

## Electrified Law: A Brief Introduction to the Workshop on the Future of the Legal Course Book

*David M. Skover*<sup>†</sup>

The character of law is no longer what it once was. The age of print has given way to the electronic age. And yet 139 years after Christopher Columbus Langdell invented the model of the printed casebook, legal education is still tethered to the paradigm promoted by the famous Dean of the Harvard Law School.

When we consider the study of law, we face a paradox. On the one hand, the calls for innovative pedagogical reforms are constant; we hear demands for skills-building instruction,<sup>1</sup> transactional approaches,<sup>2</sup> interdisciplinary treatments, multimedia experiences,<sup>3</sup> and the like. On the other hand, real reform in legal education faces two major obstacles: the traditional print casebook, which emphasizes doctrinal analysis, and the bar exam, which tests doctrinal analysis. Such a cramped conception of the law, largely confined to what is gleaned from a narrow range of appellate cases, does little to develop many skills beyond those few asso-

---

<sup>†</sup> Fredric C. Tausend Professor of Law, Seattle University School of Law.

1. See, e.g., WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Hoboken, NJ: Jossey-Bass Carnegie Foundation for the Advancement of Teaching 2007); ROY STUCKEY ET AL., BEST PRACTICES IN LEGAL EDUCATION: A VISION AND A ROADMAP (Clinical Legal Education Association 2007).

2. For one example, the University of Columbia Law School offers a skills-based program called the Charles Evans Gerber Transactional Studies Program, which focuses on complex financial transactions. See [http://www.law.columbia.edu/center\\_program/deals](http://www.law.columbia.edu/center_program/deals).

3. Columbia Law School Professor Conrad Johnson argues convincingly: “Connecting doctrine to primary sources, leveraging the ‘added value’ that many publishers already provide, producing text, graphics, audio, animation, and video that reflect and cater to the multiple learning styles present in our target audience, allows students to learn in multiple ways and to develop analytical and persuasive capacities that are not limited by the over-worn ‘top down’ approach.” Conrad A. Johnson, *Memorandum on Preliminary Thoughts*, prepared for the Workshop on the Future of the Legal Course Book (September, 2008) (memorandum on file with authors). For example, one could imagine an electronic course book that contained pod-cast mini-lectures, video interviews of clients, or audio clips from depositions and recorded police interrogations, and virtual reality experiences in legal settings. See Paula Lustbader, *Memorandum on Preliminary Thoughts*, prepared for the Workshop on the Future of the Legal Course Book (September, 2008) (memorandum on file with authors).

ciated with case interpretation. Yet, as we all know, effective lawyering demands more.

Today's law students are burdened by the cost, weight, excess, and contents of print casebooks. A typical first year law student, using some of the more popular texts, could spend upward to \$1,000 for the casebooks alone (*sans* supplements, secondary materials, outlines, etc.); will haul around weighty books that, all combined, tip the scales at almost 28 lbs; and will confront the specter of over 8,700 pages in their casebooks.<sup>4</sup> Print publishers have already realized the need to scale back from the dizzying length<sup>5</sup> and exorbitant cost of casebooks.<sup>6</sup> Even so, in order to speak to the ever increasing demands of curricular reforms, print publishers compound such problems by issuing supplemental texts dealing with law stories,<sup>7</sup> transactional methods,<sup>8</sup> theoretical readings,<sup>9</sup> and interdisciplinary approaches,<sup>10</sup> among others—all resulting in increases in prices, pages, and pounds. And though it is true that long overdue pedagogical reforms are surfacing within the print medium,<sup>11</sup> such efforts will not likely change the cost-weight-length equation, and are likely to depend on electronic formats for some of their most revolutionary features.

So, why do we cling to the traditional print casebook? There are, of course, institutional constraints to deviating from tradition: the structure of the law school curriculum, the long-practiced methods of teaching and

---

4. These figures represent retail prices plus 7% tax for new casebooks, such as the following: CHARLES KNAPP ET AL., PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (Aspen, 6th ed. 2007) (list price: \$138 / 3.4 lbs. / 1105 pp.); JOSEPH SINGER, PROPERTY LAW: RULES, POLICIES, AND PRACTICES (Aspen, 4th ed. 2006) (list price: \$139 / 3.6 lbs. / 1202 pp.); RICHARD EPSTEIN, CASES & MATERIALS ON TORTS (Aspen, 9th ed. 2008) (list price: \$142 / 4.2 lbs. / 1402 pp.); JOHN KAPLAN ET AL., CRIMINAL LAW: CASES & MATERIAL (Aspen, 6th ed. 2008) (list price: \$130 / 4.2 lbs. / 1144 pp.); JACK FRIEDENTHAL ET AL., CASES AND MATERIALS ON CIVIL PROCEDURE (Thompson/West, 9th ed. 2005) (list price: \$134 / 4.6 lbs. / 1295 pp.); GEOFFREY STONE ET AL., CONSTITUTIONAL LAW (Aspen, 5th ed. 2005) (list price \$142 / 5.2 lbs. / 1704 pp.) ; LAUREL OATES ET AL., THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING (Aspen, 4th ed. 2006) (list price: \$78 / 2.6 lbs. / 914 pp.).

5. How many professors who assign such tomes actually cover the entire text, or even a substantial portion of it?

6. See, e.g., JESSE CHOPER ET AL., LEADING CASES IN CONSTITUTIONAL LAW (Thompson/West, 2008) (list price: \$94 / 3 lbs. / 928 pp.). The unabridged counterpart costs \$146, weighs 3 lbs, and has 1617 pages.

7. See, e.g., MICHAEL C. DORF., ED., CONSTITUTIONAL LAW STORIES (Foundation Press, 2004) (540 pp.).

8. See, e.g., TINA L. STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO (Aspen, 2007) (476 pp.).

9. See, e.g., JOHN H. GARVEY ET AL., MODERN CONSTITUTIONAL THEORY: A READER (West, 5th ed. 2004) (820 pp.).

10. See, e.g., VICTOR GOLDBERG, FRAMING CONTRACT LAW: AN ECONOMIC PERSPECTIVE (Harvard University Press, 2007) (424 pp.).

11. See, e.g., Carolina Academic Press's forthcoming series *Contextual and Practice Casebooks* (Michael H. Schwartz, series editor).

studying, bar examination testing, the industry of tie-in study aids, and the continued obsession with appellate court decision-making, among others.

But Marshall McLuhan offered a more far-seeing answer: We drive into the future looking only into the rear-view mirror.<sup>12</sup> We prefer the familiar to the unknown; we equate the true with the tried; we give way to inertia rather than expending energy. If legal education remains tethered to the case method, if it does not adequately consider interdisciplinary insights, if it ignores the narratives of life and law, and if it remains largely oblivious to how law is practiced, it does so mainly because we remain fixed in our comfortable ways. This, in no small measure, explains why the ghost of Langdell still haunts us. Ever since he first cabined the law in his 1871 casebook, generations of law professors and students have made a home there. It is time to move.

The past need not be prologue; we can recreate our world. Indeed, there appears to be serious interest in doing so. The plenary session of the 2008 Annual Meeting of the American Association of Law Schools, entitled “Rethinking Legal Education for the 21<sup>st</sup> Century,” revealed enthusiasm for moving away from traditional approaches to legal education. Many professors, young and old, displayed an eagerness to embrace new classroom teaching methods, if only there were some viable re-conceptualization of law school courses and appropriate materials to enable them to do so.

Building on the excitement felt at the 2008 AALS plenary, we can strive to take that momentum to a new level, to translate its aspirations into our reality. The Workshop on the Future of the Legal Course Book, held at Seattle University School of Law on September 27, 2008, aimed to begin to do so in a significant way.

This unique venture brought scholars at the forefront of pedagogical reform together with key representatives of the print and electronic law book industry and the National Conference of Bar Examiners to explore the options available for transforming the existing prototypes of legal education and course materials. The Workshop participants engaged deeply in thoughtful dialogues about promising and pragmatic paths for the future of electrified law. Over the course of four sessions, they discussed, at different levels of abstraction, the proposition that real reform in legal education is best served by the marriage of innovative ideas with innovative media.

---

12. See PHILIP MARCHAND, MARSHALL MCLUHAN: THE MEDIUM AND THE MESSENGER 209 (New York: Ticknor & Fields, 1980).

Session 1, "Glimpses of the Future," focused on novel experiments in non-traditional pedagogy, with an emphasis on the development and implementation of creative course materials. Session 2, "The Printed Casebook & Its Print/Electronic Alternatives," examined the advantages and disadvantages of the traditional printed casebook, non-traditional printed course books, and their non-traditional electronic counterparts, with a focus on both content and delivery systems. The participants then analyzed different electronic formats for delivering educational content and electronic receptacles (such as e-readers) for receiving that content in Session 3, "Competing Online Architectural Formats." Finally, Session 4, "Where Do We Go from Here?," addressed desirable avenues for follow-up action.

The transcript that follows reveals the tracks of the participants' thoughts as they investigated new paths to legal education. Professors and publishers alike will find in here imaginative and inspired alternatives to the traditional law school casebook. Of course, these are but initial forays. For the vast and wondrous new wilderness remains to be explored. In that sense, the Workshop on the Future of the Legal Course Book might be seen as a map to this uncharted territory.



Participants Listed from Back, Row 1, to Front, Row 10:

*Row 1:* Maggie Chon, Tom Hill, Sean Caldwell, Gene Koo; *Row 2:* Greg Silverman, Paula Lustbader; *Row 3:* Michael Schwartz, Daniel Albohn, Bill Harmon, Peggy Davis, Marilyn Berger; *Row 4:* John Palfrey, Leslie Levin, John Mitchell; *Row 5:* Matthew Bodie, Craig Gold, Keith Sipe, Heidi Hellekson; *Row 6:* Steve Friedland, Ed Rubin, Richard Mixter, John Mayer; *Row 7:* Joel Thierstein; *Row 8:* David Vladeck, Kellye Testy, David Skover, Heidi Boe; *Row 9:* Dennis Patterson, Ron Collins, Faye Jones, Susan Case; *Row 10:* Kraig Marini Baker, Conrad Johnson.