When Will Law School Change?

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Steven C. Bennett*

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I. INTRODUCTION

Law schools, to paraphrase the fictional Professor Kingsfield, take students who know next to nothing about law, and teach them to “think like lawyers.”1 But a rough understanding of the methods of legal analysis does not necessarily equip budding lawyers with all the skills required for success in practice.2 Most importantly, although

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the ability to interpret rules of ethical conduct is one important element of the law school curriculum, mere familiarity with the rules of professional responsibility cannot impart sensitivity to the ethical issues that can arise in practice (much less ensure that new lawyers will place a high priority on maintaining essential standards of professional behavior). 3

The recent Carnegie Report, 4 an independent external review of law school teaching practices 5 which compared legal education with other forms of professional training, emphasized the need to impart basic skills to lawyers before they enter practice, but also expressed concerns about producing lawyers who lack a commitment to professional responsibility. 6 These concerns, moreover, have appeared in a series of prior studies and reports. 7


4. See William M. Sullivan et al., Carnegie Found. for the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law (2007) [hereinafter Carnegie Report]. The Report, among other things, noted “a history of unfortunate misunderstandings and even conflict between defenders of theoretical legal learning and champions of a legal education that includes introduction to the practice of law.” Id. at 8. The Report recommended a new approach to legal education that would “combine conceptual knowledge, skill and moral discernment” with “the capacity for judgment guided by a sense of professional responsibility.” Id. at 160. Thus, law school graduates need “the capacity to recognize the ethical questions their cases raise, even when those questions are obscured by other issues and therefore not particularly salient,” plus “wise judgment when values conflict;” and “the integrity to keep self-interest from clouding their judgment.” Id. at 146.

5. As one commentator noted, because the Carnegie Report is part of a series on professional education (including law, engineering, the clergy, nursing and medicine), the report offers a “breadth, insight and credibility it might not otherwise have had.” Nelson P. Miller, An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers, MICH. B.J. 20 (Jan. 2008) (noting that the Carnegie Report will be “read widely;” because it is not a “sour history of law school, nor a critical judgment, and not overly ideological”).


7. See Am. Bar Ass’n Task Force on Law Schools and the Profession, Legal Education And Professional Development—An Educational Continuum (1992) (report often called the “MacCrate Report”); Amy B. Cohen, The Dangers of the Ivory Tower: The Obligation of Law Professors to Engage in the Practice of
The question thus arises anew: how can law schools produce "good" lawyers? Recent scholarship and experiments at several law schools suggest an array of potential solutions (big and small), several of which are outlined here. The bigger underlying question, however, addressed at the conclusion of this Article, is: when will law school change (on a broader basis)? When will law schools incorporate, more fully, the kinds of changes that can ensure that new lawyers approach their careers equipped with a spirit of professionalism, competence and integrity, and with a genuine drive to demonstrate ethical behavior in all of their actions as attorneys? No magic solutions appear, but the ideas outlined here may contribute to the change needed in the legal education process. The task is to blend into an educational setting a focus on ethics, professionalism, competence, and integrity in the practice of law. Legal education is too important to be left to the schools to correct the current defects. It is not enough to just study law; it is necessary to live the law in a professional manner. The legal profession must focus on the ultimate goal of producing well-trained lawyers that are dedicated to ethical behavior.
but at least one essential component of change must involve demand, by the profession itself, for increased focus on ethics and professionalism. As this Article concludes, the recent economic down-turn may provide a significant catalyst for such change.10

II. THE NEED FOR CHANGE

Each law school may define its individual mission with emphasis on one or more of an array of concerns—public service, scholarship, and more.11 But, at the core, every law school is an educational institution. Law schools primarily produce one thing: graduates who—for the most part—plan to practice law in one or more fields, in connection with one or more institutions, for some period of time. Increasingly, critics and commentators, inside and outside academia, have suggested that law schools can perform that central function better.12


10. The precise moment of inflection in the legal job market is difficult to pinpoint. Some statistics suggest that economic problems, deepening over the span of many months, began as early as 2007 (when the credit crisis first made headline news). See Leigh Jones, About that Huge Salary: It’s a Longshot, LAW.COM, July 9, 2007, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005486001 (“Eye-popping salaries are the reality for a small fraction of law school graduates, and all those stories of big money may be creating unrealistic hopes for the vast majority of law school students.”).


12. Although not explored in depth here, there is a relationship between the degree of practical training offered in law schools and the ability of graduates to provide low-cost, effective service to persons of modest means. See Tammy Kim, Who’s Learning What? Toward a Participatory Legal Pedagogy, 43 HARY C.R.-C.L. L. REV. 633, 637 (2008) (improvements in lawyering training may help legal education “move one step closer to ensuring that the legal profession represents and responds to the needs of the entire citizenry”); Roy Stuecky, The Evolution of Legal Education in the United States and the United Kingdom: How One System Became More Faculty-Oriented While the Other Became More Consumer-Oriented, 6 INT’L J. OF CLINICAL LEGAL EDUC. 101, 102 (2004) (“Unfortunately, the educational goals and methods of most law schools in the United States are not designed to prepare students for practice, other than with large firms or governmental agencies that have the resources to complete their education and train-
Set forth *infra* are highlights of some of the improvements most often suggested.

**A. “Real World” Connection**

Law school teaching often relies on the “case method,” developed by Christopher Columbus Langdell, Dean of the Harvard Law School, in the late nineteenth century. Under the case method, students read judicial opinions, typically from appellate courts, which interpret and apply the law to a particular set of facts. Students often do not discuss why the lawyers in a matter behaved as they did, or what else they might have done (or done better). Students are not always asked to consider the client’s perspective on the situations described in the cases they read. The case method, moreover, teaches students to
become “Monday morning quarterbacks,” critiquing the reasoning of others, while not providing them with the experience of making decisions under difficult circumstances—such as, tight deadlines, client demands, and uncertain information.\textsuperscript{16} Significantly, law students largely work independently.\textsuperscript{17} In short, traditional law school courses may lack significant “real world” connections.\textsuperscript{18}

To satisfy some of the need for real world connections, law schools might consider an array of techniques. For example, active recruitment of students with more diverse experience could help the student

\textsuperscript{16} See Cameron Stracher, \textit{Meet the Clients}, \textit{WALL ST. J.}, Jan. 26, 2007, http://online.wsj.com/article/SB116978069890288550.html (“One of the biggest problems with the current state of legal education is its emphasis on books rather than people. . . .  When they graduate, young lawyers rarely know how to interview clients, advocate for their positions, negotiate a settlement or perform any number of other tasks that lawyers do every day.”). The case method, moreover, tends to focus on litigation questions rather than on the “nuts and bolts” of how to provide legal services. Corporate lawyers, for example, often must learn much of what they need to know to function as professionals after law school graduation. See Victor Fischer, \textit{Deals: Bringing Corporate Transactions into the Law School Classroom}, 2002 \textit{COLUM. BUS. L. REV.} 475 (noting that corporate lawyers often learn their craft on-the-job, but suggesting means to teach corporate law practice in law school).

\textsuperscript{17} By contrast, in business schools, students generally must work in teams, completing projects that replicate the business world that they expect to join. See Benjamin Barton, \textit{A Tale of Two Case Methods}, 75 Tenn. L. Rev. 233 (2008).

body as a whole gain practical understanding simply by interaction with their peers.\textsuperscript{19} Imposing some requirement (or at least preference for) practical pre-law school experience could do the same.\textsuperscript{20}

During school, an array of simulations, “lawyering” courses, and group projects could be offered.\textsuperscript{21} Experience with actual clients, through clinics and pro bono externships, may also offer practical insights for students.\textsuperscript{22} More active use of adjunct faculty could bring

\begin{flushright}
\textsuperscript{19} See About the Law School Admissions Counsel, \url{http://www.lsac.org/AboutLSAC/about-lsac.asp} (last visited Feb. 25, 2010) (“Diversity of experience among applicants—both personal and academic—serves to enrich the law school applicant pool and, ultimately, the legal profession.”).
\textsuperscript{20} See John Henry Schlegel, Eighteen or Thirty, but not Twenty-Two, 43 HARV C.R.-C.L. L. REV. 629, 631 (2008) (“Being out in the world for a while changes students enormously. They do not come to law school because law seems to be glamorous or because they imagine they have no alternatives.”).
\textsuperscript{22} See Becky L. Jacobs, A Lexical Examination and (Unscientific) Survey of Expanded Clinical Experiences in U.S. Law Schools, 75 TENN. L. REV. 343, 362 (2008) (indicating that participation in law school clinics “instills a sense of professionalism to students that cannot be learned or experienced in a classroom” and that clinical experience offers a “key setting” in teaching the ethical demands of practice); Katherine R. Kruse, Fortress in the Sand: The Plural Values of Client-Centered Representation, 12 CLINICAL L. REV. 369 (2006) (examining the history and theory of client-centered lawyering); Angela McCaffrey, The Healing Presence of Clients in Law School, 30 WM. MITCHELL L. REV. 87 (2003); Suellyn Scarnecchia, Serving the Most Important Constituency: Our Graduates’ Clients,
real world experience into the classroom. Access to speakers and off-campus events could expose students to the unique opportunities that a legal career can offer—big firms, small firms, solo practice, in-house, government, education, business and more. Students, moreover, could be trained to seek out and connect with potential mentors in the legal community. In short, through such mechanisms, law students could experience an “immersion” into the community of lawyering.

At the end of the law school process, some system of postgraduate placements, connected to the law schools, but aimed at a supervised introduction to full-time practice, might smooth the transition from school to the profession and at the same time inculcate essential values. Law schools, moreover, might encourage their graduates to return to law school on a regular basis to interact with students and recount the course of their professional careers.

B. Professional Habits

While ethics training is now a staple in law school, most students take only one course on professional responsibility, which is focused...
on learning essential ethics rules.\textsuperscript{29} That course, often taken in the third year of law school, is largely seen by students as no more than a requirement for graduation and an aid to passing the ethics component of the bar examination.\textsuperscript{30} In most cases, students receive little detailed instruction in the professional habits of good lawyers\textsuperscript{31} and are seldom shown samples of exemplary legal work or successful careers.\textsuperscript{32}

To provide a greater emphasis on the basics of professionalism, law schools might consider several steps.\textsuperscript{33} More team assignments (e.g., group writing projects or group work in simulations and clinics) could help remind students that they are entering a social profession where relationships with others, based on trust and integrity, is of para-

\begin{footnotes}
\item[29.] See \textit{Carnegie Report, supra} note 4, at 6 (“Law schools fail to complement the focus on skill in legal analysis with effective support for developing ethical and social skills. Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals. Despite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of the legal institutions and the varied forms of legal practice.”).
\item[30.] See Lauren Solberg, Comment, \textit{Reforming the Legal Ethics Curriculum: A Comment on Edward Rubin’s “What’s Wrong with Langdell's Method and What to Do about It}, 62 \textit{VAND. L. REV. EN BANC} 12, 13, April 30, 2009, http://law.vanderbilt.edu/publications/vanderbilt-law-review/online-companion/index.aspx (follow link) (indicating that students dislike current professional responsibility courses and the solution may be to integrate legal ethics “throughout most, if not all, courses in the law school curriculum”); George Leef, \textit{Clarion Call: Is Law School a Waste of Time?}, \textit{John Locke Foundation}, Feb. 1, 2007, http://www.johnlocke.org/news_columns/display_clarion.html?id=1786 (“Although a course in legal ethics is usually required, it’s often a snooze class. Professional schools in other fields usually employ well-elaborated case studies of professional work, but this is rarely the case with law schools.”) (internal quotation omitted).
\item[31.] For students who have the opportunity, work with clinical faculty may provide some sense of how competent professionals behave. See Peter A. Joy, \textit{The Law School Clinic as a Model Ethical Law Office}, 30 \textit{WM. MITCHELL L. REV.} 35 (2003); Nina W. Tarr, \textit{Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers}, 35 \textit{WM. MITCHELL L. REV.} 1011, 1013 (2009) (noting that “faculty who teach in clinics serve an important role as professional models for their students”).
\item[33.] See Harriet N. Katz, \textit{Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools}, 59 \textit{MERCER L. REV.} 909, 912 (2008) (suggesting means for law school to “use the review of its skills curriculum . . . to understand and strengthen its ability to develop the professional skills of its students”).
\end{footnotes}
mount importance.\textsuperscript{34} Even if not structured as legal clinical training, students could engage in some form of group public service, including service to the law school itself, as part of their law school career.\textsuperscript{35}

Students should also get some experience as clients themselves, perhaps in role-playing exercises, to help them recognize the needs of those they may come to serve.\textsuperscript{36} Training in interviewing skills, counseling and negotiating—all among the most basic and transferable skills for use in practice—can help students develop a sense of the elements of lawyering that extend beyond pure legal reasoning and analysis.\textsuperscript{37}

Most students, moreover, would greatly benefit from some demystification of the profession. Students who are seriously considering opening a solo law practice after graduation, for example, need to

\textsuperscript{34} See \textit{Carnegie Report}, \textit{supra} note 4, at 6 (suggesting use of “well-elaborated case studies,” similar to the case studies that seminaries and medical, business and engineering schools use to introduce students to professional responsibility issues and habits of professional practice). The need to develop improved forms of team-working and personal communications is not limited to the law school setting. See Douglas B. Richardson, \textit{Face Time—Dealing with the Legal Profession’s Communications Gap}, \textit{Report to Legal Management} (Altman Weil, Inc., Newtown Square, PA), Oct. 2008, at 6, available at http://www.altmanweil.com/dir_docs/resource/0d1e1ebd-3b67-4f62-9bc6-dcb8d9e03f3_document.pdf (noting “face-time issue” within law firms as illustrated by “rank-and-file lawyers’ complaints that it has become harder to collaborate with each other”).

\textsuperscript{35} See \textit{Carnegie Report}, \textit{supra} note 4, at 9–10 (ethical-social issues “come alive” most effectively “when the ideas are introduced in relation to students’ experience of taking on the responsibilities incumbent upon the profession’s various roles”); see also Ben W. Heineman, Jr., \textit{Law and Leadership}, 56 J. LEGAL EDUC. 596 (2006) (urging that students be taught to aspire to become leaders as well as counselors); Katherine R. Kruse, \textit{Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation}, 8 CLINICAL L. REV. 405 (2002); Donald J. Polden, \textit{Educating Law Students For Leadership Roles And Responsibilities}, 39 U. TOR. L. REV. 353 (2008) (urging that law students should be taught to aspire to become leaders); Linda F. Smith, \textit{Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research}, 10 CLINICAL L. REV. 723 (2004) (contending that law education could benefit from experience of community service movements).

\textsuperscript{36} Even in traditional law school classroom settings, for example, students might be asked to take the side of a losing lawyer in a case and explain to that side’s client why the case was lost (and what else might be done to solve the client’s problem). This skill, in conducting “difficult conversations,” is one that every successful lawyer must learn to master. \textit{See} Douglas Stone, Bruce Patton & Sheila Heen, \textit{Difficult Conversations: How to Discuss What Matters Most} (1999).

\textsuperscript{37} \textit{See} Clinical Legal Education Association’s \textit{Comments on Outcome Measures} \textit{to the Standards Review Committee of the ABA Council of Legal Education} (Oct. 1, 2009), http://www.abanet.org/legaled/committees/commstandards.html (follow link to “Comments of CLEA, Outcome Measures Subcommittee Document, October 2009”) (suggesting that students must gain competencies in a “coherent set” of lawyering skills that includes legal research, factual investigation, communication, client and other interpersonal relations, counseling and negotiation).
know basic rules of law office management. In particular, students must recognize certain “defensive” aspects of practice: an effective conflicts checking system, retainer agreements, client trust accounts, professional liability insurance, and the like. Even students who plan to join larger firms could receive some essential instruction in the “nuts and bolts” of practice.38 Some exposure to the project management elements of legal service—such as, delegation of responsibilities, team meetings and communications, and even how to bill for time spent on a matter—would permit students to embrace good professional habits as they enter the practice.39 Career development training aimed at outlining the many career options and choices that students face, coupled with some form of access to representatives of the profession (e.g., speakers, adjuncts, mentors and other role models of “good” lawyers), could help students begin to identify personal goals and pathways to success in a legal career.40

C. Ethical Sensitivity

Instruction in ethics and professionalism clearly must extend beyond mere study of ethics rules and opinions interpreting the rules.41

38. See Jean M. Cary, Teaching Ethics and Professionalism in Litigation: Some Thoughts, 28 STETSON L. REV. 305, 316 (1998) (“Law students, particularly those in their third year who are only months away from practicing on their own, are desperate to learn the nuts and bolts of what practicing law will be like for them.”).

39. See Debra Moss Curtis, Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer, 71 ALB. L. REV. 201 (2008); Gene Koo, New Skills, New Learning: Legal Education and the Promise of Technology (Berkman Ctr. for Internet & Soc’y, Working Paper No. 2007-4, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976646## (“Many attorneys work in complex teams distributed across multiple offices: nearly 80 percent of lawyers surveyed belong to one or more work teams, with 19 percent participating in more than five teams. Yet only 12 percent of law students report working in groups on class projects.”). In this regard, law school curriculum committees have much to learn from similar efforts to teach medical students both the fundamentals of medicine and essential skills for practice. See Andrew J. Rothman, Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Profession Example, 51 Rutgers L. Rev. 875 (1999); Susan Bryant & Elliott S. Milestein, Rounds: A “Signature Pedagogy” for Clinical Education?, 14 CLINICAL L. REV. 195 (2007).

40. Aaron Street, Where Law School Career Services Fail (And Some Fixes), LAWYERIST, Jan. 5, 2010, http://lawyerist.com/law-school-career-services-fail/ (“[B]asic job application skills [offered in most law schools] (while important) do nothing to create lawyers who are skilled professionals, community leaders, business managers and owners, or even to help students understand their own long-term career development path. . . . What law students really need . . . is coaching and skill-building related to long-term career and professional development.”).

41. See CARNEGIE REPORT, supra note 4, at 6 (noting that “social needs or matters of justice involved in cases” do get some attention in law school case dialogues, “but these issues are almost always treated as addenda”); id. (“students have no way of learning when and how their moral concerns may be relevant to their work,”
To become fully-functioning and ethical lawyers, students must develop ethical sensitivity—an awareness of the high priority assigned to ethical behavior—and must make a commitment to refine and apply their understanding of ethical rules in practice. In short, ethics training requires learning about a process (ethical lawyering) and not an end-point (memorization of a fixed set of rules).\footnote{See Ctr. for Professionalism, Ethics, and Pub. Serv., Univ. of Toronto Faculty of Law, Symposium: Can Legal Ethics Be Taught? (2008), http://www.law.utoronto.ca/documents/conferences/legalethics08_report.pdf (providing symposium summary).} Law schools cannot give each student an “ethics inoculation,” but they can heighten sensitivity to ethical issues and encourage students to begin to display and value ethical and professional behavior.\footnote{Some social psychology research suggests that all humans go through stages of moral judgment development. See Moral Development In The Professions: Psychology And Applied Ethics 1–3 (James R. Rest & Darcia Narvaez eds., 1994). Thus, the practice of becoming a more ethical person (and professional) may be a life-long pursuit. See Robert Kegan, The Evolving Self: Problem and Process in Human Development (1982); Robert Kegan & Lisa Laskow Lahey, Immunity to Change: How to Overcome It and Unlock Potential in Yourself and Your Organization (2009).}

To help introduce students to the process of ethical lawyering, several suggestions arise. At the very beginning of the law school experience, law students might be required to swear an oath of integrity and

which may produce a “cynical impression of the law”). Arguably, law school courses that focus solely on the rules of professional responsibility “trivialize the subject matter.” Deborah L. Rhode, Ethical Perspectives on Legal Practice, 37 Stan. L. Rev. 589, 649 (1985). Indeed, such a single-minded focus treats professional ethics as “a course in substantive law akin to torts or corporations,” and thus not really a course in morality. Joseph Allegretti, Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics, 66 Fordham L. Rev. 1101, 1106 (1998); Daniel S. Kleinberger, Wanted: An Ethos of Personal Responsibility—Why Codes of Ethics and Schools of Law Don’t Make for Ethical Lawyers, 21 Conn. L. Rev. 365, 370 (1989) (“[T]he rules are seen primarily as a set of malum prohibitum commands to be parsed, analyzed, interpreted, and distinguished—just like any set of regulations applicable to any other trade or business.”). Worse, the marginalization of ethics as a one-time, required course may add to cynicism among students and academics concerning the value of any ethical training. See Roger C. Cramton & Susan P. Koniak, Rule, Story, and Commitment in the Teaching of Legal Ethics, 38 Wm. & Mary L. Rev. 145, 145 (1996) (“Law students, law teachers, and practitioners often assume that legal ethics is mushy pap that the organized profession requires law students to study for public relations purposes.”). This focus on rule memorization, versus practical grounding in the moral issues attendant to the practice of law, may explain the great antipathy of many law students to the study of professional responsibility in law school. See Elizabeth D. Gee & James R. Elkins, Resistance to Legal Ethics, 12 J. Legal Prof. 29, 30 (1987). See generally Pearce, supra note 11, at 722–25 (summarizing the history and practice of legal ethics teaching in law schools).
commitment to ethical practice throughout their careers. At the very least, students might be asked to make a commitment to ethical practices during the course of law school itself. As one of the earliest elements of their law school experience, students might be encouraged to discuss their impressions of what it means to be an ethical professional. A pre-law school orientation program, a first-year seminar, or an “introduction to the profession” day all might serve to begin raising awareness of ethics and professionalism issues from the outset of a law school career.

Students should be given some forum to share their developing views on ethics and professionalism—not limited to a single required course in ethics. Some element of professionalism and ethics could be featured in nearly every course in law school. After experiences in

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44. See Kim Economides, Int’l Ass’n of Law Schs., The Role of Law Schools in Founding and Reviving Legal Professionalism: The Need for Ethical Leadership 3 (2009) www.ialsnet.org/meetings/role/papers/EconomidesKim(UK).pdf (suggesting one form of oath, to “work diligently, honestly, with integrity and independence to the highest standards and do my utmost to uphold the rule of law, the democratic order, human rights, social justice, fair and expeditious process, and work toward the improvement and accessibility of the law, legal institutions and processes”); Bruce P. Elman, Int’l Ass’n of Law Schs., Creating a Culture of Professional Responsibility and Community Service: A Leadership Role for Law Schools 5 (2009), www.ialsnet.org/meetings/role/papers/ElmanBruce(Canada).pdf (suggesting public statement of “objectives” for school, aimed at “transmitting to students (i.e. our future lawyers) the view that they are now members of the legal profession and it is incumbent upon them to act with honesty and integrity”).

45. The United States Military Academy Cadet Honor Code, for example, emphasizes three simple questions for all students to ask themselves when facing ethical conflicts: (1) Does this action attempt to deceive anyone or allow anyone to be deceived? (2) Does this action gain or allow the gain of privilege or advantage to which I, or someone else, would not otherwise be entitled? (3) Would I be dissatisfied by the outcome if I were on the receiving end of this action? See Ronald A. Howard & Clinton D. Korver, Ethics for the Real World: Creating a Personal Code to Guide Decisions in Work and Life (2008). Similarly, the Emory University School of Law Professional Conduct Code emphasizes excellence, integrity, respect and service as “basic values shared by the entire Law School community.” See Emory School of Law, Professional Conduct Code Guide, (revised 2008), http://www.law.emory.edu/intranet/registrar/professional-conduct-code.html (including pledge form). The Code encourages students to “think beyond the boundaries of the Law School, to understand themselves as part of a larger professional context.” Id.


47. See Pearce, supra note 11; Deborah L. Rhode, Ethics by the Pervasive Method, 42 J. Legal Educ. 31 (1992). The Thomas M. Cooley Law School, for example, has committed itself to “ethics lessons in every class.” See Thomas M. Cooley School of Law, Creating a Culture of Professionalism in Law School: The
clinics and summer jobs, students might be encouraged to write and
speak (within the bounds of confidentiality) about any “good” lawyering
they observe, as well as any ethics difficulties they have encoun-
tered.48 In a university setting, or in other settings where ready
access to professionals from other disciplines (e.g., medicine, social
work, the ministry and others) may be had, law students might be
offered opportunities to “compare notes” with other budding profes-
sionals, to discuss what it means to be successful and ethical at the
same time.49

Students should also be taught, in some form, about the emotional
hazards of the profession.50 Stress, burn-out, depression, substance
abuse and many other common problems can be identified as potential
issues, and students might be given an opportunity to learn some es-
sential skills to monitor and remediate such problems in themselves
and their colleagues.51 Students should learn to recognize that many

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48. See Carnegie Report, supra note 4, at 9 (noting that students “see their experi-
ences with law-related employment after the first and second years of law school
as having the greatest influence on their selection of career paths”).
49. See Peggy Cooper Davis, Slay the Three-Headed Demon!, 43 HARV C.R.-C.L. L.
REV. 619, 623 (2008) (“Clinical and simulation work should guide students to
think critically about the interplay of logic, psychology and culture ”); V. Pualani
Enos & Lois H. Kanter, Who’s Listening? Introducing Students to Client-Cen-
tered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical
with professionals in other disciplines and, as such, students must be introduced
to such experiences); Janet Weinstein, Coming of Age: Recognizing the Impor-
tance of Interdisciplinary Education in Law Practice, 74 WASH. L. REV. 319
(1999); see also Stephen A. Rosenbaum, The Juris Doctor Is In: Making Room at
Law School for Paraprofessional Partners, 73 TENN. L. REV. 315, 317 (2008) (pre-
dicting that the presence and engagement of non-lawyer peers in law school could
“generate dialogue, reflection, and criticism” and “further open law schools to the
public they seek to serve”); Donald A. Schön, Educating the Reflective Legal Prac-
titioner, 2 CLINICAL L. REV. 231 (1995) (summarizing ways in which non-legal
professionals solve problems and suggesting application to the legal profession).
See generally Donald A. Schön, The Reflective Practitioner: How Profes-
50. See Steven C. Bennett, The Path to Partnership: A Guide for Junior Associ-
ates ch. 6 (2004) (addressing stress and burnout issues common to the legal
profession).
51. Such problems can manifest themselves even during the law school years. See
Stephen B. Shanfield & G. Andrew H. Benjamin, Psychiatric Distress in Law Stu-
dents, 35 J. LEGAL EDUC. 65 (1985); Kenneth M. Sheldon & Lawrence S. Krieger,
Understanding the Negative Effects of Legal Education on Law Students: A Lon-
gitudinal Test of Self-Determination Theory, 33 PERSONALITY & SOC. PSYCHOL.
such problems, if untreated, can lead to ethics violations of a very serious nature.52

Law schools could also encourage students to think of the practice of law as more than a “zero sum” game. Students must realize that integrity and reputation matter more to a “good” lawyer than client accolades, fees and victory at all costs. Students should be given opportunities to see lawyers as problem solvers and problem avoiders—learning to draft agreements that prevent disputes and to mediate and settle disputes where possible. Some understanding of the unique concerns for relationship preservation that may arise in practice (e.g., divorce proceedings, custody disputes, and conflicts among long-term business partners, to name just a few) can help students develop a more sophisticated concern for all the interests that may be affected by a legal matter.53

III. RESOURCES FOR LAW SCHOOL CHANGE

Many resources and organizations offer suggestions for enrichment of the law school experience. Many fine texts on professionalism, ethics and essential lawyering skills exist.54 In addition to the Carnegie Report, there is no shortage of commentary, found increasingly in the “blogosphere,” on potential methods for curriculum reform.55 Many effective new curriculum formats, moreover, have been developed and applied at various law schools.56 Efforts at developing “best practices”


53. See Clark D. Cunningham, How Can We Give Up Our Child? A Practice-Based Approach to Teaching Legal Ethics, 42 Law Teacher 312 (2008) (suggesting a need for consideration of the interests of all parties affected by dispute resolution).


56. See Carnegie Report, supra note 4, at 10 (citing examples of law school programs); see also Veryl Victoria Miles, Practice-Ready: A Law School Perspective on Bar Certification, 78 B. Examiner 13 (2009) (describing Catholic University competency training programs); Folden, supra note 35 (describing Santa Clara program).

Several organizations have devoted substantial resources to the development of more effective professionalism and ethics training for law students. The Institute for Law Teaching and Learning, associated with the Gonzaga and Washburn law schools, for example, is dedicated to helping law schools “provide a learning environment that helps students achieve the highest academic standards and prepares students to assume their responsibilities as effective, moral attorneys.”\footnote{See Mission of the Institute, Institute for Law Teaching and Learning, http://lawteaching.org/about/ (last visited May 31, 2010).} The Institute serves as a clearinghouse of ideas to improve the quality of law school education, and it offers numerous publications and conferences, among other resources.

Similarly, the National Institute for Teaching Ethics and Professionalism (“NIFTEP”) is a consortium of nationally-recognized centers on ethics and professionalism.\footnote{These centers include: The Louis Stein Center for Law and Ethics at Fordham University; The Mercer University School of Law Center for Legal Ethics and Professionalism; The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina; The Stanford Center on Ethics; and The W. Lee Burge Endowment for Law & Ethics at Georgia State University. About NIFTEP, National Institute for Teaching Ethics and Professionalism, http://law.gsu.edu/niftep/NIFTEP%20about.htm (last visited May 31, 2010).} NIFTEP, in association with the ABA Standing Committee on Professionalism and the Georgia Chief Justice’s Commission on Professionalism, offers similar resources and regularly conducts conferences on potential ways to improve the teaching of ethics and professionalism.\footnote{The NIFTEP home page appears at http://law.gsu.edu/niftep.}

The American Law Institute-American Bar Association (“ALI-ABA”) Continuing Professional Education Committee, in combination with the Association for Continuing Legal Education (“ACLEA”), recently conducted a two and one-half day “Critical Issues Summit,” subtitled “Equipping Our Lawyers: Law School Education, Continuing
Legal Education, and Legal Practice in the 21st Century." The purpose of the conference was to “study and respond” to the challenges facing today’s practitioners.

The resources for change, including those mentioned above and many others not discussed here, are more than sufficient. With luck, the ability to connect faculty, students, alumni, potential employers and other constituents through the internet and other tools may further speed the pace of change, as early success breeds imitation.

IV. BARRIERS TO LAW SCHOOL CHANGE

Despite long-standing recognition of the need for reform of legal education, law schools have demonstrated persistent and powerful resistance to change. As the President of the Association of American Law Schools wrote in 2005, “most students are experiencing a core curriculum that, at least superficially, looks very similar to the one I first encountered nearly fifty years ago.” More recently, for all its careful preparation and comprehensive scope, the 2007 Carnegie Report has encountered “widespread indifference” within the legal academy.

63. Id.
64. See DAVID I. C. THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE (2009) (outlining the potential role of technology in improved legal education); Eli M. Noam, Electronics and the Future of Law Schools, 17 J. CONTEMP. LEGAL ISSUES 51, 62 (2008) (suggesting that law schools may become increasingly differentiated in their curriculum, as electronic communication permits courses to be transmitted with greater ease).
65. See Posting of Peter Friedman to Geniocity.com, The Financial Crisis is an Opportunity for Innovation in Legal Practice and Law Schools, http://blogs.geniocity.com/friedman/tag/rankings/ (Apr. 2, 2009) (“Lawyers and judges have for a long time called for law schools to focus more on training lawyers (rather than teaching legal theory in a way that makes sense primarily to law professors, not lawyers or judges), and still the changes have been very, very slow and very, very minor.”); William Langer, Curriculum Reform In Context, 1870–2008: Understanding and Overcoming the Limitations of Contemporary Legal Education 1 (2008) (unpublished paper, available at http://works.bepress.com/william_langer/1/ (follow link entitled “Download the Paper”) (noting that although “case method” of study has “long been due” for an update, calls for reform have been largely unsuccessful).
67. See CARNEGIE REPORT, supra note 4, at 11 (predicting that “faculty and schools will have to overcome significant obstacles” to reform). Significantly, the Carnegie Foundation’s prior report (1914) calling for reforms in legal education outlined many of the same problems as in the 2007 report, to relatively limited
Resistance to change in law school teaching methods parallels similar problems in all manner of academic disciplines: the “checks and balances” inherent in the structure of academic departments, faculty preferences to teach what they want and know how to teach, diffusion of leadership and lack of agreement on a common vision as to goals and methods for achieving them.68 Law schools, in particular, are steeped in a culture of academic “competition and conformity” and seem to resist change even beyond the norms of most educational institutions.69 The strong desire to copy—and compete with—the “elite” schools produces, at a minimum, a conservative tendency to avoid risk in curriculum reform.70


69. See Susan Sturm & Lani Guinier, The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity, 60 VAND. L. REV. 515, 519 (2007) (“History is littered with failed reform efforts of this type. Many brilliant reforms do not take root because they overlook the crucial role of law school culture in determining their meaning and impact.”).

70. See Robert J. Borthwick & Jordan R. Schau, Gatekeepers of the Profession: An Empirical Profile of the Nation’s Law Professors, 25 U. MICH. J.L. REFORM 191, 194 (1991) (noting that five of the nation’s law schools graduated nearly one-third of all law professors teaching); James Lindgren & Allison Nagelberg, Are Scholars Better Teachers?, 73 CHI.-KENT L. REV. 925, 931 (1998) (“If teaching were the sole goal of American law schools, one would expect to see different cultures for instruction and different people hired.”); Nancy Rapoport, Eating Our Cake and Having It, Too: Why Real Change Is So Difficult in Law Schools, 81 IND. L.J. 359 (2006) (“We want to be one of the schools that are in the top 50. How can we be among the elite if we don’t look like—and act like—the other elite schools?”).
Moreover, law school curriculum reform is seen as a “tedious and often frustrating task,” such that, at best, when reform comes, “modest changes are made at the margin by adding one or two additional courses.” Such changes often involve hiring a few additional clinical faculty, rather than any change in the routines of the faculty as a whole. Law school faculty may view courses directed toward practice as of “secondary intellectual value and importance.”

Law school professors are often divided in their focus between the publish-or-perish demands of scholarship and the broader needs of student training. Law school teaching, moreover, is often such that “accreditation standards have substantially increased salaries and benefits for law faculty”; Jeffrey Evans Stake, The Interplay Between Law School Rankings, Reputations, and Resource Allocations: Ways Rankings Mislead, 81 Ind. L.J. 229, 242 (2006) (noting that a “corollary” of “homogenization” of law school programs is that “schools will find it unrewarding to seek a market niche”).
politcized, with waves of new challenges for control of the academy.\textsuperscript{75} In the absence of clear consensus, or an overwhelming external stimulus, reform movements often fail.\textsuperscript{76} The legal profession is highly stratified,\textsuperscript{77} and, despite the existence of national organizations such as the ABA, it is far from unified in its views on any topic of substance.

\textit{The Transformation of an Academic Discipline: Law Professors in The Past And Future (or Toy Story Too)}, 54 J. LEGAL EDUC. 471, 473 (2004) (noting that today, “law professors’ sense of themselves as primarily lawyers is crumbling,” contributing to lack of interest in profession as a whole in scholarship generated in law schools); Deborah L. Rhode, \textit{Legal Scholarship}, 115 HARV. L. REV. 1327 (2002) (noting that legal scholarship tends to focus on criticism, rather than offering practical solutions to legal problems); Edward Rubin, \textit{Should Law Schools Support Faculty Research?}, 17 J. CONTEMP. LEGAL ISSUES 139 (2008) (“Law schools are predominantly financed by student tuition payments, yet a significant proportion of their expenditures do not directly benefit the students, but rather support faculty research.”); Lawrence B. Slocum, \textit{Blogging and the Transformation of Legal Scholarship}, 84 WASH. U. L. REV. 1071 (2006) (noting that many law professors are only interested in having their work read by “high-quality readers” within the legal academy, not by the profession as a whole); Adam Liptak, \textit{When Rendering Decisions, Judges Are Finding Law Reviews Irrelevant}, N.Y. TIMES, Mar. 19, 2007, at A8; Encouraging Congress to Really Examine the Dramatic Unjustified Increase in the Cost of Law School, www.lawyersatisfactionblog.com (Nov. 9, 2009, 6:15 PM) (noting the “systematic withdrawal of the law school faculty into academic research and scholarship” which is “of little educational value to students [and] also means that the faculty is unavailable for administrative duties which would be a benefit to students, such as career counseling [and] course advice”).

\textsuperscript{75} See Brock Brower, \textit{The Law School and the Law}, HARV. MAG., Jan.–Feb. 2000, available at http://harvardmagazine.com/2000/01/the-law-school-and-the-l.html (quoting Arthur Miller: “[T]his is a professional school. I believe that our primary mission is to train people for a great profession that can be filled with honor and dignity. But what has happened is the demeaning of the law as a profession.”). Thus, over time, even institutions like Harvard have been wracked with controversy over teachers advocating “critical legal studies,” “law and economics,” “comparative law,” and various other views on law and legal systems. See also Hunter L. Prillaman, \textit{“Critical” Law School Faculty: A Practice Perspective}, 14 J. LEGAL PROF. 3 (1989) (noting the “nihilism” inherent in some forms of critical legal studies writing, where academics see “no absolute values” and view “law, justice and rights” as all “relative”) (internal quotations omitted).


\textsuperscript{77} Some lawyers consistently represent only plaintiffs or only defendants; some lawyers consistently represent only individuals or only large institutions; some lawyers practice consistently in small/solo firms or large/multi-office firms; some lawyers are specialists while some engage in general practice; and many lawyers are clustered in large urban centers while some are spread out in smaller cities and towns. \textit{See generally Andrew L. Kaufman & David B. Wilkins, Problems in Professional Responsibility for a Changing Profession} ch. 13 (2002) (discussing the demographics of the legal profession); David W. Neubauer & Stephen S. Meinhold, \textit{Judicial Process: Law, Courts, and Politics in the United
In short, to date, law schools have often encountered few strong incentives to innovate. Prospective students largely choose schools on the basis of prestige, not a “bang for the buck” calculus of the true value of the education conferred by a particular law school. Further, law firms and other legal employers often hire graduates based on similar perceptions of prestige, not value, in the skills base of their new recruits.

V. WILL THE MARKET FORCE CHANGE?

One legal academic, prognosticating on the future of the profession twenty years ago, noted many of the features that still exist in the profession today: growth in the number of U.S. lawyers; growth in the size of some law firms; and use of non-lawyers to conduct much of the business of law. This prediction of a “post-professional legal world” suggested that law schools could, in response, largely abandon their obligation to train lawyers:

The emergence of a post-professional world is obviously going to mean major changes, but those changes may involve some opportunities for us [legal academics], as well as some constraints. They may finally free us from the notion that the prime function of the law school is to train professional lawyers. At least for those law schools that are interested in seeing themselves as centers of knowledge about the legal process and about the larger society's relation to the legal process, it may represent a remarkable opportunity.

States ch. 5 (2006) (addressing the current state of “lawyers and legal representation”).

78. See Peter V. Letsou, The Future of Legal Education: Some Reflections on Law School Specialty Tracks, 50 Case W. Res. L. Rev. 457, 463 (1999) (noting that if the market for legal education were competitive, “law schools would be forced to adopt curricular changes demanded by consumers (i.e., law students), even if their faculties found those curricular changes distasteful”).


81. Id. at 674. Professor Galanter has emphasized in much of his recent writing that lawyers have become, in the intervening years, commonly viewed as morally deficient. See Marc Galanter, Lowering the Bar: Lawyer Jokes and Legal Culture 17 (2005); see also John Lande, An Appreciation of Marc Galanter’s Scholarship, 71 Law & Contemp. Probs. 147, 154–55 (2008) (arguing that Ga-
Yet, just the opposite has occurred. As the profession has grown in size, the number of very large law firms expanded, and the use of contract lawyers, outsourcing and other cost-cutting measures has intruded. Over time, the legal profession has increasingly demanded change in the academy—not to become more theoretical, inter-disciplinary and divorced from the “real world,” but to focus more on lawyering, professionalism and inculcating values.82 Why? Some of the essential market forces, which may ultimately work to change the pattern of law school education, are outlined below.

A. Economics of the Profession

One observer calls it “the perfect storm.”83 In the years leading up to the recent recession, graduates of elite law schools were virtually assured of high paying and high prestige jobs, whether they had obtained substantive skills or not. Huge endowments and ever-increasing tuition (fueled by mountains of student loans) further insulated legal educators.84 Further, the legal academy was dominated by grad-

82. See CARNEGIE REPORT, supra note 4, at 7 (“Compared to 50 years ago, law schools now provide students with more experience, more contextual experience, more choice and more connection with the larger university world and other disciplines. However, efforts to improve legal education have been more piecemeal than comprehensive.”); see also Gary A. Munneke, Legal Skills for a Transforming Profession, 22 PACE L. REV. 105, 135–36 (2001) (noting that, since the early 1990s, “change in legal education has accelerated”); INSTITUTE OF LAW TEACHING AND LEARNING, CHART OF LEGAL EDUCATION REFORM (2009), http://lawteaching.org/publications/ILTLchartoflegaleducationreform200905.pdf (listing changes in curriculum at most law schools).

83. David Thomson, Law School 2.0 (U. of Denver Legal Stud. Research Paper No. 08-27, 2008), available at http://ssrn.com/abstract=1162928; see also Aric Press, The Change Agenda: Can You Hear the Ice Melting?, AM LAW DAILY, Nov. 30, 2009, http://amlawdaily.typepad.com/amlawdaily/2009/11/changeintro.html (noting “litany of layoffs, deferrals, partner departures, and embraces of so-called competency models” within legal profession, in past year); Will College Students Continue To Remain Ill-Informed About Law Schools?, www.lawyersatisfactionblog.com (Nov. 11, 2009) (“Law schools are under attack from all quarters: including law firms asking that the law schools prepare their students to practice law; students who are paying so much and often believing that they are getting so little; the ABA for inadequate teaching methods and devoting too much time to academic research.”).

84. See H. Reese Hansen, Being a Law School Dean in these Challenging Times (Int’l Assoc. of Law Schs., Working Paper, 2009), available at www.ialsnet.org/meetings/role/papers/HansenHReese(USA).pdf (2009) (noting “stark new realities” in which “demand for legal education may not, in fact, continue to increase over the longer term,” students “may not always be willing to pay higher and higher tuition,” student “willingness to incur large student loans to go to law school may decrease because their future earning capacity as lawyers has become doubtful,” private donors and foundations may not “continue to be generous in their support
uates from the elite schools, further ensuring a self-perpetuating in-group view of the function of law school.  

Today, however, with global economies strained, and with even the largest businesses facing bankruptcy or requiring government aid, the market for legal services has contracted, and law firm profits have eroded or disappeared. Not surprisingly, clients have demanded cost-saving measures wherever possible. In particular, they have begun to insist that junior lawyers at law firms add value to the pro-


86. See Is Law A “Mature” Industry?, http://www.professorbainbridge.com/professorbainbridgecom/2009/07/is-law-a-mature-industry.html (July 9, 2009) (suggesting that law may be a “mature industry,” where “growth in the demand for lawyers [will] slow until it reaches a level that can be sustained by population and economic growth”).


ject teams on which they are staffed,\textsuperscript{89} and in some cases have insisted that “grunt” legal work be outsourced to lower-cost service providers.\textsuperscript{90} The inability of law firms to absorb large quantities of law school graduates, to pay them handsomely for novice work, and to return contributions to school endowments could dramatically affect the economics of law school administration.\textsuperscript{91}


\textsuperscript{91} See \textit{Nat’l Inst. for Trial Advocacy, The Future of Legal Education: A Skills Continuum 3} (2009), available at http://www.nita.org/library/documents/PDF/Future_of_Legal_Education.pdf ("In our view, as market power shifts towards clients, changes will be forced earlier into, to borrow a phrase, the ‘value-chain’ that creates a seasoned, experienced attorney. Specifically, clients will force change onto law firms. Law firms, in turn, will exert pressure on bar associations and
A recent survey indicates that U.S. law firms—across the board in terms of size, geography and practice areas—saw decreases in virtually all key financial performance metrics in the past year. The result has been a very substantial decrease in employment of lawyers, at least in law firms, nationwide. Several very well-known law firms, other CLE providers, which they use in part to train their existing associates, and law schools, which train their future associates. Indeed, while . . . the legal profession has been talking about the gaps between skills needed and skills taught for many years, only now, as clients increasingly vote with their dollars to demand such skills has the potential for deeper change become real.


92. See Christopher S. Rugaber & Daniel Wagner, Surveys: Hiring to Remain Weak Early Next Year, ABC News (Dec. 8, 2009), http://abcnews.go.com/Business/wirestory?id=9279726&page=1 (noting that even graduates of Ivy League law schools find themselves unemployed and applying for jobs in unusual places, such as the Midwest); Ameet Sachdev, Law Firms: Economy Demands Attorneys Deliver Value, Chi. Trib., Dec. 29, 2009, http://articles.chicagotribune.com/2009-12-29/news/0912280333_1_sonnenschein-nath-rosenthal-law-firms-national-law-journal (“In 2009, there were signs of change in the traditional business model in which law firms leverage layers of high-priced junior lawyers who bill by the hour, which critics say gives lawyers an incentive to work inefficiently. The most glaring, and painful, were the work-force reductions borne out of the recession that cut demand for legal services.”); Ross Todd, Legal Sector Loses 2,900 Jobs in November, Am. Law., Dec. 4, 2009, http://www.law.com/jsp/LawArticlePC.jsp?id=1202436059485; Debra Cassens Weiss, BigLaw Laid Off More Than 12,000 Peo-
moreover, have disappeared entirely through bankruptcies and mergers.94 As a result, large firms are hiring (and retaining) far fewer law students than in prior years95 and paying them less.96 Demand for
highly-skilled lawyers who are able to immediately plug into the economics of a firm is at an all-time high. Alternate billing (“fixed fee” and other structures), increasingly demanded by cost-conscious clients, may put a premium on highly efficient completion of work. Many firms have begun to revise their “lockstep” compensation structures, in favor of systems that reward junior lawyers based on their skill levels. A fundamental, and permanent, change in how law schools educate law students can be expected to follow.  

97. See Gerding, supra note 93 (“[T]hese [economic] pressures [on law firms] will push law schools to improve the training of law graduates so that they are ready on ‘day one.’ Helping students in a tougher economic market supports the Carnegie/ABA best practices reforms that have been discussed so much.”); Jones, supra note 93 (“Fewer people will go to law school, and law school will be . . . different. Perhaps the focus will be more on teaching students how to draft interrogatories than on reading John Rawls.”); William D. Henderson, Are We Selling Results or Résumés?: The Underexplored Linkage Between Human Resource Strategies and Firm-Specific Capital, (Ind. Legal Studies Research Paper No. 105, Apr. 2008), available at http://ssrn.com/abstract=1121238 (“[A]s firms have attempted to pass these costs along to clients, many have responded by requesting that no junior associates be assigned to their matters . . . .”).  


change in the economics of legal services appears to be underway. 100

Firms increasingly express interest in transitional training, to provide recent law school graduates the necessary skills to become more effective, more rapidly, than in the traditional system. 101 Many local bar associations, moreover, offer “bridge the gap” training to aid the transition from law school to full time practice. These programs cost money and take time for firms and bar groups to develop and implement. Some firms, faced with such costs, may insist that recent law school graduates “pay” for such training in the form of reduced salaries during transition, while they receive “remedial” education in the lawyering skills they did not receive in law school. 102 The profession

100. See Tamara Loomis, Don’t Look Back, Am. Law., Nov. 2, 2009, http://www.law.com/jsptal/PubArticleTAL.jsp?id=1202435116048 (“What happens when the economy recovers? Will things go back to how they were? The answer, according to law firm and law school leaders, is no. They say that the recession and events leading up to it have permanently changed the way business is done in the legal industry.”).


102. See In Defense of Law Schools, Posting of J.B. Ruhl to PrawfsBlawg, http://prawfsblawg.blogs.com/prawfsblawg/2009/07/in-defense-of-law-schools-by-jb-ruhl-fsu-law.html (July 10, 2009, 1:33 P.M.) (“BigLaw law firms want more and more to be able to charge new associates’ billable hours they can justify to clients, but want less and less to bear the cost of getting the new lawyers ‘fully functional.’”); Jeff Jeffrey, Law Firm Apprentice Programs Add Extra Step for New Associates, Nat’l L.J., June 30, 2009, http://www.law.com/jsptal/PubArticleNLL.jsp?id=1202431845167 (“For the firms, there’s a cost savings from cutting salaries and, in most cases, the size of their classes—though they lose some billable hours, and there are costs for starting up the program. They also get the benefit of telling clients that they don’t have to pay for new associates (at least directly). Firm leaders contend that they’ll build associate loyalty and, by the time they are fully ready to take on clients, they’ll be more efficient earners.”); Brian Kumnick, Lower Pay, More Training: Howrey to Try an Apprenticeship Program, FindLaw,
may eventually demand that such skills be taught by the law schools themselves. Indeed, one prominent proponent of change in legal education suggests that practicing lawyers should make clear to underperforming schools that the profession is “displeased with their performance,” and “take action” if schools are not responsive. Some firms, moreover, may reassess their hiring practices, choosing recruits based on proven skill capabilities rather than on the basis of the prestige of their school.

For law students themselves, the cost of a legal education increasingly may produce skepticism about the value of the skills transmit-

See Meredith Hobbs, Experts: Lower Associate Pay Is Here to Stay, Fulton County Daily Rep., Nov. 5, 2009, http://www.law.com/jsptx/PubArticleTX.jsp?id=1202435216222 (“It costs partners money to train associates without billing for their time. The economics of these programs don’t look good to partners . . . .“) (quotation marks omitted); Paul Lippe, Welcome to the Future: Time for Law School 4.0, AmLaw Daily, June 22, 2009, http://amlawdaily.typepad.com/amlawdaily/2009/06/school.html (“[G]eneral counsel are pushing for big discounts for junior associate time, and law firms are deleveraging, which means straight-from-law-school-hiring is going to drop for at least three years and probably for ever . . . . Law schools will have to produce fully functioning lawyers who can quickly become economically viable—not just proto appellate clerks. . . . [L]aw schools are the logical source (although realistically, today, not the most fully competent source) of skills (as well as reputation and network) development for lawyers to become fully functional, especially as firms’ appetite for subsidizing training will decline.”); see also James A. Fanto, When Those Who Do Teach: The Consequences of Law Firm Education for Business Law Education, 54 Ga. L. Rev. 839 (2000) (urging law professors to learn education strategies from in-house training methods).


For many students, law school has traditionally represented merely a matter of survival of an ordeal, a way station on the road to a law license. In a down economy, however, students may come to demand that schools justify the high cost (and debt) associated with legal education and place them in the best position to compete successfully.


107. DAISY HURST FLOYD, THE DEVELOPMENT OF PROFESSIONAL IDENTITY IN LAW STUDENTS 3 (2002), available at http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/daisy.pdf (“[Law students] have very little conception that the three years they spend in law school affect the rest of their lives; they more often see law school as a way to obtain a license to practice law and a job as a lawyer.”). Many popular training texts for law students appeal to the image of law school as a matter of survival. See, e.g., JEFF ADACHI, LAW SCHOOL SURVIVAL KIT (Robert Uchida ed., Survival Series Publishing Co. 2005) (1996). Some research suggests that the common image is true. See Karen M. Sheldon & Lawrence S. Krieger, Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being, 22 BEHAV. SCI. & L. 261, 283 (2004) (“[V]arious problems reported in the legal profession, such as depression, excessive commercialism and image-consciousness, and lack of ethical and moral behavior, may have significant roots in the law-school experience.”).

cessfully after graduation.\textsuperscript{109} Moreover, the number of new law schools has continued to expand,\textsuperscript{110} putting pressure on all the schools


Students and practitioners have begun to harness the power of the internet to share information about law schools and the legal profession, making comparisons of schools and their programs more widely available. Some signs appear to confirm that prospective law students may choose among schools, at least in part, based on their ability to deliver practical skills training.

These kinds of demands from the principal constituents in the legal education process may force law schools to consider necessary changes in the direction of their programs. Similar pressures have forced school administrators in other disciplines to determine what...
“key stakeholders” (i.e., students and recruiters) value in business and medical school education.115

B. Access to Information

Law school administrators and academics care very much about their positions relative to other schools in the overall law school universe. The U.S. News & World Report ranking of law schools, for example, has become a dominant force shaping the behavior of law school administrators and faculty committees.116 Multiple criticisms of the rankings have arisen.117 The Law School Admission Council

the changes [the Carnegie Report] suggested, including more focus on practical skills."


advises that the rankings are “unworthy of being an important influence” on the choices students make in law school applications. The rankings have also received criticism for their potential effects on mi-

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WHEN WILL LAW SCHOOL CHANGE?

Nority admissions to schools. Other commentators, however, suggest that the rankings are an appropriate attempt to provide prospective students with a tool for comparison. Distortions in the U.S. News & World Report rankings can, at least in part, be corrected or highlighted to avoid misunderstandings. Many of the factors that the U.S. News rankings do not measure,
moreover, can be factored into alternative ranking systems. Many such alternate rankings now exist. These alternate rankings and surveys may offer useful information on the ethics and professionalism training provided at various schools. They may also offer some indication of career prospects for students, which is not generally available from conventional lists. One ranking, for example, attempts to measure the number of “super” lawyers that various law schools have produced. Such surveys and rankings could be extended. A number of surveys, for example, rank law firms on various qualities.


127. The American Lawyer, for example, annually produces listings of law firms that include measures of prestige, profitability and associate satisfaction, among others. See AMERICAN LAWYER SURVEYS AND RANKINGS, http://www.law.com/
ory, it should be possible to determine whether there is a link between law school attended and placement into, and ultimate success within, a law firm or other law job generally considered “desirable” or “undesirable” by graduates.\textsuperscript{128} Another measure of the perceived value of a school might be the relative rates of graduate contributions to the school, measured in both money and time.\textsuperscript{129} Rating of the teaching capabilities of individual faculty members is also theoretically possible, although it undoubtedly would be controversial.\textsuperscript{130} Although no single, perfect ranking system exists, access to these kinds of alternative rankings may “stimulate and strengthen” academic resolve to improve legal education.\textsuperscript{131}

C. Focus on Outcome Measures

Traditionally, in measuring the quality of law schools, the central focus has been on “inputs” (the number of volumes in a school’s li-
brary, for example). The profession has begun to focus, in a very organized way, on the outcomes associated with legal education. Such outcome measurement “changes behavior and alters powerful norms.” The ABA Section of Legal Education and Admissions to the Bar recently proposed standards on “student learning outcomes” which suggest that law schools must at least identify, define and disseminate the form of learning outcomes they seek to impart to graduating students. The precise shape of the ABA outcome standards has yet to be determined.


Existing outcome measurements include bar passage rates. Some ten states, moreover, have agreed to begin using a form of "universal" bar examination in the next few years. The uniform bar examination, once seen as a "radical" idea, has taken hold as a concept, in part because a "terrible" job market leaves many law students "unable to tell" what state they may end up working in after the examination. Such a system, among other things, might encourage students to consider preparing for the uniform examination as part of their final semesters in law school. Earlier focus on entry into the profession, in turn, could lead law schools to reformulate their third

136. See Douglas K. Rush & Hisako Matsuo, Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at a Midwestern Law School, 57 J. LEGAL EDUC. 224 (2007) (indicating that bar passage rates are not affected by taking bar courses in law school); Posting of Roy Stuckey to Best Practices for Legal Education, http://bestpracticeslegaled.albanylawblogs.org/2008/07/25/335/ (July 25, 2008) (noting that, nationwide, 25% of law students do not pass bar the first time, which suggests that schools "do not focus on providing their students the information and skills that are required"). Others suggest that bar passage rates may not serve as an effective measure of the quality of legal education. See Comments of the Clinical Legal Education Association to the ABA Standards Review Committee (Oct. 1, 2009), available at http://www.abanet.org/legaled/committees/comstandards.html (select “Comments of CLEA, Outcome Measures Subcommittee Document, October 2009”) (suggesting that “[b]ar passage does not measure the full extent of a law graduate’s proficiency”).


139. See CARNEGIE REPORT, supra note 4, at 9 ("Law schools could give new emphasis to the third year by designing it as a kind of ‘capstone’ opportunity for students to develop specialized knowledge, engage in advanced clinical training, and work with faculty and peers in serious, comprehensive reflection on their educational experience and their strategies for career and future professional growth."); Erica Moeser, President’s Page, BAR EXAMINER, Aug. 2009, 4, at 4, available at https://secure.ncbex.org/uploads/user_docrepos/780309_PresidentsPage.pdf (arguing
year curriculum to focus more on transition into the profession. Perhaps most significantly, a uniform bar examination could ensure uniform grading of examinations, which would improve the comparability of outcome measures that is currently impossible given the highly variable individual state bar passage rates.

Outcome measures might also include some forms of certification for specialty capabilities. Certifications of this type already exist for such areas as patent practice. Similar programs have been developed in other jurisdictions and in other professions. More generally, outcome measures could include information on employ-
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ment rates, income, and even job satisfaction after graduation.146 Such measures, if properly attuned to the essential skills and values required of lawyers, could further encourage law school curricular reform.147 Such information, moreover, should permit systematic study of the relationship between particular teaching practices and professional outcomes for students.148 Thus, outcome measures can help en-

146. See Sally Kift, Harnessing Assessment and Feedback to Assure Quality Outcomes for Graduate Capability Development: A Legal Education Case Study (2002) (unpublished manuscript for 2002 Australian Association for Research in Education conference), available at http://www.aare.edu.au/02pap/kif02151.htm (outlining essential competencies required for law students); Outcome Measures And Regulatory Failure In Legal Education, Posting of William Henderson to Legal Profession Blog, http://lawprofessors.typepad.com/legal_profession/2009/11/a-starting-point-for-law-school-outcome-measures.html (Nov. 12, 2009) (suggesting that law students are primarily interested in bar passage, employment, and debt load outcomes). Professor William Henderson, among others, has criticized the suggestion that each school determine for itself which outcomes it will measure. See Outcome Measures, supra (arguing that the ABA-proposed standards on outcome measures would only serve to tell law schools: “[D]o what you want to do, but try a little harder. When something works well, and most schools adopt it, the Section can implement it as the new rule. That way we can avoid difficult decisions that will upset our friends.”). In addition, Henderson suggests that outcomes data should be provided in the most helpful form. Drawing the Right Lessons [sic] from the Bleak Entry-Level Legal Job Market, Posting of William Henderson to Legal Profession Blog, http://lawprofessors.typepad.com/legal_profession/2009/09/historical-perspective-on-the-bleak-entry-level-law-market.html (Sept. 3, 2009) (“It is not helpful to say that 15% of a school’s graduates work in business—they need to know how many of those 15% are waiting tables, driving a cab or selling insurance.”); see Andrew P. Morriss & William D. Henderson, Measuring Outcomes: Post-Graduation Measures of Success in the U.S. News & World Report Law School Rankings, 83 IND. L.J. 791, 794 (2008) (arguing that the ABA and AALS should “collect, aggregate, verify, and publish the data necessary to facilitate accurate and meaningful comparisons of various post-graduation outcomes”).

147. See Bedford T. Bentley, Jr., Rethinking the Purpose of the Bar Examination, Bar Examiner, Feb. 2009, 15, at 18, available at https://secure.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf (arguing that the implementation of a uniform bar examination presents the “perfect occasion” for explicitly setting forth what “knowledge and skills a new lawyer should possess”); Mary Kay Kane, A Uniform Bar Exam: One Academic’s Perspective, Bar Examiner, Feb. 2009, 19, at 19–20, available at https://secure.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf (noting that a uniform examination may encourage law school curricular change “focusing at its core on those skills, values, and doctrines that will be needed wherever graduates may ultimately practice”).

courage experimentation in legal education and help confirm and disseminate effective new teaching methods.149

VI. CONCLUSION

Must we destroy law school in order to save it? Almost certainly not. The changes outlined in the Carnegie Report, in the ABA’s draft standards on student learning outcomes, and in a host of other recommendations for reforms and improvements over the past several years, do not require wholesale change in the operations and organization of American law schools.150

A focus on ethical and professional enrichment of the law school experience need not displace existing customs in legal education.151 Even strong advocates of experiential learning, for example, recommend retention of the first year system, in which students are exposed to basic subjects and taught fundamental methods of legal analysis and research.152 Further, curriculum changes will not necessarily impose huge additional costs on schools.153 The cost of pressing for “prestige” elements in a school (e.g., high salaries to capture academic


150. The Carnegie Report calls for an “integrated” curriculum, which includes conventional teaching of legal doctrine and analysis, supplemented by an “introduction to the several facets included under the rubric of lawyering, leading to acting with responsibility for clients” and “exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession.” Carnegie Report, supra note 4, at 8.


152. See Dean Larry Kramer Explains Why First Year “Works” Best, Posting by Douglas A. Berman to Law School Innovation blog, http://lsi.typepad.com/lsi/2006/10/dean_larry_kram.html (Oct. 29, 2009) (quoting Dean Kramer of Stanford Law: “The first year . . . is the part of law school that really seems to work. The problem with legal education is [that] the second and third year consists mainly of failing to keep students engaged by offering them something of equivalent educational and intellectual value to what they got in the first year.”).

153. See Carnegie Report, supra note 4, at 11 (citing “less resource-intensive strategy” for more “integrated” curriculum). The Carnegie Report, moreover, notes the potential benefits to “doctrinal” faculty members from “complementary” involvement in observing or teaching lawyering courses and clinics, which may “increase the faculty’s mutual understanding of each other’s work.” Id. at 9, 11 (“Greater coherence and integration in the law school experience is not only a worthy project for the benefit of students; it can also incite faculty creativity and cohesion.”).
“superstars”) may actually be greater than the cost of developing a practical, professionalism-centered curriculum.\(^{154}\) Some experiential courses, such as legal writing, can easily be adapted to offer additional practical training and experiences for students.\(^{155}\) The aim is not simply to add more to the teaching burdens at law schools\(^{156}\) or to teach students everything they could possibly need to know to practice law. Rather, the goal must be to provide an introduction to, and experience with, essential professionalism skills and habits that will permit graduates to make the transition into practice with relative ease.\(^{157}\)

The teaching of ethics and professionalism, moreover, can coexist with the Socratic method, so valued as an essential element of legal education.\(^{158}\) Such teaching is an appropriate extension of the traditional method, encouraging students to supplement pure legal reasoning with self-awareness and analysis of what truly matters to them.\(^{159}\) Indeed, because traditional methods of lecture and analysis can produce confusion, cynicism, and misunderstanding in some students, the addition of professionalism training may offer the perfect antidote to prevent students from becoming “not Socrates, but [one of]

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156. The Carnegie Report calls for “integration” of the “what,” “how” and “why” of the law (i.e., substantive law, practical applications and strategies, and ethics) and suggests that “[a]dding more requirements to the student’s curriculum fails to get at this problem . . . because it is precisely how to integrate the acquisition of conceptual knowledge and competence with ethical intention that is in question.” CARNEGIE REPORT, supra note 4, at 58.

157. See Memorandum from the Ad Hoc Working Group on Outcome Measures to the Standards Review Committee, Sec. of Legal Educ. & Admissions to the Bar, Am. Bar. Ass’n, (Sept. 29, 2009), available at http://www.abanet.org/legaled/committees/comstandards.html (select “Comment-Outcomes Measurement, Outcomes Measurement, Working Group, October 2009”) (indicating that professional schools “cannot directly teach students to be competent in any and all situations,” the essential goal must be to “form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity to pursue genuine expertise,” and the focus must be on “entry-level proficiency in professional skills”) (emphasis omitted).

158. See Jack L. Sammons, Traditionalists, Technicians, and Legal Education, 38 GONZ. L. REV. 237, 247 (2003) (“S]chools should apply technicians’ means to traditionalists’ ends and, in the process, add substance to the former and method to the latter.”).

159. As Richard Weisberg, a director of Holocaust and Human Rights Studies at Cardozo concludes, lawyers must be prepared to protest against gross injustice, or risk sinking into a “loose professionalism,” with no real core values. Richard H. Weisberg, Loose Professionalism, or Why Lawyers Take the Lead on Torture, in TORTURE: A COLLECTION 299 (Sanford Levinson ed., 2004).
the Sophists.”160 As the Carnegie Report has summarized: “the formation of competent and committed professionals deserves and needs to be the common, unifying purpose161 of all law schools.


161. Carnegie Report, supra note 4, at 10, 11 (“The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens’ loyalty.”).