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## When Will Law School Change?

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# When Will Law School Change?

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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.”<sup>1</sup> 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.<sup>2</sup> Most importantly, although

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1. See *THE PAPER CHASE* (20th Century Fox 1973); see also Karen L. Rothenberg, *Recalibrating the Moral Compass: Expanding “Thinking Like a Lawyer” into “Thinking Like a Leader”*, 40 U. TOL. L. REV. 411, 412 (2009) (noting concerns that “law schools focus too heavily on teaching skills for legal analysis while neglecting students’ training regarding the ‘social consequences or ethical aspects’ of that legal analysis”); Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 960 (2005) (arguing that Socratic method applied by Professor Kingsfield “teaches highly relevant and practical skills”). See generally ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* (2007).

2. See *Law School Innovations Result in Broader Students*, COMPLETE LAWYER, Sept. 10, 2007, <http://www.thecompletelawyer.com/volume3/issue5/article.php?>

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).<sup>3</sup> The recent *Carnegie Report*,<sup>4</sup> an independent external review of law school teaching practices<sup>5</sup> 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.<sup>6</sup> These concerns, moreover, have appeared in a series of prior studies and reports.<sup>7</sup>

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ppaid=4441 (“We have students for three years. But we really teach them only one thing—how to ‘think like a lawyer’—and it doesn’t take three years to do that.”) (interview with Larry Kramer, Dean, Stanford Law School).

3. See Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer’s Professional Identity*, 28 MISS. C. L. REV. 339, 340 (2009) (noting that teaching ethics in law school is “overwhelmingly” focused on “knowledge and analysis of rules”); Timothy W. Floyd & John Gallagher, *Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding*, 59 MERCER L. REV. 941, 957–58 (2009) (“Knowledge of legal rules, however, is no guarantor of ethical conduct. . . . A rule-based approach to ethics will often fail us when the landscape is exceptional.”).
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”).
6. See Nelson P. Miller & Heather J. Garretson, *Preserving Law School’s Signature Pedagogy and Great Subjects*, MICH. B.J., May 2009, at 46 (reviewing *Carnegie Report* conclusions and noting, “Learning to think like a lawyer is alone not enough to make a competent lawyer. A lawyer must integrate skills and ethics into law’s large and profound knowledge base.”).
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.<sup>8</sup> 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?<sup>9</sup> No magic solutions appear,

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*Law*, 50 LOY. L. REV. 623 (2004) (suggesting that many law school faculty members have “lost touch with the realities of day-to-day practice”); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); John Burwell Garvey, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F.L. & SOC. CHANGE 101, 107–14 (2009) (reviewing prior recommendations for reform of legal education); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991) (calling for more traditional doctrine-oriented teaching); Kate Litvak, *Blog as a Bugged Water Cooler*, 84 WASH. U. L. REV. 1061 (2006) (noting drift of law schools away from legal practice and toward law-related theories); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998). Significantly, the concerns regarding professionalism and ethical training may be linked. One survey of the causes of disciplinary violations (in New York State) suggested that “the legal profession’s most pervasive, and intractable, problem is the inadequate quality of legal services.” RICHARD L. ABEL, *LAWYERS IN THE DOCK: LEARNING FROM NEW YORK DISCIPLINARY PROCEEDINGS* 519 (2008).

8. Much of this scholarship follows similar research and experimentation at the university level. See, e.g., Anne Colby & William M. Sullivan, *Strengthening the Foundations of Student Excellence, Integrity and Social Contribution*, 95 LIBERAL EDUC. 22 (Winter 2009) (noting surveys of college administrators suggesting that “core” elements of university level education should include inculcation of ethical values: striving for excellence; cultivating personal and academic integrity; contributing to a larger community; taking seriously the perspectives of others; and developing competence in ethical and moral reasoning); see also HANDBOOK ON MORAL AND CHARACTER EDUCATION (Darcia Narvaez & Larry P. Nucci eds. 2008); ASS’N OF AM. COLLS. & UNIVS.: NAT’L LEADERSHIP COUNCIL FOR LIBERAL EDUC. & AMERICA’S PROMISE, *COLLEGE LEARNING FOR THE NEW GLOBAL CENTURY: A REPORT FROM THE NATIONAL LEADERSHIP COUNCIL FOR LIBERAL EDUCATION AND AMERICA’S PROMISE* (2007).
9. As one commentator puts the matter, law schools must begin to train students for “ethical leadership” in their professional lives. Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358 (2009); see Neil W. Hamilton & Verna Monson, *The Empirical Relationship of Professionalism to Effectiveness in the Practice of Law* (U. of St. Thomas Legal Studies Research Paper No. 09-22, 2009), available at <http://ssrn.com/abstract=1495824>; Neil W. Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470 (2008). Put another way, future

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.<sup>10</sup>

## 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.<sup>11</sup> 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.<sup>12</sup>

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professionals need to develop a form of “practical wisdom.” See Mark Neal Aaronson, *We Ask You to Consider: Learning about Practical Judgment in Lawyering*, 4 CLINICAL L. REV. 247 (1998); Alan M. Lerner, *Law and Lawyering in the Workplace: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers*, 32 AKRON L. REV. 107 (1999); Barry Schwartz & Kenneth E. Sharpe, *Practical Wisdom: Aristotle Meets Positive Psychology*, 7 J. HAPPINESS STUDS. 377 (2006).

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> (“[E]ye-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.”).
11. See DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 190 (2000) (“The diversity in America’s legal needs demands corresponding diversity in its legal education.”). For example, several law schools, founded on a religious tradition, strive to include religious perspectives in their educational program. See Russell G. Pearce, *The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 FORDHAM L. REV. 1075 (1998); Amelia J. Uelmen, *An Explicit Connection Between Faith and Justice in Catholic Legal Education: Why Rock the Boat?*, 81 U. DET. MERCY L. REV. 921 (2004).
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 HARV 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 Stuckey, *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.<sup>13</sup> Under the case method, students read judicial opinions, typically from appellate courts, which interpret and apply the law to a particular set of facts.<sup>14</sup> 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.<sup>15</sup> The case method, moreover, teaches students to

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ing. Consequently, newly admitted lawyers in the United States are ill-prepared to represent common people who have common legal problems.”). Practical experience in law school, moreover, may help produce a more tolerant and socially aware profession. See Susan Bryant, *The Five Habits: Building Cross-Cultural Competency in Lawyers*, 8 CLINICAL L. REV. 33 (2001); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002).

13. See PHILLIP C. KISSAM, *THE DISCIPLINE OF LAW SCHOOLS: THE MAKING OF MODERN LAWYERS* (2003); Edward Rubin, *What’s Wrong with Langdell’s Method, and What To Do About It*, 60 VAND. L. REV. 609 (2007); John O. Sonsteng, *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303 (2007) (reviewing history of legal education in the United States); Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429 (1981). Ironically, prior to Langdell’s innovation, many lawyers learned their craft through an apprentice system similar to what some propose as a professional reform today. See Laura I. Applebaum, *The Rise of the Modern American Law School: How Professionalization, German Scholarship, and Legal Reform Shaped Our System of Legal Education*, 39 NEW ENGL. L. REV. 251 (2005); Talbot D’Alemberte, *Law School in the Nineties*, 76 A.B.A. J. 52, 53 (1990) (“Our insistence that we are part of the academy and our insistence that we are not a trade school has actually led us to cut ourselves off from the people who have things to say to our students, people from the profession, and people from other schools in the university.”); John E. Dunsford, *Nihilism and Legal Education*, 31 ST. LOUIS U. L.J. 27, 30 (1986) (noting that law schools operate “halfway between Plato’s Academy and vocational training”); Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965 (1999); James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83 (1991).
14. Recent reforms to legal curriculum (at least at some schools) may also include treatment of the statutory and regulatory aspects of law, its international (comparative) component, and treatment of the “complicated amalgams of facts, law, and ethical issues that arise in the work of today’s lawyers.” Elena Kagan, *The Harvard Law School Revisited*, 11 GREEN BAG 475, 478 (2008).
15. The CARNEGIE REPORT explains that the “case-dialogue” method unquestionably helps students to “think like a lawyer.” CARNEGIE REPORT, *supra* note 4, at 5 (noting the “pedagogical power” of this “first phase of legal education,” which is

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.<sup>16</sup> Significantly, law students largely work independently.<sup>17</sup> In short, traditional law school courses may lack significant “real world” connections.<sup>18</sup>

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

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“an accomplishment of the first order”). Yet, the case method is a “deliberate simplification” of some of the “central aspects” of lawyering. *Id.*; *see id.* at 6 (“Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual practice.”). Thus, students need to learn to “think like a lawyer in practice settings.” *Id.* at 9.

16. *See* Cameron Stracher, *Meet the Clients*, 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, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 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).
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, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233 (2008).
18. *See* NALP, June 24 Future of Lawyer Hiring Roundtable, *Future Holds More Student & Lawyer PD, Not Less: Emphasis Will Be On Practical Training, Business Skills*, Sept. 2009, [http://www.nalp.org/uploads/0909\\_Roundtable.pdf](http://www.nalp.org/uploads/0909_Roundtable.pdf) (last accessed May 31, 2010), *reprinted from* NAT. ASSOC. FOR L. PLACEMENT BULL. (NALP, Washington, D.C.) (“The client isn’t interested in legal issues. The client is interested in solving a problem or achieving a certain goal. . . . And then there’s judgment.”). One recent survey of a wide array of law schools emphasized the gap between traditional training in “thinking like a lawyer” and the need for more emphasis on professionalism as an essential element of the law school experience. LAW SCH. SURVEY OF STUDENT ENGAGEMENT, 2008 ANNUAL SURVEY RESULTS, STUDENT ENGAGEMENT IN LAW SCHOOLS: PREPARING 21ST CENTURY LAWYERS 3 (2008), *available at* [http://lssse.iub.edu/2008\\_Annual\\_Report/pdf/j4u5h7e9/LSSSE\\_2008\\_Annual\\_Report.pdf](http://lssse.iub.edu/2008_Annual_Report/pdf/j4u5h7e9/LSSSE_2008_Annual_Report.pdf) (“[W]hile in aspiration much of legal education is starting to move beyond an exclusive focus upon ‘thinking like a lawyer,’ in practice the schools generally have a long way to go to make those aspirations real achievements”); *see also* Fischer, *supra* note 16, at 480 (noting the “gap” between law schools, which focus on reading cases, and the practice of law, where new lawyers may go days or weeks without ever reading a case); Antoinette Sedillo Lopez, *Leading Change In Legal Education—Educating Lawyers And Best Practices: Good News For Diversity*, 31 SEATTLE U. L. REV. 775, 776 n.5 (2008) (noting that, of 200 ABA accredited law schools, only nine make some form of clinical training a graduation requirement).

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

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

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19. See About the Law School Admissions Counsel, <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.”).
  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.”).
  21. See CARNEGIE REPORT, *supra* note 4, at 10 (noting need for group settings as a means to develop “practical skills of lawyering”); see also Karen Barton, Patricia McKellar & Paul Maharg, *Authentic Fictions: Simulation, Professionalism And Legal Learning*, 14 CLINICAL L. REV. 143 (2007) (discussing the *Carnegie Report* and the need for simulation in law school curriculum); Keith A. Findley, *Rediscovering The Lawyer School: Curriculum Reform In Wisconsin*, 24 WIS. INT’L L.J. 295, 327 (2007) (suggesting “[e]xpand[ed] experiences in which students learn from one another, work in groups, and develop cooperative skills and a teamwork approach”); Kathryn M. Stanchi, *Step Away from the Case Book: A Call for Balance and Integration in Law School Pedagogy*, 43 HARV C.R.-C.L. L. REV. 611, 613 (2008) (noting that experience in problem solving “would give students a fuller, richer, and more accurate picture of what it means to ‘think like a lawyer’”); Russell E. Lovell, II, *Lawyering from Day One: The First Year Trial Practicum*, LAW TEACHER, Spring 2002, at 1 (2002), available at <http://lawteaching.org/lawteacher/2002spring/> (discussing the first year trial practicum at Drake Law School); Sande L. Buhai, *Well Designed and Executed Externship Programs Meet Many Goals of the Carnegie Report*, GEORGIA STATE LAW: INTERNATIONAL CONFERENCE ON THE FUTURE OF LEGAL EDUCATION, Feb. 23, 2008, [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php) (follow “paper” from the Buhai section) (noting that simulations and clinical experiences “inculcate in students a professional identity by transmitting the values, ethics, social roles, and responsibilities that distinguish the profession”); Paul Maharg & Elizabeth Li, *A Unique, Simulation-Based Approach To Providing Students With Practical Legal Experience*, GEORGIA STATE LAW: INTERNATIONAL CONFERENCE ON THE FUTURE OF LEGAL EDUCATION, Feb. 20, 2008, [http://law.gsu.edu/FutureOfLegalEducationConference/Program\(Final\).php](http://law.gsu.edu/FutureOfLegalEducationConference/Program(Final).php) (follow “paper” from the Maharg and Li section) (summarizing simulation tools, majority of which “are transferable to other law schools”).
  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); Suellen Scarnecchia, *Serving the Most Important Constituency: Our Graduates’ Clients*,

real world experience into the classroom.<sup>23</sup> 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.<sup>24</sup> Students, moreover, could be trained to seek out and connect with potential mentors in the legal community.<sup>25</sup> In short, through such mechanisms, law students could experience an “immersion” into the community of lawyering.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup>

## 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

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36 U. TOL. L. REV. 167 (2005) (arguing for client-centered orientation to law school training needs).

23. See David A. Lander, *Are Adjuncts a Benefit or Detriment?*, 33 U. DAYTON L. REV. 285 (2008).
24. See American Bar Association: Careers in the Law, <http://www.abanet.org/publiced/legalcareers.html> (last visited Feb. 25, 2010) (providing samples of various careers available in law). Some law schools have begun to partner with bar associations for purposes of bringing law students into contact with practicing lawyer mentors, even before the students have graduated. See, e.g., University of Chicago: Women’s Mentoring Program, <http://www.law.uchicago.edu/studentorgs/wmp> (last visited May 31, 2010).
25. See Daniel D. Barnhizer, *Mentoring as a Duty and a Privilege*, MICH. B.J., Jan. 2003, at 46; Mindy Butler-Christensen, *Post-Law School Mentoring: A Solution For Diversifying Private Law Firms*, MYAZBAR.COM, <http://www.myazbar.org/SecComm/Committees/CMWL/Archives/070328-Butler-Christensen.pdf> (last visited May 31, 2010) (explaining how mentoring can improve diversity of opportunities within the profession).
26. See Beth D. Cohen, *Legal Learning for Life: Legal Immersion Fluency Education (LIFE)*, 43 HARV. C.R.-C.L. L. REV. 605 (2008) (suggesting use of volunteer work, clinical work, externships, court visits, and shadowing of practitioners as alternatives to be tailored to needs of individual students).
27. See NAT’L ASS’N OF LEGAL PLACEMENT, *THE COMPREHENSIVE FELLOWSHIP GUIDE*, 2009–2010 (2009).
28. See Steven C. Bennett, *Bringing Lawyers Back on Campus: A “Modest Proposal” for Change*, LAW TEACHER, Spring 2010, at 14, available at <http://lawteaching.org/lawteacher/2010spring/lawteacher2010spring.pdf>; Steven C. Bennett, *Make Law School Relevant*, N.Y.L.J., Sept. 26, 2002 (suggesting, among other things, that students “[s]eek out alumni with practical experience”).

on learning essential ethics rules.<sup>29</sup> 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.<sup>30</sup> In most cases, students receive little detailed instruction in the professional habits of good lawyers<sup>31</sup> and are seldom shown samples of exemplary legal work or successful careers.<sup>32</sup>

To provide a greater emphasis on the basics of professionalism, law schools might consider several steps.<sup>33</sup> 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-

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29. See 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.”).
  30. See Lauren Solberg, Comment, *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 VAND. L. REV. EN BANC 12, 13, Apr. 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, *Clarion Call: Is Law School a Waste of Time?*, JOHN LOCKE FOUNDATION, Feb. 1, 2007, [http://www.johnlocke.org/news\\_columns/display\\_clarion.html?id=1786](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).
  31. For students who have the opportunity, work with clinical faculty may provide some sense of how competent professionals behave. See Peter A. Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2003); Nina W. Tarr, *Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers*, 35 WM. MITCHELL L. REV. 1011, 1013 (2009) (noting that “faculty who teach in clinics serve an important role as professional models for their students”).
  32. See Lisa G. Lerman, *Teaching Ethics In and Outside Law School: What Works and What Doesn’t*, 2006 THE PROF. LAW. 57, available at <http://www.abanet.org/cpr/pubs/Lerman.pdf> (noting ineffectiveness of “[s]tudying ethical dilemmas only by reading post-hoc judicial opinions”); Deborah L. Rhode, *Institutionalizing Ethics*, 44 CASE W. RES. L. REV. 665 (1994) (noting wide array of ethical issues affecting the profession, extending well beyond questions typically addressed in law school legal ethics courses).
  33. See Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 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”).

mount importance.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

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

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34. See CARNEGIE REPORT, *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, *Face Time—Dealing with the Legal Profession’s Communications Gap*, 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-dcb8d9c0b3f8\\_document.pdf](http://www.altmanweil.com/dir_docs/resource/0d1e1ebd-3b67-4f62-9bc6-dcb8d9c0b3f8_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”).
35. See CARNEGIE REPORT, *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., *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, *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, *Educating Law Students For Leadership Roles And Responsibilities*, 39 U. TOL. L. REV. 353 (2008) (urging that law students should be taught to aspire to become leaders); Linda F. Smith, *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).
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. See DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (1999).
37. See CLINICAL LEGAL EDUCATION ASSOCIATION’S COMMENTS ON OUTCOME MEASURES TO THE STANDARDS REVIEW COMMITTEE OF THE ABA COUNCIL OF LEGAL EDUCATION (Oct. 1, 2009), <http://www.abanet.org/legaled/committees/comstandards.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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup>

### C. Ethical Sensitivity

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

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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##](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. Milstein, *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).<sup>42</sup> 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.<sup>43</sup>

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

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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).

42. 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/legaethics08\\_report.pdf](http://www.law.utoronto.ca/documents/conferences/legaethics08_report.pdf) (providing symposium summary).
43. 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).

commitment to ethical practice throughout their careers.<sup>44</sup> At the very least, students might be asked to make a commitment to ethical practices during the course of law school itself.<sup>45</sup> 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.<sup>46</sup>

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.<sup>47</sup> 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](http://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](http://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.*
46. See Jennifer Gerarda Brown, *Reform at the Micro Level: Planning for a Life in the Law*, 43 HARV. C.R.-C.L. L. REV. 645, 646 (2008) (suggesting a course to be conducted as the “capstone to the first year or as a mid-point assessment”); Judith L. Maute, *Lawyering in the 21st Century: A Capstone Course on the Law and Ethics of Lawyering*, 51 ST. LOUIS U. L.J. 1291 (2007).
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 encountered.<sup>48</sup> 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 professionals, to discuss what it means to be successful and ethical at the same time.<sup>49</sup>

Students should also be taught, in some form, about the emotional hazards of the profession.<sup>50</sup> 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 essential skills to monitor and remediate such problems in themselves and their colleagues.<sup>51</sup> Students should learn to recognize that many

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THOMAS M. COOLEY LAW SCHOOL EXPERIENCE (2005), <http://www.cooley.edu/overview/brochures/theplan.pdf> (noting eighteen initiatives related to ethics and professionalism training).

48. See CARNEGIE REPORT, *supra* note 4, at 9 (noting that students “see their experiences 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-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 88 (2002) (noting that lawyers increasingly work with professionals in other disciplines and, as such, students must be introduced to such experiences); Janet Weinstein, *Coming of Age: Recognizing the Importance 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*, 75 TENN. L. REV. 315, 317 (2008) (predicting 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 Practitioner*, 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 PROFESSIONALS THINK IN ACTION* (1983) (same).
50. See STEVEN C. BENNETT, *THE PATH TO PARTNERSHIP: A GUIDE FOR JUNIOR ASSOCIATES* 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 Students*, 35 J. LEGAL EDUC. 65 (1985); Kenneth M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

such problems, if untreated, can lead to ethics violations of a very serious nature.<sup>52</sup>

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.<sup>53</sup>

### 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.<sup>54</sup> In addition to the *Carnegie Report*, there is no shortage of commentary, found increasingly in the “blogosphere,” on potential methods for curriculum reform.<sup>55</sup> Many effective new curriculum formats, moreover, have been developed and applied at various law schools.<sup>56</sup> Efforts at developing “best practices”

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52. See generally John E. Montgomery, *Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students*, 39 U. TOL. L. REV. 323 (2008).

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).

54. See, e.g., GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* (1999); ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007); Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 32 (2002).

55. See, e.g., Best Practices for Legal Education, <http://bestpracticeslegaled.albanylawblogs.org/> (last visited Mar. 6, 2010); Best Practices for Legal Education, [http://www.uslaw.com/law\\_blogs/Best+Practices+For+Legal+Education?blog=1559](http://www.uslaw.com/law_blogs/Best+Practices+For+Legal+Education?blog=1559) (last visited Mar. 6, 2010); Building a Better Legal Profession, [www.betterlegalprofession.org](http://www.betterlegalprofession.org) (last visited Mar. 6, 2010); Clinical Legal Education Association, <http://cleaweb.org/> (last visited Mar. 6, 2010); Global Alliance for Justice Education, [www.gaje.org](http://www.gaje.org) (last visited Mar. 6, 2010).

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); Polden, *supra* note 35 (describing Santa Clara program).

for curriculum revisions are also underway.<sup>57</sup> Courts in many states have developed professionalism initiatives.<sup>58</sup>

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.”<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup>

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

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57. See, e.g., NAT’L ORG. OF BAR COUNSEL, LAW SCHOOL PROFESSIONALISM INITIATIVE REPORT (2009), [http://www.nobc.org/template\\_committees.aspx?id=3070](http://www.nobc.org/template_committees.aspx?id=3070) (follow “Law School Professionalism Initiative” hyperlink); National Institute for Trial Advocacy, *The Future Of Legal Education: A Skills Continuum* (Oct. 20, 2009) (white paper, available at [http://www.nita.org/library/documents/PDF/Future\\_of\\_Legal\\_Education.pdf](http://www.nita.org/library/documents/PDF/Future_of_Legal_Education.pdf)) (outlining recommendations for skills development); Posting of Carolyn Grose to Albany Law Blogs, *Queries from Best Practices Implementation Committee*, [www.bestpracticeslegaled.albanylawblogs.org](http://www.bestpracticeslegaled.albanylawblogs.org) (Sept. 29, 2009) (noting recent “Best Practices Meets Reality” workshop and suggesting exchange of concrete ideas for implementing curriculum reform measures).

58. See, e.g., Law School Professionalism Programs, North Carolina Court System, <http://www.nccourts.org/Courts/CRS/Councils/Professionalism/LawSchool.asp> (last visited May 31, 2010) (describing the North Carolina Chief Justice’s Commission on Professionalism, which facilitates law school programs on professionalism and legal ethics).

59. See Mission of the Institute, Institute for Law Teaching and Learning, <http://lawteaching.org/about/> (last visited May 31, 2010).

60. 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).

61. The NIFTEP home page appears at <http://law.gsu.edu/niftep>.

Legal Education, and Legal Practice in the 21st Century.”<sup>62</sup> The purpose of the conference was to “study and respond” to the challenges facing today’s practitioners.<sup>63</sup>

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.<sup>64</sup>

#### 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.<sup>65</sup> 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.”<sup>66</sup> More recently, for all its careful preparation and comprehensive scope, the 2007 *Carnegie Report* has encountered “widespread indifference” within the legal academy.<sup>67</sup>

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62. The Critical Issues Summit included more than 150 participants. See Welcome to the Critical Issues Summit, [www.equippingourlawyers.org](http://www.equippingourlawyers.org) (last visited May 31, 2010) (providing a conference agenda and supporting materials and describing discussions at the Summit).

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/](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).

66. N. William Hines, *Reporting “Down Under” About U.S. Curriculum Developments*, PRESIDENT’S MESSAGES (Ass’n of Am. L. Schs., Washington, D.C.), Apr. 2005, [http://www.aals.org/services\\_newsletter\\_presApril05.php](http://www.aals.org/services_newsletter_presApril05.php).

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.<sup>68</sup> 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.<sup>69</sup> The strong desire to copy—and compete with—the “elite” schools produces, at a minimum, a conservative tendency to avoid risk in curriculum reform.<sup>70</sup>

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success. See James R. Maxeiner, *Educating Lawyers Now and Then: Two Carnegie Critiques of the Common Law and the Case Method*, 35 INT'L J. LEGAL INFO. 1, 1 (2007) (citing Joseph Redlich, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCE OF TEACHING*, BULLETIN NO. 8 (1914)).

68. See CARNEGIE REPORT *supra* note 4, at 7 (“[E]fforts to add new requirements are almost universally resisted, not only in legal education, but in professional education generally.”); Frederick R. Anderson, *Change, the Law, and Curriculum Reform*, 45 AM. U. L. REV. 967 (1996) (“The conventional reasons [for lack of curriculum reform] that affect other academic departments and institutions apply here [in law school] as well.”); John C. Weistart, *The Law School Curriculum: The Process of Reform*, 36 DUKE L.J. 317 (1987) (noting inherent limits on process of reform of curriculum).
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) (“[H]istory 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. 823, 831 (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?”). Some go much further, suggesting that law schools, in conjunction with accreditation authorities, operate a “cartel” that has produced a lack of differentiation in styles (and price points) offered by law schools. See, e.g., D’Alemberte, *supra* note 13, at 52 (noting that it is “possible to conclude” that “we run legal education in a way that is least burdensome to professors, and most advantageous to the university systems”); Jon M. Garon, *Take Back the Night: Why an Association of Regional Law Schools Will Return Core Values to Legal Education and Provide an Alternative to Tiered Rankings*, 38 U. TOL. L. REV. 517, 517 (2007) (noting the “hegemony” of accreditation and *U.S. News & World Report* ranking systems, which leaves students with “too few price choices and far too much debt”); George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2096 (1998) (suggesting that economic analysis shows that “the accreditation system is a cartel of law professors,”

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.”<sup>71</sup> Such changes often involve hiring a few additional clinical faculty, rather than any change in the routines of the faculty as a whole.<sup>72</sup> Law school faculty may view courses directly oriented toward practice as of “secondary intellectual value and importance.”<sup>73</sup>

Law school professors are often divided in their focus between the publish-or-perish demands of scholarship and the broader needs of student training.<sup>74</sup> Law school teaching, moreover, is often

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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”).

71. CARNEGIE REPORT, *supra* note 4, at 7.

72. *See id.* (noting “relatively subordinate place of the practical legal skills, such as dealing with clients and ethical-social development in many law schools”); Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 597 (2008). Clinical educators, moreover, often receive lower compensation and less professional status than conventional faculty members. *See* CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007–2008 SURVEY (2008), <http://www.csale.org/Survey.html> (follow “Report On The 2007-2008 Survey” link) (noting disparities); AMERICAN BAR ASSOCIATION: TASK FORCE ON LAW SCHOOL AND THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 9 (1992) (noting existence of a “caste system” among legal educators and its “stigmatizing impact” within the law school faculty).

73. *See* COMMENTS ON THE REPORT OF THE ABA COUNCIL ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR SPECIAL COMMITTEE ON SECURITY OF POSITIONS (July 21, 2008), <http://www.abanet.org/legaled/committees/subcomm.html> (follow link with same title).

74. *See* Ethan S. Burger & Douglas R. Richmond, *The Future of Law School Faculty Hiring in Light of Smith v. City of Jackson*, 13 VA. J. SOC. POL’Y & L. 1, 17 (2005) (“Although some law schools place emphasis on candidates’ teaching ability, it is often the case that professors’ effectiveness in the classroom is secondary to scholarship or scholarly potential.”); Dennis R. Honabach, *Responding to “Educating Lawyers”: An Heretical Essay in Support of Abolishing Teaching Evaluations*, 39 U. TOL. L. REV. 311, 317–19 (2008) (“[T]he internal incentives drive many law professors to also emphasize producing scholarship. . . . [New teachers] realize they have much to gain from being scholars. Thus, they publish and publish. . . . The emphasis on scholarship that is prevalent in most law schools may be useful for advancing our knowledge of law, but its impact on the effectiveness of law school teaching is likely to be neutral at best.”). Academic legal scholarship, in turn, very often focuses on the more theoretical aspects of law, rather than the practical issues of interest to students and the profession as a whole. *See, e.g.*, Douglas A. Berman, *Scholarship in Action: The Power, Possibilities and Pitfalls for Law Professor Blogs*, 84 WASH. U. L. REV. 1043, 1044 (2006) (showing changes in legal scholarship, over period 1950–2001, evident in *Harvard Law Review*, to eliminate pieces by practicing attorneys and vastly increase length and citation details in articles); *id.* at 1057 (noting that the emphasis on legal scholarship “rewards law professors for maximizing time spent with other academics and minimizing time spent with students and practitioners”); Stephen M. Feldman,

politicized, with waves of new challenges for control of the academy.<sup>75</sup> In the absence of clear consensus, or an overwhelming external stimulus, reform movements often fail.<sup>76</sup> The legal profession is highly stratified,<sup>77</sup> and, despite the existence of national organizations such as the ABA, it is far from unified in its views on any topic of substance.

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*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, *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, *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, *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, *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](http://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”).

75. See Brock Brower, *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, *“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).
76. See Lauren A.E. Schuker, *Kagan Meets with Law Students*, HARV. CRIMSON, Apr. 25, 2003, <http://www.thecrimson.com/article/2003/4/25/kagan-meets-with-law-students-incoming/> (quoting new Harvard Law Dean Elena Kagan: “At many schools, these [reform] efforts have crashed and burned because there has been a failure to achieve consensus.”).
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. 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, 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.<sup>78</sup> 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.<sup>79</sup>

## 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.<sup>80</sup> 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.<sup>81</sup>

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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”).
79. See Michael L. Rustad & Thomas H. Koenig, *A Hard Day's Night: Hierarchy, History and Happiness in Legal Education*, 58 SYRACUSE L. REV. 261, 306 (2008) (describing the law school “caste system,” in which the greatest rewards go to graduates of “elite” schools and suggesting that “cracks” in the system may appear as lower-ranked schools begin to specialize in particular subject matters); Rachel S. Zahorsky, *The Chasm in Big Law Management: Restore or Cut Salaries?*, A.B.A. J., Jan. 5, 2002, [http://www.abajournal.com/news/article/the\\_chasm\\_in\\_biglaw\\_management\\_restore\\_or\\_cut\\_salaries/](http://www.abajournal.com/news/article/the_chasm_in_biglaw_management_restore_or_cut_salaries/) (“The economy, high tuition and geographic considerations have forced some law students to choose lower-ranked schools, and law school rankings might not have the same stigma during recruiting season . . . This could be a new dawn for top graduates of second and third-tier schools.”) (internal quotation marks omitted).
80. Marc Galanter, “*Down the Ringing Grooves of Change*”: *Law School Futures, Past and Present*, 37 BUFF. L. REV. 671, 673–74 (1989).
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.<sup>82</sup> 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.”<sup>83</sup> 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.<sup>84</sup> Further, the legal academy was dominated by grad-

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lanter’s use of lawyer jokes shows commonly held perceptions of the legal profession, including the lawyer, as morally deficient).

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/ILTchartoflegaleducationreform200905.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?*, AMLAW 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](http://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](http://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.<sup>85</sup>

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,<sup>86</sup> and law firm profits have eroded or disappeared.<sup>87</sup> Not surprisingly, clients have demanded cost-saving measures wherever possible.<sup>88</sup> In particular, they have begun to insist that junior lawyers at law firms add value to the pro-

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of law schools,” and “budget funds are diminishing” and endowment principal and earnings decreased).

85. See Why I Worry about the *Carnegie Report*: Four Data Points, Posting of William Henderson to Empirical Legal Studies, [http://www.elsblog.org/the\\_empirical\\_legal\\_studi/2007/12/why-i-worry-abo.html](http://www.elsblog.org/the_empirical_legal_studi/2007/12/why-i-worry-abo.html) (Dec. 7, 2007) (noting that “as a group, law professors are not listening” to calls for reform).
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”).
87. See Leigh Jones, *For NLJ 250 Firms, Weak Partner Growth, While “Others” Disappear*, NAT’L L.J., Nov. 11, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435366519&hblogin=1>; New Data on Big Law Contraction: Patterns of Winners & Losers, Posting of William Henderson to Empirical Legal Studies, [http://www.elsblog.org/the\\_empirical\\_legal\\_studi/2009/11/new-data-on-biglaw-contraction-patterns-of-winners-losers.html](http://www.elsblog.org/the_empirical_legal_studi/2009/11/new-data-on-biglaw-contraction-patterns-of-winners-losers.html) (Nov. 13, 2009) (“[W]e are in uncharted waters. The structure of the corporate bar is changing rapidly.”); Rachel M. Zahorsky, *Will Client Demand for Greater Value Lead to Meaningful Change Inside Law Firms?*, A.B.A. J., Jan. 4, 2010, [http://www.abajournal.com/news/article/will\\_client\\_demand\\_for\\_greater\\_value\\_lead\\_to\\_meaningful\\_change\\_inside\\_law\\_fl/](http://www.abajournal.com/news/article/will_client_demand_for_greater_value_lead_to_meaningful_change_inside_law_fl/) (“As law firms strive to provide more ‘value’ to clients, legal industry insiders warn that without a permanent overhaul of business practices, firms will face decreased profitability in 2010. . . . In order to meet the demands of corporate clients faced with shrinking legal budgets, more firms have abandoned hourly fees and adopted alternative billing methods, such as taking on a specific matter or entire portfolio of work for a fixed fee.”).
88. See Petra Pasternak, *Small Law Firm Woos Clients with Monthly Subscription Fees*, RECORDER, Dec. 23, 2009, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202437219609> (noting that “[a]lternative billing of all stripes is becoming more popular, particularly given the economic climate”); Debra Cassens Weiss, *64% Of Law Departments Have or Will Implement Rate Freezes, Survey Says*, A.B.A. J., Nov. 20, 2009, [http://www.abajournal.com/news/article/law\\_departments\\_cut\\_costs\\_by\\_squeezing\\_law\\_firms\\_freezing\\_staff\\_salaries/](http://www.abajournal.com/news/article/law_departments_cut_costs_by_squeezing_law_firms_freezing_staff_salaries/). Most of these client demands for efficiency have occurred in private discussions, but some may make headlines. See, e.g., Andrew Longstreth, *Citing Quinn Emanuel’s Bills, Thornburgh Trustee Seeks to Slow Payments*, AM. LAW., Jan. 12, 2010, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202437854564> (discussing trustee challenging firm’s bills as “vague and wasteful”); Nate Raymond, *In Rare Move, Debevoise Sues Client Over \$6 Million in Unpaid Bills*, N.Y.L.J., Dec. 9, 2009, <http://www.law.com/jsp/article.jsp?id=1202436184202> (reporting that a client asserts that firm “overstaffed” matter with associates of “no apparent skill”).

ject teams on which they are staffed,<sup>89</sup> and in some cases have insisted that “grunt” legal work be outsourced to lower-cost service providers.<sup>90</sup> 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.<sup>91</sup>

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89. See Arthur G. Greene & Sandra J. Boyer, *Professional Staffing in the 21st Century*, N.Y. ST. B. ASS'N J., Sept. 2008, at 43–44 (“[C]lients are now in control;” they are “not willing to pay for associate training at client expense.” Firms will need to focus on “meaningful mentoring,” “fast-track training,” “client development skills,” “case planning and budgeting,” and “career development and planning”); *Law School Innovations Result in Broader Students*, COMPLETE LAW., Dec. 10, 2007, <https://www.law.stanford.edu/news/details/1135> (“[P]ressure to focus on teaching [practical] skills in law school is being driven by changes in the economics of legal practice. Clients today are more demanding. They want more for their dollar, which means they want less time wasted on hours billed by young associates figuring things out. Factors like this create pressures for legal educators to turn out students who can hit the ground running a little faster.”); D.M. Levine, *Quest GC: Alternative Billing Deals Have Been a ‘Colossal Train Wreck’*, CORP. COUNS., Dec. 8, 2009, <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202436129130> (noting concern that “law students often enter the workforce without the concrete skills to serve client needs”); Martha Neil, *BigLaw Partners May Be Worth Top Pay, But What About Associates?*, A.B.A. J., Jan. 5, 2010, [http://www.abajournal.com/news/article/biglaw\\_partners\\_may\\_be\\_worth\\_top\\_pay\\_but\\_what\\_about\\_associates/](http://www.abajournal.com/news/article/biglaw_partners_may_be_worth_top_pay_but_what_about_associates/) (“Corporate counsel say they see the point of paying top dollar for law firm partners, but openly wonder whether first-year associates at major law firms, in particular, are worth what they cost.”).
90. See Molly McDonough, *Company’s ‘ Craigslist ’ Model Seeks to Keep Outsourced Work On-Shore*, A.B.A. J., Mar. 30, 2009, [http://www.abajournal.com/news/article/companys\\_craigslist\\_model\\_seeks\\_to\\_keep\\_outsourced\\_legal\\_work\\_on\\_shore/](http://www.abajournal.com/news/article/companys_craigslist_model_seeks_to_keep_outsourced_legal_work_on_shore/) (describing system for piece-work assignment of legal tasks); *Law Firm 2.0—What Might the Future of Law Firms Look Like?*, <http://www.jasonmendelson.com/wp/archives/2009/04/law-firm-20-what-might-the-future-of-law-firms-look-like.php> (Apr. 14, 2009) (Suggesting that, as clients “begin to see legal services as a commodity . . . legal services will become all the more compartmentalized.”); Gina Passarella, *Panelists Predict Change That Will Shake Up the Legal Profession*, LEGAL INTELLIGENCER, Oct. 20, 2009, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202434744078> (“Sophisticated clients are demanding that first- and second-year associates stay off their matters. They are also off-shoring work themselves or demanding their law firms do it . . . .”); Richard Susskind, *Legal Profession Is on the Brink of Fundamental Change*, TIMES ONLINE, Oct. 19, 2007, <http://business.timesonline.co.uk/tol/business/law/article2522748.ece> (noting a “market pull towards commoditisation” of legal services and an “uptake of information technology”); Value Notes, *Legal Services Outsourcing, What Do Law Firms Think?*, <http://www.sourcingnotes.com/content/view/489/1/> (last visited June 4, 2010) (noting that the current economic crisis, together with client austerity measures, may lead to increased outsourcing and offshoring).
91. See 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](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.<sup>92</sup> The result has been a very substantial decrease in employment of lawyers, at least in law firms, nationwide.<sup>93</sup> Several very well-known law firms,

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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.”); Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1514–15 (“The increased cost of attending law school, the tightening of the market for lawyers, and the economic pressures experienced by many universities all have imposed an urgent sense of market discipline in the delivery of legal education. . . . [T]hese changes created a market demand for accountability, transparency, and more information about organizational performance.”); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. (forthcoming 2010) (manuscript at 33, on file with author) (“The economic recession presents a unique opportunity for legal education to shift its priorities.”); Erik Gerding, *Death of “Big Law School”?*, CONGLOMERATE, Nov. 10, 2009, <http://www.theconglomerate.org/2009/11/death-of-big-law-school.html> (“Like it or not, the business model . . . of many law schools is heavily dependent on students getting high paying law firm jobs to pay off high law school tuition. Law firms are also prime benefactors of law school endowments. Without corporate law consuming law school graduates by the dozens, law school will face massive economic pressure.”); If BigLaw is Changed for Good, What Happens to Law School?, Posting of Ashby Jones to Wall Street Journal Blogs, <http://blogs.wsj.com/law/2009/11/12/if-biglaw-is-changed-for-good-what-happens-to-law-school/> (Nov. 12, 2009) (noting that “law school may become less *fun*, but perhaps more *useful*”).

92. See Press Release, Incisive Legal Intelligence, *Incisive Legal Intelligence Survey: FY 2008 Per Lawyer Revenues Drop, Reflecting Flat Billing Rates and Decline in Billed Hours* (Sept. 14, 2009), available at <http://www.alm.com/pressroom> (search Incisive Legal Intelligence and select appropriate release) (reporting on financial performance, compensation, billing rates, hours and other data for law firms). Similar results were obtained in 2008. See Nate Raymond, *Partners Bringing in Less Revenue, Wachovia Survey Finds*, AM. LAW., Dec. 10, 2008, <http://www.law.com/jsp/article.jsp?id=1202426608757>.
93. 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](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.<sup>94</sup> As a result, large firms are hiring (and retaining) far fewer law students than in prior years<sup>95</sup> and paying them less.<sup>96</sup> Demand for

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*ple in 2009, the Worst Year Ever*, A.B.A. J., Jan. 4, 2010, [http://www.abajournal.com/news/article/biglaw\\_laid\\_off\\_more\\_than\\_12000\\_people\\_in\\_2009\\_the\\_worst\\_year\\_ever](http://www.abajournal.com/news/article/biglaw_laid_off_more_than_12000_people_in_2009_the_worst_year_ever); Debra Cassens Weiss, *Top 250 Law Firms Collectively Shrank by 5,259 Lawyers*, A.B.A. J., Nov. 9, 2009, [http://www.abajournal.com/news/article/top\\_250\\_law\\_firms\\_collectively\\_shrank\\_by\\_5259\\_lawyers/](http://www.abajournal.com/news/article/top_250_law_firms_collectively_shrank_by_5259_lawyers/).

94. See Nathan Koppel, *Recession Batters Law Firms, Triggering Layoffs, Closings*, WALL ST. J., Jan 26, 2009, [http://online.wsj.com/article/SB123292954232713979.html?mod=rss\\_whats\\_news\\_us](http://online.wsj.com/article/SB123292954232713979.html?mod=rss_whats_news_us); Gus Lubin, *10 Huge Law Firm Collapses of the Decade*, BUS. INSIDER L. REV., Dec. 8, 2009, <http://www.businessinsider.com/decades-biggest-law-firm-collapses-2009-12>. The down-sizing and disappearance of firms, moreover, has contributed to an even larger glut of talented, experienced lawyers on the job market. See Karen Sloan, *Law Firms Getting Top Lateral Talent for Bargain Prices*, NAT'L L.J., Nov. 17, 2008, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202426054188>. Information (including gossip) on such developments is much more available than in the past. See David Marcus, *The Quick and the Dead*, DEAL MAG., Dec. 1, 2008, <http://www.thedeal.com/newsweekly/insights/the-quick-and-the-dead.php> ("Blogs about law firms publicize within hours information that firms once tried to keep secret even internally, such as the 'performance-based' layoff of a suspiciously high number of associates or buyouts of underperforming partners. Even the slightest hint of trouble can find its way onto the Web, and from there to the more traditional legal media and mainstream business press.")
95. See Susan Hansen, *Survey Shows Summertime Blues for Summer Associates*, AM. LAW., Sept. 30, 2009, <http://www.law.com/jsp/article.jsp?id=1202434177407> ("Almost half of this year's summer class said they weren't sure whether they would get full-time offers from their firms, compared to just 17 percent last year and 12 percent in 2007."); Leigh Jones, *For Law Firm Associates, It's Been a Decade of Thrills and Chills*, NAT'L L.J., Dec. 21, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202437083494&slreturn=1&hbxxlogin=1> ("For a while [law school graduates] could practically name their own price. Now, they're lucky if they can find a job."); Leigh Jones, *For NLJ 250 Firms, Weak Partner Growth, While "Others" Disappear*, NAT'L L.J., Nov. 11, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435366519> (noting 4% decline in headcount at major firms in 2009); Ashley Milne-Tyte, *Law Firms Revise Recruitment Practices*, AM. PUB. MEDIA, Sept. 23, 2009, <http://marketplace.publicradio.org/display/web/2009/09/23/pm-recruiting-lawyers/> ("[S]ome firms have found they can't afford to hire everyone they had promised jobs to."); Debra Cassens Weiss, *Law Schools Reporting Drops of Up to 45% in On-Campus Interviews*, A.B.A. J., Nov. 30, 2009, [http://www.abajournal.com/news/article/law\\_schools\\_reporting\\_drops\\_of\\_up\\_to\\_45\\_in\\_on-campus\\_interviews/](http://www.abajournal.com/news/article/law_schools_reporting_drops_of_up_to_45_in_on-campus_interviews/) (noting that many law firms have cut summer associate classes by 30% to 50%).
96. See Leigh Jones, *DLA Piper Details New Associate Compensation Plan*, NAT'L L.J., Dec. 8, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202436164338> (noting that several large law firms have reduced salaries for first-year associates in major U.S. markets); Martha Neil, *Is Law School a Good Investment? No, Law Prof Says, for Many 'Typical' Students*, A.B.A. J., Nov. 13, 2009, [http://www.abajournal.com/news/article/is\\_law\\_school\\_a\\_good\\_investment\\_no\\_law\\_prof\\_says\\_for\\_many\\_typical\\_students/](http://www.abajournal.com/news/article/is_law_school_a_good_investment_no_law_prof_says_for_many_typical_students/) ("Even many major firms, however, are paying considerably less, and a number of law graduates are having difficulty finding legal work even at much lower salaries . . .").

highly-skilled lawyers who are able to immediately plug into the economics of a firm is at an all-time high.<sup>97</sup> Alternate billing (“fixed fee” and other structures), increasingly demanded by cost-conscious clients, may put a premium on highly efficient completion of work.<sup>98</sup> Many firms have begun to revise their “lockstep” compensation structures, in favor of systems that reward junior lawyers based on their skill levels.<sup>99</sup> A fundamental, and permanent,

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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 . . .”).
98. See Ben W. Heineman, Jr. & William F. Lee, *Two Veteran Lawyers Say Now Is the Time for Fixed Fees*, CORP. COUNS., Aug. 24, 2009, <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202433319800> (stating that fixed fee arrangements address “the maddening law firm definition of ‘productivity’—defined as more lawyers and more hours per matter”); Gina Passarella, *For Large Firms, Alternative Billing Makes Inroads*, LEGAL INTELLIGENCER, May 26, 2009, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202430954941> (noting a “focused effort on efficiency” as a means to recapture law firm profits); Debra Cassens Weiss, *Big Law Turns to Alternative Billing; Is Greed a Reason?*, A.B.A. J., Jan. 30, 2009, [http://www.abajournal.com/news/article/is\\_shift\\_from\\_billable\\_hour\\_motivated\\_by\\_greed/](http://www.abajournal.com/news/article/is_shift_from_billable_hour_motivated_by_greed/) (“Law firms will have to overhaul compensation structures that reward high billable hours.”). A recent survey of 231 companies suggested that half of those surveyed had started, or planned to start, negotiating non-hourly billing arrangements with their outside counsel. Amy Miller, *Ditching the Billable Hour: ‘Everyone Wants to Do It’*, CORP. COUNS., Nov. 20, 2009, <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202435712553> (reporting on Hildebrandt survey); see also Hildebrandt, *Law Department Survey*, <http://www.hildebrandt.com/Law-Department-Survey> (providing additional data on survey).
99. See Cracks Appearing in Law Firm Associate Model, Posting of David Post to Volokh Conspiracy, <http://volokh.com/2009/10/31/cracks-appearing-in-law-firm-associate-model/> (Oct. 31, 2009, 3:48 P.M.) (“Change is undoubtedly coming, spurred on, predictably enough, by economic stress . . . . Compensation is, after all, supposed to bear some relationship—a close relationship, in a competitive market—to the actual skills that individuals possess and the manner in which they can deliver value to firm clients . . . .”); Dan DiPietro, Lisa Keyes & Laura Saklad, *The Shifting Associate Paradigm*, AM. LAW., Nov. 17, 2009, <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202435524399> (“Lockstep advancement and compensation may be ubiquitous in the legal industry, but the era in which it made sense for many firms has long since passed. It does not deal with clients’ concerns over excessive associate costs and their growing intolerance of automatic rate increases that are not always accompanied by increases in quality or skill.”); Lauren Egan & Darin Morgan, *The Law Firm Model: A Closer Look at Recent Changes*, LEGAL INTELLIGENCER, Sept. 8, 2009, [http://www.mlaglobal.com/pages/Article.aspx?pagename=Art\\_Egan\\_Morgan\\_Law\\_Firm\\_Model&versionnu](http://www.mlaglobal.com/pages/Article.aspx?pagename=Art_Egan_Morgan_Law_Firm_Model&versionnu)

change in the economics of legal services appears to be underway.<sup>100</sup>

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.<sup>101</sup> 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.<sup>102</sup> The profession

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- m=7 (“[D]epartures from the traditional lockstep system are long overdue, according to many observers. . . . This is, after all, how much of the corporate world operates.”); Hildebrandt, *“Lockstep-to-Levels”: Moving from Lockstep to a Performance-Based Evaluation, Promotion and Compensation System*, Sept. 2009, available at <http://www.hildebrandt.com/Hubbard.FileSystem/files/Publication/22481a5c-7765-470c-b725-0cd7432dcabc/Presentation/PublicationAttachment/c2b635cb-d864-4d88-aeff-004e1e109df7/LockstepToLevelsWhitePaper.pdf> (“Having long recognized the flaws inherent in lockstep systems, a growing number of law firms are now transitioning to performance-based compensation and advancement systems. The downturn in the economy has certainly accelerated the pace of these transitions . . . .”); Rachel M. Zahorsky, *Law School Rank and Class Year Take Back Seat to Practical Skills in 2010*, A.B.A. J., Jan. 7, 2010, [http://www.abajournal.com/news/article/law\\_school\\_rank\\_and\\_class\\_year\\_take\\_back\\_seat\\_to\\_practical\\_skills\\_in\\_2010/](http://www.abajournal.com/news/article/law_school_rank_and_class_year_take_back_seat_to_practical_skills_in_2010/) (“Associate level distinctions and compensation based on class year, a standard at lockstep firms, are quickly being eliminated as more law firms move toward classifying lawyers by skill sets and career tracks.”).
100. See Tamara Loomis, *Don't Look Back*, AM. LAW., Nov. 2, 2009, <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202435116048> (“[W]hat 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.”).
  101. See Ari Kaplan, *Legal Training Looks at New Directions in Response to Recession*, LAW.COM, Dec. 11, 2009, <http://www.law.com/jsp/article.jsp?id=1202436167749> (noting firms are revamping professional development efforts to meet client needs).
  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 Apprenticeship Programs Add Extra Step for New Associates*, NAT’L L.J., June 30, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.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.<sup>103</sup> 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.<sup>104</sup> 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.<sup>105</sup>

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

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June 25, 2009, [http://blogs.findlaw.com/greedy\\_associates/2009/06/lower-pay-more-training-howrey-to-try-an-apprenticeship-program.html](http://blogs.findlaw.com/greedy_associates/2009/06/lower-pay-more-training-howrey-to-try-an-apprenticeship-program.html) (“Law students are being presented with a real choice, to take less money up front in exchange for real training and a chance to accelerate the pace of their professional development. And while many might continue to grab at the largest available paycheck, there will be no shortage of new lawyers who will be happy to give an apprenticeship a go.”); NALP, *supra* note 18 (noting that there is a “great deal of interest in the new apprenticeship model that is being developed and tested at several law firms; James Smith, *Will Law Firm Changes Affect Hiring and Retention of Associates?*, RECORDER, Dec. 21, 2009, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202437079449> (“As all lawyers know, law schools do not fully prepare lawyers for practicing law. . . . Clients understand the necessity of training associates, but they are demanding lower rates that reflect a truer alignment of value and cost. . . . Confronted by this reality, some firms have adopted and others are contemplating more formal training programs for their junior associates while simultaneously dropping the salaries for these ‘apprentice’ attorneys.”).

103. See Meredith Hobbs, *Experts: Lower Associate Pay Is Here to Stay*, FULTON COUNTY DAILY REP., Nov. 5, 2009, <http://www.law.com/jsp/tx/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 forever. . . . Law schools will have to produce fully functioning lawyers who can quickly become economically viable—not just proto appellate clerks. . . . [Law 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*, 34 GA. L. REV. 839 (2000) (urging law professors to learn education strategies from in-house training methods).
104. See John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135 (1997).
105. See Walter Dellinger & Brian P. Brooks, *Reimagining Attorney Development*, NAT’L L. J., Oct. 13, 2006, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005551573> (suggesting that even big firms consider hiring at least “the top few students at less well recognized schools”).

ted.<sup>106</sup> 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.<sup>107</sup> In a down economy, however, students may come to demand that schools justify the high cost (and debt) associated with legal education<sup>108</sup> and place them in the best position to compete suc-

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106. Law School 4.0: Are Law Schools Relevant to the Future of Law?, Posting of William D. Henderson to Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession/2009/07/law-school-40-are-law-schools-relevant-to-the-future-of-law.html](http://lawprofessors.typepad.com/legal_profession/2009/07/law-school-40-are-law-schools-relevant-to-the-future-of-law.html) (July 2, 2009) (“Over the last 30 years, the cost of a legal education has increased approximately three times faster than the average household incomes. Yet, it is difficult to identify a corresponding innovation with legal education that justifies the higher cost.”); Mamas, Don’t Let Your Babies Grow Up To Be Lawyers, Posting of Ashby Jones to Wall Street Journal Blogs, <http://blogs.wsj.com/law/2009/11/13/mamas-dont-let-your-babies-grow-up-to-be-lawyers/> (Nov. 13, 2009, 2:57 P.M. EST) (referencing study suggesting that law school education may not be economically viable approach for many students); Debra Cassens Weiss, *LSAT Test-Takers Jump by Nearly 20%; Should They Consider the Alternatives?*, A.B.A. J., Nov. 23, 2009, [http://www.abajournal.com/news/article/lsat\\_test\\_takers\\_jump\\_by\\_nearly\\_20\\_should\\_they\\_consider\\_the\\_alternatives/](http://www.abajournal.com/news/article/lsat_test_takers_jump_by_nearly_20_should_they_consider_the_alternatives/) (noting that number of university students taking LSAT is at “unprecedented high,” apparently due to economic downturn, “[b]ut some are questioning whether bad economic times are a sufficient reason to go to law school”). See generally John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 4 (2002) (noting “very substantial” increases in tuition, “significant reduction in the relative level of financial support,” and “dramatic increase in the amount of borrowing” by law students over period of the 1990s and beyond); Will Prospective Law Students Listen to the Hard Truth?, <http://toughmoneylove.com/2009/09/25/prospective-law-students-hard-truth/#more-4626> (Sept. 25, 2009) (“For many who earn these [J.D.] degrees, the return on investment is poor or non-existent. The burdens of student loans far outweigh the short or long term benefit.”).
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](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 Kennon 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.”).
108. See Karen Sloan, *ABA Proposes Law Student Loan Relief*, NAT’L L.J., Nov. 11, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435359338&slreturn=1&hblogin=1> (“Debt is a huge issue for many law school graduates, particularly given the difficult legal market. The average public law school graduate borrows \$59,324 . . . [and the] figure is \$91,506 for graduates of private law schools.”); Debra Cassens Weiss, *ABA Prez Laments Young Lawyers ‘Squashed By Debt,’ Presses Deferment Idea*, A.B.A. J., Jan. 4, 2010, [http://www.abajournal.com/news/article/aba-prez-laments-young-lawyers-squashed-by-debt\\_](http://www.abajournal.com/news/article/aba-prez-laments-young-lawyers-squashed-by-debt_)

cessfully after graduation.<sup>109</sup> Moreover, the number of new law schools has continued to expand,<sup>110</sup> putting pressure on all the schools

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- presses\_deferment\_idea/; Debra Cassens Weiss, *Almost 1/3 of Law Students Expect to Graduate with \$120K Debt*, A.B.A. J., Jan. 6, 2010, [http://www.abajournal.com/news/article/almost\\_1\\_3\\_of\\_law\\_students\\_expect\\_to\\_graduate\\_with\\_120k\\_in\\_debt/](http://www.abajournal.com/news/article/almost_1_3_of_law_students_expect_to_graduate_with_120k_in_debt/); see also RICK MATASAR, A MEDITATION ON SUSTAINING THE CURRENT MODEL OF LEGAL EDUCATION: JOBS, INCOME, DEBT AND AVAILABILITY OF CREDIT 2–4 (2009), available at <http://www.abanet.org/legaled/committees/Standards%20Review%20documents/Matarasar%20letter%20May%202009.pdf> (“[W]e are entering a new era in legal (and probably most higher) education in which lenders may be more discriminating in their business practices and in which significant numbers of students may find it difficult to finance their education. . . . [P]rivate lenders will begin to distinguish between borrowers on the basis of the schools they attend—perhaps going so far as redlining some schools. . . . [L]enders may begin to distinguish borrowers on the basis of their law school performance.”).
109. See LAW SCH. SURVEY OF STUDENT ENGAGEMENT, STUDENT ENGAGEMENT IN LAW SCHOOL: ENHANCING STUDENT LEARNING 14 (2009), available at [http://lsse.iub.edu/pdf/LSSSE\\_Annual\\_Report\\_2009\\_forWeb.pdf](http://lsse.iub.edu/pdf/LSSSE_Annual_Report_2009_forWeb.pdf) (“[A]s law firms scaled back hiring and other legal organizations grappled with budget cuts, many law students reflected on important professional aspects of their legal training.”); LEXIS-NEXIS, STATE OF THE LEGAL INDUSTRY SURVEY 7 (2009), available at [http://www.lexisnexis.com/document/State\\_of\\_the\\_Legal\\_Industry\\_Survey\\_Findings.pdf](http://www.lexisnexis.com/document/State_of_the_Legal_Industry_Survey_Findings.pdf) (finding that 65% of law school students (and 90% of lawyers) say that school teaches students legal theory but does not teach the practical business skills needed to practice law in today’s economy; 35% of law school students do not feel adequately prepared to succeed in the changing legal marketplace); Herwig J. Schlunk, *Mamas Don’t Let Your Babies Grow Up to Be . . . Lawyers* (Vanderbilt Law and Econ. Working Paper No. 09-29, 2009), available at <http://ssrn.com/abstract=1497044> (investment analysis of law school education costs and benefits suggests that such investment may often be unwise); The End of an Era: the Bi-Modal Distribution for the Class of 2008, Posting of William Henderson to Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession/2009/06/the-end-of-an-era-the-bi-modal-distribution-for-the-class-of-2008.html](http://lawprofessors.typepad.com/legal_profession/2009/06/the-end-of-an-era-the-bi-modal-distribution-for-the-class-of-2008.html) (June 29, 2009) (“[L]aw school debt loads continue to climb. Thus, law schools are (rightfully) going to be under increased pressure to deliver value to our students.”); Mae I. Haffnother, *This Associate’s Life*, CAL. LAW., Jan. 2010, <http://www.cal.lawyer.com/story.cfm?eid=906590&evid=1> (“[T]aking three years off to rack up \$200K in debt to get a job that you’re completely unprepared to do without on-the-job training” may be a “big[] waste of time . . . .”); Karen Slocum, *Going to Law School? Proceed With Caution*, NAT’L L.J., Dec. 14, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202436311250> (“On the internet and in academic circles, debate is flaring over the value of a juris doctor, and whether the degree is a wise investment for many of the thousands who flock to law schools each year.”); Debra Cassens Weiss, *As Law Firms Respond to Crisis, 21% of Law Students Regret Choice*, A.B.A. J., Dec. 9, 2009, [http://www.abajournal.com/news/article/as\\_law\\_firms\\_respond\\_to\\_crisis\\_21\\_of\\_law\\_students\\_regret\\_choice/](http://www.abajournal.com/news/article/as_law_firms_respond_to_crisis_21_of_law_students_regret_choice/); Debra Cassens Weiss, *Attorney Ranked 80th on Best Jobs List*, A.B.A. J., Jan. 8, 2010, [http://www.abajournal.com/news/article/attorney\\_ranked\\_80th\\_on\\_best\\_jobs\\_list/](http://www.abajournal.com/news/article/attorney_ranked_80th_on_best_jobs_list/).
110. See Drew Combs, *Study: Minority Law Student Numbers Dip as Law School Capacity Rises*, AM. LAW., Jan. 7, 2010, <http://www.law.com/jsp/LawArticlePC.jsp?id=1202437735946&slreturn=1&hbxlogin=1> (noting increase in overall law school capacity, from 43,520 to 46,500, in period 1993–2008); Leigh Jones, *A Deluge of Law Schools*, NAT’L L.J., June 2, 2008, <http://www.law.com/jsp/nlj/Pub>

to compete for students.<sup>111</sup> 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.<sup>112</sup> 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.<sup>113</sup>

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.<sup>114</sup> Similar pressures have forced school administrators in other disciplines to determine what

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ArticleNLJ.jsp?id=1202421786165 (noting plans for ten additional law schools in coming years).

111. See How About a Law School that Competes on Price?, Posting of Mark Cohen to MinnLawyer Blog, <http://minnlawyerblog.com/2009/04/06/how-about-a-law-school-that-competes-on-price/> (Apr. 6, 2009) (suggesting that as the “traditional model of the law profession is start[ing] to crack and crumble . . . the untenable situation has some calling for a long overdue re-examination of how the legal profession does business;” and noting need for “value-based competition for a traditional legal education”); Gary Rosin, *Flat Demand and More Law Schools*, UBERLAW.NET, Oct. 2, 2009, <http://uberlaw.net/LawNumbers/category/aba/> (indicating that “we have more law schools chasing the same number of applications, but enrolling more students” and noting “trouble” for law schools caused by flat demand and increase in number of schools).
112. Web sites for law students (and prospective students) have begun to appear. See, e.g., Classcaster News, [www.calis\\_pre-law\\_blog.classcaster.org](http://www.calis_pre-law_blog.classcaster.org/); JD2B, [www.jd2b.com](http://www.jd2b.com/); Law Career Blog, [www.law-career.blogspot.com](http://www.law-career.blogspot.com/).
113. See If You Build It, They Will Come, Posting of Roy Stuckey to Best Practices For Legal Education, <http://bestpracticeslegaled.albanylawblogs.org/2009/04/09/if-you-build-it-they-will-come/> (noting \$2 million gift from alumnus to support Washington & Lee experiential reforms and suggesting that “[i]f they can demonstrate the educational superiority of their curriculum, others will follow”); Debra Cassens Weiss, *Washington & Lee’s 3Ls Learn in-the-Trenches Practice*, A.B.A. J., Dec. 18, 2009, [http://www.abajournal.com/news/article/washington\\_lees\\_3ls\\_learn\\_in-the-trenches\\_practice/](http://www.abajournal.com/news/article/washington_lees_3ls_learn_in-the-trenches_practice/) (noting one-third increase in student applications at Washington & Lee after change in curriculum to reflect real-world practice); see also Daniel de Vise, *Washington And Lee Takes Law Students from Class to Court*, WASH. POST, Dec. 18, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/12/17/AR2009121704554.html> (noting “revolutionary change” in law schools that have implemented simulations and internships for third year students and other schools that have entirely eliminated their third year classes with apparently very positive reactions from students). One law school in New York moved its campus to provide ready access to both a state and federal courthouse. See Katherine Mangan, *All Rise. Welcome to Law School*, CHRON. HIGHER EDUC., Jan. 11, 2008, at A10, available at [www.tourolaw.edu/pdf/ChronicleHigherEd\\_article.pdf](http://www.tourolaw.edu/pdf/ChronicleHigherEd_article.pdf) (reporting that Touro Law Center is “emphasizing practical skills from Day 1” and “friends at other law schools are jealous”).
114. See Adam Cohen, *With the Downturn, It’s Time to Rethink the Legal Profession*, N.Y. TIMES, Apr. 2, 2009, at A26, available at <http://www.nytimes.com/2009/04/02/opinion/02thu4.html> (“If the downturn is prolonged, law schools will need to keep tuition and other costs in check so students do not graduate with unmanageable debt. . . . Law schools may also become more serious about curriculum reform. . . . If law jobs are scarce, there will be more pressure on schools to make

“key stakeholders” (i.e., students and recruiters) value in business and medical school education.<sup>115</sup>

## 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.<sup>116</sup> Multiple criticisms of the rankings have arisen.<sup>117</sup> The Law School Admission Council

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the changes [the *Carnegie Report*] suggested, including more focus on practical skills.”).

115. See GRADUATE MANAGEMENT ADMISSION COUNCIL, WHAT KEY STAKEHOLDERS VALUE—STUDENTS AND RECRUITERS (2008), available at [http://gmac.com/global\\_trends](http://gmac.com/global_trends) (select e-report); David Snadden & John Yaphe, *General Practice and Medical Education: What Do Medical Students Value?*, 18 MED. TCHR. 31 (1996).
116. See MICHAEL SAUDER & WENDY ESPELAND, FEAR OF FALLING: THE EFFECTS OF *U.S. News & World Report* Rankings on U.S. Law Schools 1 (2007), available at <http://www.lsacnet.org/Research/gr/Fear-Falling-Effects-of-US-News-World-Report-Rankings-on-US-Law-Schools.htm> (“One general effect of the USN rankings on law schools is that it has created pressure on law school administrators to redistribute resources in ways that maximize their scores on the criteria used by USN to create the rankings, even if they are skeptical that this is a productive use of these resources.”); Francine Cullari, *Law School Rankings Fail to Account for All Factors*, MICH. B.J., Sept. 2002, at 52 (noting that “applicants, administration, trustees to a certain extent, faculty and employers pay attention to the [*U.S. News*] rankings”); Richard Buckingham, Diane D’Angelo & Susan Vaughn, *Law School Rankings, Faculty Scholarship, and Associate Deans for Faculty Research* 16 (Suffolk Univ. Law Sch. Research Paper No. 07-23, 2007), available at <http://ssrn.com/abstract=965032> (“The ranking boom has affected law schools in countless ways.”); Amir Efrati, *Law School Rankings Reviewed to Deter ‘Gaming’*, WALL ST. J., Aug. 26, 2008, <http://online.wsj.com/article/SB121971712700771731.html> (reporting that it is an “open secret” that law school administrators strategize to improve rankings); Here’s Why Law Schools Can’t Ignore *US News* Rankings: Because Journalists Treat it as a Source of Relevant Information about Law Schools, Posting of Brian Leiter to Brian Leiter’s Law School Reports, <http://leiterlawschool.typepad.com/leiter/2009/09/heres-why-law-schools-cant-ignore-us-news-rankings-because-journalists-treat-it-as-a-source-of-relev.html> (Sept. 11, 2009, 4:04 A.M.) (warning that law schools ignore U.S. News rankings “at their peril”). For current *U.S. News & World Report* rankings of law schools, see <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools>.
117. See Gary J. Simson, *Commentary: Say ‘Enough’ to ‘U.S. News’ Rankings*, NAT’L L.J., July 29, 2008, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202423321554> (“[A]lmost all, if not all, deans now take for granted [that] the *U.S. News* methodology is seriously susceptible to manipulation and remarkably poor as a measure of a school’s quality of education . . .”); Karen Sloan, *Research Documents the ‘U.S. News’ Effect on Law Schools*, NAT’L L.J., Dec. 3, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202436019486> (noting that “law schools have several ways of gaming the system”); Karen Sloan, *‘U.S. News & World Report’ Releases Latest Law School Rankings*, NAT’L L.J., Apr. 23, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202430128104> (“[R]ankings have been

advises that the rankings are “unworthy of being an important influence” on the choices students make in law school applications.<sup>118</sup> The rankings have also received criticism for their potential effects on mi-

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criticized in years past for spurring some law school administrators to game the system in order to move higher on the list.”); Debra Cassens Weiss, *It's Official: Yale Law School Tops US News Rankings*, A.B.A. J., Apr. 23, 2009, [http://www.abajournal.com/news/article/its\\_official\\_yale\\_law\\_school\\_tops\\_us\\_news\\_rankings/](http://www.abajournal.com/news/article/its_official_yale_law_school_tops_us_news_rankings/) (noting necessary changes to *U.S. News & World Report* ranking system to address “concerns that law schools were gaming the system by funneling students with lower grades and admissions test scores into part-time programs”); Alex Wellen, *The \$8.78 Million Maneuver*, N.Y. TIMES, July 31, 2005 at 4A (noting use of alleged “fair market value” of free Lexis and Westlaw to boost spending reported by schools and other more common gaming practices); Michelle Weyenberg, *Some Law Schools Are Clearly Gaming U.S. News Rankings*, NAT'L JURIST, Sept. 2008, at 14 (reporting on criticism of rankings). One significant criticism, for example, focuses on the fact that “reputation” and incoming LSAT scores appear to dominate over other factors affecting the *U.S. News & World Report* rankings. See Daniel Golden, *Law Schools Hatch Rebellion Against U.S. News Rankings*, CHESSLAW, Dec. 18, 2002, <http://www.chesslaw.com/wsjs-usnews.htm>; Jason Solomon & David Fagundes, *Guide to the U.S. News Survey*, RACE TO THE TOP, Aug. 15, 2009, [http://www.racetothetoplaw.com/?page\\_id=63](http://www.racetothetoplaw.com/?page_id=63) (reporting that “research has shown that the [*U.S. News*] survey responses tend simply to replicate the previous year's rankings”); see also Elie Mystal, *Loyola Law School (L.A.) Blames Name Mistake for Drop in Rankings*, ABOVE L., July 20, 2009, [http://abovethelaw.com/2009/07/loyola\\_law\\_school\\_la\\_blames\\_na.php](http://abovethelaw.com/2009/07/loyola_law_school_la_blames_na.php) (noting ranking change for one school, apparently based on no “legitimate” factors other than school name change, which affected reputation and suggesting that “prospective law students should think about mistakes like these before they put too much stock into the law school rankings”). A focus on rankings based on reputation may deter students from comparing actual differences in the quality and character of educational experiences offered. See Russell Korobkin, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*, 81 IND. L.J. 35, 43 (2006) (“Rankings need not attempt to measure the quality of the education offered by the institution because, regardless, students will continue to seek out highly ranked schools and schools will continue to compete for high rankings.”). Differences in rankings below the highest tier of the *U.S. News & World Report* list, moreover, may be “trivial and insignificant.” Cameron Stracher, *Commentary: There Are Only Two Kinds of Law Schools*, AM. LAW., Apr. 9, 2008, <http://www.law.com/jsp/LawArticlePC.jsp?id=900005561259>. Prospective law students may have little real ability to parse the significance of various rankings measures. See William Henderson & Andrew P. Morriss, *What Rankings Don't Say About Costly Choices*, NAT'L L.J., Apr. 14, 2008, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005508485> (“[M]any prospective law students lack knowledge about the entry-level legal market or even what different types of lawyers do in their daily lives.”).

118. See Law School Admission Council, *Ranking Law Schools*, <http://www.lsac.org/choosing/deans-speak-out-rankings.asp> (last visited June 5, 2010). The American Bar Association similarly advises: “Qualities that make one kind of school good for one student may not be as important to another.” American Bar Association, *ABA-Approved Law Schools*, [http://www.abanet.org/legaled/approvedlaw\\_schools/approved.html](http://www.abanet.org/legaled/approvedlaw_schools/approved.html) (last visited June 5, 2010).

minority admissions to schools.<sup>119</sup> Other commentators, however, suggest that the rankings are an appropriate attempt to provide prospective students with a tool for comparison.<sup>120</sup>

Distortions in the *U.S. News & World Report* rankings can, at least in part, be corrected or highlighted to avoid misunderstandings.<sup>121</sup> Many of the factors that the *U.S. News* rankings do not measure,

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119. See U.S. GOV'T ACCOUNTABILITY OFFICE, HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 2 (2009), available at [www.gao.gov/new.items/d1020.pdf](http://www.gao.gov/new.items/d1020.pdf) (noting that law school competition for improvements in rankings increases costs and creates obstacles to minority admissions); Leonard M. Baynes, *The LSAT*, *U.S. News & World Report*, and *Minority Admissions*, 80 ST. JOHN'S L. REV. 1 (2006); Debra Cassens Weiss, *Dean Blames Rankings for Drop in Minorities at Law Schools*, A.B.A. J., Jan. 7, 2010, [http://www.abajournal.com/news/article/dean\\_blames\\_rankings\\_for\\_drop\\_in\\_minorities\\_at\\_law\\_schools/](http://www.abajournal.com/news/article/dean_blames_rankings_for_drop_in_minorities_at_law_schools/).
120. See Leigh Jones, *Deans Differ on Rankings-Boycott Proposal*, NAT'L L.J., Aug. 4, 2008, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202423476451> ("Rankings are for consumer information, . . . [n]one of them are perfect, but we need to treat our potential students with respect. I just don't think we should be trying to hide information from consumers.") (quoting David Van Zandt, Dean of Northwestern University School of Law); David E. Van Zandt, *Law School Rankings Are an Invaluable Tool*, Feb. 25, 2008, <http://www.law.northwestern.edu/difference/statementOnRank.html> ("All the time, energy and money focused on denouncing and killing the rankings would be better spent on making sure that rankings provide consumers with the best possible information about choosing a law school."); see also Caron & Gely, *supra* note 93, at 1485, 1501 (indicating the *U.S. News & World Report* survey has had the "salutary effect of spurring the development of alternative methods of measuring law school success" because in the pre-rankings period, the "lack of accurate measurement of individual [law school] performance resulted in a market riddled with inefficiencies." The absence of market measures led to a "lack of accountability and transparency in legal education, thus creating a safe, comfortable environment for law schools (and particularly for law professors).").
121. See Posting of Tom W. Bell to Agoraphilia: The Center for Blurbs in the Public Interest, *Z-Scores in Model of 2010 USN&WR Law School Ranking*, <http://agoraphilia.blogspot.com/2009/07/z-scores-in-model-of-2010-usn-law.html> (July 23, 2009, 12:13) (adjusting *U.S. News & World Report* rankings to show how well each school performed relative to its peers). Researchers at Stanford Law School, for example, have created rankings of the "top" law schools, based on extraction of a variety of data included in the *U.S. News & World Report* rankings. See J. Paul Lomio, Erika V. Wayne & George D. Wilson, *Ranking of Top Law Schools 1987 - 2009 By US News & World Report* (Robert Crown Law Library, Stanford Law School, Research Paper No. 20, Apr. 2008), available at [http://www.law.stanford.edu/publications/projects/lrps/pdf/lomio\\_et\\_al-rp20.pdf](http://www.law.stanford.edu/publications/projects/lrps/pdf/lomio_et_al-rp20.pdf) (suggesting that alternate rankings show diversity, clinical training, and specialty program features, such as legal writing and trial advocacy). The *U.S. News & World Report* editors, moreover, may feel some pressure to revise the rankings themselves. See Sandra Randag, *U.S. News To Add Peer Assessment To Part-Time JD Program Rankings*, A.B.A. J., Dec. 3, 2009, [http://www.abajournal.com/news/article/u.s.\\_news\\_to\\_add\\_peer\\_assessment\\_to\\_part-time\\_jd\\_program\\_rankings/](http://www.abajournal.com/news/article/u.s._news_to_add_peer_assessment_to_part-time_jd_program_rankings/) (noting various proposed revisions to *U.S. News & World Report* ranking methodology).

moreover, can be factored into alternative ranking systems.<sup>122</sup> Many such alternate rankings now exist.<sup>123</sup> These alternate rankings and surveys may offer useful information on the ethics and professionalism training provided at various schools.<sup>124</sup> They may also offer some indication of career prospects for students, which is not generally available from conventional lists.<sup>125</sup> One ranking, for example, attempts to measure the number of “super” lawyers that various law schools have produced.<sup>126</sup>

Such surveys and rankings could be extended. A number of surveys, for example, rank law firms on various qualities.<sup>127</sup> In the-

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122. See Law School Admissions Council, Ranking Law Schools, <http://www.lsac.org/choosing/deans-speak-out-rankings.asp> (last visited June 5, 2010) (listing more than twenty factors that students should consider in choosing a school).
  123. See, e.g., THOMAS E. BRENNAN & DON LEDUC, *JUDGING THE LAW SCHOOLS* (2009); Internet Legal Research Group, Index To Law School Rankings (last visited Mar. 10, 2010), <http://www.ilrg.com/rankings.html> (listing more than twenty alternative law school ranking systems); Brian Leiter, Ranking of Top 40 Law Schools by Student (Numerical) Quality 2009, [http://www.leiterrankings.com/new/2009\\_student\\_quality.shtml](http://www.leiterrankings.com/new/2009_student_quality.shtml) (last visited June 5, 2010); see also *Fair Warning to Law Schools*, 11 GREEN BAG 139 (2008) (announcing new “deadwood report” on quality of law school scholarship); Caron & Gely, *supra* note 93, at 1517 (noting “cottage industry” of law school rankings in response to “market demand and flaws in U.S. News” approach).
  124. See JASON SOLOMON & DAVID FAGUNDES, *GUIDE TO THE U.S. NEWS SURVEY* (Oct. 2008), <http://racetothetoplaw.com/files/votersguide2008.pdf> (offering information on quality of law school programs and a survey of law schools that use “best practices” recommended in the *Carnegie Report*).
  125. *The Princeton Review*, for example, produces a set of law school rankings that includes a measure of “best career prospects.” See Law School Rankings, [www.princetonreview.com/law-school-rankings.aspx](http://www.princetonreview.com/law-school-rankings.aspx) (last visited June 5, 2010).
  126. On a cursory assessment, this “super” lawyer listing does not directly correlate to the *U.S. News & World Report* list. See 2010 Super Lawyers U.S. Law School Rankings, <http://www.superlawyers.com/toplists/lawschools/united-states/2010/> (last visited June 5, 2010) (including among the top twenty schools the University of Texas, University of Florida, Hastings, George Washington, and University of Miami). Despite problems in the methodology of the listing, see Martha Neil, *Schools Ranked by “Super Lawyers” Produced*, A.B.A. J., Nov. 16, 2009, [http://www.abajournal.com/news/article/new\\_law\\_school\\_survey\\_ranks\\_super\\_lawyer\\_quotient/](http://www.abajournal.com/news/article/new_law_school_survey_ranks_super_lawyer_quotient/) (noting that survey does not take into account size of law school, geographic location or length of existence of school), the list may offer some value to students. See Elie Mystal, *Super Law School Rankings*, ABOVE L., Nov. 17, 2009, [http://abovethelaw.com/2009/11/super\\_law\\_school\\_rankings.php](http://abovethelaw.com/2009/11/super_law_school_rankings.php) (noting that despite problems with survey, “[m]oving towards a law school ranking based on outcomes is at least a step in the right direction”). The “super” lawyer ranking of law schools, moreover, could be adjusted to reduce some of the distortions inherent in the method. See Martha Neil, *NU Law Dean Adjusts “Super Lawyers” Rankings to Reflect Law School Size*, A.B.A. J., Nov. 20, 2009, [http://www.abajournal.com/news/article/nu\\_dean\\_recalibrates\\_super\\_lawyers\\_rankings\\_to\\_reflect\\_law\\_school\\_size](http://www.abajournal.com/news/article/nu_dean_recalibrates_super_lawyers_rankings_to_reflect_law_school_size).
  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.<sup>128</sup> 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.<sup>129</sup> Rating of the teaching capabilities of individual faculty members is also theoretically possible, although it undoubtedly would be controversial.<sup>130</sup> Although no single, perfect ranking system exists, access to these kinds of alternative rankings may “stimulate and strengthen” academic resolve to improve legal education.<sup>131</sup>

### 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-

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career\_center/surveys\_rankings.shtml (last visited Mar. 20, 2010). Martindale, moreover, provides peer and client ratings of individual lawyers, which could be correlated to law school attended. See Martindale Homepage, [www.martindale.com](http://www.martindale.com) (search for an attorney or a firm, then narrow search results by peer and client ratings) (last visited Mar. 20, 2010); see also *Lawyers Not Thanking the Ranking*, WIREDGC <http://www.wiredgc.com/2009/11/30/lawyers-not-thanking-the-ranking/> (Nov. 30, 2009) (noting that the Association of Corporate Counsel has begun to survey members and rank outside law firms); Posting of Paul Lippe to AMLAWDAILY, <http://amlawdaily.typepad.com/amlawdaily/2009/11/acc.html> (Nov. 18, 2009, 16:15 PM) (indicating the new ACC ratings reflect “first professional services marketplace in which buyers (in-house lawyers) are able to judge quality as sellers”).

128. See The Top 15 Schools from which the Most “Prestigious” Law Firms Hire New Lawyers, 2008, [http://www.leiterrankings.com/jobs/2008/job\\_biglaw.shtml](http://www.leiterrankings.com/jobs/2008/job_biglaw.shtml) (last visited June 5, 2010). Such measures might also include results on issues such as diversity and pro bono practice. See Leigh Jones, *Bad Job Market Aside, Law Students Seek Change*, NAT’L L.J., Apr. 13, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202429692775> (reporting on a student group, entitled Building a Better Legal Profession, which monitors performance of law firms on diversity and other issues).
129. See Edward J. Reisner, *What’s In a Number: Ranking Law Schools*, 23 GARGOYLE 19, at 20 (Apr. 24, 2009), available at [http://www.law.wisc.edu/alumni/gargoyle/archive/23\\_4/gargoyle\\_23\\_4\\_6.pdf](http://www.law.wisc.edu/alumni/gargoyle/archive/23_4/gargoyle_23_4_6.pdf) (“The real ranking of law schools is how our own graduates feel about our successes or failures. That, in turn, is measured not by *US News* but by how generous they are in contributing support . . . .”); see also Bennett, *supra* note 28, at 14.
130. See Caron & Gely, *supra* note 93, at 21 (suggesting that growing demand will eventually produce rankings of faculty teaching performance).
131. Brian Leiter, *How to Rank Law Schools*, 81 IND. L.J. 47, 52 (2006) (“We should produce more rankings that unleash academic talent and ambition . . . .”); Brian Leiter’s Law School Rankings, [www.leiterrankings.com](http://www.leiterrankings.com) (last visited Apr. 8, 2010) (“Students are invited to consider measures important to them and to utilize those in selecting schools . . . . Suggestions for new studies and improvements in the existing measures are welcome.”).

brary, for example).<sup>132</sup> 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.”<sup>133</sup> 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.<sup>134</sup> The precise shape of the ABA outcome standards has yet to be determined.<sup>135</sup>

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132. See Douglas W. Kmiec, *Law School Accreditation: Responsible Regulation or Barrier to Entry?*, 11 TEX. REV. L. & POL. 377, 379 (2007) (noting that accreditation standards are “largely focused on inputs rather than outputs,” and there is “very little in terms of the evaluation of the actual effectiveness of the graduates”); Mathew D. Staver & Anita L. Staver, *Lifting the Veil: An Exposé on the American Bar Association’s Arbitrary and Capricious Accreditation Process*, 49 WAYNE L. REV. 1, 5 (2003) (indicating that the accreditation process “concentrates on inputs,” rather than output). For an overview of the accreditation process, see SECTION OF LEGAL ED. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, THE LAW SCHOOL ACCREDITATION PROCESS (publication date unknown), available at [http://www.abanet.org/legaled/resources/13665\\_ABA\\_accred\\_web150.pdf](http://www.abanet.org/legaled/resources/13665_ABA_accred_web150.pdf). The ABA Section on Legal Education and Admission to the Bar is recognized by the U.S. Department of Education as the accrediting agency for professional degrees in law. See 34 C.F.R. § 602 (1999).
133. See Posting of Jordan Furlong to slaw.ca, <http://www.slaw.ca/2008/12/08/re-engineering-law-schools/> (Dec. 8, 2008) (explaining the notion of outcomes is that “a school is as good as its graduates, not its infrastructure”); Posting of Bill Henderson to Legal Profession Blog, [http://lawprofessors.typepad.com/legal\\_profession/2009/11/a-starting-point-for-law-school-outcome-measures.html](http://lawprofessors.typepad.com/legal_profession/2009/11/a-starting-point-for-law-school-outcome-measures.html) (Nov. 12, 2009).
134. See STANDARDS REVIEW COMM., SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, STUDENT LEARNING OUTCOMES, CHAPTER 3: PROGRAM OF LEGAL EDUCATION (draft for Jan. 8–9, 2010 meeting), available at [www.abanet.org/legaled/](http://www.abanet.org/legaled/) (select “Learning Outcomes Draft for Consideration”). The draft standards follow the ABA’s 2008 report on the need for outcome measures in legal education. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, REPORT OF THE OUTCOME MEASURES COMMITTEE (July 27, 2008), available at [www.abanet.org/legaled/](http://www.abanet.org/legaled/) (select “Report of the Special Committee on Outcome Measures, July 2008” [hereinafter OUTCOME MEASURES REPORT]). The ABA, moreover, had previously introduced standards requiring lawyering and skills training. See Roy T. Stuckey, *How Do Law Schools Comply with the ABA’s New Mandate Requiring Significant Instruction in Professional Skills For All Students?*, 59 MERCER L. REV. 859 (2008) (reviewing efforts to introduce lawyering and skills training in law schools).
135. See James Podgers, *Self-Study Program*, A.B.A. J., Nov. 1, 2009, [http://www.abajournal.com/magazine/article/self-study\\_program/](http://www.abajournal.com/magazine/article/self-study_program/) (noting “very, very mixed” reactions to draft ABA standards on outcome measures); Letter from the Society of American Law Teachers to Dean Donald Polden, Chair of the ABA Standards Review Committee (July 7, 2009), available at <http://www.abanet.org/legaled/committees/Standards%20Review%20documents/SALT%20July%202009.pdf> (listing examples of some law schools that have already adopted outcome assessment methods, but noting that “few schools have even begun to identify learning outcomes”).

Existing outcome measurements include bar passage rates.<sup>136</sup> Some ten states, moreover, have agreed to begin using a form of “universal” bar examination in the next few years.<sup>137</sup> 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.<sup>138</sup> 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.<sup>139</sup> Earlier focus on entry into the profession, in turn, could lead law schools to reformulate their third

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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”).
137. See Leigh Jones, *Uniform Bar Exam Drawing Closer to Reality*, NAT’L L.J., Oct. 19, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202434645306&hbzlogin=1>. A similar national testing system already exists in medicine. See Susan M. Case, *A Uniform Licensure Examination: It Can Be Done*, BAR EXAMINER, Feb. 2009, 30, at 31, available at [http://www.ncbex.org/uploads/user\\_docrepos/780109\\_UBEEssays\\_01.pdf](http://www.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf) (noting that United States Medical Licensing Examination was “in some respects a larger endeavor” than current plans for a uniform bar examination). The Multistate Professional Responsibility Examination, the Multistate Essay Examination, and the Multistate Performance Test are already widely used by various states. Gregory G. Murphy, *A Uniform Bar Examination: Let’s Give It A Try*, BAR EXAMINER, Feb. 2009, 41, at 41 (2009), available at [http://www.ncbex.org/uploads/user\\_docrepos/780109\\_UBEEssays\\_01.pdf](http://www.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf). For a description of the Uniform Bar Examination, see Susan M. Case, *The Testing Column: The Uniform Bar Examination, What’s In It for Me?*, BAR EXAMINER, Feb. 2010, 50, available at [https://secure.ncbex.org/uploads/user\\_docrepos/790110\\_TestingColumn.pdf](https://secure.ncbex.org/uploads/user_docrepos/790110_TestingColumn.pdf).
138. See Posting of Stephanie Francis Ward to Legal Rebels, [http://www.legalrebels.com/posts/erica\\_moester/](http://www.legalrebels.com/posts/erica_moester/) (Oct. 5, 2009, 12:02 CDT); Rachel M. Zahorsky, *Several States Move Closer to National Bar Exam*, A.B.A. J., Nov. 23, 2009, [http://www.abajournal.com/news/article/several\\_states\\_move\\_closer\\_to\\_national\\_bar\\_exam/](http://www.abajournal.com/news/article/several_states_move_closer_to_national_bar_exam/).
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](https://secure.ncbex.org/uploads/user_docrepos/780309_PresidentsPage.pdf) (arguing

year curriculum to focus more on transition into the profession.<sup>140</sup> 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.<sup>141</sup>

Outcome measures might also include some forms of certification for specialty capabilities.<sup>142</sup> Certifications of this type already exist for such areas as patent practice.<sup>143</sup> Similar programs have been developed in other jurisdictions<sup>144</sup> and in other professions.<sup>145</sup> More generally, outcome measures could include information on employ-

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that system could “place students in the position of becoming productive as lawyers much more quickly”).

140. See Moeser, *supra* note 141, at 5 (noting that “law schools could formulate a terminal year that would be more meaningful to students in terms of preparing them to enter the legal profession. Changes to the curriculum of law schools that reimagine their third year would create an advantage for graduates of those law schools by sending them into the profession better prepared as lawyers”).
141. See Rebecca White Berch, *The Case for the Uniform Bar Exam*, BAR EXAMINER, Feb. 2009, 9, at 11, available at [https://secure.ncbex.org/uploads/user\\_docrepos/780109\\_UBEEssays\\_01.pdf](https://secure.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf) (arguing that a uniform examination “would ensure uniform content, uniform grading, a uniform passing score” and other benefits); Rebecca S. Thiem, *The Uniform Bar Exam: Change We Can Believe In*, BAR EXAMINER, Feb. 2009, 12, at 13, available at [https://secure.ncbex.org/uploads/user\\_docrepos/780109\\_UBEEssays\\_01.pdf](https://secure.ncbex.org/uploads/user_docrepos/780109_UBEEssays_01.pdf) (noting “frustration about the widely differing passing standards among the states and the lack of transparency about the exams” as currently administered).
142. By now, a great deal of study has gone into the science of competency testing, which is applied in many fields. See CYNTHIA C. DURLEY, NAT’L ORG. FOR COMPETENCY ASSURANCE, THE NOCA GUIDE TO UNDERSTANDING CREDENTIALING CONCEPTS 3 (2005), available at <http://www.credentialingexcellence.org/portals/0/CredentialingConcepts.pdf> (“Nearly every profession uses credentialing to establish criteria for fairness, quality, competence and/or safety for professional services, produce, or educational endeavors.”).
143. See U.S. PATENT & TRADEMARK OFFICE, GEN. REQUIREMENTS BULL. FOR ADMISSION TO EXAMINATION FOR REGISTRATION TO PRACTICE IN PATENT CASES BEFORE U.S. PATENT & TRADEMARK OFF. (Jan. 2008), [www.uspto.gov/web/offices/dcom/olia/oed/grb.pdf](http://www.uspto.gov/web/offices/dcom/olia/oed/grb.pdf).
144. See The Signet Accreditation, How to Become Accredited, Introduction, [www.signetaccreditation.co.uk](http://www.signetaccreditation.co.uk) (select “How to become accredited”) (last visited June 6, 2010) (describing Scottish system, which permits certification of proficiency in commercial property, commercial litigation and other subjects); OUTCOME MEASURES REPORT, *supra* note 136, at 11–13 (discussing other countries’ outcome-focused models).
145. Notably, law enforcement organizations have successfully developed standards for education and accreditation in recent years. See, e.g., Kimberly A. McCabe & Robin G. Fajardo, *Law Enforcement Accreditation: A National Comparison of Accredited vs. Non-Accredited Agencies*, 29 J. CRIM. JUSTICE 127 (2001) (noting effectiveness of accreditation system for improved law enforcement training); Welcome To FLETA, [www.fleta.gov](http://www.fleta.gov) (last visited June 6, 2010) (describing Federal Law Enforcement Training Accreditation System, which establishes standards for training law enforcement officers).

ment rates, income, and even job satisfaction after graduation.<sup>146</sup> Such measures, if properly attuned to the essential skills and values required of lawyers, could further encourage law school curricular reform.<sup>147</sup> Such information, moreover, should permit systematic study of the relationship between particular teaching practices and professional outcomes for students.<sup>148</sup> Thus, outcome measures can help en-

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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](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](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](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](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”).
148. See Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957, 971 (1999) (noting concern for the absence of a “framework for evaluation of teaching methods”); Letter from William D. Henderson, Associate Professor of Law, Indiana University, to Randy A. Hertz, Chair of ABA Special Committee on Outcome Measures (Jan. 30, 2008) (on file with author) (noting that the ABA can sponsor research targeted at the relationship between teaching methods and outcomes for law school graduates).

courage experimentation in legal education and help confirm and disseminate effective new teaching methods.<sup>149</sup>

## 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.<sup>150</sup>

A focus on ethical and professional enrichment of the law school experience need not displace existing customs in legal education.<sup>151</sup> 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.<sup>152</sup> Further, curriculum changes will not necessarily impose huge additional costs on schools.<sup>153</sup> The cost of pressing for "prestige" elements in a school (e.g., high salaries to capture academic

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149. See CARNEGIE REPORT, *supra* note 4, at 5 (noting that, in other professional disciplines, educators often employ "multiple forms of teaching," whereas legal education shows "remarkably uniform" pedagogy "across variations in schools and student bodies" producing "a striking conformity in outlook and habits of thought among legal graduates"); see also MARJORIE M. SHULTZ & SHELDON ZEDECK, IDENTIFICATION, DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING (2008), available at <http://www.law.berkeley.edu/files/LSACREPOR Tfinal-12.pdf>.
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.
151. See Susan R. Martyn & Robert S. Salem, *The Integrated Law School Practicum: Synergizing Theory and Practice*, 68 LA. L. REV. 715, 716 (2008) (describing the "successful integration of traditional and clinical methodologies" in a law school course).
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](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.<sup>154</sup> Some experiential courses, such as legal writing, can easily be adapted to offer additional practical training and experiences for students.<sup>155</sup> The aim is not simply to add more to the teaching burdens at law schools<sup>156</sup> 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.<sup>157</sup>

The teaching of ethics and professionalism, moreover, can coexist with the Socratic method, so valued as an essential element of legal education.<sup>158</sup> 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.<sup>159</sup> 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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154. Eric Kelderman, *Law School Cost Is Pushed Up by Quest for Prestige, Not Accreditation*, GAO Survey Finds, CHRON. HIGHER. EDUC., Oct. 26, 2009, <http://chronicle.com/article/Competition-Not/48940/>.
  155. See, e.g., Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. PUB. INT. L.J. 429 (1999); Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301 (2007).
  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 Carleidozo 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 Levison ed., 2004).

the Sophists.”<sup>160</sup> As the *Carnegie Report* has summarized: “the formation of competent and committed professionals deserves and needs to be the common, unifying purpose” of all law schools.<sup>161</sup>

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160. Michael C. Dorf, *How to “Think Like a Lawyer”: Advice to New and Prospective Law Students*, FINDLAW, Aug. 22, 2001, <http://writ.news.findlaw.com/dorf/20010822.html> (warning that the Socratic method, if misunderstood, may create “cynicism” and a view that the law is “illegitimate”).
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.”).