Do Best Pedagogical Practices in Legal Education Include a Curriculum that Integrates Theory, Skill, and Doctrine?

A Comment on
"The Integration of Theory, Doctrine, and Practice in Legal Education"

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I. Introduction

In opening, I would like to thank the officers and Board Members of the ALWD for developing and sponsoring such an important and timely conference. I also thank Amy Sloan for serving as Program Committee Chair and for inviting me to speak today. She asked me to participate in this session because, well, her first-choice commentator was unavailable. But I am very pleased to have been her second (or perhaps third or fourth) choice.

On a more serious note, Amy invited me to participate in this conference because of two specific aspects of my background: First, I was an instructor for two years in the Lawyering Skills Program at New York University School of Law; and second, I have had six or seven years of experience working with and teaching foreign-trained law students. An additional element of my background that might be relevant if somewhat unextraordinary is that I practiced law for seven years. While many of us have had significant practice experience, the context and nature of my law firm experience may have some special relevance to my comments here today.

But enough about me. I feel both honored and humbled to have the opportunity to comment on the wonderful paper presented by Dean Cooper. All that research! All those footnotes! I say this facetiously, of course, because Dean Cooper's article represents the very best of what those of us who are interested in erasing borders in legal education can and must do: Talk about themes that relate to pedagogy and curricular choices in a serious, academic manner that reflects the very best of our tradition of legal scholarship. I applaud Dean Cooper for treating this very important topic with such grace and professionalism. It is a model we

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would all do well to emulate.

Regrettably, my comments will be neither as scholarly nor as well documented as Dean Cooper's. But I will try to be as direct as possible in making my points.

The first point: I firmly believe that law schools can and should be ambitious, but in the end, of course, our ambitions must be moderated by reality. We as legal educators want to do so much, and we have so many wonderful ideas for preparing our students for the world that confronts them. But we face so many systemic issues that operate to restrain our ambitions: students who are with us for only three years (if we can keep them engaged for even that long); our more conventional colleagues who for any number of reasons may resist change, often without even the value of *bona fide* debate; and other institutional pressures that both distract us from thinking about and prevent us from implementing major curricular modifications. We are also constrained by certain institutional and external pressures that necessitate a core curriculum that may not yield to, or readily adapt to, newer ideas about how we train our students; there is, of course, the subordinate role of legal writing and other skills professionals in the legal academic hierarchy. Incidentally, this is another reason why I am so heartened to see that Dean Cooper made this very valuable contribution. Hopefully his intense interest in, and most valuable contributions to, erasing curricular borders and integrating theory, skill, and doctrine into modern law school curricula presages a greater level of attention to these crucial matters by others in the academe who, like Dean Cooper, have both the credibility and the authority to make genuine change happen.

So given these limitations on what can be done within the current framework of the legal academe, teaching students how to "think like lawyers" should be the goal that drives what we do. This of course is not only cliché but begs the question: What do students really need to learn in order to "think like a lawyer"? And how do we arm them with such skills?

I hope to give some thoughtful remarks about these questions in the pages that follow.

II. Do Best Pedagogical Practices in Legal Education Include a Curriculum that Integrates Theory, Skill, and Doctrine?

The answer to the question presented is quite easy in the abstract: Yes—best pedagogical practices in legal education *do* include a curriculum that integrates theory, skill, and doctrine.

A. Need to Keep in Mind Other Important Reforms

The benefits of the integration of theory, doctrine, and practice skills are endorsed by most writers on the theory of legal education and have been well stated by Dean Cooper, and need not be restated here.

But curricular integration cannot be a panacea for all evils confronting the state of legal education today. Nor can curricular integration be used as a bandage to mask other more pervasive problems. Legal academics and others with an interest in the quality of legal education must take a broad view of what is wrong with legal

education today and other ways in which these difficulties can be remedied.

For example, Dean Cooper observes that students and instructors often have different goals and interests.[2] I agree that this is true, but should it be? Obviously we cannot accept this as a simple normative reality. As Dean Cooper suggests, curricular integration can help to minimize this disconnect. But there are other things that can be done to minimize the extent of this problem. Indeed, more comprehensive approaches towards the reconciliation of the goals of law faculty and law students should be fortified and advanced. It has been said that law professors train students to think like law professors, whereas most students, of course, need to learn to think like and be law practitioners. While thoughtful efforts to integrate the curriculum can minimize this problem, a more comprehensive approach must include reconsideration of law school hiring and tenure practices. At the outset, widespread recognition of the problem is a substantial hurdle to these efforts.

B. Impediments to Curricular Integration

There are also quite serious impediments to curricular integration that must be recognized. Some of these impediments are inherent in the modern law school structure. As Dean Cooper noted, faculty incentives provide a major barrier to curricular integration and other efforts to make law schools more responsive to the needs of students and the bar.

Another barrier to curricular integration is the lack of respect afforded skills instructors in the law school context. Tremendous strides have indeed been made in recent years in this regard—legal writing faculty, clinicians, and other legal skills instructors have been given tenured status, better pay and other benefits, and their work has received greater recognition within the academe—but these constituents are still often at the fringes of the legal academe. As long as core faculty members and top-level administrators continue to dismiss these courses and their instructors as somehow irrelevant or unnecessary, any efforts to achieve true integration of skills-based teaching cannot be accomplished.

The strong tradition of allowing law professors to enjoy considerable academic freedom is also a potential barrier to curricular integration. While this tradition of allowing freedom has its detractors, its merits are also significant and this long-standing tradition is not likely to be overturned.

A closely related point and another barrier to curricular integration is the lack of faculty expertise, as Dean Cooper recognizes. But I am not as sanguine as Dean Cooper is that this can be fixed in a relatively easy manner.[3] I think that any proposal that would rely on faculty retooling or reeducation cannot be advocated with any realistic chances of success. There is tremendous resistance among the faculty to developing expertise in subjects and methods that do not interest them; and the academe puts very little pressure on faculty members to change or to develop new or innovative skills, interests, or abilities. Again, the backdrop of

2. Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ALWD 50, 58 (2002).

3. *Id.* at 59-60.

faculty independence and academic freedom are relevant. For the most part, traditional law professors harbor the interests and prejudices they do because they really believe in them.

For the same reason, and because they often lack the specific substance that would be needed to effect major learning, especially by those who face resistance to doing so, I do not think that encouraging faculty members to attend bar association meetings[4] would have any significant impact. Moreover, efforts to educate traditional-minded law professors may also confront deep-seated psychological barriers to new ways of thinking about legal education.

III. How to Best Integrate Theory, Skills, and Doctrine

Given these realities, including the lack of time and other resources, triage is necessary, accompanied by a well thought-out plan about what is most important and what can be reasonably accomplished, given instructional and other obstacles. When deciding upon best teaching practices and integrating skills, theory, and doctrine, one of the most important considerations should be the notion that we must teach students things that they can adapt to other areas of law, other types of issues, and other skills.

My experience with foreign-trained students may be relevant in helping to define what I think are the most important things we can teach our students. Almost all foreign students who come to the U.S. to study law enroll in a one-year LL.M. program. So there is a tremendous pressure to accomplish a great deal in a very condensed period of time. In thinking about how to use that time in the most advantageous manner, I (and others who design curricula for foreign LL.M. programs) have done a great deal of thinking about prioritizing. While this could easily merit an entire article on its own, the needs and experiences of the foreign LL.M. population may not be that very different from those of the domestic J.D. student. Indeed, law students as a group present no singular body in terms of needs, prior experiences, abilities, or career goals; it is somewhat remarkable that we manage to train this very varied group in a manner that makes any sense at all.

A. Necessary Elements of U.S. Legal Education

In thinking about what we really need to accomplish—whether we have one year or three in which to accomplish it—I have defined ten essential elements of a proper U.S. legal education.

Given these hurdles, and keeping in mind some realities of the U.S. legal system and U.S. law practice today—including the gradual yet constant change in the law under our common law system, the varying state of the law from jurisdiction to jurisdiction (coupled with doctrines of supremacy, preemption, choice of law, and the absence of a federal common law), the breadth of practice areas, and the nature of modern law practice as increasingly specialized and global—the following represent the elements that I believe are most critical to teach students in their legal education:

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4. *Id.* at 59.

1. The U.S. common law system;
2. Essential legal vocabulary;
3. Contingency planning;
4. Self-critique;
5. Ability to read, synthesize, and apply various sources of law;
6. Research and writing;
7. Fact development;
8. Ability to categorize legal issues;
9. Theory as a recognized useful tool;
10. "Craftsmanship" as a unifying theme of curricular integration; and
11. Mentoring as a viable tool to enhance curricular engineering.

1. The U.S. common law system

Students must be familiar with the common law system and its basic structure and operation. Students must understand how legal rules develop and change in such a system, and the roles of the various players in the court system. The respective roles of the parties/attorneys and the judge in the U.S. common law system, for instance, gives important insights into the reason for certain basic principles of jurisprudence. For example, an understanding of the adversarial nature of litigation in the U.S. helps explain the basis for standing, ripeness, mootness, and related prerequisites to federal judicial review. Likewise, the concept of constitutional federalism helps to highlight the need for principles of abstention and comity as well as important limits on the federal government. It also helps students to understand why certain substantive matters are largely the subject of state or federal law, respectively. And, of course, the defining role of *stare decisis* must be discussed both early and often, both as a principle and through example.

An understanding of the common law system implies a few other issues that are necessary. First, students must understand the various sources of law and master their priority and interaction in our system.

Second, students must be informed about the presence of alternative methods of dispute resolution, which are now gaining enormous popularity in both the domestic and international arenas. Having a basic understanding of alternatives to litigation forces students to think strategically about a wider range of options. I address this again when I discuss the importance of "contingency panning."

Third, teaching about the nature of the common law system *qua* system necessarily implies some suggestion that other legal systems exist. Given globalization, generally and specifically its impact on law and law practice, students need to have some exposure to the presence of civil law systems in the majority of countries in the world. While we need not create experts in civil law, students should have a rudimentary knowledge of the basics of the civil law system and at least some of the primary differences between the common law and civil law systems, such as the role of judges in the respective systems, the use (or not) of juries, the difference between common law statutes and civil law codes, and the

value and reliance on case law as precedent in later cases.

In this same vein, it is important for students to understand that the structure of court systems in other countries differs from ours, for example, through greater use of specialized courts, including constitutional courts in some countries.

2. Essential legal vocabulary

Students must be able to understand and use terminology that commonly appears in legal contexts. These include procedural terms, words, and phrases that represent basic legal concepts, and terms that are distinctive to specific areas of law. Legal vocabulary is learned largely as an aside to focusing on other important elements, but we should be more deliberate about exposing students to defining legal terms that, from their context, may not be clear in terms either of their meaning or their importance.

3. Contingency planning

I attribute the term "contingency planning" and the element of "self critique" to Professor Anthony Amsterdam, my mentor in New York University Law School's Lawyering Skills Program. I do not know for sure that these terms were actually coined by him, but my exposure to these terms and what they mean and how important they are to legal education come from the teachings of Professor Amsterdam.

It is pretty clear on its face what the term "contingency planning" is about: The need to engage in strategic thinking. This is of great importance to lawyers because it allows them to think very broadly on many levels about a client problem. It is also the kind of skill that itself fosters creative and wide-ranging thinking about how to address a problem or issue, including the range of alternative approaches to problem-solving; it allows the lawyer as counselor to better and more credibly counsel the client; and it allows for a more measured and thoughtful response when (as is likely to be the case) the worst of all possible scenarios happens.

4. Self-critique

Self-critique is another skill that is of vital importance to the study and practice of law. In Amsterdam's Lawyering Skills Program at NYU School of Law, instructors spend a great deal of time giving feedback to students on the performance phase of the exercises. Students are also encouraged to critique themselves and each other. The critiquing sessions are done with the hope and expectation that each student's performance will improve in a linear fashion each successive exercise. But the critiques also have a crucial objective, which is to enhance each student's ability to evaluate his or her own work—a skill that, it is hoped, ultimately translates into the ability to plan better: genuine contingency planning will necessarily result in an inherent self-critique of strategies considered.

5. Ability to read, synthesize, and apply various primary and secondary sources of law

Read, synthesize, and apply various types of sources of law are, of course, fundamental to an appreciation of the U.S. common law systems and includes related skills—the ability to state a case holding narrowly or broadly, to analogize and distinguish precedent, to explain differences in case outcomes, and to synthesize groups of cases dealing with a common legal issue.

6. Research and writing

I know that I am preaching to the converted when I speak of the need to teach legal research and writing. Research and writing, we would agree, are fundamental skills that every lawyer needs to have and, thus, that every law student must master. Legal research and writing skills are also of vital importance for the benefits to legal analysis that these skills provide.

One area of research that is often neglected or at least under-emphasized in law school is the relevance of fact research. We must make our students aware of the importance of non-legal resources, when to recognize that they may be useful, and how to use them effectively. I think that the great importance of teaching unique skills of legal research and writing—to which students are unlikely to be exposed elsewhere—sometimes means that the clever use of other resources becomes forgotten or ignored. I would not be surprised to learn that many young lawyers, or even more sophisticated lawyers, are quite insouciant when it comes to non-legal research. We should be vigilant to remind our students that there are times when a phone call may provide the source of the most efficient and effective client advice.

7. Fact development

Fact development involves at least two distinct elements: *first*, an appreciation of the importance of facts in the common law system, and *second*, an understating of the facts that need to be established and the ways in which they can be developed, including different mechanisms for fact development.

Fact development to many law students may not seem like a critical element of law study or practice, and therein lies its importance—to disabuse students of the notion that facts are objectively found; to show students the importance of storytelling; to demonstrate that the ways in which facts are presented may be outcome determinative. This emphasis on facts and factual development can easily be accomplished through case law, in underscoring the factual distinctions that appear in similar cases. The same point is made, perhaps even more poignantly, in legal research and writing assignments. Legal educators should also take pains to emphasize how the same "raw" facts can be packaged to create a different story.

8. Ability to categorize legal issues

The ability to categorize legal issues is really little more than the skill needed to identify potential causes of action. Even the most sophisticated client rarely comes with his or her legal problems packaged in legally cognizable forms. The lawyer, then, must dissect the client's problem into the various forms of legal (and non-legal) issues that the client's situation presents. This, of course, becomes the starting point for legal research, evaluating options, and counseling the client.

9. Theory as a recognized useful tool

The need to focus on theory as defined by Dean Cooper is perhaps my major point of departure with him.[5] While the integration of theory into the law school curriculum is an admirable goal, given the difficulties associated with full integration, I do not see an emphasis on theory as being of foremost importance to the legal educational process.

I take this view for a number of reasons. First, "theory" as it relates to law practice embraces many different fields, including economics; any of the social, natural, or political sciences; accounting; engineering; etc. Theory is also too complex to address adequately in the law school context, a principle with which Dean Cooper seems to agree.[6] Moreover, theory can be learned to the extent necessary in the context of law practice. Finally, when theory is an important element of a case, lawyers retain experts to perform the necessary highly skilled and complex work in these fields.

Here is where my own practice experience might be relevant: While practicing law, one of my major areas of practice was the representation of local distribution companies and consumers against natural gas producers and pipelines in federal regulatory and appellate matters. I also represented a manufacturer of asbestos-containing materials in property damages litigation. Both categories of cases required a fair amount of expertise in science and mathematics (a lack of facility with which in large part drove me to a career in law). For anything but the simplest of matters, we retained economists, meteorologists, statisticians, chemists, or others to produce the theoretical backdrop to allow the lawyers to adequately present the case.

So this leads to the following questions: What theory is really needed? And how can the appropriate level of theory be provided to our students?

Students should leave law school with the following basic skills regarding theory: creative thinking "outside the box" by taking broad interdisciplinary approaches to a client's problem; knowing when outside expertise is required; and possessing the basic tools to effectively use outside help.

Dean Cooper, recognizing the importance of law school training in theory, posits some excellent ideas for getting theory into the classroom.[7] The methods for incorporating theory into classes directly devoted to doctrine and skills are particularly attractive because they focus on the training that, in my view, should be

5. Cooper, *supra* n. 2, at 51-53.
6. *Id.* at 57, 59-61.
7. *See e.g. id.* at 56, 57.

at the forefront of legal education, while introducing some important theoretical concepts into the legal educational process. Easy mechanisms for doing this exist and are already a fundamental part of the law school process, for example, the selection of cases for a doctrinal course, or the selection of exercises in skills-based courses or elements of a course. It makes perfect sense for faculty to be aware of the desirability of including theoretical components into the learning process as a complement to the main substantive focus of the course material.

Indeed, it is likely that such efforts to integrate theoretical elements of legal education into the law school curriculum are already working. There are a greater number of faculty members than ever before who have advanced training and degrees in non-legal fields—social sciences, literature, religion, ethics, medicine, business, economics, to name a few. Although I am aware of no study that would quantify this, it must be that these professors incorporate into their teaching methods their theoretical backgrounds. Furthermore, there does seem to be an increase in the number of courses that are in large measure premised on theoretical foundations.[8]

10. "Craftsmanship" as a unifying theme of curricular integration

Dean Copper is entirely correct when he argues that craftsmanship as he defines it is a vital skill that law students and lawyers must possess.[9] I also agree with Dean Cooper that "craftsmanship" is an unfortunate term but perhaps the best that can represent the meaning Dean Cooper ascribes to it. At the very least, it does evoke pride in one's labors; an appreciation for high-quality work, including its physical aesthetic; and a sense of obligation to oneself and one's teachers (in the classical sense).

One of the reasons that "craftsmanship" is such a regrettable term in this context is that it does not evoke other important elements of "professionalism"[10] and the duty to society that lawyers carry simply by virtue of their chosen profession. These include inchoate responsibilities such as timeliness, compliance with rules, respect for the views of others, and one's duty as a public servant. Students need to be shown how these features represent traits of a "good lawyer" and underlie one's reputation and responsibilities every bit as much as the ability to present striking and inspired legal arguments. The ABA requirement that all approved law schools teach a course in professional ethics is a good starting point.[11] A course in professional responsibility can easily be used to explore other matters or "craftsmanship" or "professionalism." But other courses in the curriculum can

8. Again, I am aware of no quantitative study, but a quick perusal of many law school course offerings do seem to suggest such an increase. This could include, among others, many courses entitled "Law and . . . ."

9. Cooper, *supra* n. 2, at 63.

10. Dean Cooper rejects the use of the term "professionalism" because he believes that it evokes a very limited sense of duty *is too closely related to behavior and ethics*. *See id*. at 59. While I do not necessarily agree with Dean Cooper's characterization, I accept it for these purposes.

11. *See* ABA, *Standards for Approval of Law Schools and Interpretations* <http://www.abanet.org/legaled/standards> (accessed Feb. 26, 2002).

also include these elements in any number of relatively easy ways, for example, mandating attendance, deducting points on exams or written assignments for failure to follow instructions or page limits. While some students may see these and related professional responsibilities as somehow less important than other skills and abilities, students tend to react powerfully to rules that impact their grades. Emphasizing skills of "craftsmanship" and "professionalism" as an integral part of the law school process and the practice of law can help to underscore the importance of, as well as inspire adherence to these traits.

11. Mentoring as a viable tool to enhance curricular engineering

In addition, we should continue to engage in mentoring activities, even if, as Dean Cooper believes, mentoring has basically vanished for most students.[12] If mentoring is important (which it clearly is), then those of us who do it well must continue to do it with pride and professionalism.

But I take a more sanguine perspective to mentoring possibilities as they stand now and for the future. Mentoring, as Dean Copper notes, is a remarkably important element of the educational process that can take place in law school, in law practice, in clerkships, and in a variety of other professional settings. But Dean Cooper seems to prematurely toll the death knell for mentoring. I believe that savvy students and young attorneys can still take advantage of the substantial benefits of mentoring, even if they are not necessarily top-ranked under the indicia most often used to distinguish students and young practitioners.[13]

For example, mentoring can be accomplished by a student who seeks and finds a kindred spirit, either within or outside of the law school community. Skills instructors and law school administrators are often particularly well-suited to this role, either because of temperament, outsider status, or other commonalities. There are many professionals within the academe and law practice (in all of its different forms) that wrestle with these and similar issues and who would be pleased to have the opportunity to assist with the professional development of a student or young lawyer who may not possess a wealth of the normal attributes of "success."

Another easy, revenue-neutral way to encourage mentoring in law school is to welcome students to attend and participate in faculty paper presentations and other professional colloquium. This is a way by which students of all stripes can meet

12. Cooper, *supra* n. 2, at 52-53.

13. I am constrained to disagree with Dean Cooper when he states that the lack of mentoring is the reason that most students get guided towards large law firms rather than other careers that might better suit their interests and abilities. Instead, this pressure towards the largest and most prestigious law firms is due to the money (especially given the enormous and growing amount of loans that most laws school graduates face and prestige these jobs offer).

There are institutional pressures, as well—the desire of law school placement offices to guide students to the most lucrative jobs, as these departments are often evaluated based on this factor. Indeed, the average salary of law school graduates is used in the *US News and World Report* law school rankings, an important indicia for most law schools.

On the topic of the *US News* rankings, I cannot agree with Dean Cooper, however, that they promote creativity in law schools, as indicated by a review of the methodology used in developing the rankings. *See* US News, *Law: Methodology* <http://www.usnews.com/usnews/edu/grad/rankings/about/03law_meth.htm> (accessed July 15, 2002).

faculty members with common interests, personalities, or other attributes in a setting in which students can engage in a different kind of learning process from that which is normally introduced in the classroom. Programs that offer students access to continuing legal education programs and bar association meetings promise a similar range of benefits.[14]

B. How Can Curricular Integration Be Done Realistically within the Basic Law School Structure?

Having decided that an integrated curriculum is best, but recognizing that there are substantial barriers to accomplishing this, the question of what a good (albeit perhaps not ideal) law school curriculum should look like is the most challenging issue for me as a commentator and for us as legal educators. In other words, how can we provide the best possible legal education we can, given the constraints that are inherent in the U.S. system of legal education, especially those imposed by limited time and other resources; lack of student interest; and faculty resistance to change generally, and toward an integrated curriculum, in particular?

As mentioned by Dean Cooper, writing across the curriculum courses are an outstanding way to create a truly integrated program of study.[15] I am simply not very optimistic about the success of these programs in more than a handful of law schools. However, I do agree that these kinds of programs provide the best evidence yet of what integrated curricula *can* do.

Dean Cooper also mentions capstone courses and other,[16] related types of what I call "curricular engineering." These programs also hold promise but raise a few problems. First, as Dean Cooper agrees, the development of capstone courses may lead to specialization in law school[17]—an outcome, which most (including Dean Cooper) would agree, is undesirable. An additional difficulty not mentioned by Dean Cooper relates to the substantial administrative burdens that would be attendant to such curricular engineering. While administrative issues should not direct the educational component, realities again come to play, and in this case, they may be dispositive.

Fortunately, more modest approaches are possible. While these methodologies may not provide all the promise of a truly integrated curriculum, they are more realistic given the realities of the U.S. legal academe.

First, a well-developed set of distribution requirements provides essentially the same benefits of capstone courses and related strategies, with far fewer of the administrative obstacles and fewer student constraints. The requirement or at least widespread availability of skills courses (including legal research and writing and trial advocacy) beyond the first year can provide a great integrative function. Greater

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14. For example, the Practicing Law Institute (PLI) offers law students "scholarships" to attend certain conferences and training programs. These can prove to be of great use to law students who take advantage of these programs, not only for the course substance but for the professional and mentoring opportunities they present.

15. Cooper, *supra* n. 2, at 53.

16. *Id.*

17. *Id.* at n. 19.

communication between legal research and writing professors and doctrinal faculty members can provide tremendous benefits in terms of coordinating skills-based work with core classroom assignments.

Second, it is even possible to integrate the law school curriculum on a smaller scale under a modified Socratic teaching method through the thoughtful selection of cases. One of the cases I love to use in my course on Introduction to U.S. Law for foreign-trained attorneys is *Leonard v. Pepsico*.[18] The major issue presented by this case is whether the advertisement at issue constitutes an offer. The case thus allows me to teach several basic themes of contract law, including the "objective" standard for contract formation, and the New York Statute of Frauds. The case also raises a number of other important points of law, including:

- summary judgment, including the federal standard, the respective roles of the judge and the jury, the use of stipulated facts, and the appropriateness of certain issues for summary judgment resolution;
- federal court and *in personam* jurisdiction and the ability to waive jurisdictional defects;
- attorney selection and strategic decisions;
- removal and transfer;
- attorney ethics;
- a court's ability to award attorney fees in a case over which the court does not have jurisdiction;
- the Declaratory Judgment Act;
- choice of law and *Erie* questions;
- the use of cases in other jurisdictions as persuasive authority, including the *Carbonic Smoke Ball* case;
- the use of secondary authorities such as the *Restatement* and treatises by Corbin, Perillo, Farnsworth, and Williston;
- the appropriate use of dictum; and
- the nature and scope of discovery.

This case also allows me to integrate skills exercises into the pedagogy for this case, such as drafting the form relating to the alleged offer, the letters that were written in the pre-litigation phase of the case (which are reproduced in part in the opinion), and the motions relating to some of the issues in the case. This case is also very interesting and fun, and generates a great deal of student discussion.

IV. Conclusion: A Note of Hope

Dean Cooper ends, as do I, with a note of hope: Legal writing professors, clinicians, and other skills teachers are gaining greater credibility and professional rewards within the U.S. legal academe. Relatively recent efforts, like the McCrate Report and other critiques of modern legal education, have made clear that law schools need to be more responsive to the needs of lawyers, and must include skills

18. 88 F. Supp. 2d 116 (S.D.N.Y. 1999).

as a fundamental and significant element of the curriculum. We should engage local bar associations and law firms and government entities and other major employers of legal professionals to tell us more about what they need our students to know by the time they begin their legal careers. We should force those like Dean Cooper who are in a position to foster real change to think about what kind of change is needed. We need to begin and promote this kind of dialogue.

As members of the academe wanting law schools to do more and do it better, we should struggle for a more integrated curriculum to maximize the benefits to be gained by students. We can do this in a number of ways that range from the more ambitious to the more modest, as outlined in Dean Cooper's paper and here. But even as we do so, we must not neglect other means by which we can hope to improve the legal education process.

We should also engage in dialogue with our counterparts and others involved in pre-law education to tell them what skills and abilities we expect and need beginning law students to posses; and we should change our admissions procedures to reflect those needs. We should listen to our students and alumni—what did they get from their education that they think is the most valuable, and what proverbial "gaps" left them frustrated as they began their professional careers?

Other more ambitious ideas should also be considered. Neither this paper not this conference deals—or should deal—with the state of pre-legal education in the U.S. But the role and state of pre-law education do figure prominently in this equation. One of the many important features that distinguishes the U.S. system of legal education from legal education in most if not all civil law jurisdictions[19] is the undergraduate/graduate dichotomy that has marked U.S. legal education (and that in other common law jurisdictions) for its entire modern incarnation. There are many good reasons for this (as I am sure there are many reasons to justify the civil law tradition of having undergraduate training). One of the primary justifications for requiring an undergraduate education in advance of law school is the need for students to develop certain basic skills—research and writing skills, analytic abilities, skills of communication, the ability to read and think critically, maturity to name a few. I believe that basic theoretical concepts should also be introduced in pre-legal education. Again, this does not mean that every undergraduate student needs to master economics, statistics, accounting, and the social, natural, and physical sciences; instead, what a solid undergraduate legal education should provide is a basic familiarity with at least some of these concepts. Perhaps this ought to even be required, or at least considered, as a law school admissions criterion.

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19. For example, the Japanese Ministry of Justice has recently announced that it will move towards a graduate model of legal education, based on the U.S. model. *See e.g.* Justice System Reform Council, *Recommendations of the Justice System Reform Council for a Justice System to Support Japan in the 21st Century* <www.kantei.go.jp/foreign/judiciary/ 2001/0612report.html> (June 12, 2001).

Curricular innovation and varied related forms of engineering hold great promise for the future of legal education. While curricular changes are both difficult to accomplish and incomplete as an answer to the troubles that confront U.S. legal education today, they are vital to the primary objective of legal education.