

March 2012

See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum

Christine N. Coughlin

Follow this and additional works at: <https://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Christine N. Coughlin, *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. (2012).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol26/iss2/4>

This Article is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact mbutler@gsu.edu.

SEE ONE, DO ONE, TEACH ONE: DISSECTING THE USE OF MEDICAL EDUCATION'S SIGNATURE PEDAGOGY IN THE LAW SCHOOL CURRICULUM

Christine N. Coughlin,^{*} Lisa T. McElroy,^{**} and
Sandy C. Patrick^{***}

INTRODUCTION

The Socratic dialogue is the predominant method used to teach law students to transfer their developing and emerging analytical powers into professional skills, such as effective research and writing.¹ While the Socratic dialogue does contribute to advancing and improving students' legal reasoning skills—helping them to better “think like a lawyer”—its use in the law school curriculum is naturally limited because of the mix of theory and skills taught in legal education. With the recent publication of the *Best Practices for Legal Education*² (the *Best Practices Report*), and the Carnegie Report for

Copyright © 2009 by Christine N. Coughlin, Lisa T. McElroy, and Sandy C. Patrick

^{*} Professor and Director of Legal Research and Writing, Wake Forest University School of Law; Wake Forest University Center for Bioethics, Health, and Society. Professor Coughlin thanks her research assistants, Bue McNeely and Katrina Schaffhouser, for their assistance and patience, and Associate Deans Sid Shapiro and Ron Wright, and Professors Mark Hall and Nancy King for their support of interdisciplinary research, scholarship, and teaching.

^{**} Associate Professor of Law, the Earle Mack School of Law at Drexel University. Professor McElroy thanks her research assistant, Drew Coursin, Interim Director of the Drexel Law Library Peter Egler, and Electronic Services Librarian Keith Berthrong for their research assistance with this article; law professors David Cohen, Miriam Weismann, Terry Seligmann, and Emily Zimmerman for their helpful comments on previous drafts of this article; and the Earle Mack School of Law at Drexel University for its financial support of the underlying research.

^{***} Professor of Legal Analysis and Writing, Lewis & Clark Law School. Professor Patrick thanks her research assistant, Robert McCrea.

1. E.g., Steven A. Childress, *The Baby and the Bathwater: Salvaging a Positive Socratic Method*, 7 OKLA. CITY U. L. REV. 333, 334–35 (1982); June Cicero, *Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1011–12 (1989); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 99 (1994) (describing a study at the University of Pennsylvania Law School which found that women and men may find the Socratic method alienating and intimidating); Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT'L L.J. 335, 356–58 (2006).

2. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007).

the Advancement of Teaching³ (the Carnegie Report), law professors today have an unprecedented opportunity to consider and adopt pedagogies that have been successfully used in other professional disciplines that integrate professional skills and theory in their professional training programs. In this article, we focus specifically on the “see one, do one, teach one” approach used in medical education because of its broad potential applicability in legal education, especially insofar as it seeks to hone students’ inductive and deductive analytical skills. Because medical students and law students develop early professional reasoning skills in parallel ways,⁴ successful medical school pedagogy may be particularly applicable to the law school setting.

While legal education offers myriad potential uses for the “see one, do one, teach one” approach, this article dissects the signature pedagogy by focusing on the use of simulation and samples, active learning exercises, and peer teaching opportunities as a corollary to using visualization, application, and demonstration in the medical context. This article explicitly guides legal educators through the process of implementing the methodology and addresses potential concerns that law professors may raise when considering adopting some or all of the “see one, do one, teach one” pedagogy in the form of “see many, do many, teach many.” This article will conclude that utilizing the “see one, do one, teach one” methodology from medical education in law schools will accomplish two main objectives: (1) it will help students engage with course material on a deeper analytical level, allowing them to internalize theory and skill and transfer that knowledge to another legal problem; and (2) it will provide context for the students, allowing them to recognize the breadth of a legal concept and how the individual pieces they are learning fit together as a whole.⁵ Accordingly, borrowing the signature “see one, do one,

3. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

4. See Stefan H. Krieger, *The Development of Legal Reasoning Skills in Law Students: An Empirical Study*, 56 J. LEGAL EDUC. 332, 351–53 (2006).

5. See Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 567–68 (1997).

teach one” pedagogy from medical education will ultimately help students better learn the foundational skills of lawyering and bridge the gap between law school and the practice of law.

I. A BRIEF HISTORY: THE EMERGENCE OF THE “SEE ONE, DO ONE, TEACH ONE” PEDAGOGY AND THE REFORM OF AMERICAN MEDICAL EDUCATION

“See one, do one, teach one” is the “traditional format for acquiring medical skills based on a three-step process: visualize, perform and [demonstrate].”⁶ Specifically,

See One, Do One, Teach One is a useful strategy that combines the benefits of different learning styles. This process comes from the medical model. Medical students typically first see someone put on a splint, then put on a splint, then teach someone else to put on a splint. The process involves them in seeing the skill modeled, doing it themselves, and then teaching the skill to another student. Maximum learning results when the learner goes through all three of these activities.⁷

Although its origin is unknown, the maxim is an accurate way to describe the “goal of producing critical thinkers [that] remains the primary objective of medical educators today.”⁸ “See one, do one, teach one” is effective because it provides a mix of “analytic thinking, skillful practice, and wise judgment on which each profession rests.”⁹ The maxim is thus optimal for educating professionals in settings where theory and skill necessarily coincide. Medical education excels in “bringing the teaching of skills into

6. MCGRAW-HILL CONCISE DICTIONARY OF MODERN MEDICINE (2002), *available at* <http://medical-dictionary.thefreedictionary.com>.

7. Chick Moorman & Thomas Haller, *See One, Do One, Teach One*, EZINEARTICLES.COM, June 14, 2006, <http://ezinearticles.com/?See-One-Do-One-Teach-One&id=219888>.

8. KENNETH M. LUDMERER, *LEARNING TO HEAL: THE DEVELOPMENT OF AMERICAN MEDICAL EDUCATION* 5 (The Johns Hopkins University Press 1996) (1985) [hereinafter LUDMERER, *LEARNING TO HEAL*].

9. SULLIVAN ET AL., *supra* note 3, at 27.

increasingly close contact with the teaching of the basic sciences that underlie medical practice . . . [and] recogni[zing] that medical science is best taught in the context of medical practice, with integral connections between the fundamental knowledge base and the complex skills of professional practice.”¹⁰

Medical education and the “see one, do one, teach one” philosophy have been criticized¹¹ for several reasons—among them, the method’s reliance on students’ learning curve when performing procedures on live patients,¹² the publish or perish culture where research dominates medical teaching,¹³ and the increasing use of technology to research disease on a molecular or nano level, rather than on a whole patient level.¹⁴ However, these concerns can be overcome in the medical context and, perhaps more easily, in the law school context, as well. In fact, some medical scholars recently opined that:

Although the dictum “see one, do one, teach one” may have characterized the way in which clinical skills were learned in the past, it is now clear that for training in skills to be effective, learners at all levels must have the opportunity to compare their

10. *Id.* at 192.

11. Molly Cooke et al., *American Medical Education 100 Years After the Flexner Report*, 355 NEW ENG. J. MED. 1339, 1342 (Sept. 28, 2006). *See also* Laura Lin & Bryan A. Liang, *Reforming Residency: Modernizing Education and Training to Promote Quality and Safety in Healthcare*, 38 J. HEALTH L. 203, 221 (2005) (“‘See one, do one, teach one’ has been a long-standing mantra of medical education. Although this mantra has been repeated for years, it does not create an optimal training or learning environment.”) (internal quotation marks omitted); Lars Noah, *Medical Education and Malpractice: What’s the Connection?*, 15 HEALTH MATRIX 149, 151 (2005) (stating that the practical training medical school students and residents receive has its shortcomings, and arguing that the emphasis on practical training detracts from theoretical, scientific, and interpersonal training); Susan B. Rubin & Laurie Zoloth, *Clinical Ethics and the Road Less Taken: Mapping the Future by Tracking the Past*, 32 J.L. MED. & ETHICS 218, 223 (2004) (arguing that teaching ethics in medical school is less effective when the students are not constantly monitored, as they are not under the “see one, do one, teach one” method).

12. *See* Steven Lubet, *Like a Surgeon*, 88 CORNELL L. REV. 1178, 1181 (2003) (reviewing ATUL GAWANDE, *COMPLICATIONS: A SURGEON’S NOTES ON AN IMPERFECT SCIENCE* (2002)) (“[M]any medical procedures (unlike, say, legal briefs) cannot simply be redone if the first effort is inadequate. In medicine, especially in surgery, there is no such thing as a rough draft.”).

13. Cooke et al., *supra* note 11, at 1340.

14. *Id.*; LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 280.

performance with a standard and to practice until an acceptable level of proficiency is attained.¹⁵

In other words, to “do many”—without changing other parts of the sequence—may be enough to improve student learning so as to make the benefits of the pedagogy outweigh its drawbacks.

What’s more, the concerns articulated about the use of “see one, do one, teach one” as used in medical education today do not mean that the educational philosophy is in itself flawed. As does any type of educational philosophy, this pedagogy requires appropriate experience, reflection, theory, and application¹⁶ for its effective implementation. Indeed, despite valid criticisms, the American medical education system is thought to be one of the most successful in the world¹⁷ because of its emphasis on experiential learning, critical thinking, and the integration of theory, skills, and values that are learned, in part, by seeing, doing, and teaching within the appropriate structured educational setting.

“See one, do one, teach one” is well-matched to the law school setting, as well, because those core educational goals are similar to those in the medical school setting. The core goal of medical education is to hone students’ inductive and deductive analytical skills so they can internalize both the theory of the illness and the skills that will allow them to identify and treat illness.¹⁸ Similarly, the core goal of legal education is to hone nearly-identical inductive and deductive analytical skills so that students can both internalize the legal theory needed accurately and ethically in order to identify a client’s problem and master the skills to provide sound legal advice

15. Cooke et al., *supra* note 11, at 1342 (noting that “[c]ognitive psychology has demonstrated that facts and concepts are best recalled and put into service when they are taught, practiced and assessed in the context in which they will be used”).

16. STUCKEY ET AL., *supra* note 2, at 166 (“Experience is the immersing of one’s self in a task or similar event—the doing. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done. Theory entails interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for and make predictions about encountering the event or task a second time.” (quoting Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 SAN DIEGO L. REV. 1011, 1013 (2004))).

17. Lubet, *supra* note 12, at 1180–81.

18. See LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 280.

and assistance. The history of the two educational models further illustrates that the two professions have shared experiences in education reform and that the professions can and should borrow effective educational practices from each other to improve the educational process and client/patient outcomes.

America's status as a leader in medical education is a relatively new phenomenon that has arisen in the past two centuries. Medical education's reform in America started as part of a larger social reform movement taking place with "the emergence of the modern university, the growth of this country's system of public education, the muckraking reforms of the Progressive Era, the assumption of new regulatory authority by state and federal government, and the rise of American philanthropy."¹⁹ This larger social reform movement encompassed many intellectual disciplines, including law.²⁰

In the 1870s, when Christopher Columbus Langdell reformed legal education, then Harvard President Charles W. Eliot, "who encouraged Langdell's experiment, . . . was doing so as a part of a broader university reform effort [that] . . . encompassed changes in the sciences, *the medical school*, and the law school."²¹ The changes were designed to "move[] the schools away from reading and lecture and toward experiential education."²² Specifically, "[f]or the hard sciences and the medical school, Eliot recommended labs, field experiences, and a teaching hospital, along with the clinical instruction that attends those experiences."²³ In connection with these changes, Harvard Medical School's course of study was extended to

19. *Id.* at 4–5.

20. James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 83–84 (1996). See also LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 67 ("In many cases, . . . scholars in quite different fields responded to a growing state of knowledge in a similar way: by rejecting deductive logic, traditional authority, and dry, sterile textbook learning. . . . [M]any intellectuals became cultists of experience, embracing empiricism and an evolutionary concept of knowledge. . . . [S]uch thinkers as Thorstein Veblen in economics, Oliver Wendell Holmes, Jr., in law and Charles A. Beard in history . . .").

21. Moliterno, *supra* note 20, at 83–84 (citing Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329, 342 (1979)) (emphasis added).

22. *Id.* at 84.

23. LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 67 (quoting CHARLES W. ELIOT, *HARVARD MEMORIES* 65, 66 (1923)).

three years, new science subjects were added to the curriculum and each student was required to perform laboratory work.²⁴ It is no surprise, therefore, that Eliot indicated Langdell's reformed "law school classroom should resemble the laboratory in the medical school."²⁵

Medical education was further revolutionized in 1910 when Abraham Flexner²⁶ joined forces with the Carnegie Foundation for the Advancement of Teaching and assessed each of the 155 medical schools then in the United States.²⁷ Flexner wrote a highly publicized report, *Medical Education in the United States and Canada*,²⁸ which publically transformed American medical education. While many scholars credit Flexner individually with the transformation of medical education,²⁹ "[t]he ideas he popularized to the public in his report were those that had developed within medical facilities [like Harvard] during the 1870s and 1880s."³⁰ These were the same ideas that likely influenced Eliot and Langdell's construct of the law school "laboratory."³¹

Flexner frequently cited the work of philosopher, psychologist, and educational reformer John Dewey³² and promoted the importance of Dewey's ideas of progressive education so that students "could learn from their sensory experiences in an individualized fashion."³³ At the time of Flexner's report, behaviorism was leading educational theory. Under the theory of behaviorism, student learning was considered dependent upon the environment.³⁴ Students learned by repetition and

24. KENNETH M. LUDMERER, *TIME TO HEAL: AMERICAN MEDICAL EDUCATION FROM THE TURN OF THE CENTURY TO THE ERA OF MANAGED CARE* 4 (Oxford University Press 1999) [hereinafter LUDMERER, *TIME TO HEAL*].

25. Lisa Eichorn, *Writing in the Legal Academy: A Dangerous Supplement?*, 40 ARIZ. L. REV. 105, 109 (1998).

26. LUDMERER, *TIME TO HEAL*, *supra* note 24, at 3.

27. Cooke et al., *supra* note 11, at 1339.

28. ABRAHAM FLEXNER, *MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING* (1910).

29. LUDMERER, *TIME TO HEAL*, *supra* note 24, at 4.

30. *Id.* at 5.

31. See Eichorn, *supra* note 25, at 109–10.

32. John Dewey was a psychologist and educational reformer. ALFIE KOHN, *THE SCHOOLS OUR CHILDREN DESERVE* 4 (Houghton Mifflin 2000) (1999).

33. LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 167.

34. MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* 35 (2005).

reinforcement through either reward or punishment.³⁵ Around 1929, however, the cognitive theory became popular. This theory focused less on external factors, such as environment, reward and punishment, and more inward on brain-based development—specifically, that the memory system with its short-term and long-term sorting and encoding components guide the learning process.³⁶ Educational psychologists later promoted a constructivist view of learning where students actively construct or build new ideas based on current or past knowledge by solving realistic problems.³⁷ While behaviorist theory predominated during Flexner's time, constructivism was the theory more closely associated with Dewey's progressive work and Flexner's revolutionary report.³⁸

Flexner's report specifically posited that formal analytic reasoning, the kind of thinking integral to the natural sciences, was a necessary component of the education model for doctors in training.³⁹ Flexner theorized that medical education should deemphasize lecture-based learning and emphasize laboratory or clinical practice as the “core of the learning experience.”⁴⁰ Flexner also “envisioned a clinical phase of education in academically-oriented hospitals, where thoughtful clinicians would pursue research stimulated by the questions that arose in the course of patient care and teach their students to do the same.”⁴¹ The goal was to “foster critical thinking, not merely the memorization of facts.”⁴²

Nearly a century later, Flexner's report continues to shape American medical education.⁴³ Medical education is divided into two years of teaching the basic sciences, along with professional skills in

35. *Id.* See also ANGELINE STOLL LILLARD, MONTESSORI: THE SCIENCE BEHIND THE GENIUS (2005).

36. SCHWARTZ, *supra* note 34, at 37.

37. *Id.*

38. LUDMERER, LEARNING TO HEAL, *supra* note 8, at 167.

39. Cooke et al., *supra* note 11, at 1339.

40. LUDMERER, TIME TO HEAL, *supra* note 24, at 4, 6.

41. Cooke et al., *supra* note 11, at 1339.

42. LUDMERER, LEARNING TO HEAL, *supra* note 8, at 5.

43. See Daniel B. Hinshaw, Remarks at Association of Legal Writing Directors' Third Biennial Conference (July 27, 2001), *In Models from Other Disciplines—What Can We Learn From Them?*, 1 J. ASS'N LEGAL WRITING DIRECTORS 165, 175–77 (2001).

interviewing, counseling, and the like.⁴⁴ This classroom component is followed by two years of clinical study.⁴⁵ During the clinical component—the third and fourth year of medical school—students participate in clinical rotations with direct and frequent access to clinical faculty.⁴⁶ After graduating from medical school, doctors typically complete a “lengthy post-graduate residency . . . in which poorly paid neophytes continue to train under the supervision of their elders.”⁴⁷ As residents become more experienced, they assist in the teaching and training of the newer residents. Interestingly, throughout the process, most medical schools utilize the problem-based learning method⁴⁸ “borrowed” from Langdell’s case method implemented in the 1870s at Harvard Law School.⁴⁹

II. WHAT THE EXPERTS SAY: IMPORTING PEDAGOGICAL MODELS FROM MEDICAL EDUCATION INTO LEGAL EDUCATION

“We owe it to our students to try to be excellent teachers who skillfully employ a wide range of teaching methods.”⁵⁰

While modern American legal and medical education reformation theories may have enjoyed a similar starting point in the 1870s, any resemblance between the law school classroom and the medical school laboratory has virtually disappeared. According to one recent empirical study, however, first and second year law students demonstrate developing reasoning skills very similar to those of their

44. *Id.* at 176.

45. *Id.* at 176–77.

46. John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323, 338 (2008).

47. Lubet, *supra* note 12, at 1180. *See also* Montgomery, *supra* note 46, at 338 (discussing the fact that “[l]egal education has a dramatically different philosophy than medical education. . . . By graduation, every medical student has spent considerable time in a teaching hospital acquiring professional skills and a sense of the professional identity of the medical profession.”).

48. *See infra* note 116. *See also* HOWARD S. BARROWS & ROBYN M. TAMBLYN, *PROBLEM-BASED LEARNING: AN APPROACH TO MEDICAL EDUCATION* (1980).

49. *See supra* notes 19–31 and accompanying text.

50. STUCKEY ET AL., *supra* note 2, at 133.

medical school counterparts.⁵¹ This study, together with the recent landmark recommendations of the *Best Practices* Report and the Carnegie Report, illustrates that the professions can and should again borrow effective educational practices from each other to improve the learning process, students' analytical synthesis, and client/patient outcomes.⁵²

According to the landmark *Best Practices* Report, "law schools [should] follow the lead of other professional schools and transform their programs of instruction so that the entire educational experience is focused on providing opportunities to practice solving problems under supervision in an academic environment. This is the most effective and efficient way to develop professional competence."⁵³ What's more, "law schools need to expand their educational goals,"⁵⁴ and teachers should "[c]hoose [t]eaching [m]ethods [t]hat [m]ost [e]ffectively and [e]fficiently [a]chieve [d]esired [o]utcomes."⁵⁵ The *Best Practices* Report quotes John Mudd in stating,

[T]he landscape encountered in law practice is different [from that in law school]. It is not populated with cases and doctrine, but with clients and their problems. . . . The landscape is messy and unfamiliar. Not surprisingly, new lawyers report being disoriented and unprepared for this world. Some feel cheated by

51. Krieger, *supra* note 4, at 351–53. Significantly, Krieger's study also found that third-year law students, unlike fourth-year medical students, "showed only a slight change in reasoning strategy compared to second-year students . . . [and] there was little change between their recall of relevant facts and that of second-year students[.] . . . [whereas] [f]ourth year medical students focused on developing a coherent explanation for a problem." *Id.* at 352. Krieger hypothesizes that the differences in reasoning skills between the final-year medical and law students may turn on the difference in later-year curriculum in that medical students all engage in clinical training in their last two years, whereas only a subset of law students do so. *Id.* at 353.

52. This is not to say that legal education should emulate medical education in its entirety; indeed, to do so would not be fruitful given the differences in financial constraints and the fact that much of medical education has itself been criticized. See *supra* notes 11–14 and accompanying text. The adoption of medical school methodologies other than "see one, do one, teach one" is therefore beyond the scope of this article.

53. STUCKEY ET AL., *supra* note 2, at 144. See also *id.* at 170 ("All forms of experiential education involve problem-based learning, so one of the strengths of experiential education is that it gives students opportunities to practice solving problems and to receive feedback on the quality of their efforts.").

54. *Id.* at 19.

55. *Id.* at 130 (noting that "[i]n legal education in the United States, most law teachers use a limited range of teaching methods that are not always carefully chosen for their effectiveness").

their legal education as they are left to construct a new map and to do so often without the help of an experienced guide.⁵⁶

Toward the desired end of “initiat[ing] novice practitioners to think, to perform, and to conduct themselves . . . like professionals,”⁵⁷ The *Best Practices* Report recommends that “legal educators . . . investigate the feasibility of applying [medical education assessment] techniques . . . to assessments during law school, as part of the bar examination, and after entry into practice.”⁵⁸

The *Best Practices* Report acknowledges that, just as it was difficult for medical schools to transform their curricula,⁵⁹ so too will reformation present challenges for legal education.⁶⁰ Realistically, the *Best Practices* Report admits, “[c]reating a curriculum that focuses on developing professional problem-solving expertise will take some reconceptualizing of the law curriculum and the faculty’s roles in it.”⁶¹ Because medical schools have successfully overcome some hurdles characteristic of curriculum reform, however, the *Best Practices* Report concludes that law schools should similarly “adjust[] . . . our attitudes and practices”⁶² better to prepare students to enter law practice.

Even more extensively than the *Best Practices* Report, the Carnegie Report devotes considerable attention to medical education as a potential source of insight for developments in legal education.⁶³

56. *Id.* at 19 (quoting John O. Mudd, *Beyond Rationalization: Performance-Referenced Legal Education*, 35 J. LEGAL EDUC. 189, 197 (1986)).

57. *Id.* (quoting SULLIVAN ET AL., EDUCATING LAWYERS 98 (Draft July, 2006) (noting that all forms of professional education share this objective)).

58. *Id.* at 253. *See also id.* at 271 (suggesting that law schools adapt recommendations from the Accreditation Council of Graduate Medical Education for choosing means of and implementing assessment systems).

59. As noted throughout this article, this transformation is an ongoing process.

60. STUCKEY ET AL., *supra* note 2, at 145.

61. *Id.*

62. *Id.* at 146.

63. *See, e.g.,* SULLIVAN ET AL., *supra* note 3, at 80–81 (“The consequence [of the fact that most of medical education is carried out in settings of actual patient care] is to provide medicine a real advantage, compared to engineering or law, for integrating its forms of apprenticeship.”); *id.* at 130–31 (finding important similarities between teaching trust in the attorney-client and doctor-patient relationships and suggesting that legal education should use medical education as a model in teaching students how to establish such trusting relationships as a key component of professionalism); *id.* at 175

The Carnegie Report notes that “[i]f . . . medicine [cannot] provide [a] direct model[] for how law might deal with its problem of integrating the cognitive, practical, and professional, [it] do[es] provide some insight into the law’s particular problems and possibilities.”⁶⁴ The Carnegie Report notes that law schools tend to emphasize “cognitive training in the classroom setting”⁶⁵ while medical schools use “forms of teaching tied directly to settings of practice”⁶⁶ almost exclusively.⁶⁷ While the Carnegie Report stresses that the cognitive training so prevalent in legal education today has its benefits,⁶⁸ it also expresses concerns that cognitive training alone will not lead to “subsuming the skills or the habits of judgment needed by the competent and responsible legal professional.”⁶⁹ It goes on to note that “[p]rofessional activities typically blend and mix what the academic treatment of law works hard, for legitimate intellectual reasons, to keep separate: knowledge, know-how, and ethical judgment.”⁷⁰

As explained in Part I, medical and legal education do have a history of borrowing concepts from each other that work. Medical education did not blindly adopt the law school model, however; rather, “these latter-day case methods, with their focus on problem solving and decision for action, in principle address the cognitive, the

(contrasting the clinical training and subsequent concrete skills assessment that occurs in medical schools with law schools’ lack of “the institutional intentionality to develop and mandate these approaches”); *id.* at 192–93 (noting with approval that medical education has vastly expanded and enhanced the role of clinical education, “bringing the teaching of skills into increasingly close contact with the teaching of the basic sciences that underlie medical practice . . . [and] recogni[zing] that medical science is best taught in the context of medical practice, with integral connections between the fundamental knowledge base and the complex skills of professional practice . . . medical education has been receptive to pedagogical and curricular change to advance the goals of a more seamless integration of theory, practice, and professional responsibility.”). *Cf. id.* at 107–08 (noting that neither medical schools nor law schools do an ideal job of integrating the teaching of knowledge and practical skills and that observation and listening can be “powerful pedagogy” but have “important limitations”).

64. *Id.* at 81.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* (noting that cognitive training has the “ability to abstract concepts and principles from situations and to compress learning into controlled components that can be mastered more or less independently of any knowledge of the situations to which the concepts apply”).

69. SULLIVAN ET AL., *supra* note 3, at 81.

70. *Id.*

practical, and the ethical-social. In this sense, they represent an enriched and more complex development of the original model.”⁷¹

Indeed, medical education has come a long way in recent years,⁷² the Carnegie Report notes, “benefit[ing] from the insights of empirical, historical, and conceptual studies that employ insights from the social sciences and the humanities.”⁷³ The Carnegie Report also comments that medical schools “have employed a variety of means: new curricula, extensive use of simulation to train clinical skills, and problem-based learning, to name a few”⁷⁴ and suggests that law schools similarly reflect on how they can more effectively reach the needs of their constituent students by recognizing “the importance of providing a broader form of legal education.”⁷⁵ The Carnegie Report suggests a transparent process in which law schools, following the example of medical schools, solicit feedback both internally and externally about the institution’s “goals and priorities.”⁷⁶

Many scholars over decades of research have foreshadowed and echoed the recommendations of the *Best Practices* Report and the Carnegie Report that legal education look to medical education as a model.⁷⁷ According to Susan Sturm and Lani Guinier, medical

71. *Id.* at 199. The Report goes on to suggest that “[f]or law schools, a new look at the potential richness of case teaching could be both a way to reinvigorate a heritage and a common focus for renewal of educational mission . . . involv[ing] a larger conversation with other types and uses of cases—. . . in medicine, in nursing [,] . . . for example. . . . [I]t may significantly enhance the pedagogical imaginations of law school faculty. . . . Welcoming [the case method back to law schools] with its various enhancements would be to reclaim a legacy while acquiring new resources for legal education’s own renewal.” *Id.* at 199–200.

72. *Id.* at 94. The “past three decades” have particularly been a period of significant development. *Id.*

73. *Id.*

74. *Id.*

75. SULLIVAN ET AL., *supra* note 3, at 94.

76. *Id.* at 182. Listening to such feedback, the Carnegie Report goes on to say, “contributes significantly to educational quality.” *Id.*

77. Cf. James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT’L J. LEGAL INFO. 1, 22 (2007) (“While legal education is much the same as in 1914, medical education has ‘changed its face.’ Medical schools now have three missions: education, patient care and scientific research. *Their resources have increased exponentially to accommodate their two new missions.* Today, to say that medical and law schools are comparable because both are professional schools, is rather like saying that elephants and mice are comparable because both species are mammals. Yes, mice may learn much from elephants, but no one would expect a mouse to act like an elephant.” (emphasis added)).

education, unlike its legal counterpart, emphasizes “deep understanding” of critical topics through experiential learning and collaborative efforts; legal education tends to promote a “relatively narrow idea of professionalism and law, one focused on individual mastery and manipulation of doctrine in the context of formal adjudication or its shadow.”⁷⁸ Strum and Guinier posit that legal education would do well to borrow pedagogy from medical education, in order to broaden student perspectives about the profession.⁷⁹

Lessons learned from medical education can also inform our pedagogy with respect to non-clinical skills. In a recent article about teaching empathy, Kristen Gerdy has reflected,

Yet law is not alone as a profession that calls upon its practitioners to understand and care about people. Medicine also requires this “heart,” and medical schools often do focus on training students to deal effectively with patients. There are numerous parallels between a doctor’s “bedside manner” and a lawyer’s ability to interact with her clients, and as such, law faculty may learn from how medical faculty attempt to teach such things without having to vastly expand the existing curriculum.⁸⁰

Gerdy then writes compellingly about legal education’s opportunity to take important lessons about patient/client care from medical education experts:⁸¹

Christophe Courchesne notes that medical education has already offered important lessons for law schools, particularly for

78. Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515, 533 (2007).

79. *Id.* at 533–34.

80. Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the “Heart” of Lawyering*, 87 NEB. L. REV. 1, 4 (2008); see also *id.* at 41–52 (describing how medical schools do a better job than law schools of teaching interaction with, and compassion for, patients and clients).

81. *Id.* at 52–61.

clinical legal education. Indeed, the “rounds” model of the latter years of medical school formed the basis for advances in clinical programs at law schools since their inception. As clinical legal education matures, it continues to learn from medical schools as they have added more specific training in skills to balance the once-exclusive focus on cases.⁸²

Lawrence Grosberg has commented that adoption of the standardized patient technique of teaching “students how to apply their medical or legal knowledge in context, with the specific situation of each patient or client in mind”⁸³ works exceptionally well. And at least one law school has engaged in an actual partnership between a law school and a medical school, recognizing that “lawyers and doctors . . . both value professional autonomy and decision-making; both have a fundamental fiduciary duty to the individual client or patient; and ‘[b]oth professions have ethical aspirations and legal obligations to provide services to the community and individuals who cannot afford to pay them.’”⁸⁴ What’s more, “[m]edical-legal education provides a unique opportunity to engage law and medical students in interdisciplinary problem-solving while also expanding their understanding of complex issues of social justice and inequality in our legal and health care systems.”⁸⁵

82. Christophe G. Courchesne, *“A Suggestion of a Fundamental Nature”: Imagining a Legal Education of Solely Electives Taught As Discussions*, 29 RUTGERS L. REV. 21, 38 (2005).

83. Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 J. LEGAL EDUC. 212, 212 (2001).

84. Elizabeth Tobin Tyler, *Allies Not Adversaries: Teaching Collaboration to the Next Generation of Doctors and Lawyers to Address Social Inequality*, 11 J. HEALTH CARE L. & POL’Y 249, 250 (2008) (alteration in original) (quoting Peter D. Jacobson & M. Gregg Bloche, Commentary, *Improving Relations Between Attorneys and Physicians*, 294 J. AM. MED. ASS’N 2083, 2084 (2005)). Note, however, that Tobin Tyler goes on to say, “[a]s one commentator notes, we teach law and medical students different approaches to seeking truth: ‘[T]he two professions look for truth in unrelated ways. While medicine seeks objective, absolute truths, the law, employing the adversary system, seeks relative truths.’” Or, put another way: “In essence, lawyers are trained to look at a black and white situation and see the gray, while doctors are trained to find the black and white from a gray situation.” *Id.* at 292 (alteration in original).

85. *Id.* at 251–52.

Some scholars, however, argue that the “see one, do one, teach one” methodology may not be, in and of itself, a good fit for legal education. Says one scholar, “[t]he medical school adage, [s]ee one, do one, teach one, does not leave much room for ponder one, reject one, tinker one.”⁸⁶ Furthermore, medical school itself has been soundly critiqued, and at least one scholar questions whether we should trade one flawed model for another.⁸⁷

The “ponder one, reject one, tinker one” formulation and the “see one, do one, teach one” methodology are not mutually exclusive, however. Where the “see one, do one, teach one” methodology is adapted into a “see many, critique many, engage with many; do many; teach and reconsider many” structure, the limitations of the methodology turn into its strengths. Whereas the name of the method seems to suggest that the number of opportunities—“one”—is a key component of its success, in reality physicians-in-training repeat each segment of the sequence many times,⁸⁸ and the repetition of the activity yields skill proficiency.⁸⁹ What’s more, medical education as it currently exists may have its own limitations, but those limitations

86. Kenney F. Hegland, *Book Review: Final Exam: A Surgeon's Reflections on Mortality* by Pauline Chen, 4 MARQ. ELDER'S ADVISOR 369, 372 (2007) (book review) (emphasis omitted). See also Lin & Liang, *supra* note 11, at 221–22; Lubet, *supra* note 12, at 1181 (“The philosophy of clinical training in medicine is often summarized as ‘see one, do one, teach one,’ meaning that residents are expected to learn quickly as they begin practicing on real patients . . . the central dilemma of this system [is that b]eginners can never be as good as their more experienced colleagues, and many medical procedures (unlike, say, legal briefs) cannot simply be redone if the first effort is inadequate. In medicine, especially in surgery, there is no such thing as a rough draft. Patients sometimes pay a price for novice mistakes; such are the perils of the learning curve. And although teaching hospitals adhere to a protocol of patient consent, many of the most meaningful disclosures are, shall we say, glossed over when the resident actually seeks the patient’s permission to proceed. [One surgeon who has written about medical training] calls this ‘[t]he moral burden of practicing on people,’ which is never fully spelled out for patients.”) (last alteration not in original).

87. See Courchesne, *supra* note 82, at 37–39 (“Through different methods, the model afflicts students with many of the same psychological effects that law students experience—indeed, the ‘walking wounded’ may be as apt a description of medical students as of law students. Other criticisms of medical schools involve the extraordinary all-consuming intensity and length of the educational experience, the failure of schools to steer students into non-lucrative community practice, the questionable wisdom of several years of largely passive memorization, and the fiscal distress occasioned by the expense of running teaching hospitals.”). Even with the shortcomings inherent to medical education, the benefits of “see one, do one, teach one” are plentiful.

88. See LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 175–76 (quoting Flexner, *supra* note 28, at 99).

89. Robert F. Bruner, *Repetition Is the First Principal of All Learning*, Apr. 28, 2000, http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=66030.

may be about the educative model as a whole, not about the visualization, application, demonstration component of that model.

Other scholars have criticized the Carnegie Report for seeing medical education as a useful model for legal education. For example, James Maxeiner has noted that the two systems of education have grown apart and are now much more dissimilar than similar.⁹⁰ He expresses concerns that medical schools perform functions other than education,⁹¹ especially because they are part of a larger system of teaching hospitals, which engage in scientific research and patient care, among other tasks.⁹² He also notes the specialization in medicine, a focus which leads to training different kinds of doctors to perform different kinds of tasks.⁹³

But legal education need not emulate medical education in every respect to take away discrete lessons about professional education. While it is true that medical education is different from legal education in many ways (some of which Maxeiner may not discuss), both enterprises seek to train professionals to help and serve individuals with problems. Toward that end, borrowing a single component of that training may be both well-advised and consistent with the well-researched views of the Carnegie authors.⁹⁴

Therefore, despite the general criticisms of medical education (as well as the criticisms of medical education as a fruitful model for legal education) the “see one, do one, teach one” method so critical to medical education may play a beneficial role in legal education.⁹⁵

90. See Maxeiner, *supra* note 77, at 22.

91. *Id.*

92. *Id.*

93. *Id.* at 27–30 (positing that, to emulate medical schools, law schools would have to engage in attorney specialist training).

94. *Id.* at 2. Indeed, Maxeiner notes that the Carnegie authors are far more experienced in the ways of legal education than is he. *Id.* And, in fact, Maxeiner agrees “[t]hat legal education might learn from medical education is a good idea. Legal educators are accustomed to learning from others in law through the tool of comparative law. Learning from others can include following the example of others through the ‘better law’ approach. Legal educators ought to be willing to follow the ‘better pedagogy’ approach as well.” *Id.* at 22.

95. It is important to note, however, that medical education takes place over many more years than does legal education—typically at least seven years versus three. Therefore, the “see one, do one, teach one” sequence may be more spread out in medical school, with first and second year medical students observing, third and fourth year students and interns practicing, and residents in their sixth and seventh years of medical education teaching. In law school, the entire sequence could take place within one

According to Stephen Lubet:

It obviously makes great good sense to be shown the right way to do something, rather than to blunder about until one discovers it for oneself. All of law school is based on the premise that purposeful instruction is preferable to experimentation. In particular, clinical education posits that mentoring can save initiates from the pitfalls of false leads and blind alleys. As they say in medical school, "See one, do one, teach one."⁹⁶

III. IMPORTING THE SEE ONE, DO ONE, TEACH ONE MODEL INTO THE LAW SCHOOL CLASSROOM: THE VISUALIZATION, APPLICATION AND DEMONSTRATION SEQUENCE

If law schools are to follow the lead of other professional schools and transform their curricula so that students are better prepared to enter law practice, then professors may well adopt the "see one, do one, teach one" method to initiate that transformation. Although clinical and legal writing professors already are apt to use this method in showing samples, having students perform in-class writing or drafting assignments, and guiding peer review sessions, professors in the rest of the legal academy are not as likely to use application and demonstration learning techniques as frequently or effectively as their clinical and legal writing colleagues.⁹⁷

course (with co-student teaching of basic analytical skills) or over the course of a couple of years (as with near-peer teaching of multi-step skills).

96. Steven Lubet, *Lessons from Petticoat Lane*, 75 NEB. L. REV. 916, 917 (1996). *See also* Lubet, *supra* note 12, at 1180–81.

97. *See* SULLIVAN ET AL., *supra* note 3, at 104–05 ("In a number of the legal writing programs we observed, students reported that they learned by 'watching, following examples, being talked through what was modeled in class. . . . The legal writing courses the students were describing provide a pedagogical experience that in many ways complements what is missing in the case-dialogue classes that make up most of the students' first year. . . . Writing assignments are structured and paced to emphasize drafting and redrafting in response to the instructor's criticism and suggestions. Students often read each other's work and are encouraged to learn from each other."). *See also id.* at 108 ("In legal writing courses that are informed by composition theory, the pedagogy is, like that of clinical medicine, performative and learned in role. That is, students learn primarily by being led, coached, and given abundant feedback directed to improving their ability to practice legal reasoning in specific contexts. Many students with whom we spoke noted the ways in which their writing courses accelerated their progress in legal reasoning in their doctrinal courses, especially seminars beyond the first year;

The following sections therefore demonstrate how the “see one, do one, teach one” model can successfully be imported into the law classroom.

A. See One: Using Samples to Provide Context

*“There is no more effective way to help students understand what it is like to be a lawyer than to have them [] perform the tasks that lawyers perform or observe practicing lawyers at work.”*⁹⁸

According to the *Best Practices* Report, “[i]n addition to experience, students can more rapidly develop problem-solving expertise by . . . observing how experts solve problems.”⁹⁹ Despite this, law professors other than those teaching in legal writing or clinical programs have not traditionally turned to samples, however, when teaching legal concepts.¹⁰⁰ Students rarely see a contract in Contracts class, nor do they see a complaint in Civil Procedure.¹⁰¹

some wanted more such linkage. In these examples, legal writing is already coming to play an important role in helping students to cement basic patterns of legal thinking; it also serves as a bridge between the learning of legal thinking and the mastery of the skills demanded in order to practice law.”); *id.* at 109 (“Much of legal writing instruction today is concerned with developing better methods for promoting students’ abilities to engage in knowledge-transforming performance.”); *id.* at 110 (“[I]n writing instruction, the focus is typically on the generation of a product for a specific rhetorical situation—a simulated or actual piece of legal work. Because of this, students are challenged to engage with the uncertainties of specific practical contexts and to search for solutions together, using the instructor (and one another) as coach and resource. The coaching is precisely intended to support this process of discovery and refinement within a complex context. In its fully developed form, the pedagogy makes this developmental process itself visible to the learners, so that they can become aware of the components of their growing abilities to write—and think—as legal professionals.”).

98. STUCKEY ET AL., *supra* note 2, at 170.

99. *Id.* at 143. See also Johanna Shapiro et al., *Teaching the Art of Doctoring: An Innovative Medical Student Elective*, 28 MED. TCHR. 30, 33 (2006) (citing A. Keith W. Brownell & Luc Cote, *Senior Residents’ Views on the Meaning of Professionalism and How They Learn About It*, 76 ACAD. MED. 734 (2001)) (Students may learn more about professional behavior from watching others than from any other source.).

100. This is true despite the *Best Practices* Report observation that “[l]aw schools should determine what types of legal documents their graduates will be expected to produce when they begin law practice and provide instruction in how to produce such documents. After all, it does no good to teach a student to think like a lawyer if the student cannot convey that thinking in writing.” STUCKEY ET AL., *supra* note 2, at 149.

101. See Edith R. Warkentine, *Kingsfield Doesn’t Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. LEGAL EDUC. 112, 112 (2000). Furthermore, we examined ten current, popular Civil Procedure and Contracts casebooks. None contained sample pleadings or contracts. See generally

Students often face an assignment without a clear idea of the broader context in which the product will be used or without an idea of what the finished product should look like.

To advance student learning, however, professors may use samples of various types for various purposes. While some professors might want to show students documents that apply legal analytic tools in practice, others might choose to distribute sample essay exam answers, and still others might play video or audio presentations of excellent advocacy. Even live examples or simulations may work to teach students how real lawyers employ legal analysis in the representation of clients. The *Best Practices* Report recommends the use of simulations or samples of various types:

In some subject matter courses, law teachers encourage or require students to spend time in legal settings that illuminate issues considered in the course. For example, a course on judicial management of litigation may arrange for students to observe pretrial or settlement conferences in judges' chambers. A family law professor teaching a seminar on "the child and state" may have students visit family court, the child advocate, or a law guardian.¹⁰²

Where professors do use samples to teach legal concepts, too often they underutilize them. Frequently, students are relegated to using the lone sample in the appendix of a textbook that, though unexplained, stands as the ultimate prototype, bidding students to imitate it without question or deliberate choice. Even when a professor provides more

RANDY E. BARNETT, *CONTRACTS: CASES AND DOCTRINE* (4th ed. 2008); JOHN D. CALAMARI ET AL., *CASES AND PROBLEMS ON CONTRACTS* (5th ed. 2007); DAVID G. EPSTEIN ET AL., *MAKING AND DOING DEALS: CONTRACTS IN CONTEXT* (2d ed. 2006); RICHARD F. FREER & WENDY COLLINS PERDUE, *CIVIL PROCEDURE: CASES, MATERIALS, AND QUESTIONS* (4th ed. 2005); LON L. FULLER & MELVIN A. EISENBERG, *BASIC CONTRACT LAW* (8th ed. 2006); AMY KASTELY ET AL., *CONTRACTING LAW* (4th ed. 2006); STEWART MACAULAY ET AL., *CONTRACTS: LAW IN ACTION: THE CONCISE COURSE* (2d ed. 2003); RICHARD L. MARCUS ET AL., *CIVIL PROCEDURE: A MODERN APPROACH* (Updated 4th ed. 2008); ROBERT S. SUMMERS & ROBERT A. HILLMAN, *CONTRACT AND RELATED OBLIGATION: THEORY, DOCTRINE, AND PRACTICE* (5th ed. 2006); LARRY L. TEPLY ET AL., *CIVIL PROCEDURE* (Carolina Acad. Press 2d ed. 2008).

102. STUCKEY ET AL., *supra* note 2, at 165.

than one sample for students, inadequate comparative discussion of the strengths and weaknesses of each document leave the students confused to why some examples are better than others. Whether using one sample or many, professors should present samples in a thoughtfully explained way so that students can visualize the project and then understand and make deliberate analytical decisions about it.¹⁰³

1. *The Benefits of Using Samples*

Using simulations or samples benefits students in two ways. First, using samples helps students engage in the material on a deeper analytical level.¹⁰⁴ Second, viewing a sample provides context for the students, allowing them to understand the breadth of an assignment and how the individual pieces they are learning fit together as a whole.¹⁰⁵ Thus, using simulations or samples as the first step in the “see one, do one, teach one” sequence can increase the students’ ability to learn, retain and transfer knowledge.

As demonstrated by the *Best Practices* Report and the Carnegie Report discussed above, legal educators have traditionally taught in a linear fashion, teaching concepts using a combination of reading assignments, the Socratic method and lecture-oriented classes.¹⁰⁶ This traditional legal education played well in the decades after Langdell

103. See Craig B. Little, *Teaching by Examples*, 9 TEACHING SOC. 401, 402 (1982) (proposing the use of model exam answers to teach students to write better essay exams); Natalie A. Markman, *Bringing Journalism Pedagogy into the Legal Writing Class*, 43 J. LEGAL EDUC. 551, 564–65 (1993) (suggesting that legal writing professors should use multiple samples from student and professional writers to help law students learn the fundamentals of legal writing and that textbooks should include multiple “liv[e]” examples).

104. See Judith B. Tracy, *“I See and I Remember; I Do and Understand”: Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 TOURO L. REV. 297, 307–08 (2005).

105. See Parker, *supra* note 5, at 583–84.

106. See also Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 222 (2007) (Langdell created the casebook method and 130 years later his creation remains “the dominant teaching modality, largely unquestioned by those who populate academia even though there is no sound pedagogical reason for its pervasive use.”); Deborah L. Rhode, *Kicking the Socratic Method and Other Reforms for Law Schools*, THE CHRON. OF HIGHER EDUC. B15 (Jan. 26, 2001) (arguing that the Socratic method and the competitive nature of the law school experience short-change students, in part, because they “fail to supply enough opportunities for the individual feedback and interaction that are crucial to effective education”).

implemented the Socratic dialogue, in large part because books and lectures were the primary vehicles for communicating information.

Students today are children of the visual age, many using electronic media since preschool.¹⁰⁷ They do not always learn best in a linear fashion, and taking relevant notes from a lecture is difficult for some.¹⁰⁸ Because the ways in which information is conveyed and the ways in which individual recipients learn that information has expanded, teachers need to diverge from the traditional methods of required reading and lecture to impart knowledge.¹⁰⁹

As the visual age has evolved (and perhaps because of it), students today want and *need* to engage the material in a different way to learn it.¹¹⁰ Experts have dubbed this style an “active learning style” in

107. Tracy L. McGaugh, *Generation X in Law School*, 9 J. LEGAL WRITING INST. 119, 123–25 (2003) (noting that for current generations visual information from the television, the Internet, and the phone has traditionally been presented all at once).

108. See M.H. Sam Jacobson, *Primer on Learning Styles*, 25 SEATTLE U. L. REV. 139, 140–54 (2001). A large part of the change in learning style results not just from generational changes, but from the increased ethnic diversity law students now bring; different cultures have usually had different learning styles. *Id.* at 140 nn.3–4.

109. See Dolin, *supra* note 106, at 222–26.

110. Although research leaves little doubt that the visual age has influenced the learning styles and abilities of students, whether such influence is a good thing remains unclear. For example, in his article Madison notes the downsides to the visual age research has found. Benjamin V. Madison, *The Elephant in Law School Classrooms: Overuse of the Socratic Method As an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 321 n.121 (Spring 2008) (citing Jane M. Healy, *ENDANGERED MINDS: WHY OUR CHILDREN DON'T THINK* (1990)) (citations and omissions in original) (“[C]hildren’s brains today might be constructing slightly different road systems from those, say, twenty years ago. If they are being attracted to different types of stimuli, both structure and function could be altered.”); *id.* at 55 (it is possible that children who grow up with a lot of input from television might be different from those who grew up with input from an individual speaker); *id.* at 80 (television and computers may influence children to listen passively because they are used to fast-paced and constantly-changing information); *id.* at 127 (contemporary culture, with its video games, television, music focused on the “feel,” and “gestural, telegraphic speech,” puts more focus on “holistic and visual skills, often at the expense of language and analysis”); *id.* at 210–11 (“A number of studies have shown that children get information from television primarily through attention to visual action and nonverbal sounds (booms, crashes, music), not through following the dialogue. . . . Yet, as programs are increasingly designed to attract attention, the child viewer gains the habit of ignoring language in favor of visual and auditory gimmicks.”); *id.* at 216 (“The overall effects of television viewing and other forms of video on the growing brain are poorly understood, but research strongly indicates that it has the potential to affect both the brain itself and related learning abilities. Abilities to sustain attention independently, stick to problems actively, listen intelligently, read with understanding, and use language effectively may be particularly at risk.”).

More recent research suggested that frequent use of video games can permanently change the brain functions of long-term users. In 2002, Akio Mori, a cranial nerve specialist and professor at Nihon University College of Humanities and Sciences in Tokyo, Japan, espoused a claim that video gaming could change the brainwave activity in young people. Helen Phillips, *Video Game “Brain Damage”*

which students do “more than listening but also answer questions, work in small groups, or complete writing assignments” to internalize the learning.¹¹¹ Taking notes in a lecture does not always facilitate internalization of the material. Furthermore, lectures can be boring; listening to a lecture on dry material or reading paragraphs of thick text on a page cannot compete with the flashing visual images the Internet can provide.¹¹² Thus, because the presentation of the material is less appealing and the material itself is less than stimulating, students are less likely to engage with it for deep understanding.¹¹³ Students entering law school have been accustomed in earlier educational experiences to using more visually stimulating material; they are therefore more likely to read when the text provides more points of entry within a chapter or section.¹¹⁴ Similarly, students are

Claim Criticized, NEW SCIENTIST, July 11, 2002, <http://www.newscientist.com/article/dn2538>. Mori's ideas were based on a study of the brainwave patterns of 240 people, between the ages of six and twenty-nine. *Id.* Although Mori's claims have been largely criticized and somewhat discounted, the debate over the effect of visual technology on brain wave function has not ended; to the contrary, scientists are increasing testing on the effect of visual technology in various capacities. *See, e.g.*, CNN.com, *Brain Waves Drive Man's Bionic Arm*, Sept. 25, 2003, <http://www.cnn.com/2003/HEALTH/09/25/bionic.arm/>; Science Daily, *Neurofeedback May Help 'Retrain' Brainwaves in Children with Autism*, Apr. 24, 2008, <http://www.sciencedaily.com/releases/2008/04/080423175535.htm>. Despite the negative impact of the visual age, society will not likely retreat to pen, paper, and lectures as the primary form of communication. Accordingly, legal education must adapt to the evitable changes.

111. Madison, *supra* note 110, at 320. Critics of the Socratic-casebook method have gone so far as to say this method “is not only pedagogically ineffective, but is downright damaging to [students'] mental and emotional health. . . . Yet, while law school remains mired in the past, law practice today is more complex, more competitive, and more stressful than ever before. In a consumer oriented world, consumers of legal services are demanding greater services at lower price points than ever before. A premium has been placed on speed and efficiency in the delivery of legal services. It is a world and a practice alien to the one that Langdell knew.” Dolin, *supra* note 106, at 224–26 (citations omitted).

112. For recent generations dubbed “Gen-Xers” and “Millennials,” education and entertainment, once two separate endeavors, are now “inextricably intertwined.” McGaugh, *supra* note 107, at 124. Despite the dramatic change in learning styles and the availability of teaching media, some authorities believe law schools, in failing to acknowledge such changes, have “stagnated.” Dolin, *supra* note 106, at 222–24.

113. *See* Madison, *supra* note 110, at 321–22 (citing Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 398–99, 419–20, 424–25 (1997); STEPHEN D. BROOKFIELD, *THE SKILLFUL TEACHER* 268 (2d ed. 2006)). These authorities advocate using a variety of methods to accommodate learning styles and to connect with students including small groups, videos, guest lecturers, discussions, games, PowerPoint presentations, cartoons, film clips, and breaking lectures up into smaller pieces.

114. *Cf.* Madison, *supra* note 110, at 317 (“After seeing an overall framework into which discrete subjects can be placed, students are more likely to retain and be able to access information.”).

more apt to understand why material is effective if they are asked to dissect and engage with it.¹¹⁵

Medical schools have long understood that to internalize information, a young physician would necessarily have to first see the subject matter to understand it; in other words, students learn better when they can visualize the topic of study.¹¹⁶ Hence, gross anatomy, in which medical students dissect and study a human cadaver, is almost universally a first-semester class in medical school because it provides context to the human body. Understandably, students are more apt to learn and remember concepts about the heart, for example, if they have actually dissected one.¹¹⁷

The same experiential learning concept is true for legal education. According to the Carnegie Report, “students learn best when they can ‘reflect on’ their knowledge and performance in relation to models supplied by the teacher.”¹¹⁸ Nonetheless, the legal academy has been reluctant to embrace such a large shift in teaching method, choosing in most part to hold to the stalwarts of legal education—reading, lectures, and the Socratic method.¹¹⁹ Even many law professors who have ventured into using more diverse teaching methods often eschew the use of samples in the classroom. Some of those who have used samples have had problems arise because “[s]tudents are not told . . . how to go about the activity of production, such as

115. See McGaugh, *supra* note 107, at 136 (noting that new generations of law students need to interact with information to absorb it).

116. Although medical education has long adhered to contextual learning through hands-on instruction and clinical rotations coupled with some lecture, recent trends in the past two decades show many medical schools moving entirely to a problem-based learning experience (PBL) or at least to a curriculum that integrates PBL experiences while decreasing the number of lecture-based classes. See Cam Enarson & Liza Cariaga-Lo, *Influence of Curriculum Type on Student Performance in the United States Medical Licensing Examination Step 1 and Step 2 Exams: Problem-based Learning vs. Lecture-based Curriculum*, 35 MED. EDUC. 1050, 1050–55 (2001). In PBL, “information is mastered in the same context in which it will be used. . . . PBL is seen as a student-driven process in which the student sets the pace and the role of the teacher becomes one of guide, facilitator, and resource.” Robert S. Donner & Harmon Bickley, *Problem-based Learning in American Medical Education: An Overview*, 81(3) BULL. MED. LIBR. ASS’N 294, 294 (July 1993).

117. See Eichorn, *supra* note 25, at 109–10 (Langdell believed that using his model, “students would dissect cases much in the same way medical students would dissect a cadaver.”).

118. SULLIVAN ET AL., *supra* note 3, at 61.

119. Dolin, *supra* note 106, at 222–24.

negotiating trouble spots or generating alternative strategies when the first (or second, or third) does not work.”¹²⁰

Seeing varied samples to teach legal concepts, however, is an “active learning” device that, if used intentionally and deliberately, will allow students to engage with and internalize the material. Even after taking Civil Procedure and Trial Practice in law school, most lawyers could not draft a complaint without first seeing what a complaint looks like. Similarly, even though students may have a grasp of legal analysis and know the components of an analytical piece, they will not likely be able to draft a good analysis without seeing one first.¹²¹

Scholars in other fields have noted that students may better understand concepts underlying tasks they must perform when they first see examples of how experts have performed the same tasks.¹²² For example, in one study, algebra students who first looked at examples of worked problems involving “step-by-step guidance” were able to work subsequent similar problems themselves more quickly and accurately than were their peers who did not first look at worked examples.¹²³ According to the study authors, while looking at a sample problem might not allow students to “develop a strong representation of the relevant rules, it may be reasonable to suggest that it is a necessary first step,”¹²⁴ largely because “[i]n a

120. Nancy Soonpaa, *Using Composition Theory and Scholarship to Teach Legal Writing*, 3 J. LEG. WRITING INST. 81, 90 (1997).

121. See Tracy, *supra* note 104, at 308–09 (“[I]t is legitimate and reasonable for students to want to see examples of the kinds of documents they are being asked to prepare, especially because the document is probably unlike anything that most first-year law students have previously seen or written.”).

122. See Robert K. Atkinson et al., *Learning from Examples: Instructional Principles from the Worked Examples Research*, 70 REV. OF EDUC. RES. 181, 182–85 (2000) (“Even though learning from worked examples has recently attracted much attention, the notion of learning by example is not new. Indeed, it has been a major theme in educational research for at least the past four decades. During the mid-1950s to the 1970s, cognitive and educational psychologists adopted the learning-by-example paradigm to examine and describe the processes involved in concept formation. . . . The worked examples literature is particularly relevant to programs of instruction that seek to promote skills acquisition.”).

123. John Sweller & Graham A. Cooper, *The Use of Worked Examples As a Substitute for Problem Solving in Learning Algebra*, 2 COGNITION AND INSTRUCTION 59, 77 (1985). Note that, in the U.K., the term “worked example” is also used in the writing classroom to refer to samples of writing given to students as learning tools.

124. *Id.*

semantically rich domain . . . acquisition of schemas may be inextricably linked with an increasing facility in the use of general . . . rules. . . . It may be difficult or impossible to obtain complete knowledge of . . . rule[s] until a large number of schemas incorporating it have been acquired.”¹²⁵ Therefore, the study authors concluded,

[I]t can be hypothesized that increased acquisition periods will generally increase the strength and number of schemas acquired and that this increase will be magnified by the use of worked examples. . . . [W]e would like to argue that the usual emphasis on conventional problem solving in educational settings could be misplaced. Alternative techniques such as a heavy reliance on worked examples may be preferable. While worked examples are commonly employed until students are assumed to have obtained a basic familiarity with new material, the procedure is normally abandoned beyond this point to be replaced by conventional problems. It may be beneficial to persist with examples until complete familiarity with the material is attained.¹²⁶

Just as in math and science, samples can be particularly helpful in legal education because effective analysis is so varied.¹²⁷ Many legal authorities are quite subjective, and a reader can construe them in several different ostensibly “correct” ways. Moreover, a writer can present his analysis of a legal topic in many different ways depending on how he understands the material. Thus, seeing samples that reflect such variety, along with some consistencies in structure and content, can benefit students by teaching these key analytic components in broad strokes. Samples not only show the overall organization and

125. *Id.*

126. Sweller & Cooper, *supra* note 123, at 87.

127. See Helene S. Shapo & Mary Lawrence, *Surviving Sample Memos*, 6 PERSP. TEACHING LEGAL RES. & WRITING 90, at *1–2 (1998) (explaining how samples can “dispel students’ perception that there is but one ‘right’ approach to writing” by showing different ways to organize and present analysis); Tracy, *supra* note 104, at 314 (“The use of different samples can respond to these concerns by demonstrating what the structure should be, while showing that different approaches and analyses can generate very different documents that are far from mechanical.”).

structure of a legal document, but they also model the ways in which lawyers can conduct and present analysis.¹²⁸ Samples can also demonstrate which of the writer's choices are effective and how organizational choices work or fail. For most legal documents, while the structure may be consistent, the analytical content within that structure can vary greatly. By using different samples, the students can see the consistency of structure does not preclude variability of analytical content.¹²⁹

Therefore, using samples as the first step in the law school version of the "see one, do one, teach one" sequence can increase the students' abilities to learn, retain, and transfer knowledge.

In practice, experienced lawyers know to begin with samples. Like doctors who usually "see one" before doing, the first thing most seasoned lawyers do when they are asked to draft a document with which they are not familiar (perhaps a complaint, a contract, or a motion) is to get a "go-by," or sample of the document that another lawyer has done in another case. Although law practice mimics medical education's "see one" part of the sequence, then, legal education does not usually do so.

Whether law students truly learn from samples depends enormously on how a law professor uses them. For a sample to be an effective learning tool, the professor must know what pedagogical goals the sample will address, explicitly explain how the sample illustrates those goals, consider how the student will respond to the sample, and require the student actively to engage the sample on some level.

Through the following six steps, professors can use the "see one" method effectively and maximize student understanding of lessons that can be carried into the future:

128. Tracy, *supra* note 104, at 307–09.

129. *See id.* at 314–15.

a. Place the samples students will use in their appropriate pedagogical context.

The first step in using the “see one, do one, teach one” sequence is to determine what pedagogical goals the sequence will meet and what new concepts the students should understand after reviewing the sample. A professor should establish discrete goals. Students may learn more if the review is broken into smaller chunks. By determining the goals for the lesson and concepts that students should learn, professors can more precisely tailor each lesson to meet that goal.¹³⁰

b. Use several samples, not just one.

While any sample can be misconstrued as a “model,” using several samples together helps to lessen that danger. Using several samples can also dissuade students from believing that one “perfect” or “correct” mode or expression of legal analysis actually exists.¹³¹ By using more than one sample, students can see that, although lawyers may analyze a legal concept in different ways or from different angles—especially where client interests may diverge—each version can still be effective for different reasons.¹³² Additionally, students can see what qualities ineffective samples have in common.¹³³

Similarly, educational psychologists have posited that “[e]ncountering multiple examples enable solvers ‘to form generalized rules that are not restricted to overly specialized contexts thus facilitating transfer.’”¹³⁴ In one study requiring school-age

130. STUCKEY ET AL., *supra* note 2, at 130–32.

131. Shapo & Lawrence, *supra* note 127, at *2. *See also* Parker, *supra* note 5, at 583 (“To use models of legal writing effectively, teachers should try to provide more than one example of ‘good writing’ in a particular format.”).

132. *See* Atkinson, *supra* note 122, at 208 (“[E]xamples can in fact help educators achieve the goal of fostering adaptive, flexible transfer among learners. For instance, the research on inter-example features of lesson design point to the importance of providing a wide range of examples (and having students emulate examples) that illustrate multiple strategies and approaches to similar problems, which should help foster broad transfer and ‘cognitive flexibility.’”) (citation omitted).

133. *See* Susan E. Provenzano & Lesley S. Kagan, *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*, 39 LOY. U. CHI. L.J. 123, 131–32 (2007).

134. Zhe Chen, *Schema Induction in Children’s Analogical Problem Solving*, 91 J. EDUC. PSYCH. 703, 703 (1999) (citing M.L. Gick & K.J. Holyoak, *The Cognitive Basis of Knowledge Transfer*, in

children to calculate how to fill water jars with varying amounts of water, children who were exposed to multiple types of formulas before solving a new problem were more successful overall, perhaps because “[t]he variance in the source procedural features fostered the formation of an abstract schema, which was presumably applied more flexibly to novel situations.”¹³⁵ According to the study, “exposure to invariant problems led to solutions that were quickly learned but narrowly applied, whereas experiencing a wide variety of problems led to solutions that were learned more slowly but applied more broadly and flexibly.”¹³⁶ Most notably, the study authors posited that the study underscored “the importance of providing multiple examples with diverse procedures to facilitate students’ learning a general solution and applying it flexibly to a broader range of problems.”¹³⁷

Providing a deficient sample, without disclosing its quality, before showing students a thorough, well-written sample can effectively allow students to simulate a reader’s experience and understand why incomplete or sloppy analysis impedes a reader’s understanding.¹³⁸ Students are then more apt to understand why the better sample meets the reader’s needs and communicates the analysis more clearly.

c. Identify how students will respond to the sample, based on their familiarity with the subject matter.

Students respond to samples according to the level of familiarity they have with the topic and the basic document.¹³⁹ When students

TRANSFER OF LEARNING: CONTEMPORARY RESEARCH AND APPLICATIONS 9, 27 (S.M. Cormier & J.D. Hagman eds. 1987)).

135. *Id.* at 711.

136. *Id.* at 712.

137. *Id.* at 713.

138. See Cornelia S. Grobe & Alexander Renkl, *Finding and Fixing Errors in Worked Examples: Can This Foster Learning Outcomes?*, 17 LEARNING AND INSTRUCTION 612, 627 (2007) (“[E]rrors or impasses do not per se ‘drive’ learning. The effects of impasses depend on the learners and whether they have the appropriate prerequisites (i.e., prior knowledge) to react productively to them. Likewise, the positive effects of self-explaining why incorrect solutions are not appropriate . . . should also be restricted to cases in which the learner has the knowledge prerequisites to actually explain the error.”); Tracy, *supra* note 104, at 317–18 (“Students are more receptive to understanding and applying structure in legal writing if they can see for themselves why it is needed.”).

139. Tracy, *supra* note 104, at 316.

first read a sample document on a subject with which they have little familiarity, the students will respond as a typical reader,¹⁴⁰ usually finding only the basic analytical flaws and holes that any new reader would find.¹⁴¹ The more familiarity the student has with the substantive topic, however, the more the student reader will glean about structure and analysis from the sample.¹⁴² If the student is familiar with the legal topic but has not engaged in independent legal analysis about it, “the student will be able to see how the process by which the analysis was developed—through reading and class discussion of the authority—was transformed into a structure which successfully explains that analysis.”¹⁴³ Perhaps the strongest response occurs when reviewing students have themselves analyzed the same topic.¹⁴⁴

By anticipating the students’ likely responses as readers, the professor can more deliberately choose the samples and the pedagogical effect they will underscore.

d. Identify and evaluate in detail the differences between the samples that meet audience needs and those that do not, having students specifically address why some samples are more effective than others.

To use samples effectively, law professors must discuss the reasons why the legal analysis in the samples succeeds or fails. Furthermore, professors must show the students how to effectively engage with the samples for maximum learning.¹⁴⁵ Professors should annotate samples thoroughly, noting both the “good” and “bad” points. Perhaps more importantly, professors should explicitly identify *why* those portions of a document are good or bad,

140. *Id.*

141. *See id.*

142. *Id.*

143. *Id.*

144. *Id.* (“If students are given a sample memorandum on a matter on which they have already written, the sample will serve to confirm their work and will become part of the critiquing and feedback process.”).

145. Tracy, *supra* note 104, at 317.

specifically explaining why they do not meet analytical criteria.¹⁴⁶ The class should dissect each part of the sample to learn how each part contributes to the overall legal analysis—much like medical students dissect cadavers to understand the workings of each body system.¹⁴⁷ By questioning the words on the page and dissecting the analysis, students are far more likely not only to understand the analytic process and substance but also to transfer more easily the concepts they have learned to the next topic for discussion.¹⁴⁸

Professors can present samples using “see one” in more than one way. They can show portions of samples in class and then students can discuss the strengths and weaknesses within each sample before comparing the different samples. This classroom exercise not only facilitates discussion on the analytical choices the author may have made but also allows the professor to answer unexpected questions that many students may share. Although such an open discussion often helps students internalize concepts they may not have previously understood, the efficacy of this method may depend on student learning styles.¹⁴⁹ After identifying the characteristics of the sample analysis privately, students can discuss their findings with the whole class, in small groups, or with a professor-led discussion. Such an exercise would appeal to a broad range of learners and help students gain insights that can be transferred to later assignments in the course.

2. *Why Some Professors View the Use of Samples As Problematic*

Some professors disdain the use of samples. The most obvious reason is that students will look at the sample perfunctorily, without

146. Or the professor can have the students identify and explain; by annotating the samples themselves, the students are likely to better internalize the lessons. See Shapo & Lawrence, *supra* note 127, at *2.

147. Eichorn, *supra* note 25, at 109–10.

148. See, e.g., Kurt VanLehn et al., *A Model of the Self-Explanation Effect*, 2 J. OF THE LEARNING SCIENCES 1, 1 (1992) (“Students who explain examples to themselves learn better, make more accurate self-assessments of their understanding, and use analogies more economically while solving problems [the so-called ‘explanation effect’].”). See also Laurel Currie Oates, *I Know I Taught Them How to Do That*, 7 J. LEGAL WRITING INST. 1, 7 (2001).

149. See Jacobsen, *supra* note 108, at 167–69 (“The social milieu in which learning takes place affects student comfort; the more comfortable the learner, the more the student will learn.”).

integrated understanding or thought as to how the document's writer went through the analytical process.¹⁵⁰ Additionally, the sample, although exactly on point according to the lawyer who created it, may not always reflect the instructional information the professor and the course textbook are trying to impart.¹⁵¹ Professors may also omit samples because finding a comprehensive "good" sample takes so much time and effort, usually requiring the professor to draft such a sample.

The main reason professors reject sample use in the classroom is because of the danger samples can pose to the students. Using samples may present a risk because of the potential for students simply to accept the analysis in the sample wholesale without understanding the organizational and analytical choices the writer made after assessing the law and its application to the client's facts.¹⁵² Particularly when a professor only offers students one sample, students may use it as a universal "model" rather than a "sample."¹⁵³ Students may see the sample as a "template from which to create all documents of that type or, not yet having sufficient experience in the [writing] genre to recognize what is good about the model document, may emulate its less desirable attributes."¹⁵⁴ Therefore, a challenge to the professor is to have students reflect sufficiently on the sample's analysis to decide which parts of the document were the most (or least) effective and why.

While students naturally want to see an example of good legal analysis, at some point a sample may seem to transform from a representative way to communicate analysis to a "model" of analysis that is objectively correct.¹⁵⁵ More disturbingly, the student may not attend to the analytic lessons the professor is trying to teach. Instead, students may see the sample as a rigid guide to "what the professor wants" and try to emulate the sample overly strictly, especially on an

150. Shapo & Lawrence, *supra* note 127, at *2.

151. *Id.*

152. Oates, *supra* note 148, at 6.

153. Shapo & Lawrence, *supra* note 127, at *1.

154. Parker, *supra* note 5, at 583.

155. *Id.*

exam. By mimicking the sample, the student may learn enough to get through the exam, but the distinction between what the teacher must want versus the ability to think independently blurs considerably. Consequently, the “model” becomes an impediment rather than a tool for learning. Without a keen understanding of what parts of the model are good and why, the students do not internalize any lessons that can be transferred to the next topic of analysis or to future projects they will encounter in practice.¹⁵⁶

Another problem law professors may encounter is finding an adequate sample to use. While “bad” or ineffective samples may be plentiful, effective samples are often elusive.¹⁵⁷ Although the professor can draft a sample document, doing so requires a good deal of time not often available during a busy semester. Even the samples included in the textbooks can pose problems because “[n]ot all [law professors] agree about the quality of someone else’s . . . samples . . . and poor . . . examples in a text lead to confusion.”¹⁵⁸

A student-written sample in the form of a memorandum or exam answer, especially one on a topic with which students in the class have familiarity, can be even more problematic.¹⁵⁹ Using a poor example of legal analysis can shame the student who wrote it, even when the student is not mentioned by name.¹⁶⁰ On the other hand, a sample exam answer from the best student in the class may be excellent in the professor’s experienced eye, which tends to evaluate how the sample has met the course’s pedagogical objectives as a whole. The novice student analyst, however, may not yet be able to see the whole, but instead may tend to focus on less important

156. Oates, *supra* note 148, at 7–9 (noting processes to maximize transfer).

157. See Shapo & Lawrence, *supra* note 127, at *2–3.

158. *Id.* at *2.

159. See Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. PITT. L. REV. 719, 721 (1997) (explaining that annotated samples written by professors were used to reinforce lessons of good writing and editing).

160. The Hippocratic Oath says, “First, do no harm,” and the legal academy would benefit in incorporating this medical practice into legal teaching. Although the days of abusively using the Socratic method have largely passed, shaming a student will not achieve good results in learning. See Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN L.J. 313, 313 n.4, 313–15 (2008); Rhode, *supra* note 106, at B15.

individual pieces of the document.¹⁶¹ Consequently, he may stray from considering how best to engage in thoughtful legal analysis and, instead, focus on what kind of exam answer would please their professor. Even worse, the students may become disgruntled with the professor's grading assessments and why an exam with any errors was "better" than their own.

Samples may also fail to advance pedagogical goals when they do not reflect the lessons taught in the course textbook.¹⁶² Although experienced legal thinkers know that legal analysis may take a number of forms,¹⁶³ novice writers do not. Novices rigorously adhere to the instructions of their textbook and often do not have the ability to discern why a document that strays from the textbook's guidelines can also reflect strong analytic process. And when the document does stray, the students become discouraged and frustrated as they struggle to hit a moving target.¹⁶⁴

Nonetheless, the benefit of sample usage greatly outweighs its drawbacks. "Over and over again, researchers have found that transfer is more likely to occur when students have been presented with a number of different examples that have similar underlying structures and problem solutions but different surface features."¹⁶⁵ If law professors want to create the kind of internalized learning that will transfer to future law school courses and later to law practice, then they should use samples. A critical part of this visualization piece, however, is that the professor must go beyond the superficial characteristics of the samples to underlying analytic patterns, themes, and structures.¹⁶⁶

161. For characteristics of a novice reader, see COUGHLIN ET AL., A LAWYER WRITES 55–56 (Carolina Acad. Press 2008).

162. Shapo & Lawrence, *supra* note 127, at *2.

163. For example, legal writing professors across the country often disagree regarding the use of the classic IRAC paradigm in organizing writing assignments. See, e.g., Charles Calleros, *IRAC: Tentative and Flexible and Therefore Reliable*, 10(1) THE SECOND DRAFT (BULLETIN OF THE LEGAL WRITING INSTITUTE) 4 (Nov. 1995); Jane Kent Gionfriddo, *Dangerous! Our Focus Should Be Analysis, Not Formulas Like IRAC*, 10(1) THE SECOND DRAFT (BULLETIN OF THE LEGAL WRITING INSTITUTE) 2, 2–3 (Nov. 1995); Robin S. Wellford, *IRAC Unnecessarily Confuses*, 10(1) THE SECOND DRAFT (BULLETIN OF THE LEGAL WRITING INSTITUTE) 19 (Nov. 1995).

164. See Wellford, *supra* note 163, at 19.

165. Oates, *supra* note 148, at 7.

166. *Id.* at 8.

By following the six steps above and using simulation and samples to teach defined pedagogical points through concrete exercises, the professor can avoid most, if not all, of the pitfalls. Critical evaluation and discussion of why samples succeed or fail can overcome any drawbacks to their use by providing a depth of understanding the students would not get otherwise. Despite the inherent problems samples can bring to the classroom, students in law school today need to engage with material at its core to understand it and to transfer that understanding to the next task.¹⁶⁷

Despite the inherent problems samples can bring to the classroom, using them thoughtfully and properly can greatly enrich the learning process and more deeply impart lasting learning to students. Thus, integrating samples into the classroom as the first step of the “see one, do one, teach one” sequence can engage students on a deeper level and help them to advance their legal analytic skills.

B. Do One: Applying Theory and Skill

“[S]tudents must shift from learning by observation and discussion to learning by performance.”¹⁶⁸

That students learn effectively through experience is a fundamental tenet of educational learning theory.¹⁶⁹ Toward that end, “doing one” is a crucial component of the “see one, do one, teach one” methodology because it (1) allows students to do the important work of an attorney; (2) encourages students to assess their success and provides explicit and relevant guideposts for improving on work; and (3) provides context for the analytical and writing theory. What’s more, learning through doing in law school teaches students to learn experientially throughout their lifetimes.¹⁷⁰

167. See, e.g., STUCKEY ET AL., *supra* note 2, at 146.

168. SULLIVAN ET AL., *supra* note 3, at 108.

169. See generally DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT (Prentice Hall 1984) (also noting that reflection upon experience is critical to the learning process).

170. See STUCKEY ET AL., *supra* note 2, at 172.

The importance of “do one” is best illustrated by the fact that “medical school educators have in recent years altered their ‘case-centered’ approach in favor of ‘skills-centered’ training Significantly, medical schools have substantially increased the amount of training time they devote to clinical skills, typically embedding clinical skills training in the entire medical school curriculum.”¹⁷¹ Incorporating active learning activities into the curriculum can involve both “real life” and simulated experiences: from having an Evidence professor ask students to argue a motion in limine on behalf of the prosecution and defense, to having a Contracts professor ask her students to draft a simple contract.¹⁷² The possibilities are endless, and the experience is rewarding for both the student and the professor.

1. The Benefits of Do One

While “do one” may at first glance seem to be a misnomer (as it is also the ultimate goal for a lawyer), it is the step that links mastery of theory with skill. Specifically, it is the link that allows the student to go from visualizing a legal concept or problem to demonstrating theory to solve new problems through peer teaching. The entire learning process is dependent upon “do one,” and the process is neither efficient nor effective without active, individual expression of the skill. As the Carnegie Report says:

[N]ovices can begin to learn the rudiments of litigation practice, for example, by attending to the core elements of the procedural and conceptual models exemplified in expert practice. Teachers make this possible by allowing novices to work with and imitate multiple examples, using the conceptual models as scaffolds

171. David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 208 (2003).

172. STUCKEY ET AL., *supra* note 2, at 172.

through which to understand feedback, in order to guide their assimilation of more skillful performance.¹⁷³

“‘Transfer’ refers to a student’s ability to employ skills in one context that have been learned in a different context.”¹⁷⁴ Courses that include or emphasize active learning skills—like those used in the training of physicians—help students more easily transfer skills they learned in school to their future practice. Specifically, allowing students to “do one” enables the student to: (1) bridge the gap between theory and practice;¹⁷⁵ (2) “synthesize” substantive law with procedural law;¹⁷⁶ (3) introduce and integrate the client and other personalities into the “study and practice of law;”¹⁷⁷ (4) expose students to advocacy;¹⁷⁸ and (5) teach students to analyze a problem from the beginning, rather than dissecting it at the end.¹⁷⁹

Active learning exercises, like those used in medical education, incorporate components of the predominant learning theories of behaviorism, cognitivism, and constructivism.¹⁸⁰ Specifically, students learn from repetition, reward and punishment (characteristic of behaviorism); brain-based learning, sorting, encoding, and retention of material from short-term to long-term memory (characteristic of cognitivism); and, most importantly, the ability to apply learned concepts and ideas to new situations (deriving from both cognitivism and constructivism).

At least one scholar—Stefan Krieger—has noted that most clinical law professors base their claims—that experiential learning is effective in the law school setting—on anecdotal rather than empirical observations.¹⁸¹ This deficiency prompted him to conduct

173. SULLIVAN ET AL., *supra* note 3, at 101–02.

174. Binder & Bergman, *supra* note 171, at 197.

175. *Id.* at 198.

176. *Id.*

177. *Id.*

178. *Id.* at 197–98.

179. *Id.* at 198.

180. See *supra* Part I and notes 32–38 for a more detailed discussion of the leading learning philosophies.

181. Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359, 362 (2008).

an empirical study comparing the lawyering skills of law students who had participated in a law school clinic with the same skills of those who had not.¹⁸² The results of his study supported the conclusion that students who have participated in experiential education activities in law school are better able to identify some relevant facts in a legal fact pattern,¹⁸³ identify legal rules relevant to a client's problem,¹⁸⁴ identify client interests,¹⁸⁵ and consider next steps in a client representation.¹⁸⁶

While many schools are in the process of discussing curricular changes that would involve more “do one” or active learning activities, the 2008 Association of Legal Writing Directors survey illustrates that only 16% of the 171 responding schools actually implemented changes in their legal writing programs at the time of the survey.¹⁸⁷ Not surprisingly, clinicians and legal writing professors remain at the forefront of their law school colleagues in incorporating the types of experiential learning opportunities discussed in *Best Practices* and the Carnegie Report in their classroom.¹⁸⁸ To extrapolate, then, casebook professors may incorporate even less experiential learning into their curriculum—to the detriment of their students' learning.

Implementing active learning exercises or a “do one” mode of teaching requires intentionality and patience. The professor needs to

182. *Id.*

183. *Id.* at 379. However, Krieger notes that even clinical students did not pick up on all relevant facts provided to them.

184. *Id.* at 383–84. It is important to note that students who had not enrolled in a clinic were able to cite more legal rules overall, but that the clinical students were able to cite to a higher percentage of relevant rules out of the ones identified. *Id.* at 395.

185. *Id.* at 389–90.

186. *Id.* at 393–94. Krieger does note that the typical next step articulated by the clinical students was to engage in legal research, not, according to Krieger, “the type of strategic reasoning used by experts in problem solving.” *Id.* at 394. Moreover, according to the Krieger study, clinical students were less likely to draw inferences from the facts, leading the study author to ponder whether “the clinical experience may stifle the fact brainstorming process.” *Id.* at 386.

187. PHILIP FROST ET AL., ASSOCIATION OF LEGAL WRITING DIRECTORS LEGAL WRITING INSTITUTE, 2008 SURVEY RESULTS, at ix (2008), http://www.alwd.org/surveys/survey_results/2008_Survey_Results.pdf.

188. *Id.* at ii. For example, among legal writing professionals, the time spent lecturing in legal writing classes is approximately 31.80%, the time responding to question and class questions is 23.39%, the time actively demonstrating concepts is 10.70%, the time spent on in-class exercises is 9.74%, the time doing group activities is 16.68%, and the time doing in-class writing is 8.36%.

provide the appropriate structure to expose students not only to theory and skill, but to the relationship between the two, allowing them to synthesize the two lawyering components.¹⁸⁹ Therefore, professors should look to some guidelines to “promote the likelihood of transfer”¹⁹⁰ of information, help students retain it, and increase the likelihood that they will apply it to new situations.

Through five key steps, a professor can maximize student understanding of concepts that can be carried to the future:

a. Students should do more than one.

Professors should provide students with multiple opportunities to “do one” that relate to the concept or skill the professor wants to teach. “Without repeated opportunities, concepts are unlikely to become encoded in students’ long term memories.”¹⁹¹ Some educational psychologists theorize that repetition of a skill—or the “do one, do many” philosophy—actually moves theory and skill from short-term to long-term memory, or to another place in the brain where it remains more “permanent.”¹⁹² Even in medical schools, students typically do not one, but many.¹⁹³

Repetition of a professional skill brings “expertise and smoothness.”¹⁹⁴ As Atul Gawande reflects in his book *Complications: A Surgeon’s Notes on Imperfect Science*, “We want perfection without practice. Yet everyone is harmed if no one is trained for the future.”¹⁹⁵ As the *Best Practices* Report says, “If proficiency in the performance of specific lawyering tasks is an educational objective, students [should] have repeated opportunities to perform the tasks to be learned or improved upon until they achieve the desired level of proficiency.”¹⁹⁶ Moreover, as Flexner so aptly observed when

189. Moliterno, *supra* note 20, at 81 n.37.

190. Binder & Bergman, *supra* note 171, at 200.

191. *Id.* at 201.

192. See LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 176 (quoting Flexner, *supra* note 28, at 99).

193. Cooke et al., *supra* note 11, at 1341; LUDMERER, *LEARNING TO HEAL*, *supra* note 8, at 279.

194. Perri Klass, Book Review, 347 *NEW ENG. J. MED.* 1727, 1727 (2002).

195. *Id.* (quoting GAWANDE, *supra* note 12).

196. STUCKEY ET AL., *supra* note 2, at 178.

publicizing medical education reform, “If one had one hundred hours in which to learn to ride a horse or to speak in public, one might profitably spend an hour (in divided doses) in being told how to do it, four hours watching a teacher do it, and the remaining ninety-five hours in practice.”¹⁹⁷

b. Students should “do one” in multiple diverse contexts.

Professors should encourage students to “do one” using skills that involve the same legal concept or issue but are present in different contexts.¹⁹⁸ As David Binder and Paul Berman note in their article *Taking Lawyering Skills Training Seriously*,¹⁹⁹ cognitive psychologists affirm,

“[T]he use of varied context examples can build a robust schema, which will in turn support far transfer. In summary, a powerful instructional strategy to avoid inert knowledge to yield far-transfer performance is to provide varied context examples . . . which will allow students to focus on building flexible schema based on the deep structure and show that it may be reactivated by a variety of surface features.”²⁰⁰

c. The “do one” activities should be spread out over time.

Professors should offer students the opportunity to engage in “do one” activities over time.²⁰¹ Research by psychologists suggests that “the same amount of overall practice is much more effective for long term retention when the practice is distributed over time. . . . For example, four twenty-minute segments distributed over two days is more effective than the same four twenty-minute practice sessions over one day.”²⁰²

197. FLEXNER, *supra* note 28, at 99.

198. Binder & Bergman, *supra* note 171, at 201.

199. *Id.*

200. *Id.* (quoting Ruth Clark & Merlin C. Wittrock, *Psychological Principles of Training*, TRAINING AND RETRAINING at 78 (Sigmund Tobias & J.D. Fletcher eds. 2000)).

201. *Id.*

202. *Id.* (quoting Clark & Wittrock, *supra* note 200, at 60).

d. Students should receive feedback.

Professors should ensure that students receive timely and comprehensive feedback on any “do one” activity or performance.²⁰³ Feedback “that provides students with the opportunity to revise their thinking as they work on tasks[] is likely to be particularly effective.”²⁰⁴ Legal education theorists note that without detailed and individualized feedback, attempts at simulation and experiential learning in the law school classroom may fall flat because students have no way of assessing their successes and no guideposts for improving upon their work.²⁰⁵

e. Students should have the opportunity to self-evaluate.

Students should employ appropriate methods for self-evaluation or reflection.²⁰⁶ “Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done.”²⁰⁷ Guided reflection will enable students the opportunity to evaluate their own performance.²⁰⁸ While each student’s experience and perception of self is unique, professors can provide instruction and materials on reflective thinking, “require [the] students to write reflective journals, and have students perform self-evaluations at one or more points during the semester and at the end of the term.”²⁰⁹

2. Why Some Professors Are Reluctant to Ask Their Students to “Do One”

Law professors often report two major issues with having students “do one.” First, the more students practice their skills, the more time professors must spend responding to their efforts. The challenge is to incorporate further analytic opportunities during already hectic

203. *Id.* at 202.

204. Binder & Bergman, *supra* note 171, at 202.

205. STUCKEY ET AL., *supra* note 2, at 143 (quoting SULLIVAN ET AL., *supra* note 3, at 178).

206. *Id.*

207. *Id.* at 166 (citing Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 SAN DIEGO L. REV. 1011, 1013 (2004)).

208. *Id.* at 143 (citing SULLIVAN ET AL., *supra* note 3, at 178).

209. *Id.* at 173.

semesters where the average law professor teaches several courses, engages in school service, and advances her own scholarly agenda.

Second, many students report that they are asked to “do one” in a vacuum—in other words, they are expected to simulate the work of an attorney without any informed idea of what that work would look like.²¹⁰ Legal education theorists note that, without detailed and individualized feedback, attempts at simulation and experiential learning in the law school classroom may fall flat because students have no way of assessing their successes and no guideposts for improving upon their work.²¹¹

Both of these issues have real implications for the implementation of the “see one, do one, teach one” methodology in the law school classroom; however, both concerns are surmountable because the “see one, do one, teach one” methodology itself can help to safeguard against them.

a. Grading, Commenting, and Conferencing

Professors who use the “see one, do one, teach one” sequence will necessarily have a disproportionately heavy teaching and grading load when compared to professors who employ the traditional Socratic method in their teaching.²¹² Whereas most law professors grade one set of exams at the end of a semester,²¹³ using samples may require professors to give individualized feedback on assignments for

210. The Carnegie Report notes that respondents in a study agreed with the proposition that “[l]aw school teaching is too theoretical and unconcerned with real life practice.” See SULLIVAN ET AL., *supra* note 3, at 76 (quoting DINOVTIZER ET AL., AFTER THE J.D.: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 79 (2004)).

211. See SULLIVAN ET AL., *supra* note 3, at 100 (“By giving learners opportunities to practice approximations to expert performance and giving these students feedback to help them improve their performance, educators are providing an apprentice-like experience of the mind.”).

212. See Robert C. Downs & Nancy Levit, *If It Can't Be Lake Woebegone . . . A Nationwide Survey of Law School Grading and Grade Normalization Practices*, 65 UMKC L. REV. 819, 824 (1997) (“[G]rading is far and away the most distasteful aspect of law school teachers’ jobs. . . . [M]ost law school teachers will not give the slightest consideration to the use of teaching/grading techniques that call for a larger commitment of grading time than that already spent.” (quoting Paul T. Wangerin, “Alternative” Grading in Large Section Law School Classes, 6 FLA. J. L. & PUB. POL’Y 53, 54 (1993)); Michael P. Allen, *Making Legal Education Relevant to Our Students One Step At a Time. Using the Group Project to Teach Personal Jurisdiction in Civil Procedure*, 27 HAMLINE L. REV. 134, 150–51 (2004)).

213. Downs & Levit, *supra* note 212, at 822.

up to 100 students per class (or more).²¹⁴ What's more, while law professors may typically grade an exam answer by reading through it and using a rubric,²¹⁵ providing detailed feedback on students' attempts to "do one" is a considerable investment of time for the professor—time that the professor must take away from scholarship, school service, or personal obligations.

One potential solution to this issue is to have students "teach one" and guide each other through analyzing basic legal issues or creating simple documents, perhaps with the aid of a professor-generated checklist or guided list of questions. Another possible solution is to have students work in teams or small groups to "do one," just as they might in law practice, thereby cutting down on the sheer number of assignments a law professor must grade and comment upon as well as the number of conferences she must hold.

b. Students' Lack of Exposure

A common complaint in the law school classroom is that professors ask students to "do one," or engage in legal analysis, without giving students a real idea how to go about it. Even when professors offer guidance, the guidance is often in the form of a hypothetical or description rather than a concrete example.²¹⁶ Students therefore lack confidence in their abilities to parlay their analytical abilities into producing a complaint, a trial brief, or a contract.

Again, the "see one, do one, teach one" model itself can provide a solution to this common issue. When professors incorporate the "see one" component into the law school curriculum through the use of samples, students have concrete examples of what their analytic output should and should not resemble.²¹⁷ They have little real-life exposure to documents like these.²¹⁸ The task of creating their own

214. *See id.* at 822–23.

215. *Id.*

216. *See supra* Part III.A. (discussing "see one").

217. *See, e.g.,* SULLIVAN ET AL., *supra* note 3, at 105.

218. *See supra* notes 130–148 and accompanying text for recommendations.

work, while still daunting, seems less impossible because the expectations are clear and visible.²¹⁹

C. Teach One: Demonstrating Mastery

*"There is nothing that makes you learn more than teaching it yourself."*²²⁰

Medical education has been successful in its approach to experiential learning and development of critical thinking skills. It is no surprise, then, to learn that the word "doctor" is derived from the Latin word for "teacher."²²¹ "[E]ffective peer teaching works on both a cognitive and affective level, for peer teacher and learner alike."²²² Moreover, it is not a stretch for the law professor to incorporate peer teaching to mimic the "teach one" portion of the medical education philosophy.²²³ Peer teaching lies near the heart of Langdell's intended reforms because "students learn better when they participate in the teaching process. . . ."²²⁴ Scholars have commented that "[p]eer

219. See, e.g., STUCKEY ET AL., *supra* note 2, at 130.

220. LILLARD, *supra* note 35, at 203 (citing MARIA MONTESSORI, *THE CHILD, SOCIETY AND THE WORLD: UNPUBLISHED SPEECHES AND WRITINGS* 69 (Clio Press Ltd. 1989)).

221. Ronald A. Arky, *The Family Business—To Educate*, 354 N. ENG. J. MED. 1922, 1924 (May 4, 2006).

222. Ted Becker & Rachel Croskery-Roberts, *Avoiding Common Problems in Using Teaching Assistants: Hard Lessons Learned from Peer Teaching Theory and Experience*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 269, 275 (2007). See also LILLARD, *supra* note 35, at 208 ("Many others have also shown that positive academic and social effects accrue to those who teach as well as to those who are tutored.").

223. Other scholars have commented that peer teaching may be particularly effective in legal education. See Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 166 (1987) ("[W]hat substantial objection can there be to using paid assistants or other class members to comment, under faculty guidelines, on the substance of a student's short, ungraded writing exercises?"); Michael Hunter Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 WASHBURN L.J. 235, 245 (2008) (describing having enrolled students "reteach" concepts related to contract law to the entire class); Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 189, 191 (1995) (describing an academic support Community Property class in which "for each topic, two students were tagged to be the teachers. The teachers were responsible for preparing a brief overview of the issue, and for answering student questions. . . . The students who played the role of professor discovered (as most beginning law teachers discover) that they learned the material more thoroughly than they ever had in a student role" and noting that the students who took the class "had a statistically significant and moderately strong effect on a student's general performance in law school.").

224. Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449, 455 (1996) (quoting Edwin W. Patterson,

teaching is considered a ‘subset of the collaborative learning movement in higher education.’”²²⁵ Furthermore, “faculty can encourage a cooperative atmosphere in learning. Creating formal structures for peer teaching can accomplish this goal. [However], [a]s a method of structuring the standard curriculum, one may hypothesize that pure peer teaching is rare.”²²⁶

1. *The Benefits of Teach One*

Peer teaching “builds on individuals’ strengths and mobilises [sic] them as active participants in the learning process—this is true for teachers as well as students.”²²⁷ The teacher must not only understand the material or concept being taught, but must also apply these from different vantage points to understand her students’ motivations and learning styles in order to effectively pass on the information.²²⁸ Through “teaching one,” the students “learn the subject better and deeper, [and] they also learn transferable skills in helping, cooperation, listening, and communication.”²²⁹ Teaching also enables students to apply information to new situations more effectively because the process of teaching another student shifts the information from short-term to long-term memory.²³⁰ In other words:

When you teach a skill or concept, you have to think about it, formulate it in your mind, rehearse how you want to explain it, say it aloud, and adjust your responses to the learner’s questions and level of understanding. You may have to come up with new

The Case Method in American Legal Education: Its Origins and Objectives, 4 J. LEGAL EDUC. 1, 5 (1951)). See also Leon E. Trakman, *Law Student Teachers: An Untapped Resource*, 30 J. LEGAL EDUC. 331, 340 (1979) (“Senior student [peer teacher] interviewees repeatedly echoed an axiom: an ideal way to grow to appreciate the intricacies of legal reasoning is through [educating] others.”).

225. Becker & Croskery-Roberts, *supra* note 222, at 275 (quoting NEAL A. WHITMAN, *TO TEACH IS TO LEARN TWICE* 4 (ASHE-ERIC Higher Education Reports 1988)).

226. Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 912 (1997).

227. Keith J. Topping, *Trends in Peer Learning*, 25 EDUC. PSYCHOL. 631, 643 (2005).

228. See Arky, *supra* note 221, at 1924, 1926.

229. Topping, *supra* note 227, at 643. See also Fines, *supra* note 226, at 913 (“Where peers interact in learning there tends to be both a cognitive and an affective difference in the approach to the process by both participants.”)

230. See Moorman & Haller, *supra* note 7.

examples, new words for explaining, and new ways of thinking [of] the skill or concept involved. Engaging [in] this process serves you (the teacher) as much as it does the learner. It increases your level of retention.²³¹

Finally, several scholars have commented that students may be in the best position to teach other students because they are able to recall their more recent struggles with the material,²³² as well as relate to their peers on an equal level.²³³

Peer teaching may take one of two forms: co-peer teaching, where students who are on equal academic footing teach each other through demonstration, simulation, or small groups; and near peer teaching, where more experienced students act as teaching assistants to the professor or tutors.²³⁴ The learning benefits for the students are similar in both forms of peer teaching.²³⁵

To illustrate, many psychological studies have shown the effectiveness of academic peer teaching.²³⁶ In one study, the University of South Carolina Medical School analyzed the academic effects of peer teaching among medical students.²³⁷ The study found

231. *Id.*

232. See Becker & Croskery-Roberts, *supra* note 222, at 277 (“Experienced professors sometimes are so familiar with a subject that they unconsciously omit information or procedural steps needed for complete understanding by less-experienced (or completely inexperienced) first-year students. [M]ost [peer teachers] have not mastered legal writing and analytical skills to such an extent that they risk skipping explanatory steps, or at least as many steps as a more experienced professor might inadvertently omit.”). See also Fines, *supra* note 226, at 914 (“Since the peer has only recently learned (or is currently learning) the material being taught, the peer teacher is more likely to consciously think through the steps of the learning process than one who has greater expertise.”); Terrill Pollman, *A Writers’ Board and a Student-Run Writing Clinic: Making the Writing Community Visible at Law Schools*, 3 J. LEGAL WRITING INST. 277, 284 (1997) (“[Peer teachers] remember clearly which concepts or skills are likely to cause confusion and distress to first year students.”).

233. See Becker & Croskery-Roberts, *supra* note 222, at 276. See also Fines, *supra* note 226, at 914 (“The combination of a greater opportunity for empathy on the part of the peer teacher and a lesser need for deference from the peer student creates an affective environment in which the student peers view themselves as partners in a process of learning.”); Pollman, *supra* note 232, at 284 (noting that students may find other students more approachable and less intimidating than a professor).

234. See WHITMAN, *supra* note 225, at 59–61.

235. See *id.* at 60.

236. See LILLARD, *supra* note 35, at 208.

237. See generally Jeffrey G. Wong et al., *Formal Peer-Teaching in Medical School Improves Overall Academic Performance: The MUSC Supplemental Instruction Program*, 19 TEACHING AND LEARNING IN MED. 216 (2007).

that students who participated in a program where they taught their peers in small group settings performed statistically better on medical school performance exams and overall GPA than students who did not participate in such “teach one” opportunities.²³⁸

In another study, college students were divided into three groups and asked to read a passage.²³⁹ The first group was told that they should only read the material and that they would be later tested.²⁴⁰ The second group was told that they should read the material and expect to have to teach the material.²⁴¹ Instead of having the students teach the material, however, the second group was instead tested on the material.²⁴² The third group was told to read the material, prepare to teach the material, and then actually teach the material to peers.²⁴³ The results reflected that the students who prepared to teach and actually taught showed the highest level of understanding of the passage.²⁴⁴ The students who prepared to teach but did not teach had a bit lower understanding of the material. The students who performed the worst were those who only read the passage.²⁴⁵ So, in order to have students learn most effectively, we should teach our students not only to learn, but also to teach.

Teaching as a conduit to learning is not only effective academically, but also socially.²⁴⁶ Students who prepare material to teach tend to enjoy the learning process and may even be more engaged in it.²⁴⁷ To test this hypothesis, in another study, undergraduate psychology class students were given passages to read on brain development just before a school vacation and were asked to prepare for either an exam or a session in which they would have to teach another student.²⁴⁸ When the students returned from vacation,

238. *Id.* at 218–19.

239. LILLARD, *supra* note 35, at 208.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.*

245. LILLARD, *supra* note 35, at 208.

246. *Id.*

247. *Id.*

248. *Id.*

they were tested on the material and questioned about their engagement in the study process.²⁴⁹ Students who read to teach, however, were more intrinsically involved, and they rated themselves as more actively engaged in the reading, more interested in the material, more willing to return, and happier about the process overall.²⁵⁰ On a measure of conceptual learning, a significant difference existed between the two groups, with the teaching group scoring almost double that of the exam group.²⁵¹

Moreover, teaching provides students with greater self-insight. While individuals' teaching methods tend to be similar to those they have experienced,²⁵² they also tend to recall those previous teaching experiences that worked for them—in other words, they tend to teach with the same teaching methods that successfully match their own learning style.²⁵³

The ways to employ the “teach one” philosophy are limited only by the professor's creativity and imagination. The following guidelines, however, will help peer teachers and students to learn most effectively.

a. Describe context and the pedagogical goals of the peer teaching activity.

When incorporating a peer teaching activity, the students should understand the legal concepts being taught, as well as the context and goals involved. Students sometimes mistake collaborative learning exercises as exercises where the teacher wants to spend time on outside research, rather than focused on her students. Peer-teaching should not make the student-teacher into a substitute teacher. Rather, “in the collaborative learning classroom, the instructor is in no sense

249. *Id.*

250. See LILLARD, *supra* note 35, at 208.

251. *Id.* On rote learning, there was not a statistically significant difference, however, between the readers and the teachers. *Id.*

252. Mary Beth Beazley, *Better Writing, Better Teaching: Using Legal Writing Pedagogy in the “Casebook” Classroom (Without Grading Papers)*, 10 J. LEGAL WRITING INST. 23, 32 (2004).

253. Penny H. Stewart et al., *Learning Styles: Charting with Iconic Learners*, ERIC Document Reproduction Service No. ED 428 403, at 1 (1999), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/17/70/40.pdf.

a passive figure. Collaborative learning is not unstructured learning; it replaces one structure, the traditional one, with another, the collaborative structure.”²⁵⁴ Explicitly describing concepts, goals, and context enables the students to understand that the exercise is relevant and explicitly designed to further the learning process.

b. Have explicit standards for the selection of near-peer teachers.

Hiring teaching assistants or tutors can be a rewarding task for both the professor and the teaching assistant or tutor. The relationships can be strong and extremely positive for both parties. Typically, professors simply consider who did well in the class in making the decision; however, the professor should also consider other characteristics to avoid selecting a person who is simply doing the job for purposes of ego building.²⁵⁵ Instead, professors should interview teaching assistants and tutors who not only did well in the class but showed a passion for the subject, encountered and overcame struggles in the subject, or who have shown a passion for teaching.²⁵⁶

c. Incorporate a variety of peer teaching activities.

There are many ways to incorporate co-peer teaching into the law school classroom in the form of partnerships and work groups. For example, a professor can utilize creative dialogue where the students are instructed to organize into small discussion groups, elect a spokesperson to record the group’s theories, then report back to the larger group.²⁵⁷ A professor can also have students participate in group projects, answer study guide questions in pairs or groups, give “teacher of the day” lectures, lead class discussions, or conduct demonstrations or simulations.²⁵⁸ To illustrate the broad nature of possible peer teaching activities within the law classroom, consider

254. WHITMAN, *supra* note 225, at 57 (quoting Harvey F. Wiener, *Collaborative Learning in the Classroom: A Guide to Evaluation*, College English 48(a): 52-61 (1986)).

255. See WHITMAN, *supra* note 225, at 48-49.

256. *Id.*

257. *Id.* at 45.

258. *Id.* at 46.

the following three creative ideas that can be used effectively to “teach one” after students “do one” in different contexts:

In *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*,²⁵⁹ Sophie Sparrow discusses the use of rubrics—or “sets of detailed written criteria used to assess student performance.”²⁶⁰ Professor Sparrow explains that well-developed rubrics can help focus both the teaching and learning process because they set forth explicitly the goals of the assignment.²⁶¹ Having students act as “teachers” to review a peer’s drafting sample of a complaint, contract, or other type of writing assignment, and provide input into the rubric designed by the professor—or even having the students design a rubric based upon class instruction—enables the students to understand and articulate course goals and expectations, and empowers them to apply them to their own drafts.

In *Teaching in Reverse: A Positive Approach to Analytical Errors in 1L Writing*,²⁶² Susan Provenzano and Leslie Kagan suggest allowing students to engage in the process of error analysis to identify and correct predictable analytic mistakes before any type of written assignment is graded.²⁶³ These legal writing professors analyzed several years worth of errors in students’ closed memorandum assignments, and charted and quantified common errors in various aspects of writing.²⁶⁴ Professors could easily use the student samples provided in *Teaching in Reverse* in a “teach one” exercise; however, professors could also find and use similar analytic errors in any set of law school writing assignments, regardless of whether the subject matter was skill-based or doctrinal. Having students teach their peers by identifying and explaining basic analytical errors, as well as the root causes of those errors, would be a meaningful learning experience.²⁶⁵ Peer teaching using the

259. Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. L. REV. 1 (2004).

260. *Id.* at *7.

261. *Id.* at *9.

262. Provenzano & Kagan, *supra* note 133.

263. *See id.* at 124.

264. *Id.* at 149–52.

265. *See id.* at 156–57.

information in this article could be done through the use of small group settings, through peer critique, or through individual presentations to a small group or class.

In *From Grimm to Glory: Simulated Oral Argument As a Component of Legal Education's Signature Pedagogy*,²⁶⁶ Lisa McElroy²⁶⁷ describes an oral argument simulation designed to help students learn a variety of practical and analytical skills.²⁶⁸ While simulations such as this can be excellent “teach one” active learning exercises all by themselves, such activities can also provide additional learning opportunities by having students analyze the transcripts and describe to their peers the advantages and disadvantages of the various arguments used in the simulation.

2. *Why Some Professors View Peer Teaching As Problematic*

While peer teaching within the law school curriculum already takes place in upper level seminars where students must present to the class, in the first year curriculum—as well as in large lecture classes—very few professors formally try peer teaching despite the well-established academic and social advantages.²⁶⁹ Professors typically have several primary concerns about having students teach other students. First, law professors may lack the time to teach students to teach.²⁷⁰ Specifically, given the amount of material the professor needs to cover, professors may hesitate to integrate innovative teaching methodologies into an already packed syllabus. Second, many professors are concerned that students do not have the experience or insight successfully to teach other students to engage in legal analysis.²⁷¹ Third, the law school hierarchy presupposes in many instances that professors talk and students listen; to upset this

266. Lisa T. McElroy, *From Grimm to Glory: Simulated Oral Argument As a Component of Legal Education's Signature Pedagogy*, 84 IND. L.J. 589 (2009).

267. McElroy is a co-author of this article.

268. McElroy, *supra* note 266.

269. See generally Becker & Croskery-Roberts, *supra* note 222.

270. See *supra* notes 212–216 and accompanying text (discussing time constraints for law professors). See also Kissam, *supra* note 223, at 165 (discussing ways to “compensate for the commitment of extra time”).

271. See Kissam, *supra* note 223, at 165–66.

apple cart is intimidating to many, whether on a conscious or subconscious level.²⁷²

a. Taking the Time

Incorporating a peer teaching component into the class need not be time-consuming—one study even showed the effectiveness of three minute peer teaching modules.²⁷³ What's more, students can effectively spend time outside of class commenting on and editing each other's work, whether independently, in cooperative pairs, or in small groups.

An important consideration for time allocation is the utility of that time; in other words, how effectively is the time spent? What lessons do the students take away from the learning experience? And what are the time-based costs of the pedagogical method? In answering these questions, professors who are initially reluctant to have students teach other students may come to change their minds. Teaching, as explained previously, is a highly effective means of learning, so much so that students may learn more from a class in which they teach than from one in which they learn passively.²⁷⁴ Students who teach others take away lessons, not only about the substance of the material, but also about the professional interactions that all lawyers experience with each other, providing students who teach with more "bang for their buck."²⁷⁵ And when students are trained to teach each other well, the time costs may be net positive—in other words, more students will have more opportunities for active learning, allowing more students to learn more important material in less time.

When professors require students to "teach one" (analyze, edit, comment, revise, or conference with peers) outside of class, the time gains may be even more significant. When students have actively engaged with material outside of class (as opposed to listening or reading, which are more common forms of out-of-class assignments),

272. See *infra* notes 276–280.

273. See generally Kristin H. Mayfield & Timothy R. Vollmer, *Teaching Math Skills to At-Risk Students Using Home-Based Peer Tutoring*, 40 J. APPL. BEHAV. ANAL. 223 (2007).

274. See *supra* notes 236–253 and accompanying text.

275. *Id.*

it can be hypothesized that they may come to class with more nuanced questions and thoughts about the nature and substance of their work. If they are learning more outside of class because teaching is such a valuable learning experience, then a professor may spend class time on more sophisticated material or material that may properly be the domain of the professor alone.

b. Deconstructing the Hierarchy

It is no secret that law schools—and, indeed, law firms—can be hierarchical places. Duncan Kennedy recognized a generation ago that faculty and students form a fundamental hierarchy in which, “the students accept without question the teachers’ views as truth.”²⁷⁶ Furthermore, Steve Sheppard has commented that Kennedy believes that:

[T]he institution attempts to legitimate its structural organization and values by formally presenting them to the student as intrinsic components of “thinking like a lawyer.” Thus, the law school transmits the formal structure of the institution by preparing the student for hierarchical relationships (teacher-student is equated with partner-associate, judge-counsel, and lawyer-client) as well as by telling the student that acceptance of these relationships is necessary for effective lawyering.²⁷⁷

The hierarchies inherent to law schools may discourage professors—particularly inexperienced professors—from allowing or encouraging students to teach other students. Some may be afraid of relinquishing their role in the hierarchy and thereby losing control of the classroom. Still, as Lani Guinier has noted:

276. Steve Sheppard, *The Ghost in the Law School: How Duncan Kennedy Caught the Hierarchy Zeitgeist but Missed the Point*, 55 J. LEGAL EDUC. 94, 96 (2005) (citing DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (2004)).

277. Guinier et al., *supra* note 1, at 69.

Given the high student-faculty ratio and the large classroom format, at least some of the learning that goes on in legal education must take place within informal faculty mentoring relationships or in peer-to-peer contacts. Large lectures alone cannot provide for the needs of students. In addition, these informal settings allow for more interaction and thus cater to a different kind of learning.²⁷⁸

Barbara Glenser Fines has also commented that “[a]ny time that educational policies encourage faculty to move from ‘sage on the stage’ to ‘guide on the side’ protests arise that faculty control is necessary to insure effective, challenging education.”²⁷⁹

Helpfully, many scholars note that peer teaching works best in an environment where the professor is closely supervising it.²⁸⁰

CONCLUSION

Legal education experts have admonished the academy to incorporate more “real world” immersive learning experiences to complement established law school teaching.²⁸¹ To that end, legal education has a chance to expand its methods and incorporate trends that have been successful for other professional disciplines and for adult education generally.²⁸² Medical education in particular has been successful in modifying its approach to experiential learning in order to help students develop critical thinking skills. The “see one, do one, teach one” approach has academic, cognitive, and social advantages, and law professors can advance student learning, improve student

278. *Id.* at 71 n.183.

279. Fines, *supra* note 226, at 898. Fines does note the “risks” of allowing students more autonomy: “Surrendering some control does have some significant political implications. . . . When students are given the power and responsibility to formulate their own learning tasks, they approach learning with greater flexibility and creativity and a greater sensitivity to nuance.” *Id.* at 899. But peer teaching can help to restructure the hierarchy: “Rather than viewing the relationship as one in which knowledge is given from teacher to student, the peer learner is more likely to see the process of working with another peer as a cooperative one in which both participants are actively learning.” *Id.* at 913.

280. See Becker & Croskery-Roberts, *supra* note 222, at 290–91, 295–98.

281. See generally SULLIVAN ET AL., *supra* note 3.

282. *Id.* at 22.

2010]

SEE ONE, DO ONE, TEACH ONE

415

enjoyment, and ingrain pivotal concepts into students' minds. Using simulations and samples will not only give students more context for their work and appeal to a wider host of students with different learning styles, but will also facilitate more internalized learning that students can transfer to other assignments, to classes, and to the effective practice of law.

