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Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century

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> Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law.[1]

I. INTRODUCTION

Christopher Columbus Langdell proposed that law be taught as a process of thinking as well as a doctrine of thought.[2] With the introduction of this method came a serious debate concerning the best way to teach and train law students. Critics challenged not only the assumptions that lie behind the "Langdellian method," but also the limitations of the method.[3] However, critics have focused too little attention on the important academic virtues of this traditional law

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1. Arthur D. Austin, *Is the Casebook Method Obsolete?*, 6 WM. & MARY L. REV. 157, 161 (1965) (citing CHRISTOPHER COLUMBUS LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS (1871)).

2. Christopher Columbus Langdell introduced his method at Harvard Law School in 1870. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S, at 36 (1983). He was dean at the law school until 1895. *Id.*

3. For a sampling of articles criticizing the methodology, see Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71 (1970); Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211 (1948); Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392 (1971); Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 93 (1968).

school methodology and the role that it plays as the bridge between modern undergraduate training and the modern legal profession.[4]

The modern student comes to study law unfamiliar with, and, to some extent, unprepared to meet the challenges presented by law school. For many, the methodology used in law school is one of the most formidable challenges to overcome, especially in the first year of legal study. Despite a growing body of criticism, however, this methodology remains the best means for teaching students to analyze effectively, think independently and express themselves verbally.[5] Without these analytical skills, law students cannot meet the challenges of a modern legal market that expects new attorneys to hit the ground running.[6]

This Article proposes that the Langdellian method provides a necessary bridge between students' undergraduate training and the practice of law. Part II of this Article explores the nature of the Langdellian method, particularly its goals and the misconceptions about the methodology.[7] Part II also challenges the assumption that the Langdellian method was meant to be "Socratic."[8] Part III focuses on the criticisms of the method.[9] For the sake of synthesis and simplicity, Part III focuses on three areas of modern day criticism, namely that (1) the Langdellian method causes psychological distress,[10] (2) the method is overly theoretical,[11] and (3) the method is especially distressing for some nontraditional law students who find the combative nature of the method to be an obstacle to learning.[12] Part IV confirms that there is a need for the Langdellian method, not only because of the analytical skills that are fostered by this method, but also because of its role as the bridge between undergraduate and professional life.[13] This

4. Scholars who have defended the methodology include: Steven A. Childress, *The Baby and the Bathwater: Salvaging A Positive Socratic Method*, 7 OKLA. CITY U. L. REV. 333 (1982); Thomas F. Konop, *The Case System: A Defense*, 6 NOTRE DAME L. REV. 275 (1931); Burnele V. Powell, *A Defense of the Socratic Method: An Interview With Martin B. Louis*, 73 N.C. L. REV. 957 (1995). *See also* Calvin Woodward, *The Limits of Legal Realism: An Historical Perspective*, 54 VA. L. REV. 689, 712 (1968) (referring to the Langdellian case method as "the most creative single contribution that America has made to educational theory").

5. *See infra* notes 108-49 and accompanying text.

6. *See infra* notes 138-49 and accompanying text.

7. *See infra* part II.

8. *See infra* notes 36-46 and accompanying text.

9. *See infra* part III.

10. *See infra* part III.A.

11. *See infra* part III.B.

12. *See infra* part III.C.

13. *See infra* part IV.

Part first outlines the virtues of the methodology[14] and then explores the current state of modern undergraduate education and modern legal practice.[15]

Finally, Part V advocates that law schools must not abandon the Langdellian method.[16] Rather, law schools should take both the virtues and the criticisms of the methodology into account and fashion a curriculum that exemplifies the virtues of the methodology while minimizing some of its negative effects. Part V synthesizes the three virtues and the three criticisms of the method and proposes that law schools: (1) can offset the psychological distress associated with the methodology by providing a clearer context for the Langdellian method of teaching;[17] (2) can supplement the theoretical basis of the methodology with "practical" law school courses;[18] and (3) can address the particular problems encountered by some nontraditional students through the vehicle of Academic Support Programs.[19] Ultimately, this Article attempts to show that the Langdellian method can be a conduit through which students develop vital analytical and verbal skills, and that law schools should extend the method into the twenty-first century.[20]

II. THE NATURE OF THE LANGDELLIAN METHOD

To better understand the Langdellian method, both professors and students alike must revisit the history of legal education before this method was introduced.[21] Originally, law students trained to become lawyers by reading the law.[22] Attorneys considered the law a craft, and those wanting to learn would apprentice themselves to a mentor, who would introduce and teach the law.[23] The apprentice method

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14. *See infra* part IV.A.

15. *See infra* part IV.B.

16. *See infra* part V.

17. *See infra* part V.A.

18. *See infra* part V.B.

19. *See infra* part V.C.

20. *See infra* part VI; *see also* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 53-60 (1953) (stating that the Langdellian method is "a system of instruction which in the hands of an able and skillful teacher is unexcelled as an instrument of education").

21. This article provides only a brief sketch of this history. For a more in-depth view, see LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (1985); GRANT GILMORE, THE AGES OF AMERICAN LAW (1974); HARNO, *supra* note 20; STEVENS, *supra* note 2; Paul D. Carrington, *Hail! Langdell!*, 20 L. & SOC. INQUIRY 691 (1995).

22. *See* Austin, *supra* note 1, at 158; John J. Costonis, *The MacCrate Report: Of Loaves, Fishes and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 161 (1993).

23. *See* Kurt M. Saunders & Linda Levine, *Learning to Think Like a Lawyer*, 29 U.S.F.

provided practical skills training, but did not offer doctrinal and analytical training.[24] Therefore, although this type of "skills" training taught a law student the practical aspects of how to act like a lawyer, it did not provide students the opportunity to learn what the law was and why it existed as it did.

Over time, the lecture method of learning replaced the apprentice model. The lecture method purported to teach students legal doctrine (what the law is) within a university setting.[25] Although this approach added a needed dimension to legal training, it did not provide the practical skills training of the previous apprentice model and encouraged student dependence on the professor.[26] Instead of focusing on law as a process, and, therefore, placing a premium on analytical skills, students were encouraged to concentrate on the "rules" as an end in themselves.[27]

In response to the inadequacies of both the apprenticeship and lecture models, Professor Langdell proposed teaching law as a science, rather than a craft.[28] In essence, Langdell added to the lecture model by suggesting that students learn the doctrine and the process of the law, or the "science of the law," in the classroom.[29] Under Langdell's method, the "craft of the law," which was at the core of the apprentice model, remained outside the province of the classroom and practicing lawyers were left with the task of teaching students practical lawyering skills.

L. REV. 121, 127 (1994). For example, in Massachusetts, candidates were required to serve a five-year apprenticeship. STEVENS, *supra* note 2, at 3. Twelve of the 13 original colonies had prescribed periods of apprenticeship training for lawyers. *Id.*

24. *See* Austin, *supra* note 1, at 160 (noting that "the apprenticeship method failed because it was tightly geared to the pragmatic mechanics of the law"); Costonis, *supra* note 22, at 161.

25. For those seeking an academic study of the law, a few universities attempted to teach students principles of legal doctrine or the "what" of the law. *See* Saunders & Levine, *supra* note 23, at 127-28. At these early schools, students were primarily taught by the lecture method, in which students read texts on legal doctrine and teachers lectured on the law. Austin, *supra* note 1, at 158-61. For a description of the various lecture methods used in the early 1800s, see *id.* at 158; Russell Weaver, *Langdell's Legacy: Living With the Case Method*, 36 VILL. L. REV. 517, 522-26 (1991).

26. *See* WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE 52 (1994); Austin, *supra* note 1, at 160 (noting that the lecture method "demanded that the student accept as gospel the word of the writer or lecturer that his statement of the principles reflected a correct appraisal of the existing decisions").

27. *See* Austin, *supra* note 1, at 160; Franklin G. Fessenden, *The Rebirth of the Harvard Law School*, 33 HARV. L. REV. 493, 500 (1920).

28. *See* Austin, *supra* note 1, at 161 (citing Norman Redlich, *The Common Law and the Case Method,* 8 CARNEGIE FOUND. BULL. 11 (1914)).

29. *See* Childress, *supra* note 4, at 336; Edwin W. Patterson, *The Case Method in American Legal Education: Its Origins and Objectives*, 4 J. LEGAL EDUC. 1, 10-11 (1951).

Langdell proposed modifying classroom instruction by having law students read cases and then engage in a question and answer dialogue regarding those cases.[30] Langdell postulated that through the question/answer methodology, students would learn how courts reasoned and analyzed, and thus be able to apply like reasoning and analysis to various fact patterns.[31] The goal of the method, as envisioned by Langdell, was to have the student understand legal analysis, the "generative process by which a particular reading of the case or cases is constructed or created."[32] According to Langdell, the purpose of law school was to train legal "scientists" who could discover for themselves, by reading cases, a pattern of reasoning and then adopt and apply that pattern of reasoning to solve similar problems.[33] Langdell believed that it was a student's personal intellectual responsibility to develop the analytical skills to defend a "position from attack by both faculty and fellow students."[34] In theory, the method would simultaneously develop law students' cognitive skills, substantive concepts, and independent learning habits.[35]

Some mistakenly dubbed the Langdellian method the "Socratic method" in honor of the fifth century B.C. Greek philosopher Socrates, who used the question/answer model to probe the assumptions behind those beliefs espoused to be "truths."[36] Langdell, how-

30. *See* HARNO, *supra* note 20, at 54; LAPIANA, *supra* note 26, at 26 ("In short, students learned by doing what professionals did in practice. The goal of that system was to lay a foundation of elementary knowledge that could be applied in practice. The new system trained students to understand the sources as a practicing attorney must understand them.").

31. *See* Austin, *supra* note 1, at 161-62. *See also* Konop, *supra* note 4, at 279 ("[T]he purpose of a law-school is not simply to impart knowledge of a few principles of law, but to prepare the student for the legal profession.").

32. John O. Cole, *The Socratic Method in Legal Education: Moral Discourse and Accommodation*, 35 MERCER L. REV. 867, 869 (1984). Additionally, this methodology would force students to separate "superfluous facts from those issues impregnated with legal significance." Austin, *supra* note 1, at 161.

33. *See* Austin, *supra* note 1, at 162 ("Rather than being committed to rigid boundaries of memorization, the student relies on a general reasoning pattern (empirical classification) that can be applied to any problem."); Weaver, *supra* note 25, at 526-27.

34. *See* Austin, *supra* note 1, at 161.

35. *See* B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627, 652 (1991).

36. *See* Cole, *supra* note 32, at 869. In his article, Cole distinguishes the true form of the Socratic method—where questions are an end unto themselves and where neither the questioner nor the student knows the "answer"—from other methodologies that are loosely referred to as Socratic, including the Langdellian method, where questions are used to draw out the substance, limitations and complexities of the law. *Id. See also* Richard Neumann, Jr., *Perspectives on Legal Education: A Preliminary Inquiry Into the Art of Critique*, 40 HASTINGS L.J. 725, 728 (1989) ("The term 'Socratic' often is used misleadingly to identify a style of classroom teaching in which a professor interrogates

ever, never intended that his technique be truly "Socratic."[37] Unlike Socrates, who focused purely on the questioning process, Langdell sought to combine both the substance of the law and the process of the law into the legal classroom.[38] Langdell's students used the Langdellian method to obtain a greater understanding of how to approach similar problems in the future.[39] Moreover, Langdell meant for there to be guided discussion of principles.[40] He also intended the casebook and the professor to serve not only as a springboard for discovering legal reasoning, but also as a means for learning legal doctrine. Using inductive reasoning, students would discover the legal principles; using scientific reasoning, students could then apply similar reasoning to other problems.[41] Thus, in an attempt to train lawyers as "legal scientists," the Langdellian method combined legal doctrine, or the "what" of the law, and legal process, the "why" of the law.[42] The Langdellian method assumed that a legal apprenticeship after law

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students. As actually practiced in the classroom, however, this method is not Socratic at all: the accurate term would be 'Langdellian,' or even 'Protagorean.'") (footnote omitted).

37. *See* HARNO, *supra* note 20, at 56. Whereas Socrates' goal was for the student to gain self-knowledge, Langdell, like Socrates' rival Protagoras, sought to teach students "how to develop equally plausible arguments both for and against a given proposition." Neumann, *supra* note 36, at 729.

38. *See* HARNO, *supra* note 20, at 61-62; Saunders & Levine, *supra* note 23, at 128-29. Socrates did not claim to be imparting knowledge to others; he only sought to probe truths and assumptions held by others and never claimed or offered to be wise. James A. Jordan, Jr., *Socratic Teaching?*, 33 HARV. EDUC. REV. 96, 96 (1963). In contrast, Langdell wanted to create a system whereby the student would learn legal analysis and synthesis while at the same time mastering a knowledge of the law itself. *See* HARNO, *supra* note 20, at 61-62; Saunders & Levine, *supra* note 23, at 129.

39. *See* HARNO, *supra* note 20, at 61-62. It was only Langdell's successors that began to apply this method less as a means of learning doctrine and more as a means of developing a particular mental process. *See* Childress, *supra* note 4, at 336. Thus, Langdell is blamed for things "he never believed or at least never understood." Steven Alan Childress, *Historicizing Law Schools: An Alternative to the Socratic Tunnel Vision*, 38 BUFF. L. REV. 315, 316 (1990) (quoting STEVENS, *supra* note 2, at 279).

40. Austin, *supra* note 1, at 161-62 (noting that the role of the Langdellian teacher was to encourage the student to analyze each case "in terms of overriding legal doctrine."); Patterson, *supra* note 29, at 7 (advising that including a summary of legal principles to be derived from cases may supplement Langdellian questioning); Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 948 (1991) (stating that the Langdellian method is used "not only to teach substantive principles of law, but also to teach legal reasoning skills").

41. Austin, *supra* note 1, at 162; Patterson, *supra* note 29, at 2-3.

42. STEVENS, *supra* note 2, at 55-57; Saunders & Levine, *supra* note 23, at 129 ("Langdell intended to unite the teaching of legal doctrine with the teaching of legal analysis.").

school would then provide law students with the practical skills necessary for practicing law.[43]

In sum, the Langdellian method[44] was meant primarily to foster analytical skills, encourage independent learning and provide students with the opportunity to practice and refine verbal and rhetorical skills.[45] The "chief pedagogical presupposition of the [Langdellian] method was that students learn better when they participate in the teaching process through problem-solving than when they are merely passive recipients of the teacher's solutions."[46]

III. CRITICISMS OF THE LANGDELLIAN METHOD

From its inception, critics have ridiculed and shunned the Langdellian method.[47] Professors and practitioners did not readily accept the method as the best way to master legal doctrine and legal

43. HARNO, *supra* note 20, at 149 (quoting W. Barton Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL EDUC. 28, 32 (1948)). Throughout this Article, I draw a distinction between practical skills (traditionally honed through legal apprenticeships) and analytical skills (honed in the classroom via the Langdellian method). The definition of these two distinct types of skills has been noted by scholars:

> Practical skills include legal research, oral and written communication, counseling, negotiation, planning, and interviewing. Analytical skills involve fact analysis, case analysis and synthesis, statutory analysis, argumentation, and critical evaluation of legal and ethical issues. Because analytical skills are generally thought to be more closely tied to the lawyer's cognitive processes, they are more frequently viewed as the components of thinking like a lawyer.

Saunders & Levine, *supra* note 23, at 125.

44. This article focuses on the Langdellian method in its most general sense: the question and answer format of classroom discussion. It does not address another integral part of the Langdellian method, namely the casebook. The Langdellian method, as originally conceived by Langdell, was to use original materials as the basis for discussion. However, Langdell was ultimately driven to prepare a casebook that collected a series of original decisions. *See* Patterson, *supra* note 29, at 2-8. Many authors have criticized the casebook component of Langdell's methodology. *See, e.g.*, Austin, *supra* note 1, at 161 (discussing the evolution of the casebook method); Patterson, *supra* note 29, at 10-11.

45. *See* Patterson, *supra* note 29, *passim* (discussing the goals and elements of the Langdellian method); Paul T. Wangerin, *Law School Academic Support Programs*, 40 HASTINGS L.J. 771, 794-95 (discussing the educational theory that lies behind the case method devised by Langdell).

46. Patterson, *supra* note 29, at 5. Langdell seemed to understand that "students must necessarily *think* like lawyers in order to *act* as lawyers." Saunders & Levine, *supra* note 23, at 131.

47. STEVENS, *supra* note 2, at 56-57. As early as 1876, scholars condemned the system as quite unsuited for average students. *Id.* at 57. As noted by one scholar: "Initial reaction to the introduction of the [Langdellian] method was negative, extreme, and immediate." Paul F. Teich, *Research on American Law Teaching: Is There a Case Against the Case System?*, 36 J. LEGAL EDUC. 167, 169 (1986).

process.[48] Slowly, however, in one form or another, the Langdellian method became the predominant teaching methodology.[49] Still, critics continually argue that the method is an "abomination" that law schools must abandon completely.[50]

Critics view the Langdellian method as an outmoded and ill-suited methodology.[51] They charge that this methodology fails to adequately prepare law students for the practice of law and that it precipitates a wide range of psychological and educational problems.[52] Modern critics predominantly focus on three areas of concern.[53] First, scholars argue that the method "necessarily involves psychological scarring."[54] Second, scholars charge that the method is overly formalistic and theoretical.[55] Finally, the most current critics focus on the adverse effects the methodology has on an increasingly diverse law school population.[56]

A. The Langdellian Method Causes a Variety of Psychological Problems

The Langdellian method of teaching is not the sole cause of psychological distress in law school.[57] It does, however, contribute signifi-

48. Teich, *supra* note 47, at 169-70 (describing the controversy precipitated by Langdell's introduction of the case method).

49. *See id.* at 170.

50. *See id.*

51. *See* Austin, *supra* note 1, at 164-65; Ronald Chester & Scott E. Alumbaugh, *Functionalizing First-Year Legal Education: Toward a New Pedagogical Jurisprudence*, 25 U.C. DAVIS L. REV. 21, 23-24 (1991); Jerome Frank, *Why Not a Clinical Lawyer-School*, 81 U. PA. L. REV. 907, 909 (1933); John W. Wade, *Some Observations of the Present State of Law Teaching and the Student Response*, 35 MERCER L. REV. 753, 767 (1984).

52. *See infra* parts III.A.-C.

53. *See infra* parts III.A.-C.

54. *See* Suzanne Dallimore, *The Socratic Method—More Harm Than Good*, 3 J. CONTEMP. L. 177, 185 (1977); *see also infra* part III.A (discussing the psychological problems caused by the case method).

55. *See* Austin, *supra* note 1, at 164 (citing an early critic who noted "that the law must always be partially a handicraft and that even a scientific knowledge thereof is increased by the intimate acquaintance with the actual working of the law"); *id.* at 184 (quoting A.V. Dicey, *Teaching of English Law at Harvard*, 13 HARV. L. REV. 422, 429 (1888)); Saunders & Levine, *supra* note 23, at 130 (criticizing law school methods that force students to memorize "black letter" law).

56. *See infra* note 93. *See also* part III.C (discussing the disadvantages to nontraditional students).

57. The heavy work load, high level of competition, isolation, and loneliness might also precipitate psychological distress. *See* Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 285-86 (1979). Indeed, in a comparative study of law students and medical students, law students reported insufficient study time, lack of feedback, infrequent exams, and financial problems as greater sources of stress than being called on in class. *See*

cantly to law students' distress.[58] Critics have characterized the Langdellian method as "infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values."[59] Certainly, when abused, the method can have devastating effects.[60] Some critics go further, maintaining that even when used expertly and fairly, the method is still unnecessarily traumatizing.[61]

Additionally, scholars find that for students whose self-esteem depends on continual demonstrations of ability, "the classroom dialogue frustrates the student's internal demand for absolute certainty and correctness."[62] These students believe they have failed if they make a mistake when called on in class, and with such failure comes depression or anxiety.[63] Students are often left confused and anxious because in-class "answers" only lead to other questions.[64] They no

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Marilyn Heins et al., *Law Students and Medical Students: A Comparison of Perceived Stress*, 33 J. LEGAL EDUC. 511, 520 (1983). The authors of the study concluded that competition for grades and the threat of disqualification due to inadequate academic performance most likely account for the higher stress rate among law students. *Id.* at 523.

58. Carrington, *supra* note 21, at 741-42 (quoting Heins, *supra* note 57, at 520) ("For decades, psychiatrists and psychologists have questioned the consequences of aggressive law teaching for the mental health of students."); Lawrence Silver, Comment, *Anxiety and the First Semester of Law School*, 1968 WIS. L. REV. 1201, 1207; Cathaleen Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 670 (1994); Watson, *supra* note 3, at 124-37.

59. Stone, *supra* note 3, at 407. *See* Roach, *supra* note 58, at 670 (noting one empirical study that estimates that up to 40% of law students may experience depression or other problems as a result of the law school experience); Wade, *supra* note 51, at 764.

60. Wade, *supra* note 51, at 764 ("There are sadists who serve as law professors, too."). *See also* Robert Stevens, *Law Schools and Law Students*, 59 VA. L. REV. 551, 638 (noting that the most frequent complaint about the Langdellian method was the perceived tendency to demean and degrade the student).

61. Some note that the method, even if used correctly, is a poor teaching technique because it transforms the teacher into an enemy whom students should fear and avoid, and, furthermore, the method does not reward good performance. *See* Watson, *supra* note 3, at 123. Others, however, suggest that it is not necessarily the method in and of itself, but rather the "lack of context" that is the true cause of student isolation. Roach, *supra* note 58, at 672. Still others note that the classroom experience need not be traumatic if a student understands that she is not being attacked personally; rather, the questioning is meant to attain the best possible articulation of her position. Wade, *supra* note 51, at 770. "If the idea can permeate that the teacher and students are adults working together to find the correct solution (the one attaining the best balance of conflicting interests), the view that teacher and students are natural enemies disappears." *Id.*

62. Beck & Burns, *supra* note 57, at 287.

63. *See id.* at 286.

64. Because the Langdellian method emphasizes logic and reason over personal conviction, law school education may threaten the personal values by which students

longer deal with absolute truths as they did in college; instead, they must learn to cope with relativism.[65]

Moreover, the challenging impact of the questions triggers both anxiety and stress.[66] Students may suffer anxiety as a result of Langdellian questioning and the realization that law is not as certain, predictable, and ordered as many students expect.[67] Not only are the questions themselves difficult, but the student does not enter into a *quid pro quo* relationship with her questioner. In other words, students often go unrewarded for their persistence and insight.[68] Moreover, the demand on the student to think analytically "poses a cognitive dilemma for many whose prior education has prepared them poorly for inductive analysis."[69]

Some students stressed by this method of teaching adopt certain attitudes, behaviors, and traits as a way of coping.[70] Some students be-

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define themselves as distinct and special. *See* Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9, 17 (1990). *See also* Andrew S. Watson, *Reflections on the Teaching of Criminal Law*, 37 U. DET. L. REV. 701, 703 (1960) ("One of the greatest sources of anxiety in the first year students is brought on by the shattering of the illusion [of certainty] under the incessant attrition of case method teaching.")

65. *See* Paul Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1258-69 (1988) (quoting Watson, *supra* note 64, at 123) [hereinafter *Relative Truth*]. As expressed by one student: "My undergraduate classes had right and wrong answers, here there are several ways to look at a problem . . . . This is a little disturbing." Silver, *supra* note 58, at 1206.

66. *See* Watson, *supra* note 3, at 124.

67. *See* Cole, *supra* note 32, at 872-73; James B. Taylor, *Law School Stress and the "Deformation Professionelle,"* 27 J. LEGAL EDUC. 251, 254 (1975).

68. *See* Watson, *supra* note 3, at 145. Professor Watson also observed that: "There is little overt reward given for good performance under this [the Langdellian] system. Since most professorial responses are questions, they are perceived as neverending demands, and hoped-for relief never comes into sight." *Id.* at 123.

69. Taylor, *supra* note 67, at 255. Indeed, the shift to law school from college may be more abrupt than the shift to college from high school. Silver, *supra* note 58, at 1205. *See also* Michael J. Patton, *The Student, the Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10, 15 (1968) (observing that "[c]onsiderable pressure is placed upon the first-year student to adjust to a professionally orientated academic setting that is often experienced as sharply discontinuous in many ways from the experiences which preceded it"); Vernellia R. Randall, *The Myer-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 67 (1995).

70. *See* Silver, *supra* note 58, at 1204 (noting that "[m]ost law students encountering the . . . method will develop marked anxiety which in the extreme may cause physical or emotional illness, withdrawal or failure, or at the very least necessitate the use of some sort of psychological defense"); Taylor, *supra* note 67, at 254-55; *see also* Glesner, *supra* note 35, at 627. Glesner added:

> Students, perceiving the educational process to be the cause of this stress, often act instinctively to protect themselves through "fight or flight"

come obsessed with their grades and their class rank, even at the cost of sacrificing personal and social relationships.[71] Others withdraw from the learning process—the very system that is intended to enhance their understanding of the legal process—and settle for just getting through the experience.[72] These are students who respond in class by stating "I'm not prepared" or "pass."[73] Still others become antagonistic towards their instructors and colleagues and take pride in beating the professor at his own game.[74] These students relish humiliating rather than helping colleagues.[75]

> reactions. Students fight education in ways ranging from hostility and ridicule to passive aggression, and they see themselves as "beating the system" or "refusing to play the game." Students flee as well, dropping out entirely or continuing their enrollment while 'playing dead' in school.

Id.

71. *See* Carney, *supra* note 64, at 19 (describing the proverbial "grind," a person who sacrifices a social and personal life in an effort to achieve the best grades).

72. *See id.* at 20-21; Taylor, *supra* note 67, at 263; *see also* Glesner, *supra* note 35, at 627-28 ("[A]mong those students who flee the school or who allow themselves to be swept along without taking risks or making much of an effort, few graduate with the necessary courage and self-knowledge to exercise independent professional judgment."). Professor Watson calls this maladaption "flight by incapacitation." Watson, *supra* note 3, at 129-30.

73. *See* Stevens, *supra* note 60, at 644-45; Watson, *supra* note 3, at 129-31. Professor Watson further categorizes student withdrawal into distinct areas: (1) early failure; (2) later failure; (3) mental disturbance; and (4) character formation. *Id.* It is Watson's contention that law school education shapes the character development of law students in undesirable ways. *Id.* at 131. Although certain aspects of the law school experience may be stressful, stress, and the ability to manage it, are key components of the legal profession.

74. *See* Carney, *supra* note 64, at 20 ("Disgruntled and discontented, [students who protect their own self-esteem by attributing problems and difficulties to sources outside themselves] are vigilant to detect any hint of unfairness in the educational system and are ready to protest vigorously and make their grievances known."); Glesner, *supra* note 35, at 627. *See also* Watson, *supra* note 3, at 122 ("Since the Socratic invasion poses a grave threat, it will mobilize defensive aggression . . . .").

75. In a satirical piece on law school, one author divides law students in another way:

> During the first year, the law students quickly divide into three groups:
>
> *The Active Participants:* Overconfident geeks who compete with each other to take up the most airtime pointing out that before law school, when they were Fulbright Scholars, they thought of a question marginally relevant to today's discussion . . . .
>
> *The Back Benchers:* Cool dudes who "opt out" of law school's competitive culture and never prepare for class . . . .
>
> *The Terrified Middle Group:* People who spend most of their time wondering what the hey is going on, and why don't the professors just tell us what the law is and stop playing 'hide the ball' and shrouding the law in mystery/philosophy/sociology/nihilistic/relativism/astrology/voodoo/sado-masochistic Socratic kung fu?

James D. Gordon III, *How Not to Succeed in Law School*, 100 YALE L.J. 1679, 1686-87 (1991).

At the very core of these and other coping mechanisms seems to lie the need to protect one's self-esteem from the invasive and evasive questions that are the essence of classroom dialogue.[76] However, neither the psychological distress the Langdellian method causes, nor the coping mechanisms that students employ in an attempt to deal with the methodology, benefit the short-term goal of student learning in law school or the long-term goal of effective lawyering.[77] In the short term, students' psychological distress poses a barrier to their learning.[78] In the long term, students who choose to fight the method might find their very personalities transformed into a more aggressive and cynical version of themselves.[79] As a result, some scholars conclude that law schools must abandon the entire methodology in favor of something that does not, by necessity, cause such psychological scarring.[80]

B. The Langdellian Method Focuses on Abstract Legal Principles, Rather Than Practical Lawyering Skills

As stated above, the Langdellian method initially intended to provide both procedural and substantive training to law students.[81] It assumed that practicing lawyers would provide practical training via some form of legal apprenticeship.[82] Critics today charge, however, that the method neither accomplishes its espoused goals nor adequately provides practical skills.[83] Scholars argue that the dual goals of process

76. *See* Carney, *supra* note 64, at 19-20 (discussing the various types of adaptations employed by law students in an attempt to preserve their self-esteem from injury); Roach, *supra* note 58, at 671.

77. *See* Glesner, *supra* note 35, at 635-40.

78. *See id.* at 635.

79. *See id.* at 628 ("[A]fter three years of battle with law school, "fighting" students often are left dispirited about learning and cynical about the law, the legal profession, and most especially law school."); Taylor, *supra* note 67, at 252; Wade, *supra* note 51, at 764 (noting that the Langdellian method engrains an adversarial mentality into the law student).

80. *See* Dallimore, *supra* note 54, at 185; Glesner, *supra* note 35, at 651. However, as noted by other scholars: "There is no doubt that the risk of embarrassment before a large audience of classmates is daunting to many students, especially those of a perfectionist bent expecting ever to excel. But professional work must often and ordinarily be performed under equal or greater duress." Carrington, *supra* note 21, at 747.

81. *See supra* note 29 and accompanying text.

82. As noted by one scholar: "We [legal educators] take [the law student] from an earlier phase—college—and deliver him to the next phase—apprenticeship." HARNO, *supra* note 20, at 149 (quoting W. Barton Leach, *Property Law Taught in Two Packages*, 1 J. LEGAL EDUC. 28, 32 (1948)).

83. *See* Saunders & Levine, *supra* note 23, at 130 n.33. The authors noted:

> While the case method is usually viewed as theoretical in nature, it was

and doctrine are not blended adequately or even-handedly.[84] Indeed, critics argue, the search for doctrine—or "black letter law"—tends to obscure students "from real insight into how arguments work."[85] Students view the process as a means toward an end of knowing the law, rather than an end in and of itself.[86]

Furthermore, even if students do focus on the process as a crucial component of their legal training, professors do not encourage students to view the law holistically.[87] Indeed, students become confined to cold, legal reasoning as professors discourage them from emphasizing moral and ethical arguments.[88] Thus, students only learn analysis in a vacuum; they are removed from real world considerations and implications.[89]

Finally, critics assert that not only does the Langdellian method not fulfill its espoused goals, it also fails to teach students about the practical skills needed to implement legal strategies.[90] Some have even noted that the Langdellian method leads students to develop a sense of division between law and practice. Specifically, because of classroom emphasis on appellate decisions and analytical reasoning, some students conclude that practical skills are of little value and consequence.[91] Thus, students leave law school unsure of how to ask questions; they only know how to respond.[92] Moreover, law school

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originally conceived as a practical method of teaching legal thinking. This suggests that the identification of the case method with either theory or practice depends upon with what it is compared. If it is compared to early apprenticeship training, it appears to be theoretical; if compared to instruction based on lecture, it appears to be practical.

Id. *See also* Patterson, *supra* note 29, at 8 (recognizing the criticisms of lawyers, many of whom claim that the case method does not develop pragmatism).

84. *See* Childress, *supra* note 4, at 336.

85. *Id.*

86. *See* Saunders & Levine, *supra* note 23, at 130.

87. *E.g.*, Wade, *supra* note 51, at 765 (describing one criticism of the Langdellian method as depending solely on logic and not permitting "due consideration of moral or ethical implications or of general social policies").

88. *See id.* (discussing the student's role in analyzing cases and frequent criticisms of this approach).

89. *See* Paul D. Carrington, *The Missionary Diocese of Chicago*, 44 J. LEGAL EDUC. 467, 468 (1994) (describing the Langdellian method as an exercise in pure law; a method which is unconcerned with "the practical or political consequences of its application").

90. Indeed, "[t]he most vocal criticism of legal education is that it is not practical enough, or stated more broadly, that it does not adequately train the young lawyer in the skills of the practice." HARNO, *supra* note 20, at 146.

91. *See* Watson, *supra* note 3, at 135.

92. *See* J.T. Dillon, *Paper Chase and the Socratic Method of Teaching Law*, 30 J. LEGAL EDUC. 529, 533 (1980) (noting that "it remains still unknown how a teacher's question can be functional in the student's thinking"). Dillon argues that students spend

leaves students unable to tend to the everyday tasks of lawyering because they have not learned the law, only *about* the law. Thus, the Langdellian method is inadequate because it leaves students (1) knowing only a little bit of legal doctrine, (2) having a superficial sense of legal process and reasoning, and (3) lacking practical training. I do not challenge these criticisms; indeed, I agree with many of them. Rather, as outlined further in this article, I propose that legal educators "mend and bend" the Langdellian method in light of its shortcomings.

C. The Langdellian Method Disadvantages Nontraditional Students

Many scholars note that nontraditional law students suffer greater psychological and academic problems than traditional students because they experience an added sense of alienation and estrangement.[93] As noted by one author: "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."[94] The loss of self-esteem and sense of isolation also impacts educational performance. Not only are some nontraditional students less confident than their majority counterparts, but they may have less access to the formal and informal networks that can help students understand and ultimately master the law school environment.[95] Critics often cite the Langdellian method as a cause for the acute psychological and academic stress suffered by nontraditional students.[96] For example, in one study,

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their time in class attempting to give answers, in contrast to their professional life, where they are struggling to come up with the questions. *Id.* at 535. "From an educational perspective, it is a dubious expectation that having been professionally prepared to react to questions, students will the next day appear in court and begin formulating good questions." *Id.*

93. *E.g.*, Valerie Fontaine, *Progress Report: Women and People of Color in Legal Education and the Legal Profession*, 6 HASTINGS WOMEN'S L.J. 27, 28 (1995) (concluding that men do better in law school than women, in part, because of the Langdellian method); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences At One Ivy League Law School*, 143 U. PA. L. REV. 1, 59 (1994); Shanie Latham, *Is Law School Still a Man's World?*, NAT'L JURIST, Oct.-Nov. 1995, at 22 (reporting on the best law schools for women); Stephen R. Ripps, *A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student*, 29 HOW. L.J. 457, 467-68 (1986) (noting that minority students need a process course that is geared toward developing student confidence and legal skills).

94. Roach, *supra* note 58, at 675.

95. Specifically, nontraditional students often do not have "access to the pivotal survival information including outlines, flow charts, and practice exams. . . . 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." *Id.* at 676.

96. *See* Charles L. Finke, *Affirmative Action in Law School Academic Support Programs*, 39 J. LEGAL EDUC. 55, 58 (1989); Roach, *supra* note 58, at 675 & n.47

twenty-five percent of the females and twenty-two percent of the minority females experienced a loss of confidence because of the classroom experience.[97] In contrast, only fifteen percent of the males reported experiencing a loss of confidence.[98] The same study also reported that forty-one percent of the females and the minority females felt less intelligent and articulate because of the law school experience.[99]

Scholars note that nontraditional students react this way because the Langdellian method reflects white male values, created for those who are assertive, argumentative, confrontational, controlling, impersonal, logical and abstract.[100] Thus, scholars argue, students who come from a non-white and/or non-male background cannot adapt to this "white-male" way of thinking.[101] For example, those who do not feel com-

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(citing Suzanne Homer & Lois Schwartz, *Admitted But Not Accepted: Outsiders Take an Inside Look at Law School*, 5 BERKELEY WOMEN'S L.J. 1, 25-45 (1989)); *see also* Guinier, *supra* note 93, at 4 (noting that the methodology makes women feel "strange, alienated, and 'delegitimated'").

97. Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 326 (1994). It is interesting to note that in 1968, 3,704 of the 62,000 law students in approved schools were women; by 1979, there were 37,534 women out of 117,279 students in approved schools. STEVENS, *supra* note 2, at 246. Between 1963 and 1992, female law students increased from 4% to 43%. *A Review of Legal Education in the United States: Fall 1992*, A.B.A. SECTION LEGAL EDUC. & ADMISSION BAR, at 67-70 (1993). Between 1977 and 1992, law students of color increased from 8% to 17%. *Id.* The latest statistic reflects that students of color comprise 16.6% of all law school enrollments. Fontaine, *supra* note 93, at 29.

98. Krauskopf, *supra* note 97, at 326.

99. *Id.* at 328.

100. *See* Guinier, *supra* note 93, at 62 (finding that "[m]any students, especially many women, have simply not been socialized to thrive in the type of ritualized combat that comprises much of the legal educational method"). Guinier further observes that the Langdellian method "devalues and distorts those characteristics traditionally associated with women such as empathy, relational logic, and nonaggressive behavior. In this understanding, law school unintentionally uses a male-oriented baseline to measure male/female differences." *Id.* at 80. *See also* Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147, 150 (1988) (noting that women are socialized into being silent, and thus are more likely to be traumatized by a teaching methodology that requires verbalization); *Elusive Equality: The Experiences of Women in Legal Education*, AMERICAN BAR ASSOCIATION, REPORT BY THE COMMISSION ON WOMEN IN THE PROFESSION (January 1996) [hereinafter *Elusive Equality*] (reporting that most women generally and multicultural women particularly are isolated from the law school experience).

101. *See* Guinier, *supra* note 93, at 4-5 (concluding that for some women, "learning to think like a lawyer means learning to think and act like a man"); *see also* Donald K. Hill, *Law School, Legal Education, And the Black Law Student*, 12 T. MARSHALL L. REV. 457, 469-70 (1987) (noting that minority students take a pragmatic approach to learning that interferes with law school success in that it: (1) constrains classroom performance; (2) restricts curriculum selections; and (3) hinders the ability to see the big picture).

fortable with having to answer a professor right away, without time to reflect, ultimately remain silent in the classroom.[102] Those who value cooperative rather than competitive learning are unable to criticize a peer's comment on request or learn in what they perceive to be a hostile environment.[103] And, those who learn by incorporating moral, intellectual and emotional views feel alienated by the Langdellian method's adherence to neutral, objective reasoning.[104]

In sum, scholars note that law schools tailored the Langdellian method to suit their audience—white males who attended law schools.[105] And, although the student body has changed over the years, the methodology has not.[106] Instead, law schools force the newest students to the law school experience to learn and adhere to a

102. The silence phenomenon has been well documented, especially with respect to women. *See, e.g.*, June Cicero, *Piercing the Socratic Veil: Adding An Active Learning Alternative in Legal Education*, 15 WM. MITCHELL L. REV. 1011, 1014-15 (1989); Guinier, *supra* note 93, at 32; Krauskopf, *supra* note 97, 315-17 & n.18 (citing Catharine W. Hantzis, *Reappraising the Male Models of Law School Teaching*, 38 J. LEGAL EDUC. 155 (1988)). Others note a similar silencing with respect to minority groups. *See* Alice K. Dueker, *Diversity and Learning: Imagining A Pedagogy of Difference*, 19 N.Y.U. REV. L. & SOC. CHANGE 101, 118-19 (1991-92). The pressure to speak might be even more problematic for minority students who perceive that they are speaking for their entire racial or ethnic group. *See* Guinier, *supra* note 93, at 46. In addition, Guinier reports that "the perception is widespread that within the classroom, white men, more than women of all colors, are encouraged and allowed to speak more often, for longer periods of time, and with greater positive feedback from the professor and peers." *Id.* at 63-64. *See also Elusive Equality*, *supra* note 100, at 14 ("Minority women are often regarded as 'experts' on minority issues or as speakers representative of their race.").

103. *See* Guinier, *supra* note 93, at 46 (relating results of a study revealing that many women found law school questioning intimidating, and further noting that women cannot learn in an intimidating environment); Jennifer Jaff, *Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning*, 36 J. LEGAL EDUC. 249-60 (1986) (arguing that the Langdellian method is inherently flawed because of its hierarchical and patriarchal nature). There is, however, some evidence that women are thriving in law school. *See* Latham, *supra* note 93, at 28 (reporting a University of Iowa College of Law study that found "the number of women who achieved . . . honors was in proportion with their enrollment figures").

104. *See* CAROL GILLIGAN, IN A DIFFERENT VOICE 22 (1982); Dueker, *supra* note 102, at 114-15 (discussing how women's and men's developmental process differs); *Elusive Equality*, *supra* note 100, at 21 ("The law has developed and continues to develop in the United States with a bias toward the male perspective."); Guinier, *supra* note 93, at 47 (concluding that there are students "who resist competitive, adversarial relationships, who do not see themselves in the faculty, who vacillate on the emotionally detached, 'objective' perspectives inscribed as 'law,' and who identify with the lives of persons who suffer from existing political arrangements. These students experience much dissonance."); Homer & Schwartz, *supra* note 96, at 25-45; Jaff, *supra* note 103, at 263-64 (arguing that a 'male' perspective embodies an ethic of rights, whereas a 'female' perspective embodies an ethic of responsibility).

105. *See* Latham, *supra* note 93, at 23; Roach, *supra* note 58, at 697.

106. *See* Roach, *supra* note 58, at 698.

way of learning that may be completely incompatible with their ways of knowing and learning. In a sense, law schools might be admitting diverse students into our law schools, without really accepting or hearing them.[107]

IV. THE NEED FOR THE LANGDELLIAN METHOD

From its inception to modern times, students, scholars, and practitioners have criticized the Langdellian method.[108] And yet it remains, in one form or another, the dominant vehicle through which students learn legal doctrine and legal process.[109] Although discussion should continue as to whether this learning methodology remains the best today, law schools should not abandon it altogether without first considering the virtues associated with the method as well as its place vis-a-vis modern undergraduate methodology and modern legal practice. For some, the virtues themselves might be reason enough to salvage at least part of the Langdellian methodology.[110] This Article maintains that the virtues of the Langdellian method dictate modification, rather than abandonment, of this "grand tradition";[111] after all, modern students have few opportunities, either before or after law school, to learn the valuable analytical skills that the Langdellian method teaches.

A. Virtues of the Method

Many before me have championed the virtues of the Langdellian method.[112] Although scholars have enumerated these virtues in many ways, three common areas of praise have been noted repeatedly: the analytical, the intellectual, and the verbal attributes of the Langdellian method perpetuate its continued existence in the majority of modern law schools. Moreover, this Article advocates that these virtues justify "extending" the Langdellian method to the twenty-first century.

1. The Langdellian Method Compels Students to Analyze

The primary advantage of the Langdellian method is that it compels students to *analyze* cases, not simply read them. An engaging Lang-

107. *See* Homer & Schwartz, *supra* note 96, at 3. Or to put it another way: "[It] is not enough to add women and stir." Guinier, *supra* note 93, at 100.

108. For a description of the criticisms, see Stevens, *Legal Education: The Challenge of the Past*, 60 N.Y.U. L. REV. 475, 475-82 (1985).

109. *See* Saunders & Levine, *supra* note 23, at 129 & n.30.

110. *See, e.g.*, Konop, *supra* note 4.

111. *See infra* part V.

112. *See, e.g.*, Childress, *supra* note 4; Konop, *supra* note 4; Wade, *supra* note 51.

dellian dialogue presumes that students have not only read the material, but have comprehended it.[113] Thus, students who learn passively, who would prefer to memorize the material and then repeat it to the professor, do not fair well in the classroom.[114] Nor should they. The successful Langdellian dialogue goes beyond the rule of law and challenges students to probe the legal consequences of the argument, to make distinctions, and to place an order on things.[115]

To excel at the Langdellian method, students must be able to take seemingly inconsistent decisions and precepts and assign a logical order to them.[116] The Langdellian method encourages preparedness as a necessary component of analysis.[117] If students do not prepare for class—in terms of both reading and understanding the cases—they will not be able to participate in classroom discussion.[118] Students learn fairly quickly that preparedness encompasses more than knowing the case; it also entails thinking on a global scale, focusing on the rationale used to reach a specific legal conclusion, and challenging the assumptions underlying those conclusions.[119] A methodology that uses questions as its primary focus can force students to go deeper into

113. Patton, *supra* note 69, at 19-27.

114. *See id.* at 19. Indeed, when students realize they cannot be "mere passive recipients of information" and do well in law school, they often manifest a wide array of anxiety behaviors. Watson, *supra* note 3, at 121. Others feel that the method effectively "counteracts the laziness of the prior education of the student." Patterson, *supra* note 29, at 6 (citing part of a letter by John Chipman Gray reprinted in Edward J. Phelps, *Methods of Legal Education*, 1 YALE L.J. 159, 160 (1892)).

115. *See* Powell, *supra* note 4, at 987. In fact, "[t]he chief pedagogical presupposition of the [Langdellian] method was that students learn better when they participate in the teaching process through problem-solving than when they are merely passive recipients of the teacher's solutions." Patterson, *supra* note 29, at 5.

116. *See* Wade, *supra* note 51, at 761. In addition, the Langdellian method "teaches students to deal with reported opinions, to understand how legal principles interact with the facts of life." LAPIANA, *supra* note 26, at 102.

117. *See* Patton, *supra* note 69, at 15. The method embraces the assumption that "[w]e understand most thoroughly and remember longest that which we have acquired by labor on our part." William A. Keener, *The Inductive Method in Legal Education*, 28 AM. L. REV. 709, 715 (1894).

118. *See* Patton, *supra* note 69, at 19; Wade, *supra* note 51, at 762. There are those who conclude that the law school workload is so overbearing that it actually interferes with learning. *See* Taylor, *supra* note 67, at 255; Robert K. Wilkins, *"The Person You're Supposed to Become": The Politics of the Law School Experience*, 45 U. TORONTO FAC. L. REV. 98, 117-21 (1987). However, it is not true that "unlike legal practice, students have no accurate basis for predicting the ability to manage law school workloads and little control over the nature of their work." Glesner, *supra* note 35, at 655. Rather, in law practice, a new associate has very little control over his or her workload. Thus, an associate who has not learned to manage the workload in law school stands little chance in the real world.

119. *See* Patton, *supra* note 69, at 48-49.

the analysis, explore logical implications, reveal faulty reasoning, and begin the process known as "thinking like a lawyer."[120] The Langdellian method uses questions to evoke more than mere comprehension of the material; they must facilitate ideas of connectedness. One author observed that "[t]he method not only causes the student to think; it makes him think twice."[121]

2. The Langdellian Method Teaches Students To Think Independently

Unlike the deductive approach that requires an expert or text to impose a context, the inductive approach depends upon individual effort.[122] Because the Langdellian approach uses cases as its basis for questioning—professors do not give students a deductive framework through which they can process the information—students must exercise individual effort in distilling common principles from the cases. Students must discern the general principles of law from the cases themselves, must synthesize the materials into some sort of working schema, and then must learn to apply the schema to other situations in a contemplative, logical way.[123]

The top achievers at law schools seem to understand, early on, that they must adapt to the current environment and construct individual ways in which to process a tremendous amount of information efficiently and effectively.[124] Top achievers also seem to understand that the Langdellian method reveals that there are no "right" or "wrong" answers. Rather, they learn that the law is, and must be, flexible.[125]

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120. There has been much debate about what it means to "think like a lawyer." For purposes of this analysis, this article defines it as the ability to "think precisely, to analyze coldly." KARL N. LLEWELLYN, THE BRAMBLE BUSH 116 (1930). For a deeper explanation about how students are taught to "think like lawyers," see Saunders & Levine, *supra* note 23.

121. Childress, *supra* note 4, at 349. Even critics of the "Socratic" method point out: "[P]roperly targeted, the Socratic technique has many benefits including developing cognitive skills, substantive concepts, and independent learning habits simultaneously." Glesner, *supra* note 35, at 652 (opining that the method teaches students how to gain knowledge "autonomously"). *See also* Cicero, *supra* note 102, at 1016; Wangerin, *supra* note 45, at 794-801 (equating the classic case method with independent learning); Watson, *supra* note 3, at 145 ("Let me emphasize that [the method] is a superb teaching technique which must remain a fundamental part of good legal education.").

122. Indeed, "[i]t should never be forgotten that one of the chief values of the case method is the student's participation in constructing what he learns." Patterson, *supra* note 29, at 13.

123. *See* Roach, *supra* note 58, at 682. In essence, the Langdellian method "was designed to produce independent and creative thinking." Patterson, *supra* note 29, at 6.

124. *See* Patton, *supra* note 69, at 21-27.

125. *See id.* at 29-32 (finding that higher-achieving students seemed less concerned

In other words, students begin to understand that there might be more than one "right" answer. Those students who succeed in law school understand that they must focus on the questions to which the answers relate, not just the answers in and of themselves.[126]

Of course, this inductive approach requires a degree of initiative and self-confidence unfamiliar to most students. However, if students begin to exercise independent thought while reading and synthesizing cases, they will be better prepared to engage in classroom dialogue about the cases specifically and legal principles generally, and will be better able to apply similar reasoning to new problems.

3. The Langdellian Method Offers Students the Opportunity to Practice Their Verbal Skills

Most of all, the Langdellian method requires student participation in the class discussion.[127] The verbal exchange between the professor and students gives students the opportunity to "think on their feet" and try to express their thoughts clearly and persuasively.[128] In essence, the Langdellian method teaches how lawyers apply legal principles to changing circumstances.[129] Through this method, a student "learns how to select a theory and present a convincing argument that a decision for his client is the just result."[130]

The Langdellian method affords all students, even those who fear public speaking,[131] the opportunity to develop verbal and analytical instincts.[132] Because students cannot anticipate when they will be called

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with finding the "answers" and were more willing to focus on the legal method, or approach to the solution of problems); Wangerin, *supra* note 65, at 1248 (describing that the successful students are not dualistic, but multiplistic).

126. *See* Patton, *supra* note 69, at 47. In essence, students learn to "extract law from facts" in the very way practicing lawyers do. Patterson, *supra* note 29, at 7 (citing a letter by John Chipman Gray reprinted in Edward J. Phelps, *Methods of Legal Education: IV*, 1 YALE L.J. 159, 160 (1892)).

127. *See* Patterson, *supra* note 29, at 17.

128. *See* Wade, *supra* note 51, at 762.

129. *See* Powell, *supra* note 4, at 964. As noted by one student: "In law there is a premium in being able to express yourself in briefs, legal writing, and in oral presentation. That's the purpose of the Socratic method, the case method, and the conversation." Patton, *supra* note 69, at 31.

130. Wade, *supra* note 51, at 762.

131. *See* Powell, *supra* note 4, at 970.

132. It is clearly better to practice these skills in law school than to wait until practice when "careers are on the line." *See* Powell, *supra* note 4, at 967. As noted by another student: "[T]his is . . . the only way to teach, especially law. . . . I mean if you are training someone to eventually be able to go in to court and stand on his feet eight hours a day and try to win an argument—uh, the only way to learn is to be able to think and speak almost instantaneously." Patton, *supra* note 69, at 31.

upon to speak, they must follow classroom discussion and answer the questions in their minds so that they have a response ready when they are called.[133] This silent, constant contemplation enables students to think through answers and refine them quickly in their minds before speaking. The actual verbalization of the analysis further enables students to see the fallacies and strengths of their responses as fellow students and the professor challenge their assumptions and conclusions.[134] Hopefully, these analytical instincts will guide both the litigator and the corporate attorney in verbally crafting ideas to suit a variety of audiences in a variety of settings. For, as every attorney knows, it is one thing "to learn a body of doctrinal law or to speculate on policy arguments; it is quite another to verbalize that knowledge."[135] The question/answer method can teach students to "recognize, organize, verbalize, and even discover, their very real and powerful emotions and moral values."[136] By verbalizing what they know, students have the opportunity to present ideas and clarify their position.[137] Hence, students become familiar with one of the essential attributes of lawyering—oral advocacy.

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133. As John W. Wade observes:

> When the dialectic discussion is properly conducted to include the class as a whole, the students all should be actively participating in the process, at least mentally. It brings about spontaneity. . . . The case method combined with dialectic discussion is demanding on both professor and students, but it can be highly stimulating and rewarding. What students acquire through it is likely to remain with them throughout their careers—far more so than if they merely had copied into their notebooks what they were hearing in a lecture.

Wade, *supra* note 51, at 762-63.

134. This type of verbal training used to be an essential part of the undergraduate education. ERNEST L. BOYER, COLLEGE, THE UNDERGRADUATE EXPERIENCE IN AMERICA 81 (1987). "In recent years, the value of disciplined oral discourse has declined. At a leading private university in the Southeast, three fourths of the students in a senior course agreed that they could have completed a baccalaureate program at the institution without having ever spoken in class." *Id.* This lack of verbal training in undergraduate education places a premium on its role in law school.

135. Wildman, *supra* note 100, at 150.

136. Childress, *supra* note 4, at 350. Moreover, "[i]n being required to engage in public dialogue with a teacher, students are eased into the role of advocacy in a public forum before a genuine authority figure." Carrington, *supra* note 21, at 747.

137. *See* Cicero, *supra* note 102, at 1016 ("Through this method the student comes to understand a topic. By talking aloud, by presenting her ideas to someone else, and by listening to her own reaction to another person's ideas, an individual clarifies her own position."); *see also* Carrington, *supra* note 21, at 747 ("Active dialogue and reflection upon dialogue are good, and perhaps the best sources of self-knowledge, and hence the best source of sound professional judgment.").

B. The Virtues of the Langdellian Method are Indispensable in Light of the Modern Legal Profession

If law schools eliminate the Langdellian method as the vehicle through which students learn to "think like a lawyer," the schools will rob students of a unique opportunity to learn and develop the analytical skills that will make the students successful in the practice of law. Too many students mistakenly assume that they will develop essential analytical and verbal skills after graduation, while in practice. Although this might have been true in the past, when lawyers learned the craft of lawyering by way of an apprenticeship, the modern legal market expects entry-level attorneys to possess good verbal and analytical skills from the onset of their careers.[138] No longer can young lawyers anticipate being mentored or advised by the wiser, older partners. Indeed, the opportunity and financial costs associated with lawyer training have made any meaningful "on the job" training obsolete.[139]

In the current competitive law firm environment, where firms emphasize billable hours rather than training and mentoring, new associates no longer have opportunities to collaborate with others on memoranda, documents, or briefs.[140] Instead, partners or senior asso-

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138. Glesner, *supra* note 35, at 629 ("Finally, the economics of practice and the high costs of legal education have led to an increasingly commercial and competitive approach to legal work."); Saunders & Levine, *supra* note 23, at 131 ("[L]aw firms still complain that many new graduates do not possess basic legal skills.").

139. *See* Eileen B. Cohen, *Teaching Legal Research to a Diverse Student Body*, 85 LAW. LIBR. J. 583, 583 (1993) ("With the rapid increase in first-year associate salaries, the bar can no longer afford the time for associates to apprentice with a firm for a year or two to learn basic . . . skills."); Burton Lehman, *Business Forum: An End to Collegiality; When the Law Becomes Big Business*, N.Y. TIMES, Feb. 5, 1989, § 3, at 3 ("The days of a well-rounded attorney with experience in a number of legal fields may be coming to an end, not because of a lack of talent but as a result of increasing demands for profitability and very early expertise."). The problem is not only severe in big firms, where economic constraints limit associate training, but in smaller firms as well because "[g]raduates entering such practice seldom have an experienced attorney to whom they may go for advice, nor do they have access to training programs in which to learn on the job." John Mitchell et. al., *And Then Suddenly Seattle Was on Its Way to Experience a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1, 18 n.37 (1995) (quoting the MACRATE REPORT, *infra* note 145, at 46). A recent study confirmed this dilemma reporting that less than 18% of junior associates received frequent feedback or training as part of their work experience. Ronald L. Hirsh, *Are You on Target?*, 12 BARRISTER 20 (1985).

140. *See* Costonis, *supra* note 22, at 193, 196.

> [T]he *profession* itself is in a crisis in consequence of its transformation 'from a profession to a business' in the highly competitive environment of the last two decades . . . . The 'bottom line,' as they say, is that the law firms' inclination to complete the young lawyer's competence training diminishes as their economic margins tighten.

Id. See also Cohen, *supra* note 139, at 583 ("In the past several years, however, the

ciates give assignments to new associates and expect them to find the result and present it in an acceptable form.[141] The law firm, as a business, expects lawyers to know the how, what, and why of the law; unfortunately, they are no longer in a commercial position to teach either analytical or even practical skills.[142]

Modern law firms expect their new attorneys to possess advanced analytical thinking and independent learning habits from the onset of their careers.[143] Firms place a premium on those associates who are independent learners, who either know what they are being asked to do, or can figure it out for themselves.[144] Law firms demand that the model attorney come "completely assembled" and "ready to work."[145] Partners expect new associates to be able to read and digest appellate court decisions. They also expect new associates to make conclusions based on sound analysis and to communicate those conclusions both orally and in writing in a comprehensive and intelligent fashion.[146] The practice expects lawyers to have honed cognitive skills such as fact sifting, rule finding, precision and observation during their

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organized bar has begun to look for law clerks and first-year associates who are already trained in basic skills.").

141. *See* Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 171 (1987) (noting that "many legal practices may have little room for a full appreciation of the critical writing process. It is admittedly a costly practice in terms of time and dollars, as well as in terms of risk to one's own sense of expertise.").

142. This is not to suggest that law schools are in a better financial position to absorb these costs. To some, this shift of apprenticeship responsibility from practice to the law schools reflects the "bar's indifference to the law schools' financial plight." Costonis, *supra* note 22, at 196.

143. The ABA is especially troubled that many new attorneys may achieve competence at the expense of clients. *Id.* at 190. It is interesting to note that the Langdellian method "replicates in the classroom what the practicing lawyer does every day in the office: 'To extract law from facts is the thing . . . to do it well makes the successful lawyer; to do it pre-eminently well makes the great lawyer; a student cannot begin too early.'" LAPIANA, *supra* note 26, at 103 (quoting John Chipman Gray letter, part of which is reprinted in Edward J. Phelps, *Methods of Legal Education: IV*, 1 YALE L.J. 159, 160 (1892)).

144. *See* Gail A. Jaquish & James Ware, *Adopting an Educator Habit of Mind: Modifying What It Means to "Think Like a Lawyer,"* 45 STAN. L. REV. 1713, 1715 (1993) (contending that unless lawyers acquire better communication skills, they will be unable to advise their clients).

145. REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, *Legal Education and Professional Development—An Educational Continuum*, 1992, A.B.A. Sec. Legal Educ. & Admissions B. 254 [hereinafter MACCRATE REPORT].

146. Obviously, if the instruction in law school did not include giving students feedback on whether a certain line of reasoning was flawed, then the ability to assess one's analytical abilities is impaired. Silver, *supra* note 58, at 1203 (discussing the confusion that results when a professor fails to give any feedback about whose remarks are correct or incorrect).

schooling.[147] In essence, law firms look for those individuals who know the law and can apply the law.[148]

Law schools that do not emphasize these analytical skills put their students at a disadvantage when the students enter the legal market. Thus, if law schools abandon the Langdellian method—the methodology best suited to teach these analytical skills—students will find it even harder to make the transition from law school to law practice.[149]

C. The Need for Teaching These Skills is More Acute in Today's Law Schools Because of the Modern Undergraduate Experience

Today's law students' need to hone analytical, independent thinking, and verbal skills is not only driven by the competitive market, but also by the state of current undergraduate education. Part of the psychological and educational stress that is often associated with the Langdellian method stems from the shock students face in adapting from the college experience to the very different law school experience.[150] Indeed, such dissonance might be the primary explanation why some

147. *See* Childress, *supra* note 4, at 347.

148. Powell, *supra*, note 4, at 958. Two practitioners describe the current crisis in these terms:

> Senior attorneys lack time for lengthy conversations with an associate because they need to get the work done quickly. Associates lack time to attend meetings or watch trials for the sake of their education. Firms are reluctant to create such time because they must then either write it off or add it to a client's bill, neither of which is a particularly palatable choice. To make matters worse, these problems are hard to confront because the notion of apprenticeship is no longer fashionable. Instead, firms lure associates with the promise of quick responsibility.

Werner L. Polack & Stephen V. Armstrong, *Why Law Firms Should Adopt In-House CLE and What They Can Expect It to Do,* K929 A.L.I.-A.B.A. 19, 22 (1994).

149. As noted by Costonis, the problem is an economic one. Costonis, *supra* note 22, at 196-97. While everyone agrees that law students should be better "trained," neither the profession nor academia can allocate the necessary resources to get the job done. *Id.* This was not always the case. Indeed, only a decade ago, during the time of increased associate hirings and salaries, law firm training programs expanded. The recession slowed the growth of in-house training programs, thus leaving a gap in comprehensive legal training. Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1467 (1995). There may be an economic solution to associate training. Some law firms have begun, for example, to hire in-house writing consultants to help attorneys improve their written work and provide training to new associates. C. Edward Good, *The 'Writer-In-Residence': A New Solution To An Old Problem*, 74 MICH. B.J. 568-69 (1995) (describing such programs in law firms in New York, Oregon, and California). I myself have served as a professor-in-residence at a large Chicago law firm.

150. *See* Patton, *supra* note 69, at 16-17.

law students adopt unhealthy psychological coping mechanisms in law school and suffer such high rates of stress and anxiety.[151]

The fact that law students experience something different from their undergraduate experience when they come to law school, however, does not justify changing law school methodology to ease students into the study of law.[152] Indeed, if law schools lower their standards and alter their methodology, ultimately the law students will suffer. Untrained in independent thought, critical analysis, and verbal communication in their undergraduate education and not fully exposed to it in their legal training, law students will enter the legal market completely unprepared to face the challenges that await them. Therefore, law schools should continue utilizing the Langdellian method, even if it represents a drastic departure from undergraduate courses and learning methodology.

Modern undergraduates enter law school unaccustomed to the law school experience because of the variety of choices they have in what to study and how to study.[153] Modern undergraduates have many more choices in terms of areas of study than did their antiquarian cousins.[154] Indeed, modern undergraduates have varying degrees of exposure to analytical and critical thinking and rhetorical skills in the university classroom, in part because of the specialized nature of college study.[155] Nowadays, many colleges have diversified their curriculum to reflect increasing areas of scholarship in today's society.[156] This diversification results in an increased specialization of undergraduate majors.[157] With this ever-increasing specialization, however, comes a decreased focus in the "traditional" disciplines of logic, rhetoric, and oral and verbal communication.[158]

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151. Roach, *supra* note 58, at 671-72. *See supra* notes 57-80 and accompanying text (discussing law school students' high rates of stress and anxiety).

152. Interestingly, students might resent a professor as much for her abdication of power as they do for her authoritarian position. Stone, *supra* note 3, at 414. "Almost as bad is an obviously paternalistic manner or an attitude of contemptuous disdain." Wade, *supra* note 51, at 764.

153. BOYER, *supra* note 134, at 83 ("Colleges offer a smorgasbord of courses, and students pick and choose their way to graduation."). There are currently more than 6000 different majors that are available to college students. *Id.* at 102.

154. *See id.* at 102-04.

155. *See id.* at 83-90. Very few colleges or universities emphasize a "core" curriculum that is designed to expose students to a wide range of classes in the sciences, humanities and arts. *Id.*

156. *Id.* at 102-04.

157. *Id.*

158. Many students had common educational backgrounds in Langdell's day:

> [S]tudents in Langdell's classroom had an undergraduate liberal education in rhetoric, logic, philosophy, science and mathematics that served as a

In the past, lawyers were 'learned' because they were widely read in philosophy and history and even religion;[159] today, law students study social sciences, such as psychology, medicine, economics, and business and financial subjects. Thus, students come to law school having acquired a far more specialized realm of scholarship and are likely to be unfamiliar with the context and assumptions made by the Langdellian method.[160] Indeed, law schools require no specific training of incoming law students. Thus, the modern law professor cannot trust that any particular core of knowledge is held by the incoming law students.[161] Moreover, the wide and flexible curriculum in most undergraduate schools enables some lazy or fearful students to avoid the intellectual stress that they will undoubtedly meet in law school.[162] This ability to evade academic rigor, coupled with the commonly held view that undergraduate life should be glamorous and fun, leads some students to manage both their studies and their studying so that school does not interfere with more pleasurable pursuits.[163]

The methodology of modern undergraduate courses also plays an important role in students' lack of preparation for law school.[164] In most undergraduate courses, professors teach, and students learn, through deductive reasoning.[165] Most undergraduate programs put a

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> foundation for the case method. The case method was intended to systematize teaching; subsequently, however, the philosophical underpinnings have been gradually eroded and what has been retained is simply the form.

Saunders & Levine, *supra* note 23, at 183. It is not only the lack of critical thinking and verbal skills that is at issue, but also the unevenness of undergraduate institutions in providing training in writing. BOYER, *supra* note 134, at 73-78. Indeed, the crisis in student writing skills has led some academics to begin a "Writing Across the Curriculum" movement, which is aimed at improving student writing skills throughout the curriculum. *Id.* at 79.

159. STEVENS, *supra* note 2, at 35 (noting that lawyers in the past had broad liberal arts backgrounds).

160. In presenting the recommendations being forwarded by the ABA Legal Education Review Committee for quality undergraduate pre-law preparation, committee member Ed Foley noted that the initial draft of the report proposed that pre-law students be exposed to a core curriculum of economics, politics and history. Ed Foley, Presentation made to the Midwest Association of PreLaw Advisors 1995 Conference (October 6, 1995). The fundamental weaknesses of incoming law students, according to Professor Foley, is their inability to read difficult primary materials, such as cases, and their inability to create logical, well thought-out arguments, either verbally or on paper. *Id.*

161. *See* Watson, *supra* note 3, at 98.

162. Andrew S. Watson, *Reflections on the Teaching of Criminal Law*, 37 U. DET. L. REV. 701, 711-12 (1960).

163. Patton, *supra* note 69, at 16-17.

164. *Id.* at 17.

165. *Id.* at 33-34 ("[U]ndergraduate education in America is unfortunately not noted for assisting a student to reason analytically."). *Id.* at 34.

premium on the teacher-oriented classroom.[166] Because the focus of the classroom is on the teacher, the undergraduate professor most commonly uses the lecture format of instruction.[167] Thus, if a student can listen attentively, take good notes, memorize vital facts and repeat them in an organized manner on an examination, then the student will likely achieve good marks.[168] In a way, this style of teaching and learning works comfortably for a great number of students of the so-called "Generation X" or the MTV Generation—those students used to seeing a visual image and listening to the spoken word, memorizing, and conveying back.[169] Thus, most undergraduate courses lead students to become passive consumers of information,[170] rather than independent thinkers and analysts.[171]

V. MENDING AND BENDING THE LANGDELLIAN METHOD—WAYS TO RESPOND TO THE CRITICISMS WITHOUT AFFECTING THE VIRTUES

In light of the disparity between the undergraduate and the law school experiences, many scholars have called for the abolition of the Langdellian method. On the one hand, critics question the legitimacy of an approach that carries with it the possibility of undesirable

166. *See* BOYER, *supra* note 134, at 159.

167. *Id.* at 149. Indeed, the pressure to "publish or perish" has led to a crisis in undergraduate teaching, because generally only graduate assistants have the luxury of time to teach. Derek Bok, *What's Wrong With Our Universities?*, 14 HARV. J.L. & PUB. POL'Y 305, 308 (1991); Larry Gordon, *For Profs, Teach or Perish*, L.A. TIMES, Jan. 10, 1993, at A4 (reporting that teaching assistants teach more than 60% of undergraduate classes at two California campuses). The lack of learned teachers coupled with large, overcrowded classrooms enable students to complete four years of learning without having actively participated in a classroom. *Id.*; Lisa Lapin, *Higher Education Gets Blasted From All Sides; Teaching vs. Research: UC Seeks New Balance*, SACRAMENTO BEE, Feb. 25, 1992, at 1 ("But for undergraduates, research has meant less contact with professors, larger and more crowded lectures and a feeling of alienation.").

Even the popular media has begun investigating whether students are getting their money's worth in terms of a well-taught college education. Alisa Wabnik, *Prof. on Carpet: UA asks him to explain remarks on '60 Minutes,'* ARIZONA DAILY STAR, Mar. 2, 1995, at 3 (reporting the scolding a professor received after disclosing on a '60 Minutes' investigation: "I'm waiting for some powerful parent to sue the university for consumer fraud. You're trying to get a product. You're not getting it.").

168. In essence, students are "passive consumers of courses designed, presented and assessed by others." Wangerin, *supra* note 45, at 789. As noted by one student: "In college you just aren't used to analyzing, taking apart a fact situation and putting it all (together) and seeing what is left. You're just not used to the process." Patton, *supra* note 69, at 30.

169. *See* Powell, *supra* note 4, at 958. In fact, students who are unable to delay gratification and need to see immediate and tangible results tend to be more negative about the law school experience. *See* Patton, *supra* note 69, at 31.

170. *See* Wangerin, *supra* note 45, at 788-89.

171. Patton, *supra* note 69, at 34.

psychological and educational effects.[172] Specifically, some anecdotal as well as statistical reports suggest that the Langdellian method precipitates psychological problems, is overly theoretical, and disadvantages nontraditional students.[173] On the other hand, the Langdellian method advances the very skills that the legal profession requires of its new attorneys—strong analytic ability, independent thinking, and refined verbal proficiency.[174]

This Article maintains that law schools can save the Langdellian method—and with it the skills that it fosters—while diminishing its undesirable side effects.[175] Instead of abandoning the Langdellian method of teaching, law schools can offset some of the discomfort associated with the methodology by: (1) offering a context for this new learning method;[176] (2) supplementing doctrinal courses that use the Langdellian method with skills courses that teach students the practical aspects of the practice of law;[177] and (3) developing Academic Support Programs that address the individual needs of those students who do not readily adapt to the Langdellian method and who need individual assistance.[178] By implementing these three strategies, law schools and law students can reap the benefits of the Langdellian method while diminishing some of its undesirable consequences.

A. The Need for Context

Because students come to law school without previous experience with or knowledge of the Langdellian method, they are often bewildered and frustrated during the first few days, if not the first few months of law school.[179] This initial shock can have serious educational and psychological repercussions.[180] Indeed, students often note

172. *See supra* part III.A.

173. *See supra* part III.A.

174. *See supra* part IV.A.

175. It might not even be the Langdellian method *per se* that creates anxiety or depression. "Rather, it [may be] the interaction of the potential stresses of the law school experience with certain individuals' specific dysfunctional attitudes that results in adverse emotional reactions." Beck & Burns, *supra* note 57, at 287.

176. Roach, *supra* note 58, at 682-86. In other words, law schools should offer "context for [the] pedagogy." *Id.* at 686. *See infra* part V.A.

177. *See infra* part V.B.

178. *See infra* part V.C.

179. Patton, *supra* note 69, at 17 ("Yet because the first year of law school was experienced as different, the expectations of many students were abruptly up-ended leaving them awash temporarily."). Randall, *supra* note 69, at 65 ("Traditional legal pedagogy fails to clearly identify for students what a student needs to know and be able to do to succeed in law school.").

180. *See supra* part III.A.

that the Langdellian method creates humiliating experiences, given the reality that no answer is ever "right" and every response yields still further questioning.[181] As stated above, some students deal with this daily intellectual combat by withdrawing from the dialogue altogether;[182] others develop inappropriate psychological adaptations in an attempt to save their fragile egos from constant onslaught.[183]

This type of psychological stress, however, need not be a necessary by-product of the Langdellian method.[184] Rather, a professor can ease students into the new law school environment by giving context to the Langdellian method—that is, by educating the students about the methodology. An explanation of the history of the methodology, as well as the articulation of its purposes and goals will give students a starting point for learning a new subject in a very different new way.[185] Once students understand the goals of the Langdellian method and understand how and what they are expected to learn, they can focus on learning.[186]

Though professors are experts in legal education, many professors tend to forget that first year students do not fully understand the purpose of the classroom and their relationship with the professor and other students.[187] Unfortunately, "[m]any students leave law school . . . mystified because the skills involved in legal thinking [were] never

181. *See* Wade, *supra* note 51, at 755.

182. *See supra* part III.A.

183. *See* Carney, *supra* note 64, at 19-20. *See also supra* part III.A. (discussing the variety of psychological problems caused by the Langdellian Method).

184. In addition, not all stress is bad. Indeed, "[i]t is also important to note that too little stress may also generate poor performance, probably secondary to boredom and lack of stimulation and challenge." Heins, *supra* note 57, at 512. Others have gone so far as to opine: "Teachers unwilling to cause such pain . . . are not as helpful as they might be to students preparing themselves to deal with human conflict." Carrington, *supra* note 21, at 748.

185. *See* Childress, *supra* note 4, at 353 (noting that a professor should discuss the method's limitations, and her own reservations, and what her goals are for the course and the classroom); Watson, *supra* note 3, at 145-46 (discussing the need for professors to acknowledge that there is stress in the Langdellian classroom and the need to offer students some *quid pro quo*—such as praise—in return for the stress they suffer).

186. *See* Dueker, *supra* note 102, at 127. If professors are not explicit regarding the legal process, they risk leaving students as passive consumers of legal education. *Id. See supra* notes 165-71 and accompanying text (describing passive learning of undergraduates).

187. *See* Silver, *supra* note 58, at 1204. Unfortunately, too many professors assume that the context of the Langdellian method is already evident. Professors should realize that "[s]ince their own law school days . . . these same professors have spent years honing a general legal framework or context." Roach, *supra* note 58, at 674. It is hypocritical for commentators to assume that students have a context by virtue of being law students, while at the same time proposing that law faculty gain context by virtue of years of study and research.

explicitly identified during the first year as the common thread running through an integrated curriculum."[188]

"Debriefing" sessions after the first few Langdellian classes would provide context for the method so that students could gain insight into the analytical process.[189] Debriefing especially helps if the professor goes through the specifics of the Langdellian dialogue with the students. When the professor explains *why* a question was asked; *why* an answer was problematic; and *why* another answer was more responsive, students can begin to grasp that probative questions are the very essence of sound legal analysis.[190] If students still cannot seem to grasp this fundamental of the method, the professor must set it out, plainly, explicitly, and repeatedly.[191] Students need to be told that: (1)

188. Saunders & Levine, *supra* note 23, at 131. *See* Roach, *supra* note 58, at 682.

189. For example, at Northern Illinois College of Law, the Academic Support Program provides a context in its week long summer program. During the week, I work with students as the Director of Academic Support. I begin the week by delving into the history of the Langdellian method. I explain why this methodology is used in law schools across the country. I also emphasize the virtues of the methodology and set forth the criticisms. For the rest of the summer week, students attend a mock torts class in the morning and a mock contracts class in the afternoon. Before each of the classes, I prepare students for what they might expect during the class. Actual professors, who teach these first year subjects, conduct the class as usual. Typically, the torts class considers issues of extension of duty in negligence cases; the contracts class deals with consideration issues. The professors begin the class with no further introduction into the methodology. After class, however, professors "debrief" the students. In an informal setting—the professor gets out from behind the podium—the professor asks the students questions such as: Did you know what I was getting at?; Why did I ask you to go further in your response?; and What should you have taken note of from our discussion?

Having viewed the previous exchange and after the doctrinal professor leaves the room, I debrief the debriefing. In other words, I ask students what they think of the methodology and how it makes them feel. We also discuss ways to take good notes and effectively and efficiently read and brief cases. I encourage students to support a "drowning" colleague who cannot respond to questions, and we list practical ways to cope with difficult classroom scenarios (i.e., you tune out and are called upon; others are picking apart your answer; it seems that your response is wrong, and yet a similar answer three minutes later is right).

Each year, the summer program gets rave reviews. Most students feel that the opportunity to discuss the Langdellian method in an open forum helps them to adjust to their classes.

190. The debriefing during our summer week follows each doctrinal class, so that students begin to focus not only on the specific questions asked, but also the motive behind the questions. Before students can begin practicing this new approach to problem solving, they must be made aware that a new approach is required. Patton, *supra* note 69, at 33. *See supra* note 185 and accompanying text (discussing the need for professors to explain the Langdellian method to students).

191. This is why the "debriefing of the debriefing" is so valuable. If the students do not understand something said in either the mock class or the initial debriefing, I try to answer questions in a much more informal, noncompetitive setting. *See supra* notes

they will be frustrated by the lack of "right" or "wrong" answers; and (2) that this is exactly the point of the class.[192] This type of open communication will reduce student stress. It may also enhance faculty teaching by encouraging reflective thought about not only what they teach, but how they teach it.[193]

Without such an explicit introduction to the Langdellian method, most students will likely revert to their undergraduate methods of memorization and regurgitation in an effort to cope with this new legal training.[194] Unfortunately, the very methods that served these students well in the past will guarantee their failure in law school.[195] Thus, professors must warn students about their expectations, both in the classroom and on the examination.

A learning methodology that does not involve some degree of educational stress, is not a methodology that encourages growth.[196]

189-90 and accompanying text.

192. This is precisely the point of "debriefing of the debriefing." *See supra* notes 189-90. I take special care not to mislead the students given that "[i]t is further possible to mislead students if the purpose of the . . . method of teaching is not made explicit for them, or if it is made to be an end in itself." Patton, *supra* note 69, at 49.

193. *See* Glesner, *supra* note 35, at 651. Glesner states:

> The issue is not so much the teaching methodology used to create a beneficial psychological environment, but rather whether faculty rigorously examine the match of method to subject matter and develop techniques to critique and improve whatever method they choose, explaining the methodology to the students so that the goals and methods of the assignments and the classroom *are not lost for lack of context.*

Id. (emphasis added). Moreover, "[p]roviding explicit information regarding doctrine and rhetoric can leave room for more active, challenging methods of instruction, such as dialogue." *Id.* at 652.

194. This problem persists despite warnings that memorization is not an effective study technique because "[s]tudents are then left largely to their own devices to decipher the meaning of this admonition." Saunders & Levine, *supra* note 23, at 123. One scholar notes that the lack of law school context *forces* students to rely on their undergraduate study methods. *See* Roach, *supra* note 58, at 673. Others note that minority students are especially susceptible to the belief that memorization is the key to law school success. Donald Hill, *Legal Education and the Black Law Student*, 12 T. MARSHALL L. REV. 457, 470 (1987). Mr. Hill states:

> They [law students] believe they are expected to acquire a specific quantum of information or data, and must store that information, and retrieve it upon request. They believe they could accomplish that task if they could find the magic formula. The real tragedy in this scenario is that they believe their teachers know what the formula is, but will not tell them.

Id.

195. *See* Silver, *supra* note 58, at 1208 (noting that memorization satisfies the students' conception of what they ought to be doing in law school). *See also* Patton, *supra* note 69, at 33 (noting that if a law student changes her attitude toward memorization, this change often manifests itself in higher first year grades).

196. *See* Glesner, *supra* note 35, at 644-45. Glesner also advocates increasing

Rather, such a methodology would encourage stagnation and dependence.[197] Thus, providing information about the educational journey should not and cannot be substituted for the journey itself. Although no harm results from describing the Langdellian method, students must be allowed to experience it on their own, even if the experience is—at times—uncomfortable and difficult. Ultimately, unless each student has the opportunity to explore the method, and flounder a bit on her own, students will lose the very analytical skills honed by this method.

B. Other Courses and Other Methodologies

The Langdellian method has always been a means of teaching students "how to think"; at its very essence, the Langdellian method is theoretical and academic.[198] Although the method may help students "think like lawyers," it does very little to help students practice the law.

The "impracticality" of the methodology, however, should not justify its abandonment, especially in light of the numerous skills courses and alternative methodologies that schools provide to second and third-year students.[199] Many law schools have paid special attention to the American Bar Association's study, known as the *MacCrate Report*, which advocates increased emphasis on practical skills training in the law school.[200] Although the *MacCrate Report* recommended that law schools should continue enhancing practical skills instruction, it also found that practical "skills training is alive and well and in an expansionary mode."[201]

Indeed, such practical skills training is alive and well. One particular practical skills program now boasts that by the time its students complete three years of study, they will have "seen, drafted and

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predictability of the overall law school process and providing more information about the goals of individual courses so that students can tailor their learning style to the course's objectives. *Id.* at 647.

197. *See id.* at 644.

198. *See* Patterson, *supra* note 29, at 8.

199. Indeed, "the Socratic method was never intended to teach students how to draft pleadings, how to write memoranda, how to interview clients or any of the various skills real-world lawyers must necessarily utilize." Dallimore, *supra* note 54, at 179.

200. MACCRATE REPORT, *supra* note 145, at 245. For a general discussion regarding the *MacCrate Report*, see Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEGAL EDUC. 548 (1994).

201. MACCRATE REPORT, *supra* note 145, at 254. Indeed, the *MacCrate Report* characterizes clinical skills instruction as "[u]nquestionably, the most significant development in legal education in the post-World War II era." *Id.* at 6.

touched every possible document they may encounter in practice."[202] In sum, many practical skills programs exist that advance educational aspirations and provide students with the opportunity to test their command of analytical skills previously mastered through the Langdellian method.[203] Even Langdell's own Harvard has plans to broaden its practical skills programs to include additional writing and negotiation opportunities.[204] These courses serve to balance out a curriculum and provide students with the practical skills that will enable them to utilize and develop their analytical training.[205] In essence, the law schools have modeled courses that teach law students the practical skills that were once taught by way of legal apprenticeship.[206]

In addition to these "practical" courses, students can also expand their learning experiences in the "substantive" upper level classes. Professors rarely use the Langdellian method in upper class law courses. It is unclear what drives this change in methodology; however, scholars have speculated that certain courses do not lend themselves to the Langdellian method.[207] Others have noted that by the third year, students are "bored" with the Langdellian method and are

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202. Ted Gest, *Combating Legalese*, U.S. NEWS & WORLD REP., March 20, 1995, at 78, 79 (quoting Susan Brody, Director of Legal Writing at John Marshall Law School in Chicago).

203. *See* Francis A. Allen, *The New Anti-Intellectualism in American Legal Education*, 28 MERCER L. REV. 447, 456 (1977). For more information on clinical education, see David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Arthur B. LaFrance, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352 (1987); Carrie Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 ANTIOCH L.J. 287 (1986).

204. *See* Gest, *supra* note 202, at 79.

205. *See* Dallimore, *supra* note 54, at 179; Wade, *supra* note 51, at 767. Practical skills training becomes even more crucial at a time where law firms no longer have the time or resources to train new lawyers. *See supra* part III.B. It is unfair to criticize the Langdellian method for having ignored practical skills; Langdell assumed that the law firm provided this training. *See supra* notes 43, 199, and accompanying text. Given the change in post-law school training, law schools have had to take on the additional burden of teaching students lawyering skills in order to better prepare their students for practice. *See also* Jennifer Howard, *Learning to "Think Like a Lawyer" Through Experience*, 2 CLINICAL L. REV. 167, 167-69 (1995) (arguing that the Langdellian method must be complimented with the clinical experience).

206. "At its best, apprenticeship at that time was all that clinical legal education is claimed to be today: close supervision of a student by his principal in real-life encounters." STEVENS, *supra* note 2, at 24. Stevens goes on to observe that in the late 1970s and early 1980s, "[i]t seemed that the legal education establishment was offering to shape up its commitment to clinical education in return for being left in peace by the practicing profession with respect to the more conventional areas of the curriculum." *Id.* at 240.

207. *See* Childress, *supra* note 4, at 351.

ready to explore different teaching methodologies.[208] Whatever the reason, professors often supplement the Langdellian method with other teaching methods.[209] Indeed, law schools advocate the use of additional writing exercises,[210] collaborative or group activities,[211] visual aids, and other active learning devices to enhance student learning.[212] The integration of the Langdellian method with other methodologies may be the best way to continue promoting independent thinking and verbal skills, while recognizing the need to more closely match what we teach with how we teach and to whom we teach.[213]

"[W]e need to integrate, not to dichotomize and polarize further, the practical and the impractical, the doctrinal and the theoretical."[214] Educators, however, should also realize that some of the learning methodologies prevalent in secondary and undergraduate education may not always be suitable for intellectually mature students. Often, law students are too complex and too variable to be uniformly affected by any single teaching method. Some students will benefit academically and some will suffer, on a relative basis, from the use of any given group strategy.[215] Thus, it is improper to characterize the Langdellian method as a universal evil. It is also improper to characterize "alternative" learning methodologies as universally better, given the complexity and diversity of the law student population.[216] At most,

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208. *See id.* at 351; Wade, *supra* note 51, at 764.

209. Toni Pickard, *Experience as Teacher: Discovering the Politics of Law Teaching*, 33 U. TORONTO L.J. 279, 290-91 (1983). Unfortunately, "[t]he reward system of most law faculties strongly favors writing law review articles over creating innovative courses or developing new teaching materials." John O. Mudd, *Academic Change in Law Schools, Part I*, 29 GONZ. L. REV. 29, 60 (1993-94).

210. *See* Kissam, *supra* note 141, at 151-71.

211. *See* Watson, *supra* note 3, at 152-62.

212. Fortunately, there are more and more materials that are available to guide professors who may want to experiment with new techniques. *See, e.g.*, Arturo Torres & Karen Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods For Law Teaching*, 1994 GONZ. L. REV. 1 (providing by subject-matter, bibliographic lists of texts that discuss alternative law school teaching methods). Law professors can also borrow from materials used at the undergraduate level. *See, e.g.*, Charles Claxton, *Using Student Learning Styles in Teaching*, 34 AM. ASS'N FOR HIGHER EDUC. 1 (May 1982).

213. *See* Glesner, *supra* note 35, at 651 (noting that faculty need to examine the match of the subject matter to the teaching methodology).

214. Barbara B. Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977, 1978 (1993).

215. Teich, *supra* note 47, at 168.

216. Interestingly, much of the criticisms surrounding the method focus on its incongruity with other teaching pedagogy. As noted by one author:

> '[P]edagogy' literally refers to the science of teaching children . . . . Adults are more self-directing and need to participate actively in the educational process .

law schools can try to accommodate students' different learning styles by either diversifying daily teaching methodology within the context of a single course,[217] or providing students with the opportunity to experience a different approach in other courses.

In order to improve student learning, law schools must also recognize the teaching style preferences of its professors. Schools can not realistically and efficiently expect a professor who is committed to a particular teaching technique to change her style.[218] Not only should law schools encourage new professors to develop new methodologies, but they should also encourage established professors to continue teaching in the style that feels best for them. Diversity, not uniformity, is the goal.[219]

> . . . The law school casebook classroom dialectic provides a participatory teaching-learning process, letting the students make use of their own experience and reasoning powers. But this means that the professor not only should listen to the students' remarks . . . , but he also should give other students the opportunity to evaluate the remarks and make responses. Then the process works well.

Wade, *supra* note 51, at 769.

217. Some first year courses try to achieve this balance. For example, most professors do not teach legal writing in the Langdellian method. Instead, students learn writing skills through a variety of collaborative learning exercises. *See* Bari R. Burke, *Legal Writing (Groups) at the University of Montana: Professional Voice Lessons in a Communal Context*, 52 MONT. L. REV. 373 (1991); Philip N. Meyer, *"Fingers Pointing At the Moon": New Perspectives on Teaching Legal Writing and Analysis*, 25 CONN. L. REV. 777 (1993); J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35 (1994); Lucia A. Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203 (1995).

However, most legal writing professors use the Langdellian method when editing students' work. That is, they ask questions of their students, rather than tell them exactly what to edit. These questions almost always require reflection, *i.e.*, is this really the case? Have you explained to your reader how you arrived at this conclusion? Is there an opposing argument to be made? Thus, students benefit from the combination of methodologies, while still developing independent learning skills. *See* Mary K. Kearney & Mary B. Beazley, *Teaching Students "How to Think Like Lawyers": Integrating Socratic Method With the Writing Process*, 64 TEMP. L. REV. 885, 885 (1991) (noting that integrating the Langdellian method with the writing process yields the most productive teacher-student interaction). There are also other courses that seek to add "an active learning alternative." *See* Cicero, *supra* note 102, at 1020 (describing a legal practicum course that provides students an alternative to the Langdellian method and involves them in a cooperative learning experience).

218. To force such change is to invite disaster and contempt. John O. Mudd, *Academic Change in Law Schools, Part II*, 29 GONZ. L. REV. 225, 262 (1993-94). "A professor who is deeply and emotionally committed to a particular technique of teaching cannot readily consider changes which would deprive him of the satisfactions derived from that technique." Watson, *supra* note 3, at 110.

219. Just as law schools should be cautious in engaging in too much theoretical discussion, they should also be wary of focusing only on the practical techniques of lawyering. Allen, *supra* note 203, at 450.

C. *Academic Support Programs*

Critics have charged that the Langdellian method has an especially harsh effect on minority, women, and other non-traditional law students.[220] Although it is true that the Langdellian method derives its origins from white men, it is not true that only white males master the technique.[221] Moreover, it is racist and sexist to suggest that people other than "white men" cannot master the art of intellectual dialogue. It insults the intellectual ability of both minorities and women to argue that they are not able to successfully engage in the Langdellian method.[222]

Moreover, it remains unclear whether some students' psychological distress comes solely from the classroom experience, or whether distress stems from the examination process, the law school "environment," or a combination of these factors.[223] Indeed, perhaps alienation and pain may not be a function of legal education *per se*, but rather a function of "developmental growth brought about by further education."[224] Undoubtedly, some students more readily adapt to the Langdellian method than others for a variety of personal, cultural, and societal reasons.[225] For the students who do not readily adapt to the

220. Guinier, *supra* note 93, at 3 (concluding that many women feel alienated by the Langdellian method); Krauskopf, *supra* note 97, at 314 (detailing the persistent differences between male and female respondents to a survey regarding perceptions of the law school experience); Stephen R. Ripps, *A Curriculum Course Designed for Lowering the Attrition Rate for the Disadvantaged Law Student*, 29 HOW. L.J. 457, 467 (1986) (noting that minority students need a process course that is geared toward developing student confidence and legal skills).

221. In the name of diversity, other programs have also challenged traditional educational precepts (such as gold stars and honor rolls) on the grounds that they reflect a white male culture of vertical thinking and encourage elitism. Charles J. Sykes, *The Attack on Excellence*, CHI. TRIB., August 27, 1995, at C18.

222. Conversely, to deny minority and female students the opportunity to experience this dialectic is to place in doubt their experiences and reasoning abilities. *See* Derrick A. Bell, Jr., *Black Students in White Law Schools: The Ordeal and the Opportunity*, 1970 U. TOL. L. REV. 539, 551 (1970).

223. For example, one study postulates that there might be benign reasons why women and men respond to the classroom experience differently. Krauskopf, *supra* note 97, at 334. Another author notes that cultural differences between a student's home environment and educational environment may frustrate learning. Finke, *supra* note 96, at 55 n.2. *See also* Paul D. Carrington & James J. Conley, *The Alienation of Law Students*, 75 MICH. L. REV. 887, 891 (1977) (noting that no demographic factors (e.g., sex, age, ancestry, political persuasion, family type, and family income) correlate with student alienation).

224. Wangerin, *supra* note 65, at 1259.

225. I do not mean to suggest that the Langdellian method is the only other way to hone necessary analytical skills. Indeed, other, less aggressive and more cooperative approaches might ultimately change legal education for the better. Glesner, *supra* note 35, at 630; Roach, *supra* note 58, at 679; *Elusive Equality*, *supra* note 100, at 35-61.

Langdellian method, however, law schools should provide the opportunity for voluntarily participation in programs such as Academic Support Programs (ASPs). ASPs target "at risk" students to help them to understand and master the Langdellian method.[226] Although these programs take many forms,[227] they all supplement Langdellian instruction by providing students with the opportunity to process the information through alternative methodologies in another forum.[228]

ASPs recognize that students have different learning styles and that students learn most effectively when the teacher's style matches the student's learning style.[229] Thus, ASPs "provide . . . students with the resources and the situations with which they can learn best."[230]

Until that time, however, we must teach students how to cope with the current reality of both the classroom and the courtroom.

226. For a general description of academic support programs, see Kathleen Patchel, *The LSAC Academic Support Program Workbook from the Perspective of a Novice User*, 12 N. ILL. U. L. REV. 341 (1992). Currently, over 100 law schools have ASPs. *See* Kristine S. Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 158-59 (1995).

227. Although selection criteria for ASPs may differ (*i.e.*, some programs select participants based on race, others select based on "objective" criteria, such as LSAT and GPA), to some degree most ASPs are designed to help minority students by "seeking to assure them that the school wants them to succeed and that they are an important part of the student body." *Id.* at 159. Some commentators believe that ASPs should be made available to all minority students. *See, e.g.*, Roach, *supra* note 58. However, I believe that ASPs should target those students who objectively demonstrate—for example, through LSAT and GPA—that they are in need. I fear that an ASP targeted specifically for minority students "worsens the problem and provides a negative signal as to the law school's expectations for its black students." Bell, *supra* note 222, at 551.

228. Although the legal profession today is larger and more diverse than ever before, minorities, women, and other "nontraditional" students and lawyers are not well represented in the profession. *See* Derrick Bell, *The Final Report: Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382, 2385 (1989) (noting the lack of minorities in law academia); Fontaine, *supra* note 93, at 28-32 (finding that although their numbers have increased, women and people of color still experience discrimination in law schools). Thus, law school must respond to this inequality in a manner that is effective and efficient. There is no easy path toward this goal. However, ASPs have helped nontraditional students to not only survive, but also to succeed. *See* Finke, *supra* note 96, at 66. To attain this goal, ASPs try to impart to students an understanding of how to approach the work and what they are to learn from studying. Patton, *supra* note 69, at 28-34.

229. *See* Cynthia A. Kelly, *Education for Lawyer Competency: A Proposal for Curricular Reform*, 18 NEW ENG. L. REV. 607 (1983). ASPs draw upon learning theory, an examination of how people learn, in an effort to develop individual learning strategies. For a general discussion on how learning theory affects legal education, see also John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 J. LEGAL EDUC. 275, 283 (1989); Roach, *supra* note 58, at 679-81. In addition to skills training, ASPs try to help students develop better ways to deal with stress so that time and energy can be devoted toward learning. *See* Watson, *supra* note 3, at 126.

230. J.M. Feinman & M. Feldman, *Achieving Excellence: Mastery Learning in*

ASPs are effective because they work with individuals in creating a personal approach to learning.[231] To date, only these "individualized approaches" have been shown to affect achievement.[232] Indeed, "teaching strategies which are responsive to variable learning styles or which target student sub-populations with particular learning traits appear to be unusually successful."[233]

The primary mission of ASPs is to help students to help themselves. Through the vehicle of ASPs, students are able to obtain the context and background they need to understand and work within the Langdellian method.[234] ASPs combine study skills training and social support to maximize performance and reduce anxiety.[235] In other words, ASPs help students translate and interpret[236] this Langdellian paradigm so that they can experience the gut reaction of "Oooh! Now I get it!"[237] Of course, students still feel real pain, discomfort and isolation associated with the Langdellian method. However, instead of advocating that ASP students are victims who cannot succeed, ASPs strive to empower students by providing tools for success.[238]

Legal Education, 35 J. LEGAL EDUC. 528, 531 (1985).

231. ASPs have been empirically shown to be effective. *See* Knaplund & Sander, *supra* note 226, at 159 (discussing an empirical analysis of the ASP at UCLA).

232. *See* Teich, *supra* note 47, at 178-79.

233. *See id.* at 185. In surveying undergraduate ASPs, researchers O'Callaghan and Bryant asked students what they wanted out of the ASP. *See* Roach, *supra* note 58, at 678 (citing R. Miebi Akah, *What Black Students Need From a Tutorial Program*, 31 J.C. STUDENT DEV. 177 (1990)). Students noted that they wanted to work hard and to be inspired; students did not want to be dependent on the program. *Id.*

234. ASP professionals who use and understand the Langdellian method can "help students learn important substantive ideas about study skills, time management, and motivation while simultaneously helping them develop independent learning skills." Wangerin, *supra* note 45, at 797. They can further help students develop an approach for solving legal problems by practicing it "while learning and operating upon legal materials." Patton, *supra* note 69, at 33.

235. *See* Kenneth M. Dendato & Don Diener, *Effectiveness of Cognitive/Relaxation Therapy and Study-Skills Training in Reducing Self-Reported Anxiety and Improving the Academic Performance of Test-Anxious Students*, 33 J. COUNS. PSYCHOL. 131 (1986) (finding that the combination of study-skills training and relaxation/cognitive therapy is effective both in reducing anxiety and in improving the performance of test-anxious students); *see also* 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, 569 (1991) (describing program that includes close teacher-student contact, extensive feedback, week-long orientation program, study skills and a generally supportive environment).

236. Knaplund & Sander, *supra* note 226, at 161.

237. Greg McCann et al., *The Sound of No Students Clapping: What Zen Can Offer Legal Education*, 29 U.S.F. L. REV. 313, 337 (1995).

238. Indeed, according to one study, ASPs go a long way toward helping student alienation. *See* Knaplund & Sander, *supra* note 226, at 197. In one sense, ASPs help students understand and appreciate the "mainstream" approach and encourage students to

In the quest to empower students, ASPs often need to strike a balance between helping a student and fostering a dependency relationship with her.[239] ASPs do not and should not further the student misconception that if you memorize the law, you will succeed.[240] ASPs should not be "special" programs that "spoon feed" the law.[241] Nothing can substitute for independent learning.[242] Likewise, nothing can substitute for critical reading, thorough analysis, and hard work.[243] Alternative methodologies employed by ASPs provide students with additional insights and supplemental instruction; they should not leave

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translate and adapt the mainstream learning technique to their own way of knowing. *Id.* at 203.

239. *See* Wangerin, *supra* note 45, at 789.

240. *See* Derrick A. Bell, Jr., *Law School Exams and Minority-Group Students*, 7 BLACK L.J. 304, 307 (1981). Unfortunately, too many students rely on the "black letter law" and are unable to deal with ambiguity. One commentator states:

> [The black letter law] is found in many of the commercial outlines sold to law students, some undergraduate law courses, and often in the public's perception of the law. It is seductive in its simplicity and apparent determinability. This seduction ultimately leaves the person disappointed or naively exposed to being manipulated by those who know the law to be more indeterminate.

Greg McCann, *supra* note 237, at 343. *See also* Glesner, *supra* note 35, at 634 ("For someone who has a high need for approval from authority or for certainty in information, a traditional 'Socratic dialogue' class will be more stressful than for someone who is more iconoclastic or tolerant of ambiguity."); Patton, *supra* note 69, at 47 ("When a student is set to expect one 'right' answer, it does not occur to him that there may be several 'right' answers, and that, given this state-of-affairs, it isn't the answer which is so important anyway but rather the questions to which the answers are related.").

241. *See* Bell, *supra* note 222, at 552 ("The view that black students, by reason of their deprived background and racist experiences, should not be required to perform as regular law students but should be permitted to go their own way in the hope that enough of the law will be absorbed by osmosis to carry them through is a form of benevolent paternalism."); *see also* Nerissa B. Skillman, *Misperceptions Which Operate as Barriers to the Education of Minority Law Students*, 20 U.S.F. L. REV. 553, 554 (1986) (noting that it is critical to the education of minority law students that the standard for academic performance be one of excellence). For a general critique in how education has been affected by lowering expectations, see CHARLES J. SYKES, DUMBING DOWN OUR KIDS: WHY AMERICAN CHILDREN FEEL GOOD ABOUT THEMSELVES BUT CAN'T READ, WRITE OR ADD (1995).

242. That is not to say that ASPs should portray the message that the participating students are not likely to succeed and that the ASP will try to help them through. Indeed, if the ASP does not adopt a tone of: "You are very likely to succeed here and we're here to make success even more likely," students are likely to withdraw from the program. *See* Knaplund & Sander, *supra* note 226, at 198.

243. ASPs cannot simply be therapeutic outlets. If the programs do not have authentic academic substance, they are destined to fail. *See* Stone, *supra* note 3, at 418. Instead, the primary role of ASPs is to help students "'learn how to learn' legal material." Patton, *supra* note 69, at 29.

students with the impression that the study of law is a lighthearted and uncomplicated pursuit.[244]

Because law school standing depends, to a large extent, on first year performance, it is critical that law schools support those students who do not understand or adapt to the Langdellian method.[245] Irrefutably, some students do not respond to the Langdellian method.[246] Often, those students lack confidence in their ability to handle law school successfully and need a great deal of help to overcome their fears and anxieties.[247] Thus, ASPs are an essential part of the law school experience because they empower students to succeed without disrupting the benefits bestowed by the Langdellian method.[248] They are the new laboratories of learning.[249] Hopefully, if students learn to adapt to the Langdellian way of thinking and speaking, they will also be able to adapt to a variety of clients, legal situations and atmospheres. The key lies not in abandoning the system, but in learning how to deal with it, understand it, and work within it.

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244. *See* Wangerin, *supra* note 45, at 802 (noting that "anyone interested in promoting independent learning skills in college and law school must recognize the value of certain law school teaching techniques that simultaneously teach students substance and independence"). Thus, no matter the method employed, ASPs should leave students with the impression that superficial analysis or generalization do not satisfy professional intellectual standards. *See* Childress, *supra* note 4, at 352-53 (citing Francis A. Allen, *The New Anti-Intellectualism in American Legal Education*, 28 MERCER L. REV. 447, 448-49, 452 (1977)); Wade, *supra* note 51, at 765-66 ("The sloppy ship creates sloppy habits on the part of most of the crew."). In fact, methods that do "feed" law students the law do not give students much intellectual credit. *Id.* at 352. "Students likely become fragile not because they are asked to reconsider or clarify their response, but rather because they begin to feel that teacher and classmates do not respect them or their intellect." *Id.* at 353.

245. Indeed, programs such as ASPs can only succeed with strong administrative support. *See* Wangerin, *supra* note 45, at 781. Without institutional commitment to and evaluation of academic support programs, law schools tend to the symptoms of isolation, but not to the cure. *See* Leslie G. Espinoza, *Empowerment and Achievement in Minority Law Student Support Programs: Constructing Affirmative Action*, 22 J.L. REFORM 281, 282-83 (1989).

246. *See* Kelly, *supra* note 229, at 617.

247. *See* Wangerin, *supra* note 45, at 789.

248. This, of course, means that ASPs must be well-funded and a visible part of the law school. By marginalizing the ASP, the law school continues to marginalize the nontraditional community the ASP serves. *See* Knaplund & Sander, *supra* note 226, at 203 (noting that ASPs that are not well funded and well organized produce, at best, sporadic short-term results). Thus, law schools must assess whether they should allocate the resources necessary to provide law students with equal access to the educational experience. *See* Mudd, *supra* note 209, at 59 (discussing budgetary constraints that must be changed in the law schools). One solution might be to secure outside funding, principally from foundations and alumni. *See* Mudd, *supra* note 218, at 267.

249. *See* Roach, *supra* note 58, at 699.

VI. CONCLUSION

The call for an end to the Langdellian method is an ill-suited solution given the current state of undergraduate education and the legal profession. As long as law school continues to be the bridge between these two powerful institutions, it must try to respond to both of their needs. Abolishing the Langdellian method may ease the transition from undergraduate learning to the law school environment. Ultimately, however, law students will suffer a far more difficult transition when they leave law school for legal practice. The solution is to bend and mend the methodology to make it more suitable for the twenty-first century.