A RIVER RUNS THROUGH IT: TAPPING INTO THE INFORMATIONAL STREAM TO MOVE STUDENTS FROM ISOLATION TO AUTONOMY

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"Isolation is the worst possible counselor," wrote an early 20th century writer[1] and those timeless words are particularly apt in modern legal education. The generic first-year law student experience — described by at least two authors as "the dark night of the soul"[2] — leaves many first-year law students isolated and very alienated. Much of the literature has discussed the psychological effects of isolation (e.g., alienation[3], withdrawal[4], and hostility[5]); however, too little attention has been paid to the important academic effects of isolation.

There should be an increased awareness that the "distress" many law students experience is not limited to how students *feel.* Isolation has important academic and institutional repercussions as well. Institutionally, this isolation

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1. Miguel de Unamuno, *Civilization is Civilism, in* MI RELIGION Y OTROS ENSAYOS BREVES 69 (Espasa-Calpe Argentina, S.A., 1945).

2. Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 878 (1985).

3. *See generally*, Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 B. FOUND. RES. J. 225; Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, J. PSYCH. & L. 9, 28 (1990); Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887, 890 (1977); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991); Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511, 514 (1983); Paul T. Wangerin, *Objective, Multiplistics and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1270 (1988).

4. Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 274 (1979); Glesner, *supra* note 3, at 634; Michael J. Patton, *The Student, The Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10, 17–38 (1968); Wangerin, *supra* note 3, at 1270.

5. *See e.g.*, Phillip C. Kissam, *Law School Examinations*, 42 VAND. L. REV. 433, 481 (1989); Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971); James B. Taylor, *Law School Stress and the "Déformation Professionelle"*, 27 J. LEGAL EDUC. 251, 262 (1975).

results in uneven testing and a potentially inaccurate, skewed grade distribution for all students.

Additionally, isolation can especially burden minority and other non-traditional students, causing them further prejudice. This Article suggests that isolation often leads to poorer grades regardless of academic ability. This is because exam grades do not necessarily measure ability. Instead, to a large extent they may measure who has access to the essential survival information which is not generally taught in the first-year classroom. Moreover, not only can isolation prevent minority and non-traditional students from a fair assessment of their actual academic ability, but isolation may also disproportionately impact minority students' job opportunities with law firms[6] and law school academic appointments[7] as well. Thus, if perpetuated by law schools, isolation in fact fosters continued long-term segregation in the legal and academic communities.

Section I of this article explores the problem of isolation in law school, particularly as it affects minority and other non-traditional students. It challenges the assumption by most law schools that once a student is admitted into law school she competes on a level playing field. Ostensibly, the playing field is level because as a result of the standardized first-year Case Method instruction, presumably all students have roughly equal access to the same type and amount of information upon which ultimately they are all tested. Consequently, it is assumed, students with superior knowledge of the material and greater ability will perform better and receive higher grades. Section I suggests, however, that those assumptions are no longer valid.

Section II moves from the research on isolation and academic performance and explores the voluminous new research on learning theory and "methods" instruction. Section II suggests that unfortunately, much of the disparate research on psychological and academic isolation, as well as the new research on learning theory and methods instruction has been conducted in a vacuum, without sufficiently acknowledging the interrelationship of each separate branch.

Thus, for the sake of synthesis and simplicity, Section II attempts to unite some of this invaluable but insufficiently interconnected research. It fashions a bridge, which I call "Creating a Context for Pedagogy," to formally unite the two bodies of important and useful research in "learning theory" and "methods teaching." Thereafter, it suggests that undergraduate and graduate academic support programs ("ASPs")[8] are the new laboratories where all of the disparate

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6. *See* Kevin Deasy, *Enabling Black Students to Realize Their Potential in Law School: A Psycho-Social Assessment of an Academic Support Program*, 16 T. MARSHALL L. REV. 547, 555 (1991); Portia Y. T. Hamlar, *Minority Tokenism in American Law Schools*, 26 HOW. L.J. 443, 553–54 (1983); Kissam, *supra* note 5, at 436, 463, 481–82; Taylor, *supra* note 5, at 265.

7. *See generally*, Derrick A. Bell, Jr., *Black Students in White Law Schools: The Ordeal and the Opportunity*, 2 U. TOL. L. REV. 539, 547–48 (1970); Leslie G. Espinoza, *Empowerment and Achievement in Minority Law Student Support Programs: Constructing Affirmative Action*, 22 U. MICH. J. L. REF. 281, 292–93 (1989); Kissam, *supra* note 5, at 454–473; Rachel F. Moran, *Commentary: The Implications of Being a Society of One*, 20 U.S.F. L. REV. 503, 504 (1986).

8. *See infra* note 144 and accompanying text for a description of the DePaul University College of Law Academic Support Program. *See generally*, Cheryl E. Amana, *Recruitment and*

research on isolation, learning theory and methods instruction appears to come together. The success of some of these ASPs suggests that it is time to replace legal education's outmoded Langdellian Laboratory[9] with new laboratories that respond to the lessons learned in the ASPs.

Using a wonderful phrase borrowed from another discipline, Section III urges the law academe to acknowledge its own educational "Methodolatry"[10] which is evidenced by an unwavering devotion to Langdellian Case Method instruction. It urges the law academe to relinquish this methodolatry and fashion a new hybrid approach to first-year instruction. This new approach produces better law students and ultimately, much better practicing attorneys because students are fully grounded in the skills of learning *how* to learn, as opposed to simply learning *what* to learn.

Specifically, this Article confirms that in fact, isolation is the worst counselor. It also suggests that it is only by abandoning an outmoded methodolatry that we can begin to move law students to the subterranean, bountiful river of information that currently exists beneath, atop, or outside most of their experiences as law students.

Ultimately, there are three goals for this Article: first, to refocus on isolation as a root cause and not merely an effect of psychological distress; second, to use a new model, "Creating a Context for Pedagogy" to provide a working bridge between learning theory and methods research; and third, to illustrate how undergraduate and law school ASPs successfully integrate all of the disparate research in the three areas of isolation, learning theory and methods instruction. Consequently, the ASPs provide a greatly enhanced learning environment, particularly for minority and other non-traditional students who tend to be the most isolated.

Ultimately, my thesis supports the following conclusions:

First, isolation produces profound academic and institutional ramifications in addition to psychological ramifications;

Second, law schools must acknowledge that frequently they neither "test what they teach,"[11] nor give the proper type of feedback that is required for successful learning;

Third, the institution must recognize that its own Langdellian methodolatry promotes psychological and academic distress;

Retention of the African American Law Student, 19 N.C. CENT. L.J. 207 (1991); Deasy, *supra* note 6; Espinoza, *supra* note 7; Lawrence D. Salmony, *Academic Support Program Workbook: A Report to the Law School Admissions Council* (Working Draft, October 15, 1991).

9. For an excellent general discussion of Langdell and Case Method Instruction see Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93, 116–32 (1968). *See also* Myron Moskovitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. LEGAL EDUC. 241 (1992); Paul F. Teich, *Research on American Law Teaching: Is There A Case Against the Case System?*, 36 J. LEGAL EDUC. 167, 169–70 (1986); Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 795 (1989).

10. Stephen Brookfield, *Self-Directed Learning: A Critical Review of Research*, *in* SELF-DIRECTED LEARNING: FROM THEORY TO PRACTICE, NEW DIRECTIONS FOR CONTINUING EDUCATION No. 25, 11 (March 1985) (citing Alvin Gouldner).

11. For an excellent and thoroughly compelling article on this topic, see Moskovitz, *supra* note 9. *See also generally*, James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1692–94 (1991); Kissam, *supra* note 5, 434–40, 470; Jeremy Paul, *A Bedtime Story*, 74 VA. L. REV. 915, 915–16 (1988).

Fourth, that potentially all students suffer needlessly as a result, but that non-traditional students are likely to suffer much more acutely and as such, the institution may unwittingly promote continued discrimination and segregation even beyond its law school corridors;

Fifth, that a just and fair-minded educational institution should not make grades, prestigious appointments and future job opportunities dependent upon the mere *fortuity* of access to the river of survival information; and

Sixth, that a new instructional approach — one that brings students to the river of information — will genuinely free many students psychologically and educationally, and thereby move them from isolation to empowerment and autonomy.

In short, accepting these premises requires a law school to become more accountable to its students for the psychological and academic distress which exists. It must also recognize that in light of new research on psychological injury, learning theory, and methods instruction, blind adherence to an outmoded pedagogy severely hampers the fairness, integrity and accuracy of the first-year grading system. It hits hardest minority and non-traditional students — regardless of their academic predictors — who perhaps are the furthest outside of the mainstream of information.

I. SHIFTING THE FOCUS TO THE PROBLEM OF ISOLATION

A. Psychological Distress

There is widespread, well-documented evidence of acute psychological distress among many of our first-year students (majority students as well as minority and other non-traditional students).[12] While it may have initially sprung from good intentions, seemingly out of some form of tough love, the "tough law" approach[13] — which rests primarily on the Langdellian model of Case Method and Socratic teaching[14] and the traditional single end-of-semester exam — has unquestionably left numerous students in tremendous distress.

One empirical report estimated that up to 40 percent of law students may experience depression or other symptoms as a *result of the law school experience.*[15] That data was collected ten years ago during the so-called "boom years" when employment opportunities were better. Additionally, the data contained no significant representation of minority students. Today, due in part to increased tuition rates and decreased employment opportunities, the actual figures for both minority and majority students are likely to be much higher. Studies also confirmed the at-that-time surprising data that law students experienced distress that was as high or higher than that of medical school students.[16]

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12. *See supra* notes 3, 4, 5; *see also* Michael I. Swygert, *Putting Law School Grades In Perspective*, 12 STETSON L. REV. 701, 701 n.1 (1983).
13. This term was coined by Glesner, *supra* note 3, at 644.
14. *See supra* note 9.
15. Benjamin et al., *supra* note 3, at 246–47.
16. Heins et al., *supra* note 3, at 519–21.

In addition to the widely accepted theory that law students experience elevated levels of psychological distress, there also seems to be general accord as to the results of such psychological distress. Often, students develop attitudes of hostility or emotional detachment.[17] Some authors describe this as alienation or disengagement, with the locus of disengagement being the student's own self-regard.[18] Moreover, in a recent article, Glesner states that undue stress results in interference with the learning process by causing students to worry more than they work, to reduce their intake of information, and to create distancing mechanisms to reduce threats to their self-esteem. As a result, argues Glesner, stress is more important than aptitude as a determinant of success.[19]

That the students are generally hurting seems established by now, although the whys have yielded some academic debate. Some authors blame the workload[20], the Socratic Method[21], and/or the total absence of feedback throughout the semester[22] for the distress. Other researchers blame the law school environment itself as "unsupportive, impersonal, and anxiety-provoking."[23] One interesting theory blames the why of the pervasive anxiety, not on the legal aspects (i.e., the Socratic or Case Method approach), but on the educational growth that a student must experience while moving from a dualistic mode of thinking to a multiplistic and relativistic one.[24]

Law professor Alan Stone[25] and psychologist Dr. Michael Carney[26] suggest that students are psychologically distressed because of a loss of self-esteem. The institutional framework of the law school promotes this loss of self-esteem. Stone and Dr. Carney posit that it is self-esteem which is the paramount issue facing law students. In a 1991 essay, Dr. Carney adopts psychologist Heinz Kohut's theory of development, termed "self-psychology," and specifically applies this theory to law students. Kohut's theory emphasizes the critical importance of the "atmosphere and ambiance of environment" in the general development of self-esteem. Using Kohut, Dr. Carney examines the genuine and tremendous "psychic *injury*"[27] that a psyche may experience in law school. This injury in turn can result in maladaptive strategies to protect the self-esteem including anxiety, withdrawal and depression.[28] In fact, as a psychologist who had been treating law students for over 10 years, Carney was so struck by the perceived injury of law school education that he responded,

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17. *See supra* notes 4, 5; *see also* Suzanne Homer & Lois Schwartz, *Admitted but Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 2–4 (1989).
18. *See* Carney, *supra* note 3, at 11–12; Patton, *supra* note 4, at 17.
19. Glesner, *supra* note 3, at 635–36.
20. *See* Benjamin et al., *supra* note 3, at 243; Patton, *supra* note 4, at 14–21.
21. For an extensive discussion on the Socratic Method see Watson, *supra* note 9, at 119–132; *see also* Beck & Burns, *supra* note 4, at 285; Glesner, *supra* note 3, at 628; Stone, *supra* note 5, at 405–07; Taylor, *supra* note 5, at 254.
22. *See* Glesner, *supra* note 3, at 646, 658; Hamlar, *supra* note 6, at 546; Lawrence Silver, Note, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1202–03 (1968); Patton, *supra* note 4, at 48; Swygert, *supra* note 12, at 702.
23. Faith Dickerson, *Psychological Counseling for Law Students*, 37 J. LEGAL EDUC. 82, 82 (1987).
24. Wangerin, *supra* note 3, at 1259.
25. Stone, *supra* note 5, at 426.
26. Carney, *supra* note 3, at 13.
27. Id. (emphasis added).
28. *Id.* at 19–31; *see also*, Beck & Burns, *supra* note 4, at 274–75.

"[l]aw schools must address the question of whether the diminution of self-esteem and the accompanying anxiety and depression reported by many law students are *necessary correlates* of legal education."[29].

Additional research as well as my own experience working with students, however, suggests to me that perhaps the problem for both groups of students (majority and minority) results more from isolation than it does from the typically described alienation or from a loss of self-esteem.

Although isolation is sometimes referenced as a by-product of the educational system, it is not generally examined as a causative factor of pervasive psychological distress, and more particularly, of significant academic distress.[30] In my own experience as a teacher, I found that my students were isolated from themselves, each other, their professors, and virtually all previously successful coping mechanisms from their undergraduate experience. Essentially, in law school students are taught and trained as loners, and this isolation produces great confusion and psychological distress. One recent article hints at the institutional role behind such pain:

> The *failure to see oneself as belonging within the norm* leads to a profound sense of alienation based not just on the newness of legal education — which many first year students share —but on the sense that while one is struggling to succeed, the system itself is set up to limit one's success.[31]

Finally, there is also the compelling argument that much of the acute distress felt by law students results in large part from the lack of context within which these students are operating:

> Usually by Thanksgiving holidays, most members of the freshman class are brought nearly to a panic by their awareness *that they do not understand what is being demanded of them*, nor can they figure out how to meet this pressure.[32]

As a cause of the pervasive psychological distress in the law school, "the lack of context" explanation is compelling because it is essentially a subset of the broader causative factor of isolation. Students are not only isolated from themselves, their former undergraduate successes, and their fellow students, but also pedagogically. They are completely isolated from any direction, modeling, or explicit instruction about what specifically is expected of them during their first year. The combination of traditional Case Method instruction and Socratic dialogue does not intuitively lead most law students anywhere, and the uncertainty caused by this isolation results in great distress. Law schools do not explain the goals nor the designs of any of its methods, prompting one student

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29. Carney, *supra* note 3, at 31 (emphasis added).

30. *See, e.g.*, Beck & Burns, *supra* note 4, at 274; Dickerson, *supra* note 23, at 89; Espinoza, *supra* note 7, at 291; Glesner, *supra* note 3, at 627–28; Taylor, *supra* note 5, at 262–65.

31. Alice K. Dueker, *Diversity and Learning: Imagining a Pedagogy of Difference*, 19 N.Y.U. REV. L. & SOC. CHANGE 101, 105 (1991–92) (emphasis added).

32. Silver, *supra* note 22, at 1214, citing Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1, 13 (1963) (emphasis added).

to observe that using the Case Method is like studying a forest one tree at a time.[33]

Most importantly, as many authors report, it has become apparent on several levels that professors do not test what they teach[34], as often during the first year curriculum they "teach by the case method and actually test by the problem method."[35] Typically, first-year law students are greeted in the first weeks of school with massive reading assignments of appellate court opinions (the standard Case Method) followed by class periods which engage in some form of Socratic dialogue regarding those cases. At the end of the semester, although taught by the Case Method system, typically they are presented with the standard three-hour exam with loaded fact patterns providing complicated legal problems for which they have received little or no explicit training. This general lack of context is also greatly compounded by the lack of feedback students receive during their first year. Most receive no formal, detailed feedback ever. Most receive only a letter grade and no formal discussion regarding how they performed.[36]

In short, standard Case Method instruction isolates students on at least two levels: first, they are isolated personally from each other and their professors, resulting in the psychological distress discussed above; and second, they are isolated "instructionally" as they are taught by the Case Method without any significant understanding about what exactly it is that they are learning, nor how it all relates to their final examinations.

This lack of context mistakenly forces many students to rely on their undergraduate learning strategies, which they developed for entirely different testing systems. Thus, for example, I noted that my students intuitively struggled to memorize each fact of each case read in each class because rote memorization had served them well as undergraduates.[37] These outmoded strategies, however, often just left them exhausted and confused. Inevitably, they spent weeks and months in educational limbo. In a very clever and useful article, Professor Moskovitz likens this odd situation to a young tennis player who studies all of the rules of tennis but will not actually play tennis until the final exam whereupon his entire grade will be based upon that single performance.[38]

The two types of isolation (i.e., psychological and academic) discussed above also function together by restricting a student's access to important law school survival information. This essential information helps a student make the huge leap from undergraduate learning to law school learning. For example, three key bits of such survival information include explicit instruction in:

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33. Sandra R. Klein, Comment, *Legal Education in the United States and England: A Comparative Analysis*, LOY. L.A. INT'L & COMP. L.J. 601, 628 (1991).

34. *See supra* note 11.

35. Moskovitz, *supra* note 9, at 260.

36. *See supra* note 22; *see also* Carney, *supra* note 3, at 16–18 and Gordon, *infra* note 118.

37. This is a very understandable response. *See* Watson, *supra* note 9, at 106 ("law students will assume *a priori* that legal education will be similar to their undergraduate experience"); and Patton, *supra* note 4 at 17, 33 ("It is in the nature of a normal person in a new situation to perform in a fashion similar to how she acted in the situation she just left.")

38. Moskovitz, *supra* note 9, at 259.

creating a rule-based outline; flow charting;[39] and the pivotal importance of taking practice exams.

Typically, however, the first-year law curriculum provides no pedagogical context, and incredibly it remains up to the second and third-year students, friends and family members, or the rare "contextual" professor to explain the new system to the struggling law student. However, it is often simply fortuitous as to whether or not one acquires those valuable friendships and informational resources. *It is the mere fortuity of having those relationships (and thereby access to the survival information) that is the most troubling aspect of first-year legal instruction.*

Law professors have typically responded that the "context" is either already evident, or that it is not useful unless the student struggles to achieve it on her own. Since their own law school days, however, these same professors have spent years honing a general legal framework or context. Thereafter, as teachers preparing for their substantive classes, they have also spent months preparing highly contextual approaches for those classes. Thus, in my opinion, law professors insisting that students need no more context than that already provided by the existing Case Method, to paraphrase First Lady Hillary Clinton, is a lot like Congress insisting that "there is no health care crisis" while Congress itself is fully insured by the federal government.[40]

Whether one views the causative problem as institutionally promoted isolation or something else, however, the response has been clear. As a general rule, law schools have shown absolutely no inclination to acknowledge or address the problems of undue psychological distress and isolation. In fact, despite the growing research discussed above, most institutions continue with the model of first-year education that has been around since the 1870's, prompting one author to bemoan that the Langdellian method still rules us from the grave.[41]

If, however, a law school refuses to acknowledge the interplay between a student's cognitive ability and other noncognitive factors (i.e., isolation and his emotional strengths and vulnerabilities)[42] then it is not really teaching to the student as a whole human being. Most importantly, the institution also fails to appreciate the significant academic costs which also result. If students are isolated, they cannot be fully educated; at the end of the semester or first year, they are then tested on that which they have not been taught and are graded on learning strategies to which many have had unequal access. The plums of law review and second-year summer clerking positions thus are not awarded on a level playing field because success can depend on little more than access to the pivotal survival information possessed by second and third-year students or family members. Consequently, there are likely equally deserving students who are never effectively or accurately tested because they are so far outside of the mainstream by virtue of their isolation that they do not have access to pivotal survival information.

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39. For a discussion of flow charts *see infra*, notes 76, 125–29.
40. *First Lady Blasts Health Care Critics*, CHI. TRIB., Jan. 29, 1994, § 1, at 12.
41. John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29, 40 (1993–94) (citation omitted).
42. *See* Carney, *supra* note 3, at 24, 28.

B. Minority Law Students, Psychology, and Academic Isolation

If the problem now seems undeniable within the general student population, it is doubly more difficult for many of the black, Hispanic, older, and other non-traditional law students, for whom isolation in all facets of life is a much more pervasive problem. Minority law students experience acute isolation, which in turn, produces serious psychological and academic ramifications.

In fact, there are indications that psychological and academic ramifications may fall disproportionately on students of color. For example, there is an added psychological strain experienced by black law students who enter an environment dominated by whites[43] with resulting high degrees of alienation and estrangement. One author reports that the "LSAT overpredicts first-year performance for minority students" but not for majority students, which suggests cultural barriers exist within the law school.[44] Similarly, another author recalls that as a black law student she only rarely felt that her presence made any impact on the class overall and that by and large she felt invisible.[45]

The segregation felt by minority law students can affect motivation which in turn affects self-esteem and the necessary sense of confidence required to survive.[46] A 1988 study of 667 law students at Boalt Hall discovered that women and people of color suffer substantially diminished self-esteem in comparison to white male students at Boalt.[47] Moreover, in 1980, a Mexican-American Legal Defense Fund study reported that a lack of confidence can be a dominant cause of a student's academic problems.[48] Additionally, a "message of incompetence" or failure can be telegraphed to the student in a myriad of ways, including actions by professors who have lower expectations of minority students.[49] In short, it seems apparent that minority student isolation may be more extreme than that of traditional law students, with far-reaching effects on self-esteem and motivation.

Moreover, in addition to psychological consequences, racial isolation also has academic consequences. Students of color are often excluded from

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43. *See* Everett Bellamy, *Academic Enhancement and Counseling Programs: Counseling Minority Law Students*, 10 ST. LOUIS U. PUB. L. REV. 289, 291 (1991); Deasy, *supra* note 6, at 561; Donald K. Hill, *Law School, Legal Education, and the Black Law Student*, 12 T. MARSHALL L. REV. 457, 482 (1987).

44. Charles L. Finke, *Affirmative Action in Law School Academic Support Programs*, 39 J. LEGAL EDUC. 55, 58 (1989).

45. Linda R. Crane, *Colorizing the Law School Experience*, WIS. L. REV. 1427, 1429 (1991).

46. Espinoza, *supra* note 7, at 289; Hamlar, *supra* note 6, at 536; Darryl Brown, Note, *Racism and Race Relations in the University*, 76 VA. L. REV. 295, 326 (1990).

47. Homer & Schwartz, *supra* note 17, at 25, 43; *see also*, Katherine L. Vaughns, *Towards Parity in Bar Passage Rates and Law School Performance: Exploring the Source of Disparities Between Racial and Ethnic Groups*, 16 T. MARSHALL L. REV. 425, 433 (1991).

48. Hamlar, *supra* note 6, at 486, 535 (citing the Mexican American Legal Defense Fund (MALDEF), Law School Admissions Study 37 (1980)).

49. Hamlar, *supra* note 6, at 579.

important yet informal networking systems,[50] which means that the student is "often shut off from the intra-institutional methods by which white students tend to acquire information about how to function in this new role, including advice from upper-class students and faculty members."[51]

Minority students are often shut out of the more formal networks, such as study groups. One author suggests that the majority students' frequent categorization of all blacks as affirmative action beneficiaries, i.e., unqualified to be in law school, along with the reluctance of many blacks to speak up in class, results in "fairly common exclusion of blacks from white study groups."[52] As a result, blacks and other minorities are less likely than majority students to be exposed to successful upper-class students or sons or daughters of judges and other professionals.[53] Isolation (intended or unintended) denies them access to the pivotal survival information including outlines, flow charts, and practice exams to a higher degree than a typical majority student. Finally, due to isolation, some minority students miss the benefit of a more competitive and high achieving study group, and thus, some minority students stay adrift either studying alone or amidst lesser achieving study groups.[54]

Although race is clearly a major cause of student isolation, the problem of isolation is not solely limited to race. It affects all sorts of students who might naturally be thought to drift outside the realm of the traditional majority law student. Studies indicate that older women law students[55], Asian law students,[56] and other non-traditional law students may also be disproportionately affected by isolation.

Consequently, as law teachers and directors of academic support programs, when creating support programs we should be more concerned with isolation factors than traditional index numbers like GPA's and LSAT's. In my opinion, isolation will disproportionately affect students of color, older students and other non-traditional students *regardless* of index numbers. In other words, even if a student arrives with excellent predictors, those numbers cannot predict success if the student is isolated and thereby not exposed to successful new learning strategies. This may frequently explain why a disproportionate number of minority students with excellent undergraduate records either fail or perform below their ability during their first year. Isolation may also explain why LSAT numbers overpredict first-year performance for minority students but not majority students.[57] Thus, especially with regard to academic support

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50. Virginia Taborn, Comment, *Law and the Black Experience*, 11 NAT'L BLACK L.J. 267, 274 (Spring 1989); Espinoza, *supra* note 7, at 291; Hamlar, *supra* note 6, at 553–574.

51. Deasy, *supra* note 6, at 562–63.

52. Brown, *supra* note 46, at 318 (quoting Wright, *Black History Month: Unconscious Racism at UVa Law*, VA. L. WKLY., Feb. 10, 1989, at 3, col. 3); Hamlar, *supra* note 6, at 474–75; Frank James, *Black Ph.Ds Too Rare in America*, CHI. TRIB., February 2, 1994 § 1, at 1, 14 (regarding the shunning of a black Ph.D candidate and isolation which occurs even before graduate school, e.g. "[f]or instance, black students are routinely shunned for study groups, important student gatherings used to prepare for exams.").

53. Deasy, *supra* note 6, at 562; Taborn, *supra* note 50, at 271–272.

54. For a discussion (without regard to race) regarding group dynamics for lower achieving students see generally Patton, *supra* note 4, at 41–42.

55. Dickerson, *supra* note 23, at 89.

56. David Quan, *Asian Americans and the Law: Fighting the Myth of Success*, 38 J. LEGAL EDUC. 619, 622 (1988).

57. *See* Finke, *supra* note 44, at 58.

programs, supplemental educational assistance programs should be made available to all students of color regardless of index numbers, as well as other non-traditional students for whom increased isolation may be especially problematic.

C. Undergraduate Studies

Undergraduate studies support the foregoing assertion that minority students experience increased isolation with resulting increased psychological and academic hardships. Undergraduate psychological studies confirm, for example, that many African-American college students experience the college environment as hostile and that, as a result, they often are more alienated than a typical white student.[58] Alienation here is defined as "a multi-dimensional concept consisting of components such as powerlessness, meaninglessness, and social isolation."[59] Other studies report that a typical behavioral response to this isolation is increased passivity and non-assertive behavior, including asking fewer questions of faculty members.[60] In turn, this passivity clearly affects grade point averages.[61] Finally, a 1990 study by Steven Gerardi reported that academic self-concept, rather than the traditional cognitive skills, is a significant predictor of academic success among minority and low-income college students in certain programs.[62]

Just like the minority law students discussed above, undergraduate research confirms that isolation not only affects these students' psychological sense of self and community[63] but that such isolation has tangible academic effects as well. Isolation affects academics in two areas: the loss of informal networking and study groups, and the deleterious effects of insufficient feedback.

For example, one undergraduate study reports that small group efforts in academic support programs improve grades more than traditional one-on-one tutorial efforts. The study compared a selected group of black students who tended to study alone, with a selected group of Asian students who frequently studied with older and more experienced students. As a result of the small group problem solving activities, the Asian students became aware of (and thereafter modified) flaws in their own thinking, increased their self-confidence

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58. Robert T. Carter, *Cultural Value Differences Between African American and White Americans*, 31 J. C. STUDENT DEV. 71, 78 (1990); Robbie J. Steward et al., *Alienation and Interactional Styles in a Predominantly White Environment: A Study of Successful Black Students*, 31 J. C. STUDENT DEV. 509, 510 (1990).

59. Steward et al., *supra* note 58, at 509.

60. Mary Levin and Joel Levin, *A Critical Examination of Academic Retention Programs for At-Risk Minority College Students*, 32 J. C. STUDENT DEV. 323, 324 (1991); Garcia and Presley, *An Assessment and Evaluation Program for Black University Students in Academic Jeopardy: A Descriptive Analysis*, 9 J. COMMUNITY PSYCHOL., 67, 68 (1981) (citations omitted).

61. Garcia & Presley, *supra* note 60, at 70.

62. Steve Gerardi, *Academic Self Concept as a Predictor of Academic Success Among Minority and Low-Socioeconomic Status Students*, 31 J. C. STUDENT DEV. 402, 403–05 (1990).

63. *See generally*, Mary E. McCarthy et al., *Psychological Sense of Community and Student Burnout*, 31 J. C. STUDENT DEV. 211 (1990).

and self-esteem, and built a social support network centered on academic goals.[64]

Similarly, a report by Steward, Jackson & Jackson also confirms that — just like isolated minority law students — isolated minority undergraduate students suffer when they do not have access to the informal river of survival information: "[Successful black students] express that they believe that interaction when in an all-White environment was critical because it was in this environment that most often the interchange of information related to academic and professional success occurred."[65]

Finally, another study concluded that isolation resulting in a lack of feedback, or a lack of diagnostic assistance, can produce misperceptions. As a result, some minority students incorrectly diagnose their academic problems as "content-centered" when in fact they are skill-related.[66] Thus, the research concluded that explicit learning strategy instruction was necessary because without it a student could continue to pursue more of what was wrong rather than shift to a more successful strategy.

Undergraduate institutions have responded to isolation and its psychological and academic effects in a myriad of ways with a variety of programs.[67] First and foremost, they have recognized that academic ability is not an exclusive determinant of academic success. Maturity, discipline, and experience are also important. Additionally, non-cognitive factors like isolation, loss of self-esteem and motivation can also affect academic performance because it prevents students from receiving essential survival information.

In one study of non-cognitive variables which affect black undergraduates, researchers O'Callaghan and Bryant asked black students what they wanted most out of an academic support program.[68] They responded that they wanted to study harder than in the past and they wanted the program "to give them hope." What they wanted least from the program was to be made "dependent" on it. They wanted to be taught effective study skills so as not to need to return to the program later.

All of this leads one to conclude that traditional index factors like GPA's and the LSAT cannot be truly useful indicators unless they are reviewed in connection with a student's propensity for isolation.

In summary, law schools must finally acknowledge that isolation produces profound psychological effects, including alienation, stress, anxiety, the loss of self-esteem and depression. It also produces equally profound academic effects, particularly with regard to minority and non-traditional law students. These academic effects include a lack of context, a determination to use outmoded undergraduate learning strategies, and a denial of access to study groups and other pivotal survival information. Consequently, many students are not tested on their academic ability but instead, on their fortuitous access to the

64. Levin & Levin, *supra* note 60, at 326 (citation omitted).
65. Steward et al., *supra* note 58, at 513.
66. Levin & Levin, *supra* note 60, at 328.
67. *See generally, supra* notes 58 & 63.
68. R. Miebi Akah, *What Black Students Need From a Tutorial Program*, 31 J. C. STUDENT DEV. 177 (March 1990).

river of survival information. For minority and other non-traditional students, this access may prove doubly difficult by virtue of their added isolation.

It is therefore incumbent upon law schools to create and maintain institutional structures which bring all students to the river of survival information and alleviate the extra burdens placed upon minority and non-traditional students.

II. RELINQUISHING METHODOLATRY

One of the goals of an effective educational institution should be to promote learning on a level playing field. There can be no level playing field until the problem of isolation is acknowledged and changed. There will be no change unless the law academe acknowledges that its own methodolatry fosters such isolation. Traditional Case Method instruction does not provide access to pivotal survival information. Thus, it can be a matter of access and/or fortuity that determines which students receive such survival information.

If, however, one accepts the premise that isolation affects students academically and psychologically with resulting institutional implications, then the next logical question is how to address the problem. One excellent way is to create academic support programs to assist those students who are potentially most isolated by including all minority students and other non-traditional students who may also be at risk for isolation.

Beyond the creation of academic support programs, however, it is quite clear that a much larger institutional movement is also afoot. Significant developments within the last 10–15 years in "learning theory" and "methods" research have prompted many authors to reexamine how law school should be taught. Thus, although it is rarely, if ever, couched specifically in these terms, this new movement is really *about* alleviating the problems of isolation described above, by changing pedagogy.

This new movement involves two premises: (1) it is desirable to look to other disciplines outside the law; and (2) to the extent possible, it is desirable to adapt and incorporate specific training from those disciplines into our own teaching.[69]

The result of this ever-growing movement has been a number of law review and other articles,[70] conferences, and studies. By now the literature is voluminous and includes a number of different educational theories and a large number of theorists. Broadly stated, much of the literature as it relates to this movement in legal education can be divided initially into two categories: learning theory and methods teaching.

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69. Cynthia Kelly, *Education for Lawyer Competency: A Proposal for Curricular Reform*, 18 NEW ENG. L. REV. 607 (1983); Hamlar, *supra* note 6, at 552 (citation omitted); Wangerin, *supra* note 3, at 1299.

70. For an exhaustive compilation of recent articles about law teaching published in law journals, see Arturo L. Torres and Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods of Law Teaching*, 1994 GONZ. L. REV. 1 (Special Ed. 1994).

By way of summary, learning theory is the science of how people learn. A key-related concept is metacognition, or understanding and monitoring one's own learning process.[71]

There are many offshoots from general learning theory concepts, including: expert and novice thinking or schema theory,[72] independent learning theory,[73] and self-directed learning[74] just to name a few. Much of learning theory is found in the disciplines of psychology and education. Central concepts include: (1) that people learn best when they have a framework (i.e., a context or a schema) within which to place incoming information; and (2) it is essential to break traditional student-teacher dependency and help a student "learn how to learn" so that ultimately she is teaching herself.[75]

On the other hand, "methods" or "teaching research" primarily represents that body of scholarship which involves legal education and actual teaching methods (as opposed to learning theory). These methods include problem solving, spatial learning,[76] flow charting and exam preparation techniques. Central to most methods research, however, is the thesis that law schools should modify their exclusive reliance on traditional Case Method instruction and move to a more "problem oriented" approach.

Although voluminous and somewhat divergent, the research from both camps can nonetheless be placed on a continuum. Essentially all of the learning theory and methods research (law-related as well as non-law-related) deals with one or more of the following processes:

(1) how students learn (particularly adult student learners);

(2) which learning skills are essential to survive and succeed;

(3) what mechanisms or specific "tools" can be used to teach those necessary learning skills.

The law-related learning theory and methods research replicates the broader, non-law related research and discusses these same three processes.

The research in learning theory and methods instruction has enormous implications for law teaching. Unfortunately, much of the learning theory research is discussed without reference to the methods research. Conversely, texts on problem methods and other methods research rarely discuss learning theory with any depth. Additionally, neither learning theory nor methods research incorporates the wealth of research regarding isolation and the

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71. Salmony, *supra* note 8, at 32; Vaughns, *supra* note 47, at 471; Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471, 472–73 (1988).

72. John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275 (1989).

73. Regarding the relationship of independent learning theory to legal education see *id.*, and Wangerin, *supra* note 9, at 790–802.

74. *See* Brookfield, *supra* note 10.

75. *See* Patton, *supra* note 4, at 29; James Boyd White, *Doctrine in a Vacuum: Reflections on What a Law School Ought (and Ought Not) to Be*, 36 J. LEGAL EDUC. 155, 162 (1986). For a discussion on the importance of breaking student-teacher dependency see Akah, *supra* note 68 and accompanying text (regarding undergraduate programs) and Wangerin, *supra* note 9, at 773, 793 (regarding law school programs).

76. For a general description of "mapping" and spatial learning strategies see Mitchell, *supra* note 72, at 278; Salmony, *supra* note 8, at 29–31; Wangerin, *supra* note 71, at 502–03. For a discussion of flow charting, *see infra* notes 126-30 and accompanying text.

psychological and academic ramifications discussed above. Nor do they reference the exciting union of psychological research, learning theory and methods research found in the undergraduate academic support program studies referenced herein. In short, although each distinct body of research is extremely useful, nonetheless, I have found the research to be somewhat unwieldy and insufficiently inter-connected for my purposes as the director of a fledgling academic support program. For example, I had some difficulty with the law-related learning theory which remained tied to traditional Case Method instruction[77] and that which seemed unrealistic in terms of the time demands placed on students.[78] I also had difficulty with some of the learning theory which places too much emphasis on self-directed learning and not enough on the very real and necessary involvement of a trained teacher.[79]

Additionally, much of the methods research appeared to focus on providing students with context in the form of black letter law. I personally found too little direction or emphasis upon the "context for the context," which I call the "context of pedagogy," in the existing methods literature. This contrasted with my own experience in teaching which led me to conclude that providing a student with context for the pedagogy as opposed to just a "black letter law context," was absolutely essential as a basis from which to start. This context for the pedagogy includes: why professors use the Case Method instruction, why exams look the way they do, why we use IRAC,[80] why case briefs are divided between facts, rule, and rationale and why cases must be read on three levels. Moreover, in creating my school's academic support program, I also wanted to cement the relationship between spatial learning and the problem method. Finally, for my own purposes, I needed to create a tighter bridge between learning theory research and the day-to-day implementation found in the methods research.

Thus, Section II of this Article results from my need to create my own schema to synthesize some of the vast available research, including research in the two camps of learning theory and methods teaching. Eventually, this new schema became for me a working model that I used in my own classroom. My model, "Creating a Context for Pedagogy" allowed me to create a working model bridging existing research on learning theory and methods instruction, while at the same time adding my own emphasis on the context of pedagogy. It was my wish that, by synthesizing the research and modifying my teaching to reflect the research, I could then alleviate some of the burdens of isolation which seemed to be so prevalent among my students.

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77. *See, e.g.*, Feinman & Feldman, *supra* note 2, and Wangerin, *supra* note 9, at 797, describing mastery learning and independent learning within the traditional Case Method format.

78. *See also*, Kathleen Patchell, *The LSAC Academic Support Program Workbook from the Perspective of a Novice User*, 12 N. ILL. U. L. REV. 341, 349 (1992).

79. *See, e.g.*, Brookfield's remarks that "no adult can be fully self-directed while working within an accredited educational institution," *supra* note 10, at 2.

80. IRAC means "issue, rule, application, conclusion." See *infra* section II(A)(2)(c).

A. Using Contextual Teaching To Promote Independent Learning

1. Learning Theory

a. How Students Learn

As noted above, learning theory is the study of how individuals learn. Presumably, if we understand how law students learn we can teach to their learning styles and produce better students. There are certain themes that run throughout much of the learning theory research. First, each student learns differently. Some learn best by visual methods (writing, charts, etc.); some learn best by auditory methods (lecture or student verbalization). Some students are abstract thinkers; others are concrete thinkers.[81] Therefore, when teaching to a classroom of students, it is optimal to combine some form of all of these techniques in order to reach the largest number of students.[82]

Second, the operational linchpin around much of learning theory is that all learning is contextual, i.e., students need and will try to use existing contexts to process and store incoming information. Law students, therefore, will often try to store the massive amount of incoming information in law school via their existing contexts (also called "schema") which are outmoded.[83] A new law student's existing schema is insufficient because it is based upon undergraduate strategies without experience in the law. This is tantamount to trying to force a square peg into a round hole, and, thus, often results in a student's "not getting it" and "missing the big picture." What a first-year law teacher must do, therefore, is to help the students create new "context" or new "schema" with which to organize this new material. Only after a student has a sufficiently grounded base or schema for the law, can she then process this enormous amount of information into true knowledge. As the student builds upon her base, her knowledge and analysis become more sophisticated.[84]

A third general component of much of the learning theory is that students learn best when they are taught how to learn and not simply taught what to learn.[85] Ultimately, therefore, if everyone learns differently, and everyone needs "context," then individuals achieve the highest and most effective learning when they learn how to learn material on their own.

b. Which Learning Skills To Develop

Various learning theories which discuss the above-referenced themes include: independent learning theory[86], self-directed learning theory[87], schema

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81. Kelly, *supra* note 69, at 618–20.
82. *Id.* at 621.
83. *See* Mitchell, *supra* note 72, at 283.
84. *Id.* at 286.
85. *See generally, supra* notes 69 & 73, and Feinman & Feldman, *supra* note 2, at 894.
86. *See infra* note 96 and accompanying text.
87. *See* Brookfield, *supra* note 10.

theory[88], heuristic learning theory[89] and mastery learning theory.[90] Each theory has its own distinguishing characteristics. However, as Feinman and Feldman report, they all seem to move from a teacher-centered approach to a learner-centered approach.[91] The ultimate goal, of course, is to free the student from dependency on his teacher and to assist the student in this discovery of how to best learn on his own.

Although initially borrowed from educational psychology, the doctrine of independent learning also comports beautifully with the central mission of law schools[92], which is to train students sufficiently to eventually go out and practice law on their own. This process of independent learning can be described simply as "learning how to learn the law."[93] It requires that a student "first attain a set of operational concepts or a strategy which permits him to handle the context of diverse legal situations in an equivalent manner."[94] Thereafter, the transformation from fledgling law student to a practicing attorney involves a similar skill: "autonomous learning, the ability to learn what needs to be learned to cope with a novel situation."[95]

Integrating learning theory into mainstream legal education, therefore, suggests that by helping the student discover how she learns, (as differentiated from providing her with simply "what to learn"), a teaching institution produces a better law student and a much better lawyer. Conversely, it is suggested that by ignoring developments in independent learning theory, law schools miss a hugely valuable opportunity to prepare their law students for law practice in the real world.

Moreover, independent learning theorists[96] argue that training students to become independent from teachers will insure that the student continues successfully even after the academic support ceases.[97] Thus, they stress that it is essential to teach substance and independence simultaneously. In order for a student to achieve independence, therefore, she must develop the following skills including the ability: (a) to set goals; (b) to devise a program for accomplishing each goal; (c) to establish criteria for evaluation; and (d) to create a mechanism to evaluate progress.[98]

Feinman and Feldman, two law professors, advocate a somewhat similar theory called "mastery learning" which identifies the same learning skills as those of the independent learning theorists set forth previously. Feinman and

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88. *See* Mitchell, *supra* note 72.

89. Paula Lustbader, *The Houses That Law Students Build: A Heuristic Model of the Process of Learning Legal Reasoning* (unpublished work in progress which examines learning theory and breaks out specific learning clusters through which students pass).

90. *See* Feinman & Feldman, *supra* note 2, at 897–898.

91. *Id.* at 900.

92. Some educators, including myself, view this as the essence of the law school mission and its most important function.

93. *See supra* note 75.

94. Patton *supra* note 4, at 48.

95. Feinman & Feldman, *supra* note 2, at 894.

96. *See generally*, Finke, *supra* note 44 (re: the University of Oregon Academic Support Program); Wangerin, *supra* note 9; *see also*, Jane H. Aiken et al., *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985) (describing the promotion of individualized learning through use of learning contacts at the Georgetown University Law Center).

97. *See supra* note 75.

98. Wangerin, *supra* note 9, at 791.

Feldman suggest that all students come to law school basically equipped to succeed. Thus, the best instruction should help students reach their own innate potential. Thus, students and teacher work to: (1) define objectives and formulate learning units; (2) develop alternative learning resources; and (3) create useful final evaluation and grading systems. Furthermore, these authors expressly note that mastery learning strategies employ many traditional teaching methods (e.g., Case Method instruction) but require that at least initially the teacher be more explicit and systematic about what is to be learned and to assert more control over how it is to be learned.[99]

"Self-directed learning theorists" are educational psychologists who study and work specifically with adult learners.[100] Like the independent learning theorists, initially they successfully challenged the assumption that adult learning could only occur in the presence of a certified teacher.[101] The idea was to encourage the adult student learner to take increased responsibility for learning — and thereby move away from a passive recipient mode —to achieve learning that would be more meaningful for the student. The techniques or skills involved in self-directed learning are very similar to those described in independent and mastery learning theories:

> [Such skills are] manifest in the individual's ability to plan and conduct learning activities. It is discernable when the individual sets realistic and achievable objectives, locates and chooses appropriate resources, designs learning strategies, and generates evaluative procedures.[102]

Interestingly, self-directed learning theorists often utilize "learning contracts" to facilitate learning self-directiveness.[103] Generally, these contracts itemize goals and evaluation strategies for the study. In 1985, the Georgetown Law Center incorporated a learning contract into one of its clinical programs.[104]

Finally, in "schema theory," cognitive psychologists argue that true understanding occurs when incoming information is broken down and patterned into a structure or a schema. One assimilates new information through existing interpretive frameworks and, in fact, "without some schema into which it can be assimilated an experience is incomprehensible and...little can be learned."[105]

As discussed above, rather than simply throwing a student into Case Method instruction, it is incumbent upon a law teacher to help the student create a new schema upon which true understanding may be achieved.

That law students suffer from a lack of context is readily apparent. Students often misjudge and misunderstand what is expected from them on an exam.[106] All too often they fail precisely because they have no context or

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99. Feinman & Feldman, *supra* note 2, at 897–98.
100. *See generally*, Brookfield, *supra* note 10.
101. *Id.* at 7.
102. *Id.* at 14.
103. For a discussion of using learning contacts as a tool to facilitate learning self-directedness among adult student learners generally, see Ralph G. Brockett, and Roger Hiemston, *Bridging the Theory-Practice Gap in Self-Directed Learning in* SELF-DIRECTED LEARNING: FROM THEORY TO PRACTICE 35 (Stephen Brookfield ed., 1985).
104. *See* Aiken et al., *supra* note 96.
105. Mitchell, *supra* note 72, at 277.
106. *See, e.g.*, Swygert, *supra* note 12, at 708.

structure in order to make manageable the massive amount of material they absorb over a semester.[107]

This is evident in student "outlines" which are nothing more than a case-by-case synopsis with no thematic understructure. It is evident in a student answer to a complicated torts exam question which contains a standard fact-loaded problem with an introductory statement that begins: "In 1694, the English common law tort of trespass vi et armis was first recognized in the case of [*Plaintiff v. Defendant*]." And it is evident in excessive reliance upon outmoded undergraduate learning strategies like memorization and rote repetition.

Isolation may exacerbate a "lack of context" for minority students and thus, they may have an even more difficult time. One professor notes that minority law students often study case book materials by reading them cover to cover rather than by imposing a structure upon the materials as part of their study.[108] Similarly, Derrick Bell observes:

> It is no wonder that so many well-intentioned [academic support programs] . . . have not been successful. All too often these programs focus on the substantive material in a course rather than how the law exam is to be written.[109]

In short, if one is to incorporate the central tenets of learning theory into a law classroom it becomes clear that standard Case Method instruction is not optimal for producing independent learning. Independent, mastery, schema, and self-directed learning theories all suggest that law students are not being taught to be effective self-learners. Some students may end up there intuitively, but perhaps this is due to their individual learning style and not necessarily because of a superior academic ability, as previously presumed.

Each of these theories (independent learning, mastery learning, self-directed learning theory, and schema theory) emphasize setting explicit goals for learning, designing specific learning strategies, and providing effective evaluation and feedback. Traditional Case Method pedagogy for first-year law students, however, is not currently designed to accomplish *any* of these goals. From a learning theory perspective, particularly lacking in law school curricula is the articulation of explicit "learning strategies" and meaningful evaluative procedures.

2. *Making The Leap From Undergraduate To Law School: The New Context Of Pedagogy*

Once learning theory concepts are understood, the next question of course becomes *how* do we get a student to "independent learning" with a "fully developed and supportive schema" so that he can go out and learn on his own? Exactly how should we teach in order to promote better learning and fairer, more accurate testing?

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107. *See* Patton, *supra* note 4, at 29.

108. Nerissa Bailey-Scott Skillman, *Misperceptions which Operate as Barriers to the Education of Minority Law Students*, 20 U.S.F. L. REV. 553, 556–57 (1986).

109. Derrick Bell, *Law School Exams and Minority Group Students*, 7 BLACK L.J. 304, 307 (1981).

Two authors conclude that we must cease blaming the victims and accept responsibility for our students' inadequate learning.[110] Accordingly, they suggest that the only way to improve the situation is to: (1) be far more explicit about what we're doing (i.e., deliver context); (2) develop alternative approaches to teach it more efficiently; and (3) provide useful evaluation so that students become aware of what they are learning but also how they are learning it.[111]

While learning theorists study the *process* by which students learn, a second category of research, "methods" research, is also extremely useful because it provides specific teaching tools that can produce better learning. In essence, therefore, teaching methods can be used to promote independent learning. Methods literature almost universally stresses the need to substantially modify or abandon the existing Case Method pedagogy.[112]

There is, however, one useful step in between learning theory and methods research. I call it "Creating a Context for Pedagogy" or providing "context for the context." Much of methods research focuses on specific teaching tools e.g., rules based outlines, practice problems and flow charting or mapping. However, a useful step in between is to explain to the students the "why" of first-year pedagogy. In short, prior to teaching "tools," the "why" of each tool must be placed into context by explaining the context of pedagogy.

a. Explaining How We Test

In order to achieve independent learning, therefore, it became apparent to me that on the very first day of class I had to use the law school exam as a starting point and take my students backwards from there. Thus, for the first several weeks in the academic support program, the context provided was not basic black letter law but rather a series of discussions on the Langdellian Case Method itself, specifically as it related to the standard single three-hour exam at the end of the semester. My theory was that by beginning with the end product, the exam, a student might be more easily convinced of the imperative requirement that she give up a much-treasured undergraduate learning strategy and work instead to create a new learning strategy. In order to provide a "context for the pedagogy" I use several old exams, and two cases, *Leatherman v. Tarrant County Narcotics Unit*[113] and *Lefkowitz v. Great Minnesota Surplus Store*.[114]

On the first day of class in the academic support program, students read several standard law school examinations including torts and contracts exams that are fact-loaded. We next discuss how and why these exams are different from standard undergraduate exams which the students have just left. We note that in the new exam rather than text-specific questions, there are generally numerous persons, (plaintiffs and defendants), with numerous problems that need to be analyzed and resolved in some orderly, chronological fashion.

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110. Feinman & Feldman, *supra* note 2, at 881–82.
111. *Id.*
112. *See* Moskovitz, *supra* note 9, at 241–43; *see also supra* notes 9, 20–22.
113. Leatherman v. Tarrant County Narcotics Unit, 954 F.2d 1054 (5th Cir. 1992), *rev'd*, 113 S. Ct. 1160 (1993).
114. Lefkowitz v. Great Minneapolis Surplus Store, 86 N.W.2d 689 (Minn. 1957).

We also discuss how simply memorizing the cases found in the students' law texts may not be a terribly useful strategy in resolving these new complicated fact patterns. In short, students acknowledge that unlike their undergraduate exams, in law school they will not be tested on mere case recall. Instead of simply repeating case names and histories verbatim, they will be asked instead to apply case reasoning to solve new problems on the exam. At this point, there is general agreement that formerly successful undergraduate strategies like massive memorization and rote response may not be useful, and thus, the new challenge is to retool in light of this new type of exam.

b. Explaining How We Read Cases

The next few classes are spent examining cases and creating a new learning strategy. Students first read *Leatherman v. Tarrant County Narcotics Unit* as an appellate court case[115] followed by the subsequent United States Supreme Court decision.[116] These cases are extremely useful in instructing a student on how to read a case on three levels. Following the wonderful advice of a colleague many years ago, I instruct the students to learn to read difficult and complex cases as a series of movements.[117] Cases should be read as a series of movements on three levels. I use *Leatherman* because of its movement on all three levels.

The first movement to examine is the movement from the world to the courtroom — what happened factually to get the case into court. In *Leatherman*, the appellate opinion provides a lurid account of civil rights violations and the students thus become very involved in the underlying facts of the case.

The second level movement — the toughest one for new law students — is the movement from the trial court to the appellate court. Again, *Leatherman* is useful because it requires students to leave the disturbing underlying facts (on which they want to concentrate) in order to wrestle with the issue on appeal which is whether a federal court may apply a heightened pleading standard in civil rights cases for purposes of a motion to dismiss.

The third movement requires a student to look at the disposition of the case, or the movement from the appellate court back out to the real world, (which of course, can sometimes involve a remand).

The *Leatherman* cases are complicated, and certainly many others might do just as well in their stead. Although complicated, my students explain often that it is the first time in the several weeks of school that they actually understand how to read a case. They have explained that without it, they tend to stay stuck in the first movement level (the movement from the real world to the trial court) and can spend weeks before they learn to properly differentiate between the movement on three levels.

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115. 954 F.2d 1054.

116. 113 S. Ct. 1160.

117. After many attempts, I am still unable to locate the exact source of this valuable advice and instead, I thank Carol Parker and Debby McGregor generally for their creative and useful input over the years regarding my ASP program.

c. Explaining Why We Read Cases

Having learned how to read a case, the next challenge is to explore why we read cases in our "laboratory" of the law. I use traditional "IRAC" (issue, rule, application, and conclusion) to explore why we read cases in order to study the law.

First, the students explore why it is useful to divide a case into its component parts: issue, rule, application, and conclusion. By way of brief summary: (1) we identify and examine "issues" because they represent the real world problems that must be resolved; (2) like dominoes, issues then trigger specific "rules" in order to resolve the problems. Rules are important because principles of precedent and stare decisis put limits on how far a court may go on its own to resolve most problems. Furthermore, a body of rules, i.e., "the law," is also essential because it enables the orderly progression of commerce and allows persons to act in reliance upon those standard established rules; (3) from there, it is useful to study how courts "apply" rules because case facts change all the time. New problems raise new facts to which established rules must be applied. Like exam questions, these new problems may not exactly reflect existing case law and thus, we must study how rules are applied.

At this point, the students generally agree that cases are useful as a tool to study the law. They now understand that cases examine legal problems (issues) and rules are used to resolve such problems. One of their goals, therefore, is to extract a series of rules and fashion a body of law that can be used to resolve new problems like the ones seen on the final exams passed out on the very first day of school. In short, we have created a context for the pedagogy and students start to understand Case Method instruction.

Additionally, by now the students fully appreciate that much of legal study is not merely memorizing old cases only to regurgitate them on an exam. Instead, legal study is essentially a two-fold process of: (1) understanding the law (rules and policies); and (2) applying the law. Using IRAC to dissect cases into issues, rules and application helps both in the "understanding" and the "application" functions.

d. Coming Full Circle - Returning to Exams

Next, students reread *Lefkowitz v. Great Minneapolis Supply Store* [118]because it is a case they are assigned to read during Orientation. It is suggested that by having students return to a familiar case they can revisit the case in light of this new context. I ask hypothetically, for the students to imagine that the plaintiff, Morris Lefkowitz, has just entered their office. I ask the students if Mr. Lefkowitz is likely to explain:

> I read an advertisement in the newspaper about fur coats and a stole, and I arrived at the store on both Saturdays at 9 a.m. first in line, whereupon the store manager said there is a House Rule — and only women can buy the furs for $1.00. Consequently, in my opinion, the two legal issues are whether the newspaper ads constitute an offer to contract and whether a store can modify an offer after acceptance.

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118. 86 N.W. 2d 689

Of course not, we all agree. A lawyer's clients will typically arrive with a bundle of uncoded, unorganized facts. Mr. Lefkowitz, for example, is likely to give his lawyer a jumbled factual history whereupon it will be the lawyer's job to organize and analyze the problem. Thus, the exam taking process in reality often replicates the real life practice of law. By way of analogy, students agree that we would not test the medical student solely on the history of medicine. Instead, it is more appropriate to test the medical student on whether she can diagnose the illness (identify the issue) and thereafter, treat the illness (apply the rules and resolve the problem).

In short, *with the proper context*, students begin to appreciate that there is some value in the kind of exam taking to which they will be exposed at the end of the semester. Like the young M.D. who must diagnose before she can treat, the students agree that as lawyers we must first identify the problems before we can solve them in a lawyerly, orderly fashion.

In my estimation, it is only at this point that the students have sufficient "context of the pedagogy" to begin studying effectively. Once they have achieved a basic comfort level with the why of Case Method instruction, (including how and why we read cases) as well as standard fact pattern examinations, they are then ready to create new learning strategies. Having achieved a bridge between learning theory and methods instruction, at this point they are ready to look to the tools found in methods instruction to help develop these new learning strategies.

3. Methods Research

An excellent way to help a law student achieve true independent learning is to expose him to the tools found in methods research. Methods instruction is particularly effective in developing two of the learning skills described above: the development of new learning strategies and self-evaluation techniques.

The single skill stressed most fervently, and frequently, by the numerous methods theorists is writing. First, students must write regularly and they should answer practice fact problems in each subject throughout the semester.[119] As they build upon their writing and analytical skills, increasingly complex problems may be used until these problems eventually replicate the depth and complexity of standard exam questions.[120]

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119. There is increasingly widespread support to revamp the first year curriculum so as to include writing exercises and concomitant feedback. *See, e.g.*, Everett Bellamy, *A Report on the NBA/HBA Legal Education Conference: An Assessment of Minority Students' Performance in Law School:Implications for Admission, Placement and Bar Passage*, 20 U.S.F. L. REV. 525, 534 (1986); Finke, *supra* note 44, at 63; Gordon, *supra* note 11, at 1692 ("Studies have shown that the best way to learn is to have frequent exams on small amounts of material and to receive lots of feedback from the teacher. Consequently, law school does none of this."); Mitchell, *supra* note 72, at 295 n.48; Stephen R. Ripps, *A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student*, 29 HOW. L.J. 457, 475–77 (1986); Watson, *supra* note 9, at 160.

120. *See* Charles R. Calleros, *Variations on the Problem Method in First-Year and Upper Division Classes*, 20 U.S.F. L REV. 455, 457 (1986); Espinoza, *supra* note 7, at 297; Moskovitz, *supra* note 9, at 249–51.

Also central to the methods theorists is the requirement of frequent, consistent and immediate feedback to the student so that she can begin to monitor her own progress and amend her learning strategies as needed.

a. The Problem Method

One tool by which teachers can facilitate increased learning is use of the problem method. Professor Teisch defines the problem method as the method which "calls upon the students to read cases, treatises, and various law-related resources and to then answer on a regular and frequent basis written or oral hypothetical problems in the nature of standard law school examinations."[121] Similarly, Professor Moskovitz carefully lays out the reasons to abandon standard Case Method instruction and move to a problem-centered approach.[122] He is careful to point out that the contemporary use of in-class oral hypotheticals is insufficient and must be distinguished from the more effective problem method format. Standard in-class hypotheticals generally are quite brief, involve just a few issues, and are answered immediately in class. By contrast, problem method teaching requires a teacher to create a somewhat lengthy and more complex factual problem that involves several issues and subissues about a block of law that the student must answer in writing.[123] It is multi-tiered, more challenging and a better learning tool for many students.

There are numerous benefits to using the problem method. The student is required to write regularly. This will greatly sharpen his issue spotting and organizational skills. It also forces the student to learn *and synthesize* a small block of law in order to apply to each practice problem. Additionally, the student receives feedback along the way and can modify her learning strategy as needed. Moskovitz likens using the problem method to actually hitting a tennis ball many times. Like an athlete, in exam-taking the student most hone a myriad of skills that must be exercised simultaneously. Thus, use of practice problems provides much needed skill development long before a final exam is taken.[124] An excellent textbook which provides problem sets and sample answers is Joseph Glannon's *Civil Procedure: Examples and Explanations.*[125] Providing a student with sample answers is particularly effective because the student can carefully evaluate and monitor his own progress.

Using the problem method clearly promotes self-directed or independent learning. This is interesting, however, because Moskovitz and others tend not to discuss methods research expressly in the context of independent learning theory. The problem method promotes in-depth learning first, because it forces the student to give up outmoded undergraduate learning strategies like rote memorization and forcibly introduces him to the skills and strategies he will need to survive law school exams. Second, as a result of more feedback from the teacher and the provision of sample answers, soon the student is able to monitor his own progress and begin to develop his own strategies for learning.

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121. Teich, *supra* note 9, at 171.
122. Moskovitz, *supra* note 9, at 241–42.
123. *Id.* at 246–47.
124. *Id.* at 259.
125. Joseph W. Glannon, CIVIL PROCEDURE: EXAMPLES AND EXPLANATIONS (2d Ed. 1992).

Thereafter, he can transfer and apply these strategies to all of his other first-year classes.

b. Flow Charting

Graphics can also be useful in moving a student to successful independent learning. I refer to these graphics as "flow charts"[126] but other authors describe somewhat similar tools as mapping[127], spatial learning strategies, or graphic organizers.[128] With regard to properly preparing for exams, many of my students report that flow charting is the single most useful learning strategy they learned in the academic support program. Furthermore, for many students it was a strategy they did not possess upon arriving to law school, and thus, it was a learning strategy they were very much in need of being taught.

Briefly stated, a flow chart is nothing more than a graphically organized series of questions that the student will ask himself in a chronological orderly fashion when he sits to take an exam. Complete with spatial signals like arrows, circles, or squares, which highlight the relatedness of certain ideas to each other, it is a way of coding an entire class on one piece of paper.[129] A student begins a flow chart only after the black letter law is organized, preferably in a synthesized outline format. The task requires a student to use his outline and textbook Table of Contents to first divide the subject into four or five blocks of major issues. These major issues are then subdivided using arrows or other signals which illustrate the hierarchy of issues to subissues. Finally, appropriate defenses are inserted.

For example, a student might initially divide torts into intentional torts, quasi-intentional torts, negligence, and strict liability. This first division may also include other blocks (e.g. libel, slander) depending on the breadth or scope of the torts class. These major blocks are then subdivided by elements and defenses. Using arrows, the elements and appropriate defenses are arranged as a series of questions (hence, "the flow chart") which moves the student thematically through an entire body of law. Later on, when faced with a complicated fact pattern the student imposes the flow chart, like a stencil, on top of the fact pattern to spot issues and organize his answer.

Similarly, as a start, much of contract law may be broken into initially three sets of problems: (1) is there a contract formed here? (formation); (2) if we have a binding contract, how will courts interpret it? (interpretation); and (3) has there been a breach and what are the available remedies? (breach and remedies).

By dividing contracts initially into formation, interpretation, and breach issues the student has a global schema of the entire class.[130] From this basic beginning, the student can add to, subdivide, and modify this analytical

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126. Being a beneficiary of the "river of information" during my own first year as a law student, I remain indebted to my friend (then a second-year law student) and now academic colleague, Professor Carol M. Rice, for providing me with my first instruction in flow-charting.

127. Mitchell, *supra* note 72, at 277; Salmony, *supra* note 8.

128. Wangerin, *supra* note 71, at 502–03.

129. For an illustration see *id.* at 510; however, I have my students phrase "themes" as "issues" in order to replicate issue spotting skills required on examination.

130. I am grateful to Larry D. Salmony for his personal assistance in November 1992 in formulating this contracts flow chart.

framework. The trigger words and question marks can be arranged in a linear or vertical fashion with circles and squares and arrows which guide the reader and illustrate the relationship of the concepts to each other. Appropriate defenses and key policy concepts are inserted beneath the issue as subcategories.

It is also very effective to flow chart parts of a complex area of law like equal protection, or jurisdiction. For example, for jurisdiction in Civil Procedure my students begin their inquiry with the question "am I in state court or am I in federal court?" That is the essential threshold question which will trigger certain subissues like dominoes. When reading a complicated fact pattern, students realize that if they are in federal court, they must next ask the following series of questions: what is the basis for jurisdiction here?; is this federal question jurisdiction?; diversity jurisdiction? (and if diversity, are all parties diverse?; is the greater than $50,000 minimum met)?; and moreover, if I am in federal court is there an *Erie* problem here? At this point, they next review the basis for personal jurisdiction.

Alternatively, should students find themselves in state court on an exam question they know to move directly — via arrows and circles — to issues of personal and subject matter jurisdiction which do not trigger diversity and *Erie* problems. They use the arrows to by-pass the federal question, diversity and *Erie* issues which are only found in federal court.

In my experience, the flow chart is *the essential step* which moves the student from rote memorization to the analytical skills required in exam taking. Incredibly, it is also a key learning strategy which is taught rarely if at all in standard first-year Case Method instruction. Students are required to discover it somehow in a hit-or-miss fashion. Often, I have found upon review that the bright, capable students who underachieve or do not achieve passing grades on exams almost invariably have not had access to the concept of flow charting. Instead, their learning strategies often cease with standard "outlining."

What is also fascinating about the flow chart is that the students so universally recommend them as an essential study tool, yet each flow chart is ultimately as unique as each student and how each student learns. The flow chart, therefore, reflects the individuality of the learning style of the student.

c. "Patterns Of Argument" And Policy

Once a student gets the basics down with the problem method and thereafter "contextualizes" an entire class onto one piece of paper via a flow chart, I have them develop a third tool. This tool is really an arsenal of policy considerations and patterns of legal argument[131] that is textually specific to each first-year class.

For each first-year subject, the students are asked to step away from the black letter law and issue spotting skills and to create a list of general arguments and policy considerations regarding that subject (e.g., What is the general purpose and function of contract law? What is the purpose that tort law is designed to accomplish? What are the competing rights and considerations?

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131. For a clever and interesting presentation on patterns of legal argument, see Paul, *supra* note 11.

What are the problem areas? What policy considerations have been stressed in the class?).

Where appropriate, these arguments and policy considerations may be integrated into the flow chart for use on standard exam questions. They also help to prepare a student for a non-standard exam question. If, for example, a professor were to ask a student to create a new statute, or evaluate a particular Justice's argument, the students' arsenal gives them a contextual framework for the subject matter. Ultimately, the purpose of the exercise is to force a student away from the black letter law to create a global context for each class.

d. Practice Exams

I next deliver a lecture entitled the "Twelve Steps to Exam Taking" which includes information on "task specific" skills for essay exams like time management, providing sufficient analytical depth after issue spotting, and weighing the value of individual exam questions by looking at point value or time allotted per question.[132] Thereafter, the students hone their skills under simulated exam conditions by taking practice exams. Practice exams are much more complicated than the earlier practice problems and are designed to replicate the exam-taking process. At this point, students particularly appreciate their flow charts and become quite adept at integrating their flow charts and issue spotting skills with other exam-taking skills.

Thereafter, students are strongly encouraged to form exam study groups of four to five students whereupon they meet before each exam to review old practice exams together. That way they get the benefit of several minds examining the same fact pattern and learn a great deal from each other. There is widespread support in the methods literature for use of practice exams.[133]

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132. Specifically, the "Twelve Steps to (Essay) Exam Taking" are:

1. Open Bluebook and write down memorized mini-checklist on inside cover (e.g., causes of action, major defenses, damages);
2. Calculate allotted time per each question based on point value; reserve 1/3 to 1/2 of each allotted period to outline answer;
3. Read question, circling facts; pay extra attention to the directions given in last sentence of exam question;
4. List all potential issues;
5. List all parties and arrange;
6. Check this tentative outline against your mini-checklist to see if you're omitting an obvious issue or defense;
7. Reread question a second time for facts;
8. Begin writing. Force yourself to IRAAC and sub-IRAAC, i.e., issue, rule, apply, apply (other side) and conclude;
9. Wrestle with specific facts;
10. Look at result(s) carefully; Is it just? Does it effectuate the purpose of the rule?
11. Is some policy discussion appropriate? and
12. Don't assume facts or directions which are not specifically set forth.

133. *See supra* notes 119-20.

B. Additional Support For Learning Theory And Methods Research

1. Undergraduate Studies

As discussed in Section I, studies of undergraduate minority students support the argument that minority law students who are isolated may suffer disproportionate psychological and academic effects from their isolation.

Similarly, much of the learning theory and methods research described above also receives considerable support from studies on undergraduates. While there may be some scientific debate as to the empirical value of some of the studies[134], the undergraduate studies nonetheless overwhelmingly support continued efforts at intervention which utilize learning theory research and methods research.

Particularly useful are the undergraduate reports which review learning and methods research in the context of minority students. These studies show that minority attrition rates at undergraduate institutions decrease when: (1) an academic support program creates a supportive emotional environment for student learning (thereby decreasing psychological distress); and (2) introduces skill-centered learning strategies — as opposed to "content-centered" instruction — by incorporating writing and lots of feedback.[135] In a strong concurrence with the independent learning theory research discussed above, these reports show that undergraduate academic support programs are far less successful when they create dependency relationships between the teacher and student and do not teach students how to learn on their own.[136]

In a well-written and comprehensive 1991 study, Levin and Levin, an assistant dean and a professor of educational psychology from the University of Wisconsin, review much of the current data on undergraduate academic support programs.[137] They sought to understand the conceptual basis of academic support programs and to isolate the critical components of successful programs. Although the Levin survey is not reviewed expressly in terms of independent learning theory and methods research, it nonetheless provides wonderful illustration of what can be achieved when an undergraduate ASP promotes independent learning via methods instruction. The studies surveyed by the Levins confirm much of the theory set forth by independent learning theorists and self-directed learning theorists.

They cite, for example, a Rohwer report that concludes: (1) contrary to public opinion, students do not acquire effective learning strategies by trial and error; (2) differences in student initiated learning strategies are more determinative than differences in student ability in explaining differences in GPA's; and (3) most education is self-education and that students need to be equipped with tools in order to succeed.[138]

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134. Mary Levin & Joel Levin, *Methodological Problems in Research on Academic Retention Programs for At-Risk Minority College Students*, 34 J. C. STUDENT DEV. 118 (1993); *See also* Levin & Levin, *supra* note 60.

135. Levin & Levin, *supra* note 60, at 331.

136. *See* Akah, *supra* note 68.

137. *See* Levin & Levin, *supra* note 60.

138. *Id.* at 329; *See also*, Barbara Nelson et al., *Effects of Learning Style Intervention on College Students' Retention and Achievement*, 34 J. C. STUDENT DEV. 364, 368 (1993)

They also report that the *type* of learning strategy selected by a student is a useful predictor of academic performance.[139] In fact, the authors suggest that the type of learning strategy selected by a student affords an academic prediction "above and beyond that provided by [academic] ability differences."[140] Moreover, a separate study confirms that at-risk minority college students can profit from the systematic application of learning strategies.[141]

Finally, excellence in teaching is also defined as a critical component for a successful academic support program. Studies suggest that reinforcement and committed enthusiastic teaching which motivates students to work hard and take responsibility for their learning are critical factors.[142] Again, although not expressly reviewed in terms of learning theory and methods research, the Levin survey offers considerable practical support to the theoretical research discussed above. After review of numerous undergraduate ASP studies, the Levins suggest that the five most critical program components are:

(a) proactive intervention;

(b) small group tutorials;

(c) the teaching of study skills, learning strategies, and test-taking techniques in the context of courses in which the students are enrolled;

(d) the development of students' basic language skills (i.e., reading, writing, speaking, and listening abilities); and

(e) quality instruction.[143]

2. DePaul University Academic Support Program

Our own recent experience with a newly created ASP at DePaul University College of Law also lends credence to the theoretical models presented above. The ASP at DePaul University College of Law is a new program — we are just completing our second full year.[144] Thus, it is far too soon to extrapolate any significant long-term reliable data.[145] The short-term results, however, are fascinating and encouraging. Our own anecdotal

("[T]hose students who received instructions on studying congruently with this learning style preference achieved significantly better than those subjects in [the other groups].").

139. Levin & Levin, *supra* note 60, at 329.

140. *Id.*

141. *Id.*

142. *Id.* at 330; *See also* Hill, *supra* note 43, at 471 (regarding law teachers' failure to teach); McCarthy et al., *supra* note 63, at 212 (regarding the importance of reinforcement); Skillman, *supra* note 108, at 554 (regarding the need for a teacher to articulate the standard for academic performance as one of "excellence"and not merely teaching minority students simply how to survive.).

143. Levin & Levin, *supra* note 60, at 325.

144. The DePaul College of Law Academic Support Program began in full in August 1992. It has benefitted greatly from the kind and generous assistance of those who direct successful and long-standing academic support programs elsewhere, including Deborah McGregor at I.U. School of Law-Indianapolis; Kristine Knaplund, Director of ASP at UCLA; Paula Lustbader (*see supra* note 89), Director, Academic Resource Center, U. of Puget Sound, Tacoma, Washington; and Laurie Zimet, Director, Academic Success Program, Santa Clara University School of Law. Kris Knaplund at the UCLA School of Law publishes an ASP newsletter, the *Learning Curve*.

145. Larry Salmony, *supra* note 8, at 75, suggesting that no long-term results can be evaluated for at least four years.

experience strongly supports the argument that when minority students and other non-traditional students are provided access to the river of survival information (including self-directed learning strategies and the methods instruction discussed above), many of these students perform much better than if they were to remain isolated and therefore tied to outmoded undergraduate learning strategies.

In the past two years, minority student attrition rates are significantly lower than the previous years without the academic support program. A second benefit has been a significant grade enhancement for some of the students who participate in the ASP — in short, some students are not only surviving, they are thriving. For example, for the past two years, participants in the academic support program have earned an American Jurisprudence Book Award (for highest exam grades in a class section) in each semester since we began the full-time program. Last fall, program participants earned two American Jurisprudence Book Awards in a single semester. There has also been significant increase in the numbers of A, B+, and B exam grades awarded to ASP participants. Moreover, some of the high performers are earning several A's, B+'s and B's in the same semester. This may indicate that individual students are successfully transferring learning skills to several of their various substantive courses.

Also interesting is the fact that consistent with the research which suggests that students have individual learning styles, the DePaul ASP student evaluations reflect that different parts of the ASP curriculum reach different students. For example, some have stated that they have learned the most from the introductory "creating a context for pedagogy" lectures; others stress the flow charting; others stress the repetitive writing; others benefit primarily "psychologically"; and others interact more with professors as a result of the ASP and have benefited greatly from those relationships. Although the ASP curriculum may benefit each student differently, overall there is a clear indication that the flow charting and the practice problem instruction were the most helpful for many of the students. There has also been a palpable change in the morale of the minority and non-traditional student participants from previous years without the ASP which suggests that the psychological distress has been greatly diminished.[146]

It is important to note that our ASP has not met with a 100 percent success rate. There are still students with motivational, remedial or other needs who have not succeeded. Thus, admittedly, it will take several years and assistance from learned statisticians before we are able to collect sufficient data to fully understand the long-term effects, if any, of DePaul's recent efforts. We will try to track the many variables which may be at work. For example, our ASP class is disproportionately female, which reflects in part the disproportionately high number of female minority applicants. Also,

146. Backlash by students not in the program has been exceedingly minimal. It is essential that any backlash by non-participants is minimal to insure that psychological distress by minority students is diminished. I attribute the minimal backlash to three sources: (1) the great diversity in our ASP classroom because it is not limited exclusively to minority students; (2) as Asst. Dean, I provide much of this information to all interested first-year students via a voluntary monthly lecture program; and (3) all my materials remain on Reserve in the library for access and use by any student.

participants in the ASP, for the most part, are personally highly motivated.[147] Both of these factors may strongly influence our recent encouraging numbers.

For example, the ASP is by invitation, and a student is not required to join as a condition of enrollment in the law school. In that sense, participation is voluntary. Once a student elects to join the ASP, however, attendance and all written assignments are mandatory. It is also interesting to note that in each of the past two years, a large number of the first semester participants have requested that the ASP continue to meet second semester even if their first semester grade performances were quite good. Thus, our initial results may reflect, in part, the high motivation of these participants and not solely changes in learning strategies by these students. Or perhaps it simply confirms that when highly motivated students are exposed to specific learning strategies and evaluation techniques, they are far more likely to excel.

While it is too soon to proffer empirically-based results, there is no doubt that in only two years there has been a dramatic enough change, in enough lives, to warrant closer study and research. I truly suspect that it is the *interplay* between the decreased psychological distress (which results from decreased isolation) combined with the increased successful independent or self-directed learning (achieved through contextual teaching) that has resulted in the overall grade enhancement and reduced attrition rates for many of our minority students. In short, although the program is still quite new, it has been a most rewarding and enjoyable journey for many of us, particularly in light of the palpable difference in the morale of the students.

III. REVISITING LANGDELL; OR POSED DIFFERENTLY, HOW MANY MINORITIES AND WOMEN WERE IN LANGDELL'S HARVARD IN THE LATE 1870'S?

Numerous writers have eloquently described Langdell's revolutionary introduction of the "scientific method" into law school education in the 1870's.[148] Law was to be treated as a science and the laboratory materials were appellate decisions. Introduced in the late 1870's, the method effectively revolutionized legal education.

While researching these issues, I read with some disappointment Professor Stevens's 1973 statement that "[h]ysterical outcries against the Socratic method ...seem strangely dated now."[149] In the twenty years since that statement — despite all of the scientific research set forth above — there has been no widespread change in first-year pedagogy. Notwithstanding a persistent Clarian Call for change amongst many researchers, many of our first-year students still suffer tremendous psychological and academic distress as a result of isolation. The aforementioned research clearly confirms that "isolation is the

147. *See e.g.*, Amana, *supra* note 8, at 212 (reporting that a problem with exclusive reliance upon the LSAT is that it also fails to recognize characteristics which can contribute to success in law school, including discipline, maturity and motivation (citation omitted)).

148. *See supra* note 9.

149. Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 551–52 (1973).

worst counselor," yet we remain tied to the Langdellian methodolatry of the late 1870's. Thus the continued questioning of the Case Method and Socratic instruction seems neither hysterical nor unreasonable.[150] Instead, inexplicably, the continued questioning seems only ineffectual.

Over 100 years later, of course, the obvious question is how many women and persons of color were students in Langdell's classes in the late 1870's? Over the course of those 100 years the composition of the first-year law classroom has changed substantially while the pedagogy has not. There is growing evidence to suggest that the negative emotional and educational effects of the Langdellian model may disproportionately impact women[151] and persons of color.[152] Characteristics like race or age may promote increased isolation which can then impact academic performance, without regard to the student's academic ability as expressed in traditional index numbers.

Not only do we have substantially different classrooms today, but the scientific disciplines of psychology and education clearly suggest that the Langdellian model may not be optimal and in fact may be dangerous as the exclusive methodology for first-year education because it provides insufficient context and hinders optimal learning. There is also evidence to suggest that the model promotes genuine psychological injury.

Finally, despite its status as a much heralded scientific model, as applied in the 1990's, Langdell's scientific model also produces suspect or even skewed exam results. If isolation prohibits effective learning, then exam results do not necessarily reflect actual ability. At least at some level instead of "ability" those exam grades may more accurately reflect who has better access to the river of survival information.

The foregoing research on isolation, learning theory, methods instruction and undergraduate academic support programs requires law schools to revisit two previously held and sacrosanct assumptions: first, that the Langdellian model Case Method instruction is the optimal teaching and learning format; and second, that once admitted to school, all students theoretically compete on a level playing field because each student who sits in the classroom has roughly equal access to the law via the Case Method instruction.

Important research in the last 20 years clearly shows that the Case Method instruction does not produce optimal learning because students are not provided with appropriate schema, nor are they taught to become independent learners. Contemporary Case Method instruction does not accommodate this new research.

Additionally, the problem of minority student isolation clearly suggests that a disproportionate number of minority law students suffer poorer academic performance for reasons that are not related to traditional notions of ability. Noncognitive factors like isolation and the concomitant exclusion from study groups and vital survival information — which information is not taught in typical Case Method instruction — may disproportionately affect these students. Thus, unwittingly, law schools may actually further continued segregation in

150. *See supra* note 21.
151. Homer & Schwartz, *supra* note 17, at 2–4.
152. Finke, *supra* note 44, at 58.

academia and legal employment because in many cases, minority students' grades may be lower as a result of these non-cognitive factors.

Undergraduate and graduate ASPs are exciting precisely because they are the *new* laboratories where all of the disparate research on isolation, learning theory, and methods research appears to come together. The early success of many of these programs affirms the scientific developments in educational research like learning theory and methods instruction. These same programs also confirm that traditional notions of academic "ability" may be obsolete. Until non-cognitive factors like isolation (psychological and academic) are addressed, minority and other non-traditional students may suffer disproportionately.

Thus, the new laboratories of the ASPs should inform and possibly replace the Langdellian laboratory of the 1870's. I am reminded that education reform — like many reform movements — may start small and must begin with individuals. Student-by-student, we need to strive to better understand learning and must continue to experiment with our teaching methods.

While stated in another context, the following remarks nonetheless affirm the notion that effective reform begins with individuals:

> People want to wait for the big blow that will take care of everything, . . . Well, Rosa Parks didn't grab the whole system of segregation — just one seat on the bus, just one little light of dignity in what had been a dark spot.[153]

This Article suggests that the new laboratories of the ASPs represent similar "little light[s] of dignity." In turn, our new lights of dignity can shed some light upon the generic first-year instruction which is all too frequently experienced as the "dark night of the soul."[154] For a few select students, there is no doubt that the ASP has greatly influenced —if not revolutionized — their experience in law school. Perhaps ultimately, the lessons learned in these new laboratories may be used to free all first-year students from an outmoded and potentially injurious system.

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153. William Raspberry, *Pulling the Plug on 'Gangsta Rap' to Clean Up the Air*, CHI.TRIB., Dec. 13, 1993, at 15.

154. Feinman & Feldman, *supra* note 2.