20TH ANNIVERSARY CONCLAVE
ON THE
EDUCATION OF LAWYERS

VIRGINIA STATE BAR
SECTION ON THE EDUCATION OF LAWYERS IN VIRGINIA

APRIL 22–23, 2012

THE BOAR’S HEAD INN
CHARLOTTESVILLE, VIRGINIA

Conclave 2012 is financially assisted by the Virginia Law Foundation
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BACKGROUND READING MATERIALS

8. Educating Lawyers: Preparation for the Profession of Law (Summary)
The Carnegie Foundation for the Advancement of Teaching

9. What Can We Learn from Law School? Legal Education Reflects Issues Found in All Higher Education (Summary)
Julie Margetta Morgan, Center for American Progress (December 2011)

10. A Survey of Law School Curriculum: 2002-2012 (Executive Summary Draft)
Curriculum Committee, ABA Section of Legal Education and Admissions to the Bar

11. The Law School Critique in Historical Perspective (Sections V & VI)
A. Benjamin Spencer

12. Beyond Langdell
A. Benjamin Spencer, Volume XX, Number 1, Education & Practice (Fall 2011)

13. Two Questions for Law Schools about the Future Boundaries of the Legal Profession
Elizabeth Chambliss – NYLS Legal Studies Research Paper No. 10/11-25 (October 18, 2011)
14. The Bad News Law Schools
Stanley Fish – Opinionator, The New York Times (February 20, 2012)

15. IOWA Law Review 2011 Symposium – Rethinking Legal Education

- Foreword
  Gail B. Agrawal
  96 IOWA L. Rev. 1449 (2011)

- What Will Our Future Look Like and How Will We Respond?
  Michael A. Fitts
  96 IOWA L. Rev. 1539 (2011)

- Training the Whole Lawyer
  Deanell Reece Tacha
  96 IOWA L. Rev. 1699 (2011)

16. The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills?
William D. Henderson and Rachel M. Zahorsky - ABA Journal (January 2012)

17. Law Job Stagnation May Have Started Before the Recession – And It May Be a Sign of Lasting Change
William D. Henderson and Rachel M. Zahorsky - ABA Journal (July 2011)

Debra Cassens Weiss - ABA Journal (March 2012)

19. ABA Commission on Ethics 20/20

- Admission by Motion Revised Draft Resolution and Revised Draft Report (February 7, 2012)

- New ABA Model Rule on Practice Pending Admission Revised Draft Resolution and Revised Draft Report (February 21, 2012)

20. The Delaware Clerkship Requirement: A Long-Standing Tradition
Randy J. Holland, The Bar Examiner (November 2009)

21. Background Information on Transition to Practice

- Virginia CLE’s New Program – Background Information

- Summit Update: Proposed Model MCLE Rules
  Patrick A. Nester and Peter S. Vogel – Presented at the ACLEA 48th Mid-Year Meeting in New Orleans, LA (January 28-31, 2012)
• **Solving the Professional Development Puzzle**  

• **The Importance of Pro Bono Work in Professional Development**  
  Brian J. Murray – Volume 23, Number 3, The Journal of the Trial Practice Committee  
  Verdict, ABA Section of Litigation (Summer 2009)

22. **The Economics of Civility**  
  Donald W. Lemons – *Trial* (July 2011), American Association of Justice

  • **Model Mentoring Program for Use by Individual Inns**  
    American Inns of Court (2002)

  • **Mentoring Program Guidelines, Expectations and Acknowledgement**  
    American Inns of Court (2002)

  • **Suggested Mentoring Topics & Experiences**  
    American Inns of Court (2002)

23. **Conclaves on Legal Education: Catalyst for Improvement of the Profession**  
TO: Conclave 2012 Participants
FROM: Elizabeth L. Keller
RE: 20th Anniversary Conclave on the Education of Lawyers in Virginia
      April 22-23, 2012
DATE: April 4, 2012

Welcome to the 20th Anniversary Conclave on the Education of Lawyers in Virginia. Below are
some logistical details concerning the schedule of events and arrangements for the conclave.

**The Boar’s Head Inn**

The Boar’s Head
200 Ednam Drive, Charlottesville, Virginia 22903
Toll Free: (800) 476-1988
Main: (434) 296-2181

Directions and a map of the premises are included in the notebook.

**Agenda & Schedule of Events**

All events will be held in The Boar’s Head Inn Pavilion which is located across the street from
the Main Lobby of the hotel. The program will begin promptly at Noon on Sunday afternoon
with a seated luncheon and welcoming remarks from Chief Justice Kinser. Because of the
compressed nature of the schedule, it is important that participants are punctual in their arrival
and that they plan to attend all sessions during the course of the two days. The Conclave is
scheduled to conclude mid-afternoon on Monday.

A detailed agenda and schedule of events for the two-day program is included.

**Registration**

Registration will begin at 11:00 am on Sunday morning, April 22, in the Pavilion Foyer.

**Meals**

The program will include the following group meals which will be held in Pavilions I & II: Lunch
and Dinner on Sunday; and Continental Breakfast and Lunch on Monday. If you have a dietary
restriction, please advise Teresa Moore no later than April 18; moore@vsb.org.
Panel Discussions
The panel discussions will be held in Pavilions II & III. On Sunday afternoon, the first panel will run from 1:30 pm to 3:00 pm, followed by a break from 3:00 pm to 3:15 pm. The second panel will run from 3:15 pm to 4:45 pm. On Monday morning, the first panel will run from 9:00 am to 10:30 am, with a break from 10:30 am to 10:45 am. The second panel will run from 10:45 am to 12:15 pm.

Reception and Award Presentation
On Sunday evening, there will be a special reception for all Conclave participants from 6 to 7 pm in the Pavilion Foyer. This event is being sponsored and underwritten by Gentry Locke Rakes & Moore LLP, of Roanoke.

At 6:30 pm, the Virginia State Bar’s Section on the Education of Lawyers will make a special inaugural presentation of its Leadership in Education Award.

Dinner and Program
A group dinner for Conclave Participants will begin at 7:00 pm in Pavilion I on Sunday evening. Following dinner, Dean David Yellen of Loyola University School of Law, Chicago, and Professor William Henderson, of the Mauer School of Law, University of Indiana, will lead a discussion entitled, Is there a Crisis in Legal Education?

Luncheon & Remarks
There will be a seated luncheon on Monday at 12:15 pm in Pavilion I. Following lunch, Dean Emeritus John E. Montgomery, of the South Carolina School of Law, will deliver remarks.

Closing Session
The closing session will take place in Pavilions II & III beginning at 1:45 pm. Brief reports from the panel discussions will be received from the Reporters Committee chaired by Judge Waugh Crigler. Taylor Reveley will make closing remarks between 2:45 pm and 3:00 pm on Monday afternoon.

Attire
Business attire is appropriate for Conclave 2012. The conclave proceedings will be videotaped for future distribution to law schools, law firms, local bars and the judiciary. With this in mind, the Conclave Planning Committee asks that all participants dress accordingly.

Hotel Reimbursement
You may be reimbursed for one night’s lodging at The Boar’s Head, at the inclusive group rate of $181.50. You may submit your reimbursement request by using the form included in the notebook. Please indicate ‘Conclave 2012 Participant’ on the form, sign it, and mail to the Virginia State Bar with your original hotel receipt. Travel reimbursement requests should be received no later than May 15, 2012.

For questions, please contact Teresa Moore, Bar Services Dept., Virginia State Bar (804) 775-9400; moore@vsb.org
20th ANNIVERSARY CONCLAVE
ON THE EDUCATION OF LAWYERS IN VIRGINIA

Sharing the Responsibility for Legal Education Among
The Law Schools, the Bar and the Bench

Section on the Education of Lawyers in Virginia ~ Virginia State Bar
The Boar’s Head Inn - Charlottesville, Virginia
April 22-23, 2012

AGENDA

SUNDAY, APRIL 22

11:00 – 12:00  ARRIVAL AND REGISTRATION

Noon  WELCOME AND OPENING REMARKS

W. Taylor Reveley III, Esq. – Program Chair
President
College of William and Mary
Williamsburg, Virginia

The Honorable Cynthia D. Kinser
Chief Justice
Supreme Court of Virginia
Pennington Gap, Virginia

LUNCHEON

HISTORICAL OVERVIEW AND REMARKS

William R. Rakes, Esq. – Program Vice Chair
Gentry Locke Rakes & Moore LLP
Roanoke, Virginia

Reporter:      Prof. Dale S. Margolin

1:30 – 3:00  PANEL I – HOW ARE LAW SCHOOLS ADDRESSING MAJOR CHANGES IN THE
PRACTICE OF LAW AND IN ACCREDITING STANDARDS FOR LEGAL
EDUCATION?

What have been the major changes in these two aspects of the legal profession
in the last generation? To what extent are law schools responding creatively
and effectively to them? Should law schools be doing more to prepare their
graduates to practice law effectively from “day one” and to use their legal
training productively in other careers?

Moderator:     W. Taylor Reveley III, Esq.
President
College of William & Mary
Williamsburg, VA
3:00 – 3:15  
BRAKE

3:15 – 4:45  
PANEL II - HOW SHOULD WE MEASURE PREPAREDNESS FOR ADMISSION TO THE BAR?

To what extent do bar exams realistically capture competence for the practice of law? How effectively, for instance, do they test an applicant’s capacity to write? Do bar exams fail to take into account the contemporary reality that a rapidly growing number of lawyers have multi-state and international practices? Can we justify any longer having 50 different bar exams and confronting applicants with the steep costs of application fees and bar prep courses? Do the number and nature of tested subjects on bar exams constrain the capacity of law schools to reshape their curriculums to deal with contemporary needs in the profession, for instance, skills education?

Moderator: Hon. Elizabeth B. Lacy  
Senior Justice, Supreme Court of Virginia  
Richmond, Virginia

Panelists:  
Hon. B. Waugh Crigler  
William D. Dolan III, Esq.  
Prof. James E. Moliterno  
Anita O. Poston, Esq.

Panelists:  
Dean Jeffrey A. Brauch  
Dean Davison Douglas  
Tracy A. Giles, Esq.  
David C. Landin, Esq.  
Prof. A. Benjamin Spencer

Reporter: Prof. Margaret I. Bacigal

Reporter: Jeanne F. Franklin, Esq.

4:45  
CLOSING REMARKS FOR THE DAY

6:00  
RECEPTION  
Sponsored by Gentry Locke Rakes & Moore LLP

6:30  
PRESENTATION - Inaugural Leadership in Education Award

7:00  
DINNER & PROGRAM

Is There a Crisis in Legal Education?

Dean David N. Yellen – School of Law, Loyola University, Chicago

Professor William D. Henderson – Director, Center on the Global Legal Profession, Mauer School of Law, Indiana University, Bloomington

Reporter: Prof. Dale S. Margolin
MONDAY, APRIL 23

8:00 – 9:00  CONTINENTAL BREAKFAST

9:00 – 10:30  PANEL III – HOW DO WE MOST EFFECTIVELY SEEK TO EDUCATE LAWYERS THROUGHOUT THEIR CAREERS?

What are the main ways in which lawyers continue to learn over the course of their legal careers? Which ones seem to be especially effective? Among these ways, what is the most useful role for mandatory CLE? To what extent does it now actually fulfill that role?

Panel Moderator:  W. David Harless, Esq.
President-Elect, Virginia State Bar
Christian & Barton LLP
Richmond, Virginia

Panelists:  David P. Bobzien, Esq.
Hon. Donald W. Lemons
Jacquelyn E. Stone, Esq.
Prof. Richard Balnave

Reporter:  John H. Foote, Esq.

10:30 – 10:45  BREAK

10:45 – 12:15  PANEL IV – DO JUDGES HAVE A MEANINGFUL ROLE IN LEGAL EDUCATION?

Since judges often see some lawyers’ abuse of precedent and statutory law, gross inability to write, and blatant incivility, should judges insist more forcefully on legal competence, ethical behavior and civility from lawyers appearing in their courts? To the extent judges are reluctant to do so, what considerations inhibit them (for instance, concerns about reappointment, limited time to intervene, or belief that intervention would be inappropriate)? Realistically can judges do more, and should they do more, to ensure the effective education of lawyers?

Panel Moderator:  Hon. Gerald Bruce Lee
Judge, U.S. District Court for the Eastern District
Alexandria, Virginia

Panelists:  Hon. Cynthia D. Kinser
Hugh M. Fain III, Esq.
Monica Taylor Monday, Esq.
Hon. Michael F. Urbanski

Reporter:  Hon. Walter S. Felton, Jr.
12:15 LUNCHEON & PROGRAM

Dean Emeritus John E. Montgomery
Director, Nelson Mullins Riley & Scarborough Center on Professionalism
School of Law, University of South Carolina
Columbia, SC

1:45 – 3:00 CLOSING SESSION & ADJOURNMENT

Reports from Reporters’ Subcommittee:

Hon. B. Waugh Crigler, Chair
Prof. Margaret Ivey Bacigal
Hon. Walter S. Felton, Jr.
Jeanne F. Franklin, Esq.
John H. Foote, Esq.
Prof. Dale S. Margolin

W. Taylor Reveley III, Esq. - Ex Officio
William R. Rakes, Esq. - Ex Officio

(Conclave 2012 is financially assisted by the Virginia Law Foundation)
20th Anniversary Conclave on the Education of Lawyers in Virginia
Pavilion Conference Center
The Boar’s Head Inn
Charlottesville, Virginia
April 22-23, 2012

**SUNDAY, APRIL 22**

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<td>Noon</td>
<td>WELCOME AND OPENING REMARKS</td>
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<td><em>Sponsored by Gentry Locke Rakes &amp; Moore LLP</em></td>
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<td>6:30</td>
<td>PRESENTATION</td>
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<td><em>Inaugural Leadership In Education Award</em></td>
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<td>DINNER &amp; PROGRAM</td>
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**MONDAY, APRIL 23**

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<td>PANEL IV</td>
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<td>12:15</td>
<td>LUNCHEON &amp; GUEST SPEAKER</td>
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<td>CLOSING SESSION &amp; ADJOURNMENT</td>
<td>Pavilions II &amp; III</td>
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**Rev. 3-28-12**
ROSSIE D. ALSTON, JR.

Rossie D. Alston, Jr. is a Judge of the Court of Appeals of Virginia. Judge Alston matriculated to Averett College (now Averett University) and graduated cum laude with a Bachelor of Arts in History in 1979. Upon graduating from Averett College, Judge Alston matriculated to the North Carolina Central University School of Law where he graduated with a Juris Doctorate cum laude and fifth in his graduating class in 1982. In 1998 Judge Alston was elected by unanimous vote of the Virginia House of Delegates and the Virginia Senate as a Judge of the Prince William Juvenile and Domestic Relations Court. In January 2001, Governor James Gilmore appointed Judge Alston as a Judge of the Circuit Court of Prince William County. With this appointment Judge Alston became the first African-American to sit as a judge of the Circuit Court of Prince William County. In February 2009, Judge Alston was unanimously elected as the thirty-second judge in the history of the Court of Appeals of Virginia where he currently serves. Judge Alston has served with many civic organizations including the American Heart Association, Didlake, the Virginia United Methodist Church Foundation and the Board of Trustees of Averett University. He also served for eight years as lay leader at Good Shepherd United Methodist Church in Dale City. He is the Commissioner of the Christian Fellowship Softball League and a Past President of the Northern Virginia Football Officials Association. Judge Alston is also an Adjunct Professor at George Mason University and a Distinguished Adjunct Professor at the George Mason University Law School. He is a proud and avid fan of his beloved Washington Redskins.

MARGARET IVEY BACIGAL

Margaret Ivey Bacigal is a Clinical Professor of Law at the University of Richmond School of Law. She directs the school’s Clinical Placement Program and teaches the Domestic Violence Seminar. Professor Bacigal is past Chair of the Virginia State Bar’s Section on the Education of Lawyers and former Editor of its newsletter, Education & Practice. She is currently Chair of The Virginia Bar Association’s Commission on the Needs of Children and a former member of The Virginia Bar Association’s Board of Governors, Pro Bono Task Force, and Community Service Council. She currently serves on the Virginia Poverty Law Center’s Board of Directors and is a past Board president. She participated in the ABA National Conclave on The Educational Continuum for Lawyers: Collaboration among the Academy, Bench, and Bar, and the 2007 Conclave on Legal Education which was jointly sponsored by the ABA Section of Legal Education and Admissions to the Bar and the Virginia State Bar’s Section on the Education of Lawyers. Former Chief Justice Leroy Hassell appointed her to serve on the Judicial Administration Task Force, Commission on Virginia Courts in the 21st Century. She received her B.A. from Mary Baldwin College and her J.D. from the University of Richmond School of Law. Prior to joining the faculty at the law school, she practiced law with Williams Mullen in Richmond.

THOMAS R. BAGBY

Thomas R. Bagby serves as President of Woods Rogers, in Roanoke. A native of Roanoke, Mr. Bagby joined the firm in 1995, where he is now a Principal and also serves as Chairman of the firm’s Labor and Employment Law Section. Prior to joining the firm, he was a partner in the Washington, D.C. office of a national law firm, where he had practiced since 1986 representing national and international clients in the labor and employment law area. From 1977 to 1981, he was a trial attorney with the U.S. Department of Justice, Civil Rights Division, where he handled numerous pattern and practice employment discrimination cases. He served as a law clerk in the District of Columbia to U.S. District Judge June L. Green for two years before joining the Department of Justice. Mr. Bagby was admitted to the Virginia Bar in 1975, the District of Columbia Bar in 1976 and the U.S. Supreme Court Bar in 1980. He is an active member of the Roanoke, Washington, D.C., and Virginia State Bars. Mr. Bagby received his law degree (1975) and B.A. degree (Phi Beta Kappa, 1972) from the University of Virginia.
Mr. Bagby specializes in representing management on a broad range of labor and employment law issues. He represents employers in litigation in various state and federal courts and administrative agencies around the country. In addition, he regularly counsels employers on various workplace-related issues, including discipline and discharge, ADA and FMLA issues, sexual and other harassment and discrimination, affirmative action policies and non-competition issues. Mr. Bagby is co-author of Labor & Employment Law In Virginia: A Business Guide For Employers, a book published through the Virginia Chamber of Commerce. Among his honors, Mr. Bagby has been selected by Virginia Business magazine as one of its Legal Elite in the Labor and Employment practice area and was the subject of a feature profile in that magazine’s December 2002 edition. He is Past Chair of The Virginia Bar Association’s Labor Relations & Employment Law Section and currently serves as President-Elect of The Virginia Bar Association.

GERALD L. BALILES

Governor Gerald L. Baliles is Director and CEO of the Miller Center, a nonpartisan institute that seeks to expand understanding of the presidency, policy and political history, providing critical insights for the nation’s governance challenges. Based at the University of Virginia, with offices in Charlottesville and in Washington DC, the Miller Center is committed to work grounded in rigorous scholarship and advanced through civil discourse. Governor Baliles previously served as a Virginia legislator, Attorney General (Outstanding Attorney General in 1985) and Governor (1986-1990). During his tenure as Governor, he served as Chairman of the National Governors Association. As a partner at the law firm of Hunton & Williams LLP, he chaired the section on international law, and practiced aviation law, as well as chaired such national and regional entities as the Presidentially-appointed Commission on Airline Competitiveness, the Southern States Energy Board, the Chesapeake Bay Blue Ribbon Panel, the Education Quality Committee of the Southern Regional Education Board, the AGB Commission on Academic Presidency, and the AGB Commission on the State of the Presidency in Higher Education. He serves on the Boards of Altria and Norfolk Southern; is on the board of the Council on the Study of the Presidency and Congress; served as Chairman of PBS for multiple terms; and has served on several other civic and corporate boards, including Newport News Shipbuilding, the Nature Conservancy in Virginia, the Virginia Historical Society, and the Virginia Foundation for Community College Education. He holds honorary degrees from eleven institutions of higher education.

RICHARD D. BALNAVE

Richard D. Balnave has taught at the University of Virginia School of Law since 1984, and currently serves as its Director of Clinical Legal Education. His primary areas of teaching include family law, children’s law, mediation and professional responsibility. Prior to teaching, he practiced law full time in Pennsylvania beginning in 1977. Professor Balnave has served on the Board of Governors of the Family Law Section of the VSB, the Council of the Domestic Relations Law Section and the Commission on the Needs of Children of the VBA, and the Commission on the Future of Virginia's Judicial System (“The Carrico Commission”). Professor Balnave has been a frequent lecturer at Virginia CLE programs and serves on its Advisory Committee. Professor Balnave received his B.A. from the College of William and Mary (1971); his M.A. from State University of New York at Albany (1973); and his J.D. from Case Western Reserve University Law School (1977).

JAYNE WEEKS BARNARD

Jayne Weeks Barnard is the Cutler Professor of Law and Kelly Professor of Teaching Excellence at the William and Mary School of Law, in Williamsburg. Professor Barnard’s areas of specialization are Corporations; Criminal Law – White Collar Crime; and Securities Regulation Law. Prior to joining the W&M Law faculty in 1985, Professor Barnard practiced law at Jenner & Block in Chicago (elected to partnership1982). She is the author of articles in the Journal of Corporation Law; The Business Lawyer; and the Wisconsin, North Carolina, Boston University, Arizona, and Southern California Law reviews. Professor Barnard served as the program chair for the Herbert V. Kelly, Sr. Program for Teaching Excellence (2010-11), and as the president of the ACLU of Virginia (2010-11). Among her honors, Professor Barnard is the recipient of the Plumeri Award for Teaching Excellence(2010) and
the Thomas Jefferson Award (2011). Professor Barnard received her B.S. from the University of Illinois and her J.D. from University of Chicago.

IRVING M. BLANK

Irving M. Blank is the managing partner of ParisBlank LLP, in Richmond. He has spent his entire career in the courtroom. For a number of years, Mr. Blank’s primary areas of practice included criminal defense, insurance defense and domestic relations. For the past twenty-five years, he has represented injured persons throughout Virginia. He was lead counsel in landmark cases involving punitive damages, premise liability, and general damage decisions. He is a Fellow of the American College of Trial Lawyers and the Virginia Law Foundation, and was selected as Virginia’s 2011 Leader in the Law sponsored by Virginia Lawyer’s Weekly. He also is a member of the Million Dollars Advocates Forum and has been named a Virginia Super Lawyer every year since 2006. Mr. Blank served as President of the Virginia State Bar from 2010-2011. He received his undergraduate degree from Virginia Tech and his J.D. from the University of Richmond School of Law (1967).

DAVID P. BOBZIEN

David P. Bobzien was appointed County Attorney by the Fairfax County Board of Supervisors effective January 1993, after serving as a member of the Fairfax County Planning Commission and as the Chairman of the Fairfax County Goals Advisory Commission. He is a past chair of the Local Government Law Section of the Virginia State Bar, a past president of the Local Government Attorneys of Virginia, a past president of Lawyers Helping Lawyers, the organization that assists lawyers in Virginia suffering from substance abuse or mental illness, and the Immediate Past President of the Virginia Law Foundation. In 2004-2005, he served as the 66th President of the Virginia State Bar. Mr. Bobzien is the current Chairman of the Virginia CLE Committee of the Virginia Law Foundation and a board member of the Fairfax Law Foundation. He also serves as a member of the American Bar Association’s Commission on Domestic and Sexual Violence and as the Fairfax Bar Association’s delegate in the American Bar Association’s House of Delegates. Mr. Bobzien is a Fellow of both the Virginia Law Foundation and the American Bar Foundation. Prior to assuming his present County position, he served as an assistant counsel in the Office of Professional Responsibility of the United States Department of Justice. From 1975 to 1979 Mr. Bobzien was an associate in the Fairfax law firm of Fitzgerald and Smith. He served as a captain in the Judge Advocate General’s Corps in the United States Army from 1971 to 1975. Mr. Bobzien is a graduate of Holy Cross College and holds a J.D. from the University of Virginia and an LL.M. in Taxation from George Washington University.

JEFFREY A. BRAUCH

Jeffrey A. Brauch is Dean of the Regent University School of Law in Virginia Beach. He has been a member of the law faculty since 1994, and has served as Dean of the Law School since 2000. Brauch has taught Civil Procedure, Christian Foundations of Law, International Human Rights, Appellate Advocacy, and other courses. He helped create the law school’s Center for Global Justice, Human Rights, and the Rule of Law, and he has served as director of Regent’s Summer Program in International Law and Human Rights in Strasbourg, France. Brauch received his B.A. with distinction from the University of Wisconsin (1985), and his J.D. with honors from the University of Chicago Law School (1988). After graduating from law school, Brauch served as a law clerk for Justice William Callow of the Wisconsin Supreme Court during the 1988-89 term. He then worked five years as an associate with the Milwaukee law firm Quarles & Brady, where he specialized in commercial litigation. Brauch has published two books, *A Higher Law* (2008) and an earlier edition, *Is Higher Law Common Law* (1999). He has also published twenty-two articles on topics related to international human rights, integration of faith and law, and ERISA litigation

TERESA M. CHAFIN

Teresa M. Chafin serves as Circuit Judge for the 29th Judicial Circuit in Tazewell County. From 1988 to 2002, Judge Chafin was in private practice as a partner with Chafin and Chafin, P.C. in Lebanon,
Virginia. From 2002 to 2005, she served as Chief Judge for Tazewell County Juvenile and Domestic Relations Court. Judge Chafin has been appointed by the Supreme Court of Virginia to serve on the Judicial Council, the Judicial Administrative Committee, the Commission on Virginia Courts in the Twenty-First Century, the Editorial Board for the *Virginia Benchbook*, the Judicial Realignment Study Committee, the E-filing Committee, and the Committee for Indigent Defense Compensation. She also serves as a trustee for the Appalachian School of Law. Judge Chafin graduated from Emory and Henry College with degrees in Business and Economics, and received her J.D. from the University of Richmond School of Law.

**CHARLES J. CONDON**

Charles J. Condon is Associate Dean for Information Services and Law Library Director at the Appalachian School of Law in Grundy. Associate Professor Condon currently teaches Remedies and has taught Legal Research, Pre-Trial Practice and Education Law. His research interests include privacy & technology, technology in law practice and technology in teaching. He has written and delivered presentations on RFID technology and privacy issues. He holds a B.A. from Florida Atlantic University, J.D. from Nova Southeastern, LL.M. from the University of Arkansas and M.L.S. from the University of Southern Mississippi.

**DOUGLAS H. COOK**

Douglas H. Cook is Professor and Associate Dean for Academic Affairs at Regent University School of Law, in Virginia Beach, and also serves as Acting Associate Vice President for Academic Affairs for Regent University. He has been a member of the law faculty since 1987, teaching Torts, Insurance Law, and Nonprofit, Tax-Exempt Organizations. He has a B.A. in English and Economics from Miami University (Magna cum laude, Phi Beta Kappa, 1978), and the J.D. (with honors) from The Ohio State University (1983). At Ohio State, he served as Managing Editor of the Ohio State Law Journal. In addition to his teaching and administrative responsibilities, he is Of Counsel with Davis Law Group, Chesapeake, Virginia, where his part-time practice focuses on tax exemption, charities, ministries, and church law.

**B. WAUGH CRIGLER**

B. Waugh Crigler has served as a U.S. Magistrate Judge for the Western District of Virginia, in Charlottesville, since 1981. Judge Crigler received his B.A. from Washington and Lee University (1970) and his J.D. from the University of Tennessee (1970) where he was a member of the *Tennessee Law Review*. He served as a law clerk for the Hon. Robert L. Taylor, U.S. District Court, Eastern District of Tennessee (1973-1974), and was in private practice from 1974-81. Judge Crigler served as a member of the Judicial Conference of the United States Criminal Rules Advisory Committee (1991-97). He has served on the Virginia State Bar’s Litigation Section Board of Governors; as a member of the Professionalism Course Faculty (1998-2001); and as a member of the Standing Committee on Professionalism. He also serves as a member of The Virginia Bar Association’s Professionalism Commission. Judge Crigler was the founding chair of the Virginia State Bar’s Professionalism for Law Students Program in 2000, and continues to serve as co-chair of this program. He currently serves as Vice Chair of the Virginia State Bar’s Section on the Education of Lawyers.

**JOHN J. DAVIES III**

John J. (Butch) Davies III is an officer in the law firm of Davies, Barrell, Will, Lewellyn & Edwards, PLC, in Culpeper. He served as the Delegate from the 30th Legislative District in the Virginia General Assembly from 1992 to January 2000, and was a member of the Commonwealth Transportation Board from May 2002 to June 2010. He was appointed by the Attorney General to serve as the Virginia Department of Transportation Attorney from 1986 to 1992. Mr. Davies is active in many educational and civic organizations including the Board of the Germanna Community College Educational Foundation, Virginians for the Arts, Bluemont Concert Series, the Randolph-Macon College Alumni Association Board, and the Ashlawn Highland Opera Summer Festival Board. Mr. Davies received his
B.A. from Randolph-Macon College (1969) and his J.D. from the University of Richmond School of Law (1973).

WILLIAM D. DOLAN III

William D. Dolan III has been a partner with Venable LLP since 1985, practicing in the Tyson's Corner office. He has maintained an active trial practice since his admission to the Virginia State Bar in 1972. His professional activities include service on the Virginia State Bar Council from 1979 to 1986 and President of the Virginia State Bar from 1984 to 1985. He was also President of the Virginia Commission on Women and Minorities in the Legal System from 1986 to 1988 and Chairman of the Virginia State Bar Special Commission on Professionalism. Mr. Dolan has served on the Advisory Committee on the Rules of the Virginia Supreme Court from 1980 to 1982 and from 1998 until the present. Mr. Dolan served on the State Board for Community Colleges from 1989 to 1993, during which time he chaired the Board from 1990 to 1992. Mr. Dolan also served on Governor Gerald Baliles' Commission on the University of the Twenty-First Century from 1988 to 1989. He is a Fellow of the American College of Trial Lawyers and of the International Academy of Trial Lawyers. Mr. Dolan holds an A.B. degree from Marquette University (1967), and a J.D. from the Columbus School of Law at Catholic University of America (1972).

DAVISON M. DOUGLAS

Davison M. Douglas is the Dean and Arthur B. Hanson Professor of Law at the William & Mary Law School. He has been a member of the William & Mary law faculty since 1990, and has served as Dean of the Law School since July 2009. As one of the nation's leading constitutional historians, he is the author or editor of seven books on American constitutional law and history. He has lectured on American constitutional law and history at universities throughout the United States and in Africa, Asia, Australia, and Europe. On five occasions, the William & Mary Law School's graduating class has selected him as their outstanding teacher. In 2002, he received the State Council of Higher Education's Outstanding Faculty Award, the state's highest faculty honor. Douglas graduated summa cum laude from Princeton University and received a law degree, a Ph.D. in history, and a master's degree in religion from Yale University.

HUGH MCCOY FAIN III

Hugh M. Fain III is managing director at Spotts Fain, in Richmond. His practice emphasizes commercial and business litigation including contract disputes, business torts, employment law, intellectual property, construction litigation, and shareholder and partnership disputes. Mr. Fain earned a B.A. in Economics, with distinction, from the Virginia Military Institute (1980). In 1983, he earned a J.D. from the University of Virginia, where he served on the editorial board of the Journal of Natural Resources Law and was a member of the Raven Society. He is admitted into practice in Virginia and Texas. Mr. Fain is a Past President of the Bar Association of the City of Richmond, and he currently serves as President of The Virginia Bar Association. He has been named in Virginia Business Magazine's Legal Elite each year since 2003 and in the Virginia Super Lawyers list each year since its inception.

WALTER S. FELTON, JR.

Walter S. Felton, Jr. was elected to the Court of Appeals of Virginia in September 2002, and has served as Chief Judge since April 2006. Judge Felton served as a Captain in the United States Army Judge Advocate General Corps from 1969-1973, at which time he began his law practice in Suffolk, Virginia. In 1982, Judge Felton was appointed to the faculty of the William & Mary Law School, where he subsequently attained the rank of Professor of Law, and served as Legislative Counsel for the College. He also served as Administrator of the Commonwealth’s Attorneys Council, the state agency responsible for training the Commonwealth’s prosecutors. In 1994, he was appointed as Deputy Attorney General of Virginia, heading the Intergovernmental Affairs Division, and in 1995 was appointed as Senior Counsel to the Attorney General. Thereafter, he served as Counsel to the Governor of Virginia, and as Director of Policy. Judge Felton served as a member of the Chief Justice’s Commission on Virginia Courts in the 21st Century, as Chair of the Task Force on the
JOHN HOLLAND FOOTE

John Holland Foote is a Shareholder with Walsh, Colucci, Lubeley, Emrich & Walsh, in Prince William. His practice focuses on land use approvals and related litigation. He has appeared in a broad range of complex matters in state and federal courts, both trial and appellate. He is a graduate of LSU, and served as an Army Infantry Officer in Vietnam. After graduation from UVA Law, he joined the United States Department of Justice Honors Program and was assigned to the White House staff to serve as the third-ranking official of President Ford’s Vietnam Era Clemency Program. He returned to the Department of Justice specializing in criminal appeals, and argued numerous appeals in federal courts of appeals throughout the United States. Mr. Foote was Deputy County Attorney and County Attorney for Prince William County from 1977 to 1989. He was a partner at Hazel & Thomas for 10 years before joining Walsh Colucci. He is the author of the principal Virginia text on Planning and Zoning in the Commonwealth. Mr. Foote currently serves on the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

JEANNE F. FRANKLIN

Jeanne F. Franklin focuses on mediation, facilitation and conflict management services through Franklin Solutions, in Arlington, with a particular emphasis on employment and healthcare conflicts and the challenges of collaboration. A Past President of The Virginia Bar Association, she serves on the Joint Alternative Dispute Resolution Committee Council; The Virginia Bar Association’s Health Law Section Council and its Committee on Special Issues of National and State Importance; and on the American Health Lawyers Association (AHLA) ADR Service Task Force. Ms. Franklin has taught mediation to multidisciplinary groups (lawyers, healthcare providers and administrators) through the AHLA. She received a B.A. from Vassar College, a J.D. from the University of Virginia, and a certificate from the Georgetown University Certificate Program in Organization Development. She currently serves as a member of the board of Governors of the Virginia State Bar’s Section on the Education of Lawyers.

JAMES GIBSON

James Gibson is a professor of law and Director of the Intellectual Property Institute at the University of Richmond, where he teaches contracts, intellectual property, computer law, and related courses. As chair of the Richmond Law’s curriculum committee, he is currently spearheading a comprehensive reform of the school’s legal writing and skills program. A graduate of Yale University and the University of Virginia, his scholarship has appeared in the Yale Law Journal, the Virginia Law Review, the UCLA Law Review, and elsewhere, and he is frequently quoted in the media, including in the New York Times, the National Law Journal, and the Chronicle of Higher Education.

TRACY A. GILES

Tracy A. Giles is a partner in the firm of Giles & Lambert, P.C. in Roanoke, where he practices in the field of bankruptcy law. After receiving his B.A. from the University of Virginia, Mr. Giles earned a J.D. degree from Mercer University Walter F. George School of Law. He is admitted to practice in Virginia, the U.S Court of Appeals for the Fourth Circuit, and U.S. Bankruptcy Court of the Western District of Virginia. Mr. Giles currently serves as a member of the Council of the American Bar
Association’s Section of Legal Education and Admissions to the Bar; as the Virginia State Delegate to the ABA’s House of Delegates; and as a member of the Nominating Committee of the House of Delegates. In addition, he has served on numerous other ABA committees including the Presidential Appointments Committee; Standing Committee on Membership; the Committee on Rules and Calendar of the House of Delegates; and the Working Group on Strategic Planning. From 1997 to 2000, he served in the ABA House of Delegates, and on the ABA Board of Governors, including as a member of the Finance Committee of the Board of Governors. He also is active in the Virginia State Bar where he currently serves as a member of the Executive Committee and Council and as a member of the Standing Committee on Professionalism. He also has served as President of the Young Lawyers Conference; as a faculty member of the Harry L. Carrico Professionalism Course; as a member of the 8th District Disciplinary Committee; and as member of the Conference of Local Bar Association’s executive committee. In 1996, the Virginia State Bar named him the R. Edwin Burnett Jr. Young Lawyer of the Year. He has also received the Platinum Key Award from the ABA’s Law Student Division.

WILLIAM E. GLOVER

William E. Glover practices with Glover & Dahnk in Fredericksburg. He served as chair of the Virginia State Bar’s Standing Committee on Professionalism and moderated the Harry L. Carrico Professionalism Course for two years. Since 2009, Mr. Glover has served as co-chair of the Virginia State Bar’s Law School Professionalism Program, serving as moderator at the program held annually at each of Virginia’s eight law schools. He currently serves as secretary of the Virginia State Bar’s Section on the Education of Lawyers, and as a member of the board of governors of the State Bar’s Litigation Section. Mr. Glover recently completed 12 years as a member of the Virginia State Bar’s disciplinary system, serving as a member and chair of the Sixth District Disciplinary Committee, and then as a member and chair of the Disciplinary Board. He received both his undergraduate and law degrees from the College of William and Mary.

S. BERNARD GOODWYN

S. Bernard Goodwyn is a Justice on the Supreme Court of Virginia. He joined the Court in October 2007. Before joining the Supreme Court of Virginia, he served as a state trial court judge for 12 years, during which he presided over a wide variety of civil and criminal cases in one of the busiest jurisdictions in Virginia. Prior to going on the bench, he was a litigation partner at one of Virginia’s largest law firms and was appointed to the full-time faculty of the University of Virginia School of Law for the 1994-95 academic year as a Research Associate Professor of Law. He is a graduate of Harvard University and the University of Virginia School of Law.

KAREN A. GOULD

Karen A. Gould is the Executive Director of the Virginia State Bar, in Richmond, a position she has held since December 2007. She graduated from the University of Virginia in 1976 with a Bachelor of Arts degree, cum laude. She obtained her J.D. from the University of South Carolina, School of Law (1979). After clerking for U.S. District Judge Glen M. Williams in Abingdon, Virginia (1979 to 1980), she joined the Office of the Attorney General in Richmond where she defended the Commonwealth and its employees in race, sex, national origin and religious discrimination and construction cases from 1980 to 1984. Ms. Gould entered private practice in 1984 and represented health care providers in medical malpractice cases from 1984 to 2007. She became a bar volunteer in 1993, serving on the Third District Disciplinary Committee initially, before becoming a member of the Disciplinary Board in 1998. She was also a member of the MCLE Board for six years and an elected member of bar council from 2000-2005. Ms. Gould served as President of the Virginia State Bar from June 2006 to July 2007.

MARK H. GRUNEWALD

Mark H. Grunewald is the Interim Dean and James P. Morefield Professor of Law at Washington and Lee University School of Law, in Lexington. Dean Grunewald is admitted to practice in the
District of Columbia (1973) and in Virginia (1979). Prior to joining the law faculty, he was in private practice at Arent, Fox, Kintner, Plotkin & Kahn, Washington, D.C. (1972-73) and served as attorney advisor in the Office of Legal Counsel, U.S. Department of Justice (1973-76). During his tenure on the law faculty, Dean Grunewald has served as Assistant Professor of Law (1976-81); Associate Professor of Law (1981-86); Professor of Law (1986-92); Associate Dean and Professor of Law (1992-96); Professor of Law (1996-99); Interim Dean and Professor of Law (1999-2000); and Professor of Law Washington and Lee University (2000-02). Dean Grunewald received his B.A. from Emory University (1969) and his J.D. (with highest honors) from George Washington University (1972).

WARREN DAVID HARLESS

W. David Harless is a partner in the Litigation Department of Christian & Barton, LLP in Richmond, where he serves on its Executive Committee and as head of the firm's Employment Practice Group. He represents a wide variety of corporations, closely-held companies, and individuals in complex business and commercial disputes, employment matters, and products liability, premises liability, and tort defense litigation. Mr. Harless attended undergraduate studies at the University of Kentucky, and obtained his law degree from the University of Virginia School of Law. Following law school, he served as a law clerk to U. S. District Judge Glen M. Williams in the Western District of Virginia. Mr. Harless is a Fellow of the American College of Trial Lawyers and a member of the Lewis F. Powell Jr. American Inn of Court. He has been recognized in the 2012 edition of The Best Lawyers in America® in the practice areas of Bet-the-Company Litigation, Commercial Litigation, Employment Law-Management, Litigation-Labor & Employment and Personal Injury Litigation–Defendants, and has been listed in The Best Lawyers® for ten years or longer. He also is a Fellow of the Virginia Law Foundation; a member of The Virginia Bar Association and its Boyd-Graves Conference; the Virginia Trial Lawyers Association; and the Bar Association of the City of Richmond, for which he served as its president in 1999-2000. Mr. Harless will become the 74th president of the Virginia State Bar in June 2012.

FREDERICK T. HEBLICH, JR.

Frederick T. Heblich, Jr. is the Supervisory Assistant Federal Public Defender for the Western District of Virginia, Charlottesville and Harrisonburg Divisions. Prior to this position, Mr. Heblich was in private practice in Charlottesville from 1982 to 2006. He has served as the Director of the Criminal Defense Clinic at the University of Virginia School of Law since 2002. He is a Past President of the Charlottesville-Albemarle Criminal Bar Association. Mr. Heblich received both his B.A. (1971) and J.D. (1982) degrees from the University of Virginia. He currently serves as a member of the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

WILLIAM D. HENDERSON

William Henderson is a Professor of Law at the Indiana University Maurer School of Law, in Bloomington, where he teaches courses on the legal profession, project management, business law, and law firm economics. He also serves as Director of the Center on the Global Legal Profession at the Law School. Mr. Henderson received his B.S. from Case Western Reserve University, and his J.D. from the University of Chicago. In his research, Professor Henderson collects and analyzes data on legal education and the market for legal talent. In addition to writing articles in leading legal academic journals, his essays and columns have appeared in The American Lawyer, The National Law Journal, ABA Journal, National Jurist, Legal Affairs, USA Business Review, and Askmen.com. Professor Henderson was recently highlighted as a “Legal Rebel” by the ABA Journal in recognition of his influence on legal education and the changing economics and structure of the legal profession. Professor Henderson speaks to law firms and legal organizations all over the country, sharing insights on the future of legal services and the results of his empirical research.
LISA HICKS-THOMAS

Lisa Hicks-Thomas was appointed by Governor Bob McDonnell to serve as Secretary of Administration for the Commonwealth of Virginia. In this capacity, she oversees a number of state agencies, including the Department of General Services, the State Board of Elections, the Department of Minority Business Enterprise and the Department of Human Resource Management. Ms. Hicks-Thomas served as a prosecuting attorney in the Chesapeake Office of the Commonwealth’s Attorney prior to joining the Office of the Attorney General as an Assistant Attorney General and Chief of the newly-formed Computer Crimes Unit in 2001. During her tenure with the Office of the Attorney General she sat on several technology-related panels and is credited with collaborating with the Virginia General Assembly for passage legislation addressing cybercrime and child exploitation; spearheading a statewide initiative to promote youth Internet safety; and authoring Virginia’s Anti-Spam law, which went into effect July 1, 2003. In 2007, Ms. Hicks-Thomas was appointed to serve as Deputy Attorney General by then serving Attorney General Bob McDonnell. She received her B.A. from the University of Virginia (1991), and her J.D. from the Marshall-Wythe School of Law at the College of William and Mary (1994). Ms. Hicks-Thomas currently serves on the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

LAWRENCE H. HOOVER, JR.

Lawrence H. Hoover, Jr. is Of Counsel at Hoover Penrod PLC, in Harrisonburg. He is a member of The McCammon Group; is a Certified Mediator and Mentor for the Supreme Court of Virginia; is an IACP Certified Collaborative Practitioner. Mr. Hoover is a former chair of the Virginia State Bar’s Section on the Education of Lawyers; a former chair, VSB/VBA Joint ADR Committee; and an Adjunct Professor of Negotiation at the Washington and Lee School of Law. He is a Fellow of the Virginia Law Foundation and the American Bar Association, and is a recipient of the ADR Founder Award, Lifetime Achievement Award from the Department of Dispute Resolution of the Supreme Court of Virginia; and the Tradition of Excellence Award from the Virginia State Bar’s General Practice Section. Mr. Hoover received his B.A. from Hampden-Sydney College, B.A., Phi Beta Kappa; and his J.D. from the University of Virginia School of Law, Order of the Coif. Community service includes the board of directors, WVPT; board of directors, Blue Ridge Community College Education Foundation, founding board member, Community Mediation Center, Harrisonburg; founding and present board member, Gemeinschaft Home; founding board member, Harrisonburg Rockingham County Community Foundation; and former chair, American Shakespeare Center.

CYNTHIA D. KINSER

Cynthia D. Kinser serves as the Chief Justice of the Supreme Court of Virginia, a position she assumed on February 1, 2011. She was appointed to the Supreme Court of Virginia by Governor George Allen in 1997 and is currently serving her second 12-year term. Prior to that appointment, Chief Justice Kinser served as a United States Magistrate Judge for the United States District Court, Western District of Virginia; and served as a Chapter 7 and 13 Trustee to the United States Bankruptcy Court, Western District of Virginia; was elected Commonwealth’s Attorney for Lee County; and clerked for United States District Judge Glen M. Williams in the Western District of Virginia. Chief Justice Kinser earned her undergraduate degree with highest honors from the University of Tennessee (1974), and her law degree from the University of Virginia School of Law (1977). She is a founding member of the Virginia 4-H Foundation, served on the Board of Directors of the Federal Magistrate Judges Association, and is a member of the Board of Trustees of Appalachian School of Law. Chief Justice Kinser was awarded the 2011 Thomas Jefferson Foundation Medal in Law.

ELIZABETH B. LACY

Elizabeth B. Lacy is a Senior Justice of the Supreme Court of Virginia, a position she has held since 2007. Justice Lacy was appointed to the Supreme Court of Virginia by Governor Baliles in 1989, and was subsequently elected by the Virginia General Assembly to two 12-year terms. From 1985-1989, she served as a judge of the Virginia State Corporation Commission; and from 1982-1985, in the Office of
the Attorney General of Virginia, including as Deputy Attorney General of the Judicial Affairs Division. Prior to coming to Virginia, Justice Lacy served in the Office of the Attorney General for the State of Texas (1973-1976); and as Staff Attorney for the Texas Legislative Council (1969-1972). She received her B.A. from St. Mary’s College (1966); her J.D. from the University of Texas School of Law (1969); and her LL.M from the University of Virginia School of Law (1992). Justice Lacy is admitted to practice in Virginia and Texas, as well as to the U.S. Supreme Court and the Fourth and Fifth Circuit Courts of Appeals. She is a member of The McCammon Group and serves as the John Marshall Scholars Professor at the University of Richmond School of Law. Her professional affiliations include the National Association of Women Judges and the Lewis F. Powell, Jr. Inn of Court; membership on the ABA Presidential Task Force, 20/20 Vision, the Virginia Law Foundation and the Virginia State Bar’s Litigation Section. Justice Lacy also has served in multiple roles with the American Bar Association, including as Chair of the ABA’s Section of Legal Education and Admissions to the Bar, as well as Chair of the Section’s Multi-Jurisdictional Practice Study and Long Range Planning Committees; with The Virginia Bar Association as a member of the Executive Committee; and with the Virginia State Bar, including membership on the Standing Committee on Professionalism, the Harry L. Carrico Professionalism Course faculty, the Committee on Legal Education and Admissions to the Bar; and Chair of the Virginia State Bar’s Section on the Education Lawyers of Lawyers. In addition, she has served as a member of the Education Committee of the Virginia Judicial Conference and as a Jurist in Residence at Washington and Lee School of Law, Georgetown University Law Center, Southern Illinois Law School, and Florida State Law School. Among Justice Lacy’s honors are the VTLA’s Distinguished Service Award (2008); The VBA’s Baliles Distinguished Award (2008); and the “Lady Justice Award” (District 4) from the National Association of Women Judges (2007).

DAVID CRAIG LANDIN

David Craig Landin is a partner at Hunton & Williams LLP, in Richmond. His practice focuses on litigation management, with emphasis on trial and litigation strategies both in multi-state and in multi-plaintiff litigation; and also in the regulatory and legislative context. Mr. Landin is co-head of the firm’s National Business Tort and Product Liability Group. He regularly advises the management of public companies, their boards and general counsel in connection with complex litigation, strategic reviews of litigation alternatives and serves as the co-chair of the firm’s Advisory Committee on Alternative Billing Arrangements. Mr. Landin is admitted to practice in the U.S. Supreme Court and Third, Fourth, Fifth, Sixth and Eleventh U.S. Circuit Courts of Appeal, as well as the Bars of Virginia, Pennsylvania and Texas. Mr. Landin is a Past President of The Virginia Bar Association; Past President of The Virginia Association of Defense Attorneys and Past President of the Virginia Law Foundation. He is former Chair of the ABA Standing Committee on Federal Judicial Improvements; served on the ABA Justice Kennedy Commission, the ABA Commission on the American Jury, and the ABA Task Force Committee on Attorney-Client Privilege. He currently serves as chair of The Virginia Bar Association’s Committee on Special Issues of National and State Importance and is a member of the Lawyers’ Committee of the National Center for State Courts. He is a Recipient of the Exceptional Performance Award, Defense Research Institute and was elected a Fellow of the Virginia Law Foundation. He has been continuously named to The Best Lawyers in America® since 1987; voted among The Legal Elite, Virginia’s Top Lawyers in Litigation, Virginia Business; and Top Lawyers in Virginia for 2011 as published in The Richmond Times Dispatch. Mr. Landin has lectured at the University of Virginia School of Law as an adjunct professor on Trial Advocacy and on Civil Litigation, Principles and Practice. He also has served as the firm-wide Hiring Partner for Hunton & Williams. He received his B.A. (1968) and J.D. (1972) from the University of Virginia.

GERALD BRUCE LEE

Gerald Bruce Lee was confirmed as a United States District Judge in the Eastern District of Virginia, Alexandria Division, in October 1998. Prior to his nomination by President Clinton, Judge Lee was a trial judge in the 19th Judicial Circuit in Fairfax, Virginia for six and one half years. Prior to going on the bench, Judge Lee was a trial lawyer for fifteen years, as a partner at Cohen, Dunn & Sinclair, PC in Alexandria. He is well known throughout the Virginia legal community for his handling of complex civil cases, his efforts to improve the court’s use of technology, and his commitment to mentorship and community service. In 1990, while in private practice, then Virginia Governor Wilder appointed
Judge Lee to serve on the Board of Directors of the Metropolitan Washington Airports Authority, the managers of Washington Dulles and Washington National Airports. He is an active member of the profession and he has served in several leadership roles, including service as an elected member of the Virginia State Bar Council, Chair of the General Practice Section of the Virginia State Bar, and Chair of the Judiciary Committee of the ABA's General Practice Section. He is a past president of the Northern Virginia Black Attorneys Association and The George Mason American Inn of Court. Judge Lee received his undergraduate degree in communications from The American University, Washington, D.C. (1973), and his J. D. from The Washington College of Law, American University (1976).

DONALD W. LEMONS

Donald W. Lemons is a Justice of the Supreme Court of Virginia, a position he has held since 2000. He received a B.A. from the University of Virginia (1970) and a J.D. from the University of Virginia School of Law (1976). From 1976 until 1978, he served as Assistant Dean and Assistant Professor of Law at the University of Virginia School of Law. Thereafter, he entered the private practice of the law in Richmond. Justice Lemons has served at every level of the court system in Virginia. He is the Distinguished Professor of Judicial Studies at the Washington and Lee University School of Law. He is the President of the American Inns of Court. Justice Lemons is an Honorary Bencher of Middle Temple in London.

RENA M. LINDEVALDSEN

Rena M. Lindevaldsen serves as Associate Professor of Law and Associate Director of the Liberty Center for Law and Policy at Liberty University, in Lynchburg. In July 2011, she also assumed the position of Associate Dean for Academic Affairs. She joined the full-time faculty at Liberty University School of Law following one year as an adjunct assistant professor of law. Previously, she had served as Senior Litigation Counsel to Liberty Counsel, a nonprofit litigation and education organization dedicated to advancing religious freedom, the sanctity of human life and traditional family. She received her B.A. from Michigan State University and her J.D. from Brooklyn Law School (magna cum laude). While in law school, Professor Lindevaldsen served as Associate Managing Editor of the Brooklyn Law Review and as a member of the Brooklyn Law School's Moot Court Executive Board.

R. LEE LIVINGSTON

R. Lee Livingston is a partner with Tremblay & Smith, PLLC, in Charlottesville, where he practices personal injury law, medical malpractice and defamation law. A member of the Virginia Trial Lawyers Association Board of Governors since 1999, Mr. Livingston presently serves on the VTLA Executive Council as Treasurer. He is former chair of the Virginia State Bar Litigation Section Board of Governors and the Virginia State Bar Mandatory Continuing Legal Education Board. He teaches Trial Advocacy and Trial Evidence at the University of Virginia School of Law. He is co-author of Evidence for the Trial Lawyer, a VTLA, Matthew-Bender (Lexis) publication. Mr. Livingston has served on the Supreme Court of Virginia’s Appellate Rules Advisory Committee and Electronic Filing Study Committee. He is a member of the Boyd-Graves Conference. Mr. Livingston received his B.A. (1990) and his J.D. (1993) from the College of William & Mary. Following law school, he clerked for U.S. Magistrate Judge B. Waugh Crigler, Western District of Virginia (1993-1994). Since 2002, he has served as Adjunct Faculty at the University of Virginia on “Trial Evidence: Principles and Practice” and “Trial Advocacy.” Mr. Livingston has been honored for selection by Richmond Magazine as a Virginia Super Lawyer and he is listed in The Best Lawyers in America®.

PAUL G. MAHONEY

Paul G. Mahoney is Dean of the University of Virginia School of Law, in Charlottesville. He also serves as the David and Mary Harrison Distinguished Professor and Arnold H. Leon Professor at the law school. His teaching and research areas are Securities Regulation, Law and Economic Development, Corporate Finance, Financial Derivatives, and Contracts. After graduating from MIT and Yale Law School, he clerked for Judge Ralph K. Winter Jr. of the U.S. Court of Appeals for the 2nd
Circuit and for Associate Justice Thurgood Marshall of the United States Supreme Court, then practiced law with Sullivan & Cromwell. Mahoney has taught at the University of Virginia School of Law since 1990 and became the school’s 11th Dean on July 1, 2008. Mahoney has been a visiting professor at the University of Chicago and the University of Southern California and has taught short courses at numerous universities around the world. He has also served as a consultant on legal reform projects in Kazakhstan, Kyrgyzstan, Mongolia, and Nepal. Mahoney is a fellow of the American Academy of Arts & Sciences and a member of the Council on Foreign Relations. He has served as an associate editor of the Journal of Economic Perspectives and a director of the American Law & Economics Association.

DALE S. MARGOLIN

Dale S. Margolin is a professor of law and serves as the Director of the Jeanette Lipman Family Law Clinic at the University of Richmond School of Law. The clinic represents low-income families in the city of Richmond. A recognized leader in family law and foster care issues, most recently Professor Margolin was awarded the FACES of Virginia Empowerment Award. Her scholarship focuses on youth aging-out of foster care as well as the constitutional rights of parents in child protective proceedings, particularly mentally disabled parents. Professor Margolin graduated with honors from Stanford University and received her J.D. from Columbia Law. She currently serves as editor of Education & Practice, the newsletter published by the Virginia State Bar’s Section on the Education of Lawyers.

WADE W. MASSIE

Wade W. Massie is an officer in the Abingdon office of Penn Stuart & Eskridge where he serves as chairman of the firm’s Commercial Litigation Practice Group. He began private practice with Penn Stuart & Eskridge in 1977. Admitted in Virginia, West Virginia and Tennessee, Mr. Massie represents numerous companies and individuals in the energy industry across the region. Mr. Massie received his B.A. (with distinction) from the University of Virginia (1974) and his J.D. from the University of Richmond School of Law (1977). He is Fellow of the American College of Trial Lawyers, the American Bar Foundation and the Virginia Law Foundation. He also has served on the Executive Committee of The Virginia Bar Association; as a faculty member for the Virginia State Bar’s Professionalism Course; and as a member of the Virginia CLE Committee of the Virginia Law Foundation.

ELIZABETH A. MCCLANAHAN

Elizabeth A. McClanahan was elected by the Virginia General Assembly as a Justice on the Supreme Court of Virginia in 2011. She also currently serves as the Street Memorial Distinguished Visitor in Real Estate Law at Appalachian School of Law. She previously served as a Judge on the Court of Appeals of Virginia, as Virginia’s Chief Deputy Attorney General, and was a principal in the law firm of Penn, Stuart & Eskridge. Justice McClanahan also has served as a member of the Board of Trustees of the U.S. Chamber of Commerce and the Energy and Mineral Law Foundation where she has been designated as an Honorary Trustee. She is admitted to the bars of Virginia, the District of Columbia, Maryland and West Virginia and was selected as the 1994 El Paso Natural Gas Law Fellow for the Natural Resources Law Center, at the University of Colorado, School of Law. Justice McClanahan received her undergraduate degree from the College of William and Mary (1981); and her law degree from the University of Dayton, School of Law (1984). Justice McClanahan has served as Vice-Rector of the College of William and Mary in Virginia, chairman of the State Council of Higher Education for Virginia and chairman of the Task Force on Governance Issues for the Governor’s Blue Ribbon Commission on Higher Education. She also has received community service awards, including the Virginia Cooperative Extension’s William Skelton Extension Leadership Award, Virginia Oil & Gas Association’s David M. Young Award, YWCA Tribute to Women Award for Volunteer Community Service, Radford University Heritage Award, Bridgewater College Outstanding Service Award, Virginia 4-H Foundation Alumni Award and the Appalachian School of Law 2004 Appalachian Service Award.
LEROY F. MILLETTE, JR.

LeRoy F. Millette, Jr. is a Justice of the Supreme Court of Virginia. He graduated from the College of William and Mary in 1971, with a Bachelor of Arts degree in Economics; and he received his law degree in 1974 from the Marshall-Wythe School of Law at the College of William and Mary. In 2008, Justice Millette was appointed to the Supreme Court of Virginia by Governor Tim Kaine, and was confirmed by the Virginia General Assembly for a 12-year term. He previously served as a judge on the Court of Appeals of Virginia, for almost one year, also having been appointed by Governor Kaine and confirmed by the Virginia General Assembly. Prior to serving on Virginia’s appellate judiciary, Justice Millette served as a circuit court judge in Prince William County from 1993 – 2007. During his tenure at the circuit court, he presided over the 2003 capital murder trial of John Allen Muhammad, also known as the D.C. Sniper, and the 1993 trial of John Wayne Bobbitt for the marital rape of Lorena Bobbitt. Prior to serving on the circuit court bench, Justice Millette was a general district court judge for Prince William County from 1990 – 1993. Currently, Justice Millette is one of three Supreme Court Justices to have served at all four levels of the Virginia court system.

WILLIAM C. MIMS

William C. Mims became a Justice of the Supreme Court of Virginia on April 1, 2010. Justice Mims served as Attorney General of Virginia from February 2009 to January 2010. Previously he served as Chief Deputy Attorney General, beginning in January 2006. He also served in the Virginia House of Delegates from 1992 through 1997 and in the Virginia Senate from 1998 through 2005. Justice Mims received a degree in History from the College of William and Mary, where he was president of the student body. He also did graduate work in Public Administration at William and Mary. He has law degrees from George Washington University and Georgetown University. During his years in the General Assembly, Justice Mims worked as an attorney in Leesburg. Prior to practicing law he served as Chief of Staff to U.S. Rep. Frank Wolf and as Deputy Legislative Director to Senator Paul Trible. He served on the Board of Governors of The Virginia Bar Association from 2002 through 2004, and was a Distinguished Adjunct Professor of Law at George Mason University from 2002 through 2005.

JAMES E. MOLITERNO

James E. Moliterno is the Vincent Bradford Professor of Law at Washington & Lee University School of Law, in Lexington, where he has a leadership role in the reformed third-year curriculum. For 21 years prior to joining the W&L faculty in 2009, he was the Tazewell Taylor Professor of Law and Director of the Legal Skills Program at the College of William & Mary, serving also as Vice Dean from 1997-2000. He has taught legal ethics courses and professional skills courses over the past thirty years. A member of the American Law Institute, Professor Moliterno is author or co-author of six books including and numerous articles on legal ethics and the teaching of legal ethics. Under his direction, the William & Mary Legal Skills Program was recognized as a model for the teaching of professional skills and ethics, receiving the inaugural ABA Gambrell Professionalism Award in 1991. He has engaged in substantial international legal ethics and legal education reform work, designing new lawyer and judge ethics courses, training professors, judges and lawyers in Serbia, Armenia, Georgia, Czech Republic, Japan, China, Thailand, Georgia, Armenia, Kosove, Spain and Indonesia. Moliterno received his B.S. (1977) from Youngstown State University, and his J.D. (1980) from the University of Akron.

MONICA TAYLOR MONDAY

Monica Taylor Monday is a partner at the Roanoke firm of Gentry Locke Rakes & Moore LLP, where she heads the Appellate Practice Group. Prior to joining Gentry Locke, she clerked for The Honorable Lawrence L. Koontz, Jr., who was then Chief Judge of the Court of Appeals of Virginia, and is now a Senior Justice on the Supreme Court of Virginia. Ms. Monday serves on The Virginia Bar Association’s Board of Governors, and as a member of the Boyd-Graves Conference. She is chair of the Appellate Practice Committee of the Virginia State Bar’s Litigation Section. She is active with the Ted Dalton American Inn of Court in Roanoke, where she serves as secretary. She is a past board member of the Virginia Law Foundation, and is a Fellow of the Virginia Law Foundation. Ms. Monday is a graduate of the College of William & Mary and the Marshall-Wythe School of Law.
JOHN E. MONTGOMERY

John E. Montgomery serves as Director of the Nelson Mullins Riley and Scarborough Center on Professionalism and as Distinguished Professor Emeritus and Dean Emeritus at the University of South Carolina School of Law, in Columbia. He served as Dean of the School of Law from 1987 to 2003 before returning to full time teaching and scholarship in 2004. Montgomery currently teaches, writes and lectures on mentoring, professionalism and trends in the legal profession. He is a founding member and Executive Director of the National Legal Mentoring Consortium which supports mentoring in all areas of the legal profession. He is the co-author of a leading casebook, *Products Liability, Cases and Materials*, with David Owen and Mary Davis (Foundation Press, 5th ed., 2011). He also serves as a member of the Supreme Court of South Carolina Commission on the Profession. In addition, he served as a member of the Board of Governors and House of Delegates of the South Carolina Bar for over 15 years. He was the principal draftsperson for the American Inns of Court Model Mentoring Program, completed in 2011. He is currently co-authoring a book profiling the professionalism of a group of outstanding lawyers and judges and on the challenges facing professionalism in the legal profession with Justice Donald W. Lemons of the Supreme Court of Virginia. Dean Montgomery received his B.Ch.E. (1964) and his J.D. (1969) from Louisville, and his LL.M. from Michigan (1971).

MARY Z. NATKIN

Mary Z. Natkin is Assistant Dean for Clinical Education & Public Service and Clinical Professor of Law at Washington & Lee University School of Law, in Lexington. After practicing law in the Shenandoah Valley, she started teaching in the clinical program at W&L in 1990 and became the first Assistant Dean for Clinical Programs in 2009. Natkin has had a leadership role in guiding the school through the implementation of its new third-year curriculum. She assisted in the design of and teaches in the required skills curriculum for all third year students. Natkin developed additional clinical opportunities for students in accord with the mandate that all third year students have a clinical experience. During her tenure at W&L, she has created and directed various clinics at the law school and currently oversees the externship program. She was awarded fellowships for teaching excellence in 2002 and 2008. Natkin received her B.A. (1979) from the University of California at Berkeley, and her J.D. (1985) from Washington and Lee University.

SHARON D. NELSON

Sharon D. Nelson is the President of Sensei Enterprises, Inc., a computer forensics and legal technology firm in Fairfax. Ms. Nelson graduated from Georgetown University Law Center and has been in private practice ever since, now concentrating exclusively in electronic evidence law. Ms. Nelson is a Past President of the Fairfax Bar Association, a Director of the Fairfax Law Foundation and serves as a member of ARMA’s E-Discovery Advisory Group. She is a former Chair of the American Bar Association’s Law Practice Management Publishing Board and a Past Chair of the ABA’s TECHSHOW. She currently serves on the Virginia State Bar’s Executive Committee and Council, on its Technology Committee, and as Chair of the Unauthorized Practice of Law Committee. The Virginia Supreme Court appointed her to the Statewide E-Filing Committee beginning in 2010. Ms. Nelson is the author of the noted electronic evidence blog, *Ride the Lightning* and is a co-host of the ABA podcast series called “The Digital Edge: Lawyers and Technology” and the Legal Talk Network podcast “Digital Detectives.” She is a frequent author (nine books and hundreds of articles) and speaker on legal technology, information security and electronic evidence topics. She is the President-Elect designate of the Virginia State Bar, and will become President in June of 2013.

G. MICHAEL PACE, JR.

G. Michael Pace, Jr., is the managing partner of Gentry Locke Rakes & Moore LLP, in Roanoke, and has been with the firm since 1984. Mr. Pace’s practice concentrations are in commercial real estate, land use and zoning, business and finance. Mr. Pace is the 2008 president of The Virginia Bar
Association and a board member of the Virginia Law Foundation. He is the creator of the VLF/VBA Rule of Law Project (www.ruleoflaw-vba.org), a program that brings lawyers, judges and teachers together to teach middle school students the meaning, origin and applicability of the rule of law as the basis of the freedoms enjoyed as American citizens. Mr. Pace currently serves on the boards of LEAD Virginia, the Business Leadership Fund, the Business Council, the Roanoke Regional Partnership, SunTrust Advisory Board, and is involved in several other civic and charitable boards. He is a trustee of Hampden-Sydney College and an adjunct professor at Roanoke College. Mr. Pace received his B.A. from Hampden-Sydney College (1979) and his J.D. from Washington and Lee University School of Law.

H. THOMAS PADRICK, JR.

H. Thomas Padrick, Jr. is a judge of the Second Judicial Circuit, and has been so since 1997 when he was elevated from the Juvenile and Domestic Relations District Court of the City of Virginia Beach, having been elected to that position by the General Assembly of Virginia in 1992. He is also a designated judge of the Charlottesville Circuit Court since 2007. Judge Padrick is a graduate of Old Dominion University with a Bachelor of Arts degree. Judge Padrick did not attend law school, but was a "law reader" with the Virginia State Bar Examiners from 1977-1980. He practiced law from 1980-1992. Judge Padrick is a member of the State Bar of California, the Bar of Maryland, the Bar of the District of Columbia and the Virginia State Bar. He is Vice Chairman of the Committee on District Courts of the Supreme Court of Virginia since 2006. Prior to that period he was the Chairman, until the Chief Justice became chairman by statute. Judge Padrick also is an adjunct professor of law at Regent Law School and Handong International Law School in Pohang, South Korea. Judge Padrick has graded the Virginia Bar Examination for twenty years. He currently serves on the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

SHARON E. PANDAK

Sharon E. Pandak is a partner, Greehan, Taves, Pandak & Stoner PLLC, in Woodbridge. She advises localities and non-profits, and handles major litigation in circuit and federal courts. She obtained her J.D. and B.A. degrees from the College of William & Mary. Ms. Pandak is General Counsel, Metropolitan Washington Council of Governments, and Orange County Attorney. Sharon served as Prince William County Attorney for 15 years. Her service to the profession includes: President, Prince William County Bar Association and the Local Government Attorneys of VA; VSB Council; VBA Board of Governors; the Virginia Supreme Court Commission on the Future. She is Fellow of the Virginia Law Foundation and American Bar Association. As CLE Chair, ABA GPSLD, Sharon presents national seminars. Ms. Pandak served on the Commonwealth Transportation Board, and she currently serves on the Prince William Historic Preservation Foundation and Didlake boards. She also serves as a member of the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

WENDY COLLINS PERDUE

Wendy Collins Perdue was appointed Dean and Professor of Law at the University of Richmond School in 2011. Before coming to Richmond Law, she was Associate Dean and Professor of Law at Georgetown University Law Center. Dean Perdue is a scholar of civil procedure and conflict of laws, as well as land use and public health. Dean Perdue is a former vice president of Order of the Coif, has served on the editorial board of the Journal of Legal Education, and has held a number of positions within the Association of American Law Schools. After receiving her B.A. from Wellesley College and her J.D. from Duke Law, Dean Perdue clerked for Anthony M. Kennedy, then a 9th U.S. Circuit Court of Appeals. She practiced law as an associate with Hogan & Hartson in Washington, D.C., before joining Georgetown’s law faculty in 1982.

DANIEL D. POLSBY

Daniel D. Polsby is Dean of the George Mason University School of Law. His undergraduate studies were at Oakland University where he received a B.A. in 1964. He was graduated magna cum laude from the University of Minnesota Law School in 1971. Following law school Polsby clerked for the late
Harold Leventhal of the United States Court of Appeals for the District of Columbia Circuit. He was an associate of Wilmer, Cutler & Pickering from 1972-1974 and Counsel to Commissioner Glen O. Robinson at the Federal Communications Commission from 1974-1976. Polsby joined the Northwestern University law faculty in 1976, where he remained until 1999 when he came to George Mason as Professor of Law and Associate Dean of the law school. From 1990 through 1999, Polsby held the Kirkland & Ellis chair in law at Northwestern. He has also been visiting professor at Cornell Law School, the University of Michigan School of Law and the University of Southern California. Torts, Criminal Law and Family Law are among the numerous subjects that Polsby has taught through his law school career. His scholarship on criminal law and criminology, family law and the constitutional law of federal elections is widely cited.

ANITA O. POSTON

Anita O. Poston is a partner in the Norfolk office of Vandeventer Black LLP. Her practice is concentrated in business law with focus on transportation, healthcare, business and individual planning and probate administration. Ms Poston co-chairs the firm’s Government Relations Committee and serves on the Practice Management Committee. She also serves as General Counsel for the Norfolk Airport Authority. She is a member and past president of the Norfolk and Portsmouth and The Virginia Bar Associations, and also is a member of the Virginia State Bar, the American Bar Association and the Virginia Women Attorneys Association. She serves as a member of the Virginia Board of Bar Examiners, having been appointed by the Virginia Supreme Court in 1990. She is a Fellow of the Virginia Law Foundation and the ABA Law Foundation. Ms. Poston has served on the board of governors of the Virginia State Bar’s Section on the Education of Lawyers; the Virginia Law Foundation Fellows Committee, and on the faculty of the Virginia State Bar’s Harry L. Carrico Professionalism Course and the Law School Professionalism Program. She has been appointed to serve as a member of several federal magistrate selection commissions by the U.S. District Court of the Eastern District of Virginia, and has served as a substitute judge for five years. Ms. Poston is involved with many civic and business-related organizations, including the boards of the Hampton Roads Educational Telecommunications Association (WHRO), which she chaired 2002-2004; the Virginia Capitol Foundation; the ACCESS College Scholarship Foundation; and the United Way of South Hampton Roads Foundation where she served as Chair in 2009-2010. In 1985, Ms Poston was appointed by Governor Robb to the State Board of the Virginia Community College System which she chaired in 1989. She was appointed by Governor Warner to the Board of Visitors of the College of William & Mary in 2003, and reappointed by Governor Kaine in 2007. She served as a member of the Norfolk School Board for twelve years, including four years as chair. Among her honors, Ms Poston is the recipient of the Professional Woman of Hampton Roads Award (1992); the Citizen Lawyer Award (2001) and the Order of the Coif (2008) from the William and Mary School of Law; and the Influential Women of Virginia Award from Virginia Lawyers Weekly (2009). Ms. Poston received her B.A. with honors from the University of Maryland and her J.D. from the College of William and Mary School of Law.

CLEO E. POWELL


WILLIAM R. RAKES

William R. Rakes has been in private practice with the Roanoke firm of Gentry Locke Rakes & Moore LLP since his admission to the bar in 1963. He served as managing partner of the firm for more than twenty years. His practice areas focus on commercial litigation, banking and finance. Mr. Rakes has served as president of the Roanoke Bar Association and of the Virginia State Bar. He has served on the Board of Governors and in the House of Delegates of the American Bar Association, and as chair of the ABA Section of Legal Education and Admissions to the Bar. He was a co-founder and president of the Ted Dalton American Inn of Court and co-founded and is chairman of the board of directors of HomeTown Bank. Mr. Rakes is a Fellow in the American College of Trial Lawyers, the American Academy of Appellate Lawyers, the American Bar Foundation, the Virginia Law Foundation, and the Roanoke Bar Foundation. He received his undergraduate (1960) and law (1963) degrees from the University of Virginia.

W. TAYLOR REVELEY III

W. Taylor Reveley III is the 27th President of the College of William & Mary and its John Stewart Bryan Professor of Jurisprudence. He was previously Dean of William & Mary Law School and, earlier still, he practiced law at Hunton & Williams for almost three decades, including nine years as the firm’s managing partner. Reveley clerked for Justice William J. Brennan, Jr. at the U.S. Supreme Court and has written extensively about the constitutional division of authority between the President and Congress over American use of force abroad. Much of his “extracurricular” time has gone to non-profit organizations, including service on many educational and cultural boards, for instance, those of Princeton University, Union Theological Seminary in Virginia, St. Christopher’s School, the Andrew W. Mellon Foundation, the Carnegie Endowment for International Peace, the Virginia Museum of Fine Arts, and the Virginia Historical Society. Reveley went to college at Princeton and law school at the University of Virginia.

BROOKE COPELAND ROSEN

Brooke Copeland Rosen is in private practice at Gentry Locke Rakes & Moore LLP in Roanoke, specializing in employee benefits law and commercial transactions for closely-held businesses. She received her B.S. from Vanderbilt University (2001) and her J.D. cum laude from the Columbus School of Law, Catholic University of America (2006). Ms. Rosen is actively involved in the local Roanoke Bar Association and currently serves on the board of governors for the Virginia State Bar’s Young Lawyer Conference. She has been recognized as one of Virginia’s Super Lawyers’ “Rising Stars” and serves on the Boards of Directors for CHIP of Roanoke Valley and the YMCA of Roanoke Valley. Brooke was recently awarded the 2011 Woman of Achievement Award from DePaul Community Resources in the area of Law.

PAMELA MEADE SARGENT

Pamela Meade Sargent serves as United States Magistrate Judge for the Western District of Virginia in Abingdon. Prior to her appointment to the bench in 1997, Judge Sargent was in private practice concentrating on civil and criminal litigation. Judge Sargent is a former law clerk to the Hon. H. E. Widener, Jr., U.S. Court of Appeals for the Fourth Circuit. She graduated with Honors from the University of South Carolina School of Law, where she was a member of the Law Review and the Order of the Coif. She received her undergraduate degree from Virginia Tech.
GEORGE WARREN SHANKS

George Warren Shanks currently serves as the 73rd President of the Virginia State Bar. He is a partner in the firm of Miller, Earle & Shanks PLLC, with offices in Harrisonburg and Luray. He has practiced law in Luray for 35 years and considers himself to be “just a country lawyer.” His primary practice areas are municipal law (serving as the Page County Attorney), elder law (serving as Page County Commissioner of Accounts), and personal injury law. Early in his career, Mr. Shanks served for four years as Special Assistant to United States Senator Harry F. Byrd, Jr. [Ind-VA]. He has served on numerous Virginia State Bar committees, sections and conferences and has chaired the Conference of Local Bar Associations and the Senior Lawyers Conference. He has appeared as a panelist or lecturer in a variety of programs sponsored by the VSB Bar Leaders’ Institute and the Solo and Small Firm Practitioner Forum. Mr. Shanks received the Virginia State Bar “Local Bar Leader of the Year” award in 2000 in recognition of his work in establishing the award-winning law-related education project of the Page County Bar Association to bring attorneys into the classrooms of Page County’s public schools. He currently serves on the Board of Directors of Lawyers Helping Lawyers. Mr. Shanks is a graduate of Indiana University in Bloomington, and Temple University School of Law in Philadelphia, Pennsylvania.

MATTHEW R. SHELDON

Matthew R. Sheldon is a partner at Reed Smith LLP, working out of the Falls Church office. Matt’s practice focuses on general commercial litigation with an emphasis on intellectual property litigation. Prior to entering private practice, Mr. Sheldon clerked for The Honorable Stanley P. Klein of the Circuit Court of Fairfax County. Following his clerkship, he accepted a position with Hazel & Thomas, PC in its Alexandria office. Hazel & Thomas merged with Reed Smith in 1999. Since joining Reed Smith, Mr. Sheldon has been active in Reed Smith’s associate recruiting efforts. He is Chair of the Reed Smith Falls Church office Summer Associate Committee, and also participates in Reed Smith’s Diverse Scholar candidate selection process. Matt has conducted dozens of interviews and has spent a significant amount of time recruiting associate candidates for the firm. He also has been involved in assisting Reed Smith in developing its associate mentoring program, as well as "CareeRS," a competency-based associate career development program. Mr. Sheldon serves as board chair for the largest homeless shelter in Northern Virginia, and he also frequently volunteers to judge moot court competitions at the George Mason University School of Law. Mr. Sheldon obtained a B.A. from Boston College (1992) and a J.D. from George Mason University School of Law (1997).

CLINTON W. SHINN

Clinton W. (Wes) Shinn is the Dean and L. Anthony Sutin Professor of Law at Appalachian School of Law, in Grundy. Prior to becoming the seventh Dean of ASL in 2006, Shinn both taught and was in private practice. He was an Assistant Professor of Law at Tulane (1973-1975); was in private practice in New Orleans and Covington, Louisiana (1975 – 1999); returned to teaching full time at ASL (1999-2002); was Associate Professor of Law at the Mississippi College School of Law (2002-2006); and returned to ASL as Professor of Law in 2006. Dean Shinn is a member of the Louisiana Bar Association, the American Bar Association, the Virginia State Bar, the Louisiana Bar Foundation (Charter Fellow), the Charles Clark Inn of Court (Barrister), the American College of Trust and Estate Counsel (Fellow), and the American Bar Foundation (Fellow). He formerly served as an elected member of the Louisiana Bar Association House of Delegates and as an Assistant Bar Examiner. He is a Public Arbitrator for NASD Disputes Resolution. He currently serves as a member of the Town of Grundy, Virginia Industrial Development Authority. Dean Shinn received a B.S. from McNeese State University (1969), a J.D. from Tulane University (1972) and an L.L.M. from Harvard University (1973).

A. BENJAMIN SPENCER

A. Benjamin Spencer is currently a Professor of Law at Washington & Lee University, in Lexington, and a Special Assistant United States Attorney for the Western District of Virginia.
Professor Spencer teaches and writes in the area of federal civil procedure. He has authored several law review articles that appear in some of the country’s most prestigious law journals, including the University of Chicago Law Review, Michigan Law Review, Southern California Law Review, Boston College Law Review, George Washington Law Review, and University of Illinois Law Review. He is also the author of a book entitled *Acing Civil Procedure* published by West and a civil procedure casebook entitled *Civil Procedure: A Contemporary Approach*. Professor Spencer received his law degree from Harvard Law School in 2001, where he served as an Articles Editor on the Harvard Law Review. Professor Spencer also received a Master of Science in Criminal Justice Policy from the London School of Economics in 1997, where he was studying as a Marshall Scholar. In 1996, Professor Spencer graduated from Morehouse College as class Valedictorian with a Bachelor of Arts in Political Science. He currently is a member of the John Marshall Chapter of the American Inn of Court, The Virginia Bar Association’s Boyd-Graves Conference as well as the VBA’s Civil Litigation Section Council, and the West Publishing Law School Advisory Board. Professor Spencer has been a member of the board of governors of the Virginia State Bar’s Section on the Education of Lawyers since 2008, serving as the Chair since 2010.

**MATHEW D. STAVER**

Mathew D. Staver is Vice President of Liberty University, Dean and Professor of Law of Liberty University School of Law, and Director of Liberty Center for Law and Policy, in Lynchburg. He received his B.A. (cum laude) from Southern Missionary College, his M.A. from Andrews University (first in class), and his J.D. from the University of Kentucky. He has also earned an LL.D. from Liberty University (*honoris causa*). After completing his studies in religion and becoming a pastor, Dean Staver entered law school and the legal profession. Following law school, he worked in private practice with the law firm of Zimmerman, Shuffield, Kiser and Sutcliffe in Orlando, Florida. In 1989, Dean Staver became the Founder and President of Staver & Associates, a statewide governmental consulting organization. In 1989, Dean Staver became the Founder, President and General Counsel of Liberty Counsel and currently serves as Chairman of the Board. Dean Staver has authored books, published over 210 legal opinions, written several hundred articles on religious freedom and constitutional law, and has published ten law review and journal articles.

**JACQUELYN E. STONE**

Jacquelyn E. Stone is a partner at McGuireWoods, in Richmond, where she served as the firm-wide hiring partner for over 15 years. She currently is co-chair of the McGuireWoods Diversity Committee and a former member of the firm’s Board of Partners. She concentrates on legislative matters before the Virginia General Assembly and regulatory issues before state and federal agencies. Jackie attended the University of Virginia, where she received a bachelor’s degree in American Government (1980). While attending the University of Virginia, she was an Echols Scholar, a member of the Honor Committee and Omicron Delta Kappa. After working for the U.S. House of Representatives, she obtained a J.D. from Harvard Law School (1985). Ms. Stone has been recognized for several years as a Virginia Super Lawyer, and as one of Virginia's Legal Elite in government relations and immigration law by *Virginia Business* magazine.

**THOMAS STRASSBURG**

Thomas Strassburg is the Executive Director of Virginia CLE®, the bar-sponsored provider of continuing legal education programs and publications in Virginia. He served as publications director there before assuming the role of executive director. As publications director he was in the forefront of the development of electronic publications. Before he joined the staff of Virginia CLE®, Tom was a career Army lawyer and served on the faculty and in the administration of The Judge Advocate General’s School in Charlottesville. He holds a J.D. from Marquette University and an LL.M. from Northwestern University and was first admitted to practice in Wisconsin in 1969.
W. SCOTT STREET III

W. Scott Street III is Of Counsel to Williams Mullen in Richmond, and has been Secretary-Treasurer of the Virginia Board of Bar Examiners since 1972. Scott was President of the Virginia State Bar during 1999-2000. He has chaired the Virginia State Bar’s Section on the Education of Lawyers and helped plan the first Virginia Conclave on Legal Education held in 1992. He served two terms in the ABA House of Delegates, is a Fellow of both the American Bar Foundation and the Virginia Law Foundation, and was President of the Virginia Law Foundation in 2004-2005. Long active in bar admissions, Mr. Street has been a Trustee of the National Conference of Bar Examiners, served on the Multistate Bar Examination Policy Committee, and chaired the NCBE Bar Admission Administrators Committee. He received his law degree from the University of Virginia in 1968.

JEFFREY M. SUMMERS

Jeffrey M. Summers is a solo appellate practitioner in Richmond. He limits his practice to appeals before the Supreme Court of Virginia, the Court of Appeals of Virginia, and the U.S. Fourth Circuit Court of Appeals. He also will assist trial counsel in any post trial work that it takes to set up the appeal. Mr. Summers is a second career lawyer. He served in the U.S. Marine Corps as a communications officer from 1976 to 1997. After retiring as a Lieutenant Colonel in 1997, Mr. Summers attended the George Mason University School of Law as a full time student. He has defended the indigent, been a community association lawyer, and a county attorney for a rural county in Central Virginia. Mr. Summers currently serves on the board of governors of the Section on the Education of Lawyers.

MARY LYNN TATE

Mary Lynn Tate is the Principal of Tate Law PC in Abingdon. She practices civil litigation, state, federal and appellate in the areas of plaintiff's medical and products injury, premises security and business disputes. Ms. Tate is a former President of the Virginia Trial Lawyers Association (VTLA) and a permanent member of the Fourth Circuit Federal Judicial Conference. She is a Co-Director of the UVA National College of Trial Advocacy. Ms. Tate has served on the Board of Governors of the American Association for Justice (formerly ATLA) and four terms on ATLA's Executive Committee. She is a Fellow of the International Academy of Trial Lawyers. Ms. Tate has served on the Board of Governors of the American Association for Justice (formerly ATLA) and four terms on ATLA's Executive Committee. She is a Fellow of the International Academy of Trial Lawyers. Ms. Tate was named a Virginia SuperLawyer and was placed in Virginia’s Top 25 Women Lawyers by Law and Politics magazine in 2006-2012. She also is listed in The Best Lawyers in America® (2008-2012) for medical malpractice and personal injury. In April 2006, she received the Virginia Trial Lawyers Association’s highest honor, The Distinguished Service Award. Ms. Tate also is a recipient of the Brenneman Award from University of Virginia honoring lawyers for excellence in advocacy, professional achievement and participation in the education of lawyers. Ms. Tate received her undergraduate degree with department honors in two majors (1973) and her law degree (1976) from the University of Richmond.

WILLIAM E. THRO

William E. Thro is University Counsel and Associate Professor of Constitutional Studies at Christopher Newport University, in Newport News, where he also serves as the University’s Pre-Law Advisor. Before assuming his current position, he was Solicitor General of Virginia. A recipient of a National Association of Attorneys General Best Brief Award, he has co-authored eleven U.S. Supreme Court amicus briefs on the merits and more than fifty briefs at the petition stage. He is an accomplished appellate advocate, constitutional scholar, and education lawyer. His scholarship focuses on constitutional law in educational contexts in both the United States and South Africa. Mr. Thro has also served as Interim General Counsel at Old Dominion University; chief counsel for Norfolk State University, and litigation counsel for the Colorado State University, the Colorado Department of Education, and the Colorado School of Mines. He received his undergraduate degree summa cum laude from Hanover College where he was the first Hanover student to become a Harry S. Truman Scholar. He earned his graduate degree from the University of Melbourne (with honors), while attending as a Rotary Foundation International Ambassador Scholar. His law degree is from the University of Virginia, where was a published member of the Virginia Law Review. He is the
President-Elect of the Education Law Association, the Immediate Past Chair of the VBA’s Appellate Practice Section, and a member of the board of governors of the Virginia State Bar’s Section on the Education of Lawyers.

MICHAEL F. URBANSKI

Michael F. Urbanski took the oath of office as United States District Judge for the Western District of Virginia on May 13, 2011, and principally hears cases in the Roanoke and Harrisonburg Divisions. From 2004 to 2011, Judge Urbanski served as United States Magistrate Judge. In that capacity, he handled initial criminal proceedings in felony cases, conducted misdemeanor trials, ruled on motions in civil cases and conducted hundreds of settlement conferences. Prior to judicial service, Judge Urbanski practiced law for 22 years with Vinson & Elkins in Washington, DC (1982-1984); and with Woods, Rogers in Roanoke (1984-2004). His practice focused on commercial litigation with substantial emphasis in the areas of business torts, antitrust, unfair competition and intellectual property law. Judge Urbanski received his undergraduate degree from the College of William and Mary (1978), and his law degree from the University of Virginia (1981). He served as a law clerk for The Honorable James C. Turk, then the Chief United States District Judge for the Western District of Virginia, after his graduation from law school.

DAVID YELLEN

David Yellen has been the Dean and Professor of Law at Loyola University Chicago School of Law since 2005. From 1988-2004, he was on the faculty of Hofstra Law School, holding the Max Schmertz Distinguished Professorship, and serving as Dean from 2001-2004. During the 2004-2005 year, he was the Reuschlein Distinguished Visiting Professor at Villanova University School of Law. He also has been a visiting professor at Cornell Law School and at New York Law School. Dean Yellen’s major area of academic expertise is criminal law, particularly sentencing and juvenile justice. He is a graduate of Princeton University and Cornell Law School. After law school he clerked for a federal judge, practiced law in Washington, D.C., and served as counsel to the Judiciary Committee of the U.S. House of Representatives. Since 2006, Dean Yellen has been a member of the Standards Review Committee of the American Bar Association’s Section on Legal Education. The Standards Review Committee has been engaging in a comprehensive review of the ABA’s law school accreditation standards.

3-23-12
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CHARLOTTESVILLE, VIRGINIA
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US Airways Express, United Express and Delta Connection serve the Charlottesville-Albemarle Regional Airport, which is 10 miles north of the resort.
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From the North
Travel Route 29 South into Charlottesville. Exit onto the Route 250 West bypass (Lynchburg, Staunton, Richmond). Travel to the third exit, Route 250 West. At the traffic light, turn left onto Route 250 West and drive for one mile. Turn left onto Ednam Drive at the third stoplight. The entrance to the resort will be on your left.

From the South
Travel Route 29 North to Charlottesville. Pass under the I-64 junction, continue for 1.5 miles and take the exit for Route 250 West. Turn left onto Route 250 West and drive for one mile. Turn left onto Ednam Drive at the fourth stoplight. The entrance to the resort will be on your left.

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EDUCATING LAWYERS
Preparation for the Profession of Law

William M. Sullivan
Anne Colby
Judith Welch Wegner
Lloyd Bond
Lee S. Shulman

Summary
The Foundation's two-year study of legal education involved a reassessment of teaching and learning in American and Canadian law schools today. Intensive field work was conducted at a cross section of 16 law schools during the 1999-2000 academic year. The study re-examines “thinking like a lawyer”—the paramount educational construct currently in use. The report shows how law school teaching affords students powerful intellectual tools while also shaping education and professional practice in subsequent years in significant, yet often unrecognized, ways. The study was funded by The Atlantic Philanthropies.

About the Authors

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SUMMARY

EDUCATING LAWYERS

PREPARATION FOR THE PROFESSION OF LAW

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Lloyd Bond
Lee S. Shulman
Introduction

The profession of law is fundamental to the flourishing of American democracy. Today, however, critics of the legal profession, both from within and without, have pointed to a great profession suffering from varying degrees of confusion and demoralization. A reawakening of professional élan must include revitalizing legal preparation. It is hard to imagine that taking place without the enthusiastic participation of the nation's law schools. Law school provides the single experience that virtually all legal professionals share. It is the place and time where expert knowledge and judgment are communicated from advanced practitioner to beginner. It is where the profession puts its defining values and exemplars on display, and future practitioners can begin both to assume and critically examine their future identities.

*Educating Lawyers* examines the dramatic way that law schools develop legal understanding and form professional identity. The study captures the special strengths of legal education, and its distinctive forms of teaching. It follows earlier studies of professional education conducted by The Carnegie Foundation for the Advancement of Teaching. Beginning with the landmark Flexner report on medical education of 1910 and other pioneering studies of education in engineering, architecture, teaching and law, the Foundation has for nearly one hundred years influenced improvement of education for the professions.

As the Foundation enters its second century, *Educating Lawyers* becomes part of a series of reports on professional education issued by the Foundation through its Preparation for the Professions Program. *Educating Clergy* was the first in this series, which will include reports on the education of engineers, nurses and physicians.

*Educating Lawyers* is thus informed by the findings of the Foundation’s concurrent studies of professional education. It is also, like the other studies, grounded in direct observation of education in process. Over the space of two academic semesters, a research team visited 16 law schools in the United States and Canada. The schools, both public and private, were chosen to be geographically diverse, ranging from coast to coast and north to south. Several are among the more selective schools. Several are freestanding schools, while others are less selective institutions within large state university systems. One school is historically black, while two (one in Canada, the other in the United States) are distinctive for their attention to Native American and First Nation peoples and their concerns. Several schools were chosen because they were judged by many to represent important strengths in legal education.
Overview of Legal Education

Education of professionals is a complex educational process, and its value depends in large part upon how well the several aspects of professional training are understood and woven into a whole. That is the challenge for legal education: linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve—in other words, fostering what can be called civic professionalism.

Like other professional schools, law schools are hybrid institutions. One parent is the historic community of practitioners, for centuries deeply immersed in the common law and carrying on traditions of craft, judgment and public responsibility. The other heritage is that of the modern research university. These two strands of inheritance were blended by the inventors of the modern American law school, starting at Harvard in the 1870s with President Charles William Eliot and his law dean, Christopher Columbus Langdell. The blend, however, was uneven. Factors beyond inheritance—the pressures and opportunities of the surrounding environment—have been very important in what might be called the epigenesis of legal education. But as American law schools have developed, their academic genes have become dominant.

The curriculum at most schools follows a fairly standard pattern. The juris doctor (JD) degree is the typical credential offered, requiring three years of full-time or four years of part-time study. Most states require the degree for admission to practice, along with a separate bar examination. Typically, in the first year and a half, students take a set of core courses: constitutional law, contracts, criminal law, property law, torts, civil procedure and legal writing. After that, they choose among courses in particular areas of the law, such as tax, labor or corporate law. The school-sponsored legal clinics, moot court competition, supervised practice trials and law journals give the students who participate opportunities to practice the legal skills of working with clients, conducting appellate arguments, and research and writing.

Law schools use the Socratic, case-dialogue instruction in the first phase of their students’ legal education. During the second two years, most schools continue to teach, by the same method, a number of elective courses in legal doctrine. In addition, many also offer a variety of elective courses in seminar format, taught in ways that resemble graduate courses in the arts and sciences. What sets these courses apart from the arts and sciences experience is precisely their context—law school as apprenticeship to the profession of law. But there is room for improvement. The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding.

That is the challenge for legal education: linking the interests of legal educators with the needs of legal practitioners and with the public the profession is pledged to serve.

The dramatic results of the first year of law school’s emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding.
Five Key Observations

OBSERVATION 1 Law School Provides Rapid Socialization into the Standards of Legal Thinking.

Law schools are impressive educational institutions. In a relatively short period of time, they are able to impart a distinctive habit of thinking that forms the basis for their students’ development as legal professionals. Visiting schools of different types and geographical locations, the research team found unmistakable evidence of the pedagogical power of the first phase of legal education. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they are learning, in the parlance of legal education, to “think like a lawyer.” This is an accomplishment of the first order that deserves serious consideration from educators of aspirants to other professional fields.

OBSERVATION 2 Law Schools Rely Heavily on One Way of Teaching to Accomplish the Socialization Process.

The process of enabling students to “think like lawyers” takes place not only in a compressed period of time but primarily through the medium of a single form of teaching: the case-dialogue method. Compared to other professional fields, which often employ multiple forms of teaching through a more prolonged socialization process, legal pedagogy is remarkably uniform across variations in schools and student bodies. With the exception of a few schools, the first-year curriculum is similarly standardized, as is the system of competitive grading that accompanies the teaching and learning practices associated with case dialogue. The consequence is a striking conformity in outlook and habits of thought among legal graduates.

In particular, most law schools emphasize the priority of analytic thinking, in which students learn to categorize and discuss persons and events in highly generalized terms. This emphasis on analysis and system has profound effects in shaping a legal frame of mind. At a deep, largely uncritical level, the students come to understand the law as a formal and rational system, however much its doctrines and rules may diverge from the common sense understandings of the lay person. This emphasis on the procedural and systematic gives a common tone to legal discourse that students are quick to notice, even if reproducing it consistently is often a major learning challenge.

OBSERVATION 3 The Case-Dialogue Method of Teaching Has Valuable Strengths but Also Unintended Consequences.

The case-dialogue method challenges students to grasp the law as a subject characterized by a particular way of thinking, a distinctive stance toward the world. And, as do the particular methods of teaching for other professions, the case-dialogue method offers both an accurate representation of central aspects of legal competence and a deliberate simplification of them. The simplification consists in the abstraction of the legally relevant aspects of situations and persons from their everyday contexts. In the case-dialogue classroom, students learn to dissect every situation they meet from a legal point of view.
By questioning and argumentative exchange with faculty, students are led to analyze situations by looking for points of dispute or conflict and considering as “facts” only those details that contribute to someone’s staking a legal claim on the basis of precedent. The case-dialogue method drills students, over and over, in first abstracting from natural contexts, then operating upon the “facts” so abstracted according to specified rules and procedures, and drawing conclusions based upon that reasoning. Students discover that to “think like a lawyer” means redefining messy situations of actual or potential conflict as opportunities for advancing a client’s cause through legal argument before a judge or through negotiation.

By contrast, the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method. Issues such as the social needs or matters of justice involved in cases do get attention in some case-dialogue classrooms, but these issues are almost always treated as addenda. Being told repeatedly that such matters fall, as they do, outside the precise and orderly “legal landscape,” students often conclude that they are secondary to what really counts for success in law school—and in legal practice. In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.

This warning does help students escape the grip of misconceptions about how the law works as they hone their analytic skills. But when the misconceptions are not addressed directly, students have no way of learning when and how their moral concerns may be relevant to their work as lawyers and when these concerns could throw them off track. Students often find this confusing and disillusioning. The fact that moral concerns are reintroduced only haphazardly conveys a cynical impression of the law that is rarely intended.

Two Major Limitations of Legal Education

1. Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice. Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school’s typically unbalanced emphasis on the one perspective can create problems as the students move into practice.1

2. Law schools fail to complement the focus on skill in legal analyses 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 legal institutions and the varied forms of legal practice. To engage the moral imagination of students as they move toward professional practice, seminaries and medical, business and engineering schools employ well-elaborated case studies of professional work. Law schools, which pioneered the use of case teaching, only occasionally do so.

Both of these drawbacks—lack of attention to practice and inadequate concern with professional responsibility—are the unintended consequences of reliance upon a single, heavily academic pedagogy, the case-dialogue method, to provide the crucial initiation into legal education.
Assessment of Student Learning Remains Underdeveloped.

Assessment of what students have learned—what they know and are able to do—is important in all forms of professional education. In law schools, too, assessing students’ competence performs several important educational functions. In its familiar summative form, assessment sorts and selects students. From the start, assessment is used as a filter; law schools typically admit only students who are likely to succeed in law school as judged by performance on the Law School Admissions Test; and high-stakes, summative assessment is critical at the end of each of the first two semesters of law school, when essay examinations in each doctrinal course will determine students’ relative ranking, opening academic options for the remainder of some students’ legal education and legal careers—and closing them for others. The bar examination is another high-stakes, summative assessment that directly affects law school teaching but is administered by an independent body.

Summative assessments are useful devices to protect the public, for they can ensure basic levels of competence. But there is another form of assessment, formative assessment, which focuses on supporting students in learning rather than ranking, sorting and filtering them. Although contemporary learning theory suggests that educational effort is significantly enhanced by the use of formative assessment, law schools make little use of it. Formative assessments directed toward improved learning ought to be a primary form of assessment in legal education.

Legal Education Approaches Improvement Incrementally, Not Comprehensively.

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. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these inadequacies on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar and its commissions antedates the study on which Educating Lawyers is based.

The relatively subordinate place of the practical legal skills, such as dealing with clients and ethical-social development in many law schools, is symptomatic of legal education’s approach to addressing problems and framing remedies. To a significant degree, both supporters and opponents of increased attention to “lawyering” and professionalism have treated the major components of legal education in an additive way, not an integrative way.

Moreover, efforts to add new requirements are almost universally resisted, not only in legal education, but in professional education generally, because there is always too much to accomplish in too little time. Sometimes this problem becomes so acute that the only solution is to extend the time allocated to training. In engineering, for example, current debate centers on the question of whether the master’s rather than the bachelor’s degree should be the entry-level credential for the field. Extending the duration of training is a radical solution, however, and certainly not one that would appeal to law school administrators, faculty or students.
This additive strategy of educational change assumes that increasing emphasis on the practical and ethical-social skills of the profession will reduce time for and ultimately affect the extent to which students develop skills in legal analyses. Thus, practical skills are addressed only to a point. This is not only a logistical problem (too much to accomplish in a limited amount of time) but it is also a conceptual and pedagogical problem. In essence, the additive strategy assumes that the legal analysis so prominent in legal education is sufficient in its own terms, only requiring slight increase in attention to the practical and ethical-social skills of a beginning lawyer.

**Toward a More Integrated Model:**
**A Historic Opportunity to Advance Legal Education**

Law school provides the beginning, not the full development, of students’ professional competence and identity. At present, what most students get as a beginning is insufficient. Students need a dynamic curriculum that moves them back and forth between understanding and enactment, experience and analysis. Law schools face an increasingly urgent need to bridge the gap between analytical and practical knowledge, and a demand for more robust professional integrity. Appeals and demands for change, from both within academic law and without, pose a new challenge to legal education. At the same time, they open to legal education a historic opportunity to advance both legal knowledge—theoretical and practical—and the capacities of the profession.

Legal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place; it needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility. Legal education should seek to unite the two sides of legal knowledge: formal knowledge and experience of practice.

In particular, legal education should use more effectively the second two years of law school and more fully complement the teaching and learning of legal doctrine with the teaching and learning of practice. Legal education should also give more focused attention to the actual and potential effects of the law school experience on the formation of future legal professionals.

**Recommendations**

**RECOMMENDATION 1** Offer an Integrated Curriculum.

To build on their strengths and address their shortcomings, law schools should offer an integrated, three-part curriculum: (1) the teaching of legal doctrine and analysis, which provides the basis for professional growth; (2) introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) exploration and assumption of the identity, values and dispositions consonant with the fundamental purposes of the legal profession. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work.

In order to produce such integrative results in students’ learning, however, the faculty who teach in the several areas of the legal curriculum must first communicate with and learn from each other.
RECOMMENDATION 2  Join “Lawyering,” Professionalism and Legal Analysis from the Start.

The existing common core of legal education needs to be expanded to provide students substantial experience with practice as well as opportunities to wrestle with the issues of professionalism. Further, and building on the work already underway in several law schools, the teaching of legal analysis, while remaining central, should not stand alone as it does in so many schools. The teaching of legal doctrine needs to be fully integrated into the curriculum. It should extend beyond case-dialogue courses to become part of learning to “think like a lawyer” in practice settings.

Nor should doctrinal instruction be the exclusive content of the beginner’s curriculum. Rather, learning legal doctrine should be seen as prior to practice chiefly in the sense that it provides the essential background assumptions and habits of thought that students need as they find their way into the functions and identity of legal professionals.

RECOMMENDATION 3  Make Better Use of the Second and Third Years of Law School.

After the JD reports that graduates mostly see their experiences with law-related summer employment after the first and second years of law school as having the greatest influence on their selection of career paths. 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.

RECOMMENDATION 4  Support Faculty to Work Across the Curriculum.

Both doctrinal and practical courses are likely to be most effective if faculty who teach them have some significant experience with the other, complementary area. Since all law faculty have experienced the case-dialogue classroom from their own education, doctrinal faculty will probably make the more significant pedagogical discoveries as they observe or participate in the teaching of lawyering courses and clinics, and we predict that they will take these discoveries back into doctrinal teaching. Faculty development programs that consciously aim to increase the faculty’s mutual understanding of each other’s work are likely to improve students’ efforts to make integrated sense of their developing legal competence. However it is organized, it is the sustained dialogue among faculty with different strengths and interests united around common educational purpose that is likely to matter most.

RECOMMENDATION 5  Design the Program so that Students—and Faculty—Weave Together Disparate Kinds of Knowledge and Skill.

Although the ways of teaching appropriate to develop professional identity and purpose range from classroom didactics to reflective practice in clinical situations, the key challenge in supporting students’ ethical-social development is to keep each of these emphases in active communication with each other.

The demands of an integrative approach require both attention to how fully ethical-social issues pervade the doctrinal and lawyering curricula and the provision of educational experiences directly concerned with the values and situation of the law and the legal profession. As the example of medical education suggests, these
concerns “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. And, in teaching for legal analysis and lawyering skills, the most powerful effects on student learning are likely to be felt when faculty with different strengths work in a complementary relationship.

RECOMMENDATION 6 Recognize a Common Purpose.

Amid the useful varieties of mission and emphasis among American law schools, the formation of competent and committed professionals deserves and needs to be the common, unifying purpose. A focus on the formation of professionals would give renewed prominence to the ideals and commitments that have historically defined the legal profession in America.

RECOMMENDATION 7 Work Together, Within and Across Institutions.

Legal education is complex, with its different emphases of legal analysis, training for practice and development of professional identity. The integration we advocate will depend upon rather than override the development of students’ expertise within each of the different emphases. But integration can flourish only if law schools can consciously organize their emphases through ongoing mutual discussion and learning.

Examples from the Field

Some law schools are already addressing the need for a more dynamic, integrated curriculum. The work of centers such as the Institute for Law School Teaching at the Gonzaga University School of Law and a far-flung network of legal educators that has resulted in the report “Best Practices for Legal Education” testify to substantial interest in aspects of the pedagogical project. Indeed, the idea for an integrated approach draws liberally on their inspiration.

The law schools of New York University (NYU) and the City University of New York (CUNY) each exemplify, in different ways, ongoing efforts to bring the three aspects of legal apprenticeship into active relation. CUNY cultivates close interrelations between doctrinal and lawyering courses, including a resource-intensive investment in small sections in both doctrinal and lawyering seminars in the first year and a heavy use of simulation throughout the curriculum. The school also provides extensive clinical experience linked to the lawyering sequence. At NYU, doctrinal, lawyering and clinical courses are linked in a variety of intentional ways. There, the lawyering curriculum also serves as a connecting point for faculty discussion and theoretical work, as well as a way to encourage students to consider their educational experience as a unified effort.

Other schools have embarked on different experiments. Yale Law School has restructured its first-year curriculum by reducing the number of required doctrinal courses and encouraging students to elect an introductory clinical course in their second semester. This is not full-scale integration of the sort necessary to legal education, but it and other efforts like it point toward an intermediate strategy: a course of study that encourages students to shift their focus between doctrine and practical experience not once but several times, so as to gradually develop more competence in each area while making more linkages between them.

Courses and other experiences that develop the practical skills of lawyering are most effective in small-group settings. Of all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome, especially at institutions without large endowments. In this light, it is encouraging to note the
Summary

The emergence of what may be another, less resource-intensive strategy. Southwestern Law School has instituted a new first-year curriculum, in which students take four doctrinal courses in their first semester rather than five, allowing for an intensified two-semester, integrated lawyering course plus an elective course in their second semester. The lawyering course expands a legal writing and research experience to include detailed work in legal methods and reasoning, as well as interviewing and advocacy. Professionalism explicitly grounds the course through the introduction of case studies of lawyer careers that have been drawn from empirical research, such as the studies done by the American Bar Foundation referred to earlier. In addition, the Southwestern plan also provides extensive academic support where needed to enhance student success.

The Rewards of Innovation

Developing an integrated curriculum and approach to teaching designed to meet a common mission of forming professionals will not be a simple or effortless process. On the part of faculty, it will require both drawing more fully on one's own experience and learning from each other. It will also require creativity.

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. Attention to issues of teaching and learning often results in improvements and even experiments in teaching. And when innovation is the focus of a group of colleagues in and across institutions, the practice of teaching can become the basis of community, where the substantive knowledge about teaching and learning can be built upon and shared publicly over time, in the fashion of traditional academic scholarship, rather than being gained and lost anew with each individual teacher. By making classroom practice the subject of critical scrutiny, law professors would be applying to their teaching and their students’ learning the kind of skill and intellectual attention they routinely bring to their legal scholarship. Curricular integration and collaborations could also open the opportunity for faculty, particularly new faculty, to develop their careers in novel ways, both directly through new methods of teaching and also through scholarship about teaching and learning.

As desirable—and necessary—as developing a more balanced and integrated legal education might be, change does not come without effort and cost. Forward-thinking faculty and schools will have to overcome significant obstacles. A trade-off between higher costs and greater educational effectiveness is one. Resistance to change in a largely successful and comfortable academic enterprise is another. However, in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized. Here, the developing network of faculty and deans concerned with improving legal education is a key resource waiting to be developed further and put to good use.

It is well worth the effort. 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. That is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.

2 Dinovitzer and others, *After the JD*, pp. 79, 82.
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What Can We Learn from Law School?

Legal Education Reflects Issues Found in All of Higher Education

Julie Margetta Morgan   December 2011
Introduction and summary

Lawyers play a relatively small role in the American workforce, but they seem to play a big role in the American imagination. Television shows such as *The Good Wife* and *Suits* portray a luxurious and exciting lifestyle at “Big Law” and boutique law firms, while *Law and Order* depicts district attorneys working relentlessly in the pursuit of justice. And mainstream media follows the developments in legal education with a level of interest that seems out of proportion with its relevance to their readership.1

As they continue to read articles about the legal education crisis in *The New York Times* or *The Wall Street Journal*, many people may wonder: Why do we care so much about law school? For higher education policymakers, though, it may be more worthwhile to consider: Why *should* we care about legal education?

As a matter of scale, it seems silly to spend much time thinking about law school. Last year only about 155,000 students were enrolled at law schools accredited by the American Bar Association, or ABA, whereas almost 6 million students were enrolled in degree programs at community colleges that same year.2 But the small scale of the legal education sector is exactly why it may be worth some attention.

A recent *New York Times* article on the economics of law school described legal education as “a singular creature of American capitalism, one that is so durable that it seems utterly impervious to change.”3 But to those who work in higher education policy, the story of impossibly high demand even in the face of climbing tuition and low success rates seems all too familiar.

It’s certainly the story of for-profit colleges that tend to charge extremely high rates to students who will make modest salaries, if they graduate at all. And in many ways, it’s the story of all American colleges—most of which continue to raise their prices without ever having to account for whether they deliver a service of value.
The reason to focus on law school is not, as *The New York Times* claims, that it is a peculiar form of education. It’s that legal education suffers from many of the same doubts and problems that plague all of higher education. But with only 198 fully ABA-approved law schools in operation, legal education is the bite-sized version of the phenomena that are forcing change in all of our colleges. And, like for-profit colleges, law schools primarily prepare students for a well-defined career area, making it easier to assess how well they serve their students.

Of course, there are some key differences between law schools and, say, community colleges. Law students have already graduated from some kind of undergraduate program, proving that they have the skills and resources to carry them through a postsecondary program, making completion rates less of a concern. Because law schools have a selective admissions process, their students probably will not need any kind of remedial education—a huge part of the services community colleges provide their students. And law students tend to be more informed consumers of information about their education than other students. But these differences actually help narrow our focus to the issues that bridge across legal education and undergraduate programs, including questions of cost, quality, and preparedness for employment.

This report explores the field of legal education with the hope that putting a magnifying glass to this small part of higher education will help us better understand the problems that face all colleges. It details the steady rise in law school enrollment, despite high tuition rates and a heavy reliance on student loan debt. And it describes the unpleasant surprise that awaits law students upon graduation: Though a few lucky grads will make more than $130,000 per year, most new lawyers can expect annual salaries of around $63,000. With monthly loan payments near $1,000, graduates are finding that membership in the legal profession is not the golden ticket they thought it would be.
The problems facing higher education

For many years the primary policy issue in higher education was equality of access. Policymakers and researchers focused on whether under-represented groups like low-income students or students of color had the educational and financial resources necessary to get into college. Now many have turned to a new problem: Not enough students are graduating from college with the skills they need to compete in the workforce.

Labor economists have shown that there is a growing demand for workers with postsecondary education and training in the United States. In fact, Anthony Carnevale of the Georgetown Center for Education and the Workforce argues that two-thirds of the jobs created by 2018 will require workers that have some postsecondary education. But based on current college attendance and completion rates, we will not have enough qualified workers to fill those jobs.

In 2008 only 42 percent of Americans aged 25 to 34 had an associate's degree or higher. Colleges must find ways to get more students into—and through—college. But it’s not enough to simply produce more college graduates. Those students must also be prepared for the occupational areas that are likely to grow over the next few decades.

Although business is the most popular college major these days, many of the jobs of the future will be in health care or in the science, technology, engineering, and math fields. If we do not find a way to get students into fields that are likely to grow, the mismatch between workers’ skills and workforce needs will continue.

There are a few key obstacles that keep colleges from fulfilling the needs of students and of the workforce:

• Preparation. Many students who arrive on college campuses are simply not prepared to do college-level coursework. The Department of Education reports that 34 percent of entering-college students require at least one remedial education course.

• Price. A key issue in getting students through college is affordability. The price of a college degree at a four-year private college has risen 75 percent over the last 20 years. Financial aid has not kept pace—the Pell Grant grew only 39 percent in that same time period. Many students decide not to attend college or drop out without a degree due to concerns over cost. Others are taking on an increasingly large debt burden—the average debt for students who borrow to complete a bachelor's degree is $24,000.

• Quality. Many colleges simply are not offering the quality of education that students need to prepare for a successful career. Researchers Richard Arum and Josipa Roksa found that of 2,300 students at four-year universities, 45 percent did not have any significant learning gains in the first two years, and 36 percent did not have any significant learning gains over all four years. Low academic standards are a persistent issue in for-profit education. A recent Government Accountability Office, or GAO, report demonstrated through a secret-shopper investigation that some for-profit institutions gave students passing grades despite grossly substandard performance.

• Information. Access to information can mitigate the problems of preparation, price, and quality described above, helping students choose colleges that fit their career goals, academic preparedness, and budget. But prospective college students do not have access to reliable, comparable information. Though the federal government and nonprofit organizations make information available, most students do not access these resources. And many colleges make it nearly impossible for students to find any information about their prices, financial aid options, and employment outcomes.

These observations show that in legal education—as in the rest of higher education—forces such as rising tuition and limited availability of jobs are changing the value proposition of earning a degree. Schools, students, and policymakers, however, are slow to respond.
Schools assume that since students absorbed previous tuition hikes with student loans, they will continue to do so, and that today’s stagnant methods of delivering legal education will always be the best choice. Students assume that the big payoff to legal education will always be the same, encouraging them to take on debt that they can only pay if they earn top salaries. And policymakers assumed by passing off quality-control functions to accreditors, they could rest assured that the federal investment in student loans was secure.

Accrediting agencies—voluntary membership organizations comprised of colleges and universities—purport to certify the quality of postsecondary institutions. But recent scrutiny of the accreditation process shows that their focus on the inputs of a college program rather than its outputs results in a system that lets in subpar traditional institutions and often keeps out innovative nontraditional programs.

The crisis in higher education these days is not that college is no longer “worth it.” It’s that the value proposition for a college degree—in this case, a law degree—is changing, but schools, students, and policymakers have not changed with it. As the value of a college degree fluctuates, students must adjust their plans regarding attendance and financing accordingly. And colleges must strive for innovations in educational delivery that both improve education and contain costs. Finally, policymakers must make sure that accreditors not only ensure quality but also encourage their members to provide a high-value education to students.

To facilitate more flexibility on the part of students, schools, and policymakers, the following policy changes should be implemented:

- The Bureau of Labor Statistics should collect and publish average employment and salary data for recent entrants into an occupation.

- Accreditors in all sectors of higher education should create standard definitions for employment and salary statistics, and require member schools to make such information readily available to students. Accreditors should audit member schools’ adherence with these standards from time to time.

- The National Advisory Committee on Institutional Quality and Integrity should conduct a review and submit a report to Congress and the Department of Education on accrediting standards that stifle innovation or drive up tuition costs in higher education.
• Congress should provide funds to colleges through the Fund for Innovation in Postsecondary Education for projects that use technology or other innovative solutions to drive down tuition costs while maintaining or improving educational quality.

A brief primer on legal education

Today’s law school education model has its roots in the 1870s, when Harvard Law School Dean Christopher Columbus Langdell instituted the case method, a model of education that is still used today in most law school courses. According to Langdell, the best way to teach law students was to read and discuss court opinions, drawing out principles of law from these texts. This method is typically combined with the Socratic method, in which professors pose a series of questions to a student to draw out the finer points of a particular case or legal principle.

Though Langdell’s peers initially objected to the case method, it quickly became the most widely used method of teaching the law. There’s just one problem with the case method: It does not teach students how to practice law. The original American models of legal education relied heavily on apprenticeships, but that practice no longer predominates. Now law schools try to bring practical skills to the classroom through coursework like legal writing, research, client counseling, and clinical experiences. But these courses are not necessarily a substitute for actual legal experience. A recent article in The New York Times illustrates the problem:

Here is what students will rarely encounter in Contracts: actual contracts, the sort that lawyers need to draft and file. Likewise, Criminal Law class is normally filled with case studies about common law crimes—like murder and theft—but hardly mentions plea bargaining, even though a vast majority of criminal cases are resolved by that method.

As the legal workforce gets more competitive, law schools seem to be embracing the idea that practical knowledge might give students an edge in the marketplace. Some law schools are substituting case-simulation courses in for the Socratic method and even making clinical experiences a requirement of graduation. Still, these efforts are likely to remain only a small part of legal education.

With all the diversity of educational models in undergraduate education, including online, hybrid online-physical programs, apprenticeships, and experiential learning programs, it is striking to observe the homogeneity of legal education. There are still a few schools, however, that offer alternative models of legal education. Concord School of Law, a for-profit, online law school owned by Kaplan University, offers students the opportunity to study law from home. Alternative schools like Kaplan tend to not be accredited by the American Bar Association, however, and Concord’s pass rate on the California bar examination is extremely low, at 36 percent for first-time takers.
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For the full article, go to http://www.americanprogress.org/issues/2011/12/legal_education.html
A SURVEY OF LAW SCHOOL CURRICULUM: 2002-2010
ABA CURRICULUM COMMITTEE
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
DRAFT

The final report from the ABA Curriculum Committee is still in draft form. Below is a draft of the Executive Summary from the full report.

EXECUTIVE SUMMARY

In 2002, inspired by the tenth anniversary of The MacCrate Report, the ABA Curriculum Committee embarked on a comprehensive survey of law school curricula. Our goal was to transform the anecdotal into objective data. Published in 2003, A Survey of Law School Curriculum: 1992-2002 provided comparative statistical results from that decade on a wide range of curricular topics in legal education. And with the help of pioneering studies in 1975 by Donald Jackson and E. Gordon Gee, and a 1986 report by current committee member, William B. Powers, the 2002 Survey was able to incorporate those observations to note longstanding curricular practices and trends.

This report, A Survey of Law School Curriculum: 2002-2010, continues in the tradition of the 2002 Survey. It is a comprehensive survey of significant aspects of current law school curricula, but additionally, the 2010 Survey employs baseline results from the 2002 Survey to track curricular changes and trends in legal education since 2002.

Much has happened since the publication of the 2002 Survey to shape our conversation about legal education. Since that time, the climate for curricular reform has intensified. Recent interest has been fueled by the publication in 2007 of two influential reports on legal education: Educating Lawyers: Preparation for the Profession of Law, produced by the Carnegie Foundation for the Advancement of Teaching; and Best Practices for Legal Education: A Vision and a Road Map, published by the Clinical Legal Education Association. The Carnegie Foundation, in particular, posed a direct challenge to law schools: reform professional legal education to better prepare students to become competent professionals.

And since the 2002 Survey was published, law schools have faced a changing legal job market amid an economic downturn, more competition as the ABA-approved ranks have swelled, and all accompanied by heightened media scrutiny. Each of these factors has contributed to make law school curriculum the subject of intense discussion and debate.

Curricular Review: The Story of the 2010 Survey

Known generally for staid and predictable curriculum setting, law schools reported that they are engaged in sustained and serious reflection of their curricula. Results of the 2010 Survey – the objective data combined with the narrative responses – reveal an energized commitment on the part of faculties to review and revise their curriculum to produce practice ready professionals. Law schools frequently cited the three publications (The MacCrate Report, Educating Lawyers, and Best Practices) as influential in their decision-making processes.

In the 2002 Survey we observed that law schools had begun to retool aspects of their programs with two commitments guiding them: an increased commitment to clinical legal education and an increased commitment to professionalism. Today, these goals remain firmly in place as the modern law school curriculum begins to mature. But there is more. Engaging in wholesale curricular review has produced experimentation and change at all levels of the curriculum, resulting in new programs and courses, new
and enhanced experiential learning, and greater emphasis on various kinds of writing across the curriculum.

**MAJOR FINDINGS OF THE 2010 SURVEY**

Outlined here are the major findings from the 2010 Survey:

**Required Curriculum**

* Average credit hours required for graduation increased by one unit to 89 units in 2010, although there is disparity in the credits required depending on a law school’s size of enrollment and whether a law school is public or private. Public law schools required an average of 89 units while private law schools required 87 units, and law schools with enrollments of more than 1300 students required an average of 86 units.

* Despite approval for accelerated graduation under ABA Standard 304(c), only 11% of respondents reported a policy allowing it.

* The number of law schools that required courses beyond the first year has remained relatively constant since 2002 with Constitutional Law and Evidence garnering the most support as required upper division doctrinal courses. For the first time, however, 28% of law school respondents indicated that they required a specific upper division legal writing course.

* Tested subject matter of bar examinations does not appear to play a prominent role in a law school’s determination of which courses to require for graduation. No statistical evidence suggests that the “bar factor” drives law school curricular decision-making on which upper division courses to require for graduation.

* Fewer law schools had upper division distribution requirements in 2010 than in 2002.

* Law schools have increased all aspects of skills instruction, including clinical, simulation, and externships, to meet recently adopted ABA Standard 302(a)(4), which requires that students receive “other professional skills instruction.”

* Pro bono service requirements have increased incrementally since 2002 with 18% of law school respondents in 2010 requiring an average of 35 hours of pro bono service to graduate, which is 10 more hours of service than reported in 2002.

**First Year Curriculum**

* While the first year lineup of core courses has remained constant since 1975, many law schools have reconfigured unit allocation and timing to expand Legal Writing coverage and to accommodate additional courses and elective opportunities for first year students.

* Legal Research and Writing continues to grow in stature as more law schools increased the number of units and expanded course coverage to include skills instruction beyond traditional advocacy.

* More law schools are offering elective opportunities to their first year students. In 2002, 14 respondents provided a first year elective opportunity; by 2010, that number had grown to 33 law school respondents.
Nearly half the respondents in 2010 reported having a small section experience outside of Legal Writing. The average size of enrollment for the small section experience was 30-40 students.

**Upper Division Curriculum**

* Elective opportunities have increased since 2002, and in general, the elective curriculum remained healthy with little decrease in any particular areas of law. Noted increases have been in International Law, Alternative Dispute Resolution, Intellectual Property, Business Law, and Drafting courses.

* Law Schools offered a wide range of professional skills opportunities, with half the respondents reporting ten or more types of professional skills courses. Transactional Drafting courses and upper division Legal Writing courses experienced the greatest growth in offerings. Many law schools added courses and course components on professionalism and professional identity.

* The percentage of law school respondents that offered specialization and certificate programs remained the same as in 2002, but the number of programs each school offered increased significantly. Most popular programs were in the areas of International Law, Business Law, Intellectual Property, and Litigation.

* Over 85% of respondents regularly offered in-house live clinical opportunities and 30% of respondents offered off-site, live clinical opportunities. Law schools with in-house live clinic opportunities averaged three clinics. Nearly all respondents provided at least one externship opportunity, and without exception, placement opportunities have increased in each externship category since 2002.

* Eighty seven percent of all ABA-approved law schools offered joint degrees in 2010. The most popular joint degree continued to be the J.D./M.B.A. (Masters in Business Administration) but the J.D./M.S.W. (Masters in Social Work) experienced the most growth. An increasing number of law schools offered post-J.D. and non-J.D. degrees in 2010.

* More law schools offered distance education courses in 2010 than in 2002, but law school policies permitting distance education credit to count toward the J.D. degree lag the approval to do so under ABA Standards 304 and 306. Fewer than fifty percent reported a policy allowing distance education instruction to count toward the J.D. degree. Synchronous offerings increased from 13% of respondents in 2002 to 23% of respondents in 2010. Similar growth can be seen in asynchronous offerings. In 2002, 11% of respondents offered asynchronous education; by 2010, that number had grown to 25% of respondents.

**Academic Support and Bar Readiness**

* Nearly all respondents provided academic support, either in the form of a program, a course, or both. Many respondents offered academic support to both first year and upper division students.

* As of 2010, 48% of law school respondents offered a bar preparation course for credit covering a range of topics including multistate essay, multiple choice, state essay, and performance practice. For most law schools, the course was voluntary. Full-time faculty resources or a combination of full-time and adjunct faculty resources were used in two thirds of the programs.

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THE LAW SCHOOL CRITIQUE IN HISTORICAL PERSPECTIVE

A. Benjamin Spencer

[The following is an edited excerpt of a much longer piece on legal education. The full version of the article is available for download at http://ssrn.com/abstract=2017114]

V. THE NEXT CENTURY IN LEGAL EDUCATION

The four pillars of law school education—its curriculum, its pedagogy, its mode of assessment, and its faculty—all have roots in the Langdellian reforms of the late 19th Century. The justification for the design of the Langdellian law school—that law is a science best learned from studying “original sources” at the feet of masters of learning rather than masters of practice—has been called into question ever since that time, but the basic model has endured. Its resilience seems to be linked to a variety of factors: The consonance of the Langdellian approach with faculty backgrounds and aspirations makes it fairly self-perpetuating; the economics of the approach have been heretofore unquestionably superior to more effective alternatives; students and employers have historically been unresponsive to law school curricular reform as they continue to prioritize school prestige—not the quality of training—in making enrollment and hiring decisions.

decisions;\(^2\) and the deficiencies of the approach were less consequential in a world in which the bar understood and fulfilled its duty to complete the training of lawyers during their first couple years of practice.

Unfortunately, the fraying of the foundation for the justification and perpetuation of the Langdellian approach is not likely to usher in fundamental change with ease. Law faculty benefit from the current structure of the course delivery system and may be loathe to take on work that will compromise time for other pursuits or impose burdens without increasing compensation.\(^3\) Further, the profile of current law faculty—having been educated under the Langdellian system and having had little to no practice experience—renders them less sympathetic to the urge toward practice-relevance and less competent to devise and deliver a program with such an orientation.\(^4\) This point was apparent to Jerome Frank, who long ago lamented that inexperienced teachers learned only in the law in books—the so-called “book lawyer” or “library-law teacher”—controlled law schools and thus could thwart the reform process:

Unfortunately, attempted reform of legal pedagogy is frequently in the hands of the “library-law” teacher. With the best will in the world, such a teacher often

\(^2\)See, e.g., AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 6–7 (July 1992) (hereinafter THE MACCRATE REPORT) ("[F]ew employers appear interested in whether students have enrolled in [skills] courses or how they perform in them."); id. at 7 n.2 ("The American Bar Foundation survey of hiring partners found . . . that this selection of particular courses has little or no impact on hiring decisions.").

\(^3\)As Upton Sinclair once observed, “It is difficult to get a man to understand something, when his salary depends upon his not understanding it!” UPTON SINCLAIR, I, CANDIDATE FOR GOVERNOR: AND HOW I GOT LICKED (1935), repr. University of California Press, 1994, p. 109. See also David Segal, What They Don’t Teach Law Students: Lawyering, N.Y. Times (Nov. 19, 2011), available at http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all ("Professor Rubin failed to sell his faculty members on a retooled first-year Contracts class. Some members of the faculty got a little overstressed by all the change.").

\(^4\)See John Lande & Jean R. Sternlight, The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering, 25 OHIO ST. J. ON DISP. RESOL. 247, 274 (2009) ("[M]any law faculty members tend to have ‘conservative’ attitudes about reform. Law professors often value tradition. It is not unusual for faculty to believe that the law school curriculum worked well for them when they were law students and that it should work well for current law students as well.").
finds it almost impossible to warp over the old so-called case-system so as to adapt it to the needs of the future practicing lawyer. For, as above noted, that system is centered in books. So long as teachers who know nothing except what they learned from books under the old case-system are in control of a law school, the actualities of the lawyer’s life are likely in that school to be considered peripheral and as of secondary importance.5

Perhaps focusing on the “law in books” was appropriate in a time when students would go on to learn the “law in action” during the first years of practice; academic legal education was originally meant to precede and supplement law office training, not supplant it. Because that tandem relationship between the two spheres has shifted—from formal, to informal, to optional, to nonexistent—law schools must reform the Langdellian model to fill the void.

What should that reform look like? I have sketched out some thoughts above—that schools should give some consideration to expanding practical skills training,6 diversifying pedagogical methods, developing more meaningful assessment techniques, and considering the benefit that more experienced practitioners could bring to a law school faculty—but these and other ideas require much more thorough treatment than I have given them here and will have to await future work.7 Further, beyond law school there are other improvements that need to be made in the areas of pre-law education,8 bar admissions standards,9 and continuing legal education while in practice.

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6 A survey of judges by Judge Richard Posner and Professor Albert Yoon revealed the opinion that “law schools should provide more coursework oriented to instilling practice-oriented skills.” Richard A. Posner and Albert H. Yoon, What Judges Think of the Quality of Legal Representation, 68 STAN. L. REV. 317 (2010-2011).
7 That said, the work of the Best Practices report, the Carnegie Foundation report, and those focusing on pedagogy such as Professors Schwartz, Sparrow, and Hess in Teaching Law By Design, provide a solid vision of the direction legal education needs to take going forward. MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW, AND GERALD HESS, TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM (Carolina Academic Press, 2009); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (The Carnegie Foundation for the Advancement of Teaching 2007) (hereinafter THE CARNEGIE REPORT); ROY STUCKEY, ET AL., BEST PRACTICES IN LEGAL EDUCATION (2007). Washington University law professor Brian Tamanaha has a book forthcoming in July 2012 that promises some suggestions for the future, including giving schools the flexibility to pursue differing objectives, such as a research-orientation or a practice-orientation, which will result in their faculties having different backgrounds. See Stanley Fish, Bad News for Law Schools http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/# (Feb. 20, 2012) (discussing the contents of an advanced copy of Tamanaha’s forthcoming book on failing law schools).
8 See ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES, 127 (1953) (“Many of the problems of legal education owe their being to deficiencies in the pre-legal period.”). See also THE MACCRATE REPORT, supra note __ at 230 (“Most prelaw counseling takes place only after individuals have already decided to become lawyers . . . . The need for advice at an earlier time in the decision-making process is apparent.”).
But our concern here has been the Langdellian model of law school education. If that model is fundamentally broken—a question that will likely remain the subject of great debate\textsuperscript{10}—then only fundamental change will do, rather than the incremental change we have seen over the past 130 years. Fundamental change means rethinking our categorization of doctrinal subjects and commitment to them as the dominant component of training for legal practice.\textsuperscript{11} It means acknowledging what other disciplines seem to know about how people learn and giving in to the need to bring that knowledge into our own classrooms.\textsuperscript{12} It means going beyond traditional classroom dynamics and physical libraries to approaches that leverage technology to deliver content while focusing face time on meaningful discussions and problem solving.\textsuperscript{13} It means making the effort to evaluate students against learning objectives in a way that measures and supports their growth and development. It means opening our minds to the notion that using experienced lawyers to educate novice lawyers-in-training is not some radical proposition, but an approach that bears a greater promise of inculcating students with the tools they need for practice. It means freeing law schools to focus on their respective missions and areas of strength, rather than playing to a unitary, Harvard-based model of legal education.\textsuperscript{14} And it means that legal employers—who complain...
incessantly about the quality of legal education—will have to start putting their jobs where their mouths are and hire based more on the quality of training received than on one’s class rank and school prestige ⁵ and reclaim some responsibility for the continuing education of their new hires. ¹⁶

Many readers will want a bit more specific advice regarding legal education reform than I have given here. I will thus offer some reforms that a law school wanting to do a better job of preparing its students to become practitioners could undertake:

- Modernize the first year to include an introductory overview of the legal system and the legal profession, as well as subjects more pertinent to contemporary legal practice such as transnational law and administrative law;
- Impose a live-client experience requirement, having all students participate in either a clinical course or an externship;
- Extend legal research and writing education into the second year, featuring more extensive simulation training focused on certain areas such as litigation and transactional skills;
- Redesign the content of traditional courses away from an emphasis on cases toward more source material and practice documents, while redesigning the delivery of courses around more group work and problem-solving exercises in the lawyer role during class meetings;

World Report ranking system, which ranks all law schools along a single scale. Perhaps moving toward the approach U.S. News takes with undergraduate rankings—dividing them National Universities, National Liberal Arts Colleges, Regional Universities, and Regional Colleges—would be something that could be tried for law schools. Unfortunately, no law school is likely to embrace the label “Regional Law School” or “Local Teaching Law School.”

¹⁵ A promising area for future research would be to examine the hiring patterns of employers across and within law schools over time to see if there has been any migration towards job applicants with more extensive practical training; if not, the question of what they truly value in a potential hire—versus what they say they value—arises.

¹⁶ Something else employers could consider would be to hire new associates at dramatically reduced pay and offer them extensive practical training experiences, akin to the apprenticeship model used in other countries such as Canada (“articling”) and England (“pupilages” for barristers). Some American law firms have experimented with this approach, although the model has not become widespread. See Elie Mystal, Howrey First Years to $100K, http://abovethelaw.com/2009/06/howrey-first-years-to-100k/ (June 22, 2009) (“[Howrey] is moving to more of an apprenticeship model. New Howrey associates will receive an emphasis on training and take a significant reduction in salary.”); Elie Mystal, Salary Cut Watch: Drinker Biddle Cuts Salaries AND Rates, http://abovethelaw.com/2009/05/salary-cut-watch-drinker-biddle-cuts-salaries-and-rates/ (“Rather than immediately assign the incoming lawyers to client matters, [Drinker Biddle] will enroll its hires in a new training program that will provide courses on taking depositions, writing briefs, and meeting client needs.”). Howrey was dissolved on March 15, 2011, See http://www.howrey.com/ (“Effective March 15, 2011, the partners of Howrey LLP voted to dissolve the law firm.”); Drinker Biddle carries on with its program. See First Year Associate Development Program, http://www.drinkerbiddle.com/careers/first_year/.
• Hire full-time, part-time, and adjunct faculty who can bring more extensive and contemporary practice experience to bear on the design and delivery of the curriculum;
• Develop capstone courses that enable third-year law students to synthesize their learning across courses and apply it in practice settings.

These are not steps that all law schools must take. Rather, these are simply some possibilities that some schools could consider; there are surely other ways to improve the ability of legal education to prepare students and schools should be free to pursue them. Further, while the above reforms may be worthwhile improvements, work remains to be done that can demonstrate their efficacy in better preparing students for practice, at least sufficiently to justify the cost and potential disruption that might accompany some of these efforts.

Unfortunately, several external constraints facing law schools make fundamental reforms difficult to embrace: ABA standards limit the ability to use active practitioners as part-time faculty, require the commitment of extensive resources to physical libraries, and limit the amount of distance education that students can apply toward their degrees; the U.S. News rankings lump all schools into a unitary system that rewards things like expenditures per student, faculty scholarship and prestige, and LSAT scores rather than qualities that relate more directly to a school’s ability to prepare its students for practice; and bar exams continue to focus almost exclusively on substantive knowledge rather than practice competency, a focus that law schools must mirror to some extent if their graduates are to be able to pass the bar. Hopefully over time these and other external factors will evolve in ways that facilitate the more effective legal education that reformers have been urging for the past century.

VI. CONCLUSION

Traditional legal education remains bound up with many of the fundamental attributes designed by Langdell at Harvard Law School more than a century ago. It is a decidedly academic, or cognitive model of legal education—centered on legal doctrine and case law—with varying degrees of elective opportunities to attain practical and professional competence. To be truly effective, however, professional legal education must give more attention to transmitting the skills and values that are essential compliments to doctrinal instruction. Mastering the cognitive, practical, and ethical dimensions of legal practice are what professional legal education must be about; focusing largely on the law in books cannot do the job. This full
range of abilities gained through experiential learning is what law schools should strive to deliver if their goal is to produce competent attorneys. Students need to learn how to “work like a lawyer,” not just how to “think like a lawyer.”

This has been understood by many since the time of Langdell, as evidenced by the continual criticism emanating from the ABA, the Carnegie Foundation, and legal commentators since the late 19th Century. What makes change possible now is that the unprecedented confluence of disintermediation in the legal profession, the stagnation of incomes in the legal job market, a bubble in law school tuition and attendant student borrowing, and the prospect of a decline in law school applications and enrollments that will require all but perhaps the most elite and secure law schools to innovate or die. I have no doubt that many law professors will react to these admonitions much as most law professors have reacted to previous efforts to improve legal education—with denial or sighs of impossibility or indifference—given the many obstacles to reform. It may require bold leadership from deans to make the case for a new vision of legal education and an insistence on the adoption of certain measures, perhaps as a condition of their taking on or continuing to serve in the dean role. Certainly, there may be faculties that take the lead in responding to the need for significant change. However we get there, it is clear that we need to get beyond the Langdellian model toward a truly 21st Century program of professional legal education that prepares graduates for practice; the time is ripe for getting there if we can all collectively muster the will to take the first steps.

17 David E. Van Zandt, Foundational Competencies, 61 Rutgers L. Rev. 1127, 1133–34 (2009) (“The excellent legal analysis and advocacy skills that are the hallmark of law school programs must remain an essential element of legal education, but today’s law students also need a much more sophisticated understanding of what it means to work as well as think like lawyers in their multi-job careers.”).

18 See Richard Susskind, The End of Lawyers? Rethinking the Nature of Legal Services 6 (Oxford 2008) (“Lawyers, like the rest of humanity, face the threat of disintermediation (broadly, being cut out of some supply chain) by advanced systems . . . .”).

19 Michael Hunter Schwartz, Teaching Law By Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching, 38 San Diego L. Rev. 347, 360 (2001) (“The legal academy’s policies regarding law school hiring, promotion, and tenure practices, law school textbooks, law school accreditation practice, and law school economics have created an environment in which change is very unlikely to occur.”).

20 Brian Tamanaha has suggested just such an approach in his “Dean’s Vision” speech, in which he announces pay cuts and increased course loads as norms that would characterize his deanship if hired. Brian Tamanaha, My “Dean’s Vision” Speech, Balkinization, (Nov. 16, 2010), http://balkin.blogspot.com/2010/11/my-deans-vision-speech.html.
Beyond Langdell

By A. Benjamin Spencer

Today's model of legal education, with its emphasis on the study of appellate court decisions as a means of ascertaining legal doctrine and teaching legal analysis, is the product of the vision of Harvard Law School Dean Christopher Columbus Langdell. In the late 19th Century, Langdell took over the Harvard Law School and introduced the notion that law schools should focus on legal doctrine, that legal doctrine was best learned through the study of cases, and that class was best spent exploring these cases through the Socratic method. Although manifold reforms have occurred since the time of Langdell—including the expansion of the educational program to embrace learning from other disciplines as well as some training in the practical skills of the legal profession—Langdell’s model retains its hold on legal education, with all due acknowledgment of the many ways in which legal educators have innovated their teaching methods and curricula beyond that approach. The fact remains that notwithstanding the panoply of reforms, a steady stream of reports and commentaries—most notably the 2007 Carnegie Foundation report—have noted the extent to which students schooled in what basically remains the Langdellian law school are not sufficiently prepared for practice as legal professionals.

A fundamental problem with legal education is its focus on transmitting knowledge rather than focusing on the abilities that competent lawyers need to possess, as well as the fact that traditional law faculty tend to be hired more for their scholarly prowess than their practice experience, both Langdellian innovations. Given the ability of the Langdellian model to endure over the past 140 years, is it possible to move beyond that approach toward a model focused on developing in students the knowledge, skills, and professional experience to be practice-ready upon graduation and admission to the bar?

A. The Current State of Legal Education

Although still fundamentally consonant with the Langdellian model, law schools have reformed in many ways since Langdell’s time. Professors have varied their teaching methods in ways that build on or depart from the case method. Law schools have pursued and implemented many of reforms, offering basic legal research and writing training in the first year, requiring upper-level extensive writing experiences in line with the current ABA Standards, and ensuring that students have some opportunity to experience small class sizes and group work with other students. The relevance of other disciplines to the study of law has been recognized and incorporated into the curriculum through the introduction of interdisciplinary subjects or the infusion of such learning into traditional law courses. The clinical training movement has successfully imported live-client experiences into

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the law school framework. And, increasingly, schools are offering courses that teach students the skills they need to practice law. Indeed, curricular reform is the order of the day, as schools rush to outdo each other in adjusting their programs in various ways to improve their ability to produce practice-capable graduates.

Although these contemporary reforms will yield results on the margins, they have not fostered a wholesale change in the practice-readiness of American law school graduates, a failing reflected and explored in the 2007 Carnegie Report and other recent studies. Indeed, the numerous shortcomings of the American model of legal education have been documented extensively: law school does not routinely provide training in many of the practice skill areas—such as drafting, counseling, planning, client development, management—needed to be a successful practitioner; its primary pedagogical approach (the case-dialogue method) is ineffective and demoralizing; its main approach to assessment remains the final essay exam, which reflects little about the professional competency of students and comes too late to allow self-improvement; faculty incentives promote scholarship over the needs of students; many professors (particularly the more recent ones) have little or even no experience practicing law and lack membership in the bar; and law school costs so much that most graduates have mammoth, mortgage-like debts that limit their economically viable options after graduating.

This is no way to produce competent legal professionals. Notwithstanding the addition of clinical programs, creative first-year courses, and an array of experiential learning opportunities, law school remains fundamentally Langdellian: The bulk of law school consists of standard and advanced doctrinal courses taught largely through the case-dialogue method with experiential opportunities comprising only a small part of students’ overall curriculum. The overemphasis of the teaching of legal analysis and substantive legal doctrine—typically divorced from the practical context in which attorneys must use such doctrine as advocates or counselors—produces legal theorists who can think about and analyze the law but may be challenged in performing simple lawyering tasks with competency and professionalism upon graduation if they lack practical experience. Rather than focusing narrowly on the transmission of legal knowledge—a legacy of law school’s place as merely preparatory for subsequent apprenticeship training and of its residence within the university system—law schools need to inculcate their students with the full range of abilities and skills that successful lawyers must have (so-called “core practice competencies”), hewing closely to the needs and demands of contemporary professional practice. Experiential supplementation and curricular tinkering have not succeeded and cannot succeed in getting the job done. Comprehensive and fundamental reform of how law school is structured is required get us past the collection of critiques that have been leveled at legal education for over a century. Law school needs to move beyond Langdell to a new model for legal education.

B. A New Model for Legal Education

Reforming legal education in a manner that will result in a serious and lasting improvement in law schools’ ability to prepare their graduates for legal practice will require more than making modifications to the existing law school structure. To get to a place where practice-ready, competent professionals are the natural and expected outputs of a law school, I suggest the following reforms:

**Improved Prelaw Education and Admissions Processes.** To strengthen the quality and preparedness of law school applicants, some attention may need to be paid to prelegal education, admissions reform, and enhanced matriculation standards. Prelegal education is not formally connected with law school training in any way, meaning that students learn little about the legal profession and law school before deciding to become a lawyer, and are not guaranteed to have had any training or learning preparatory for the study of law. This results in poor decision making about whether and where to attend law school as well as potentially poor performance once there. Admissions standards focus largely on LSAT performance, which measures reading and analytical abilities that can predict law school performance but are less connected with demonstrating an aptitude for legal practice. Developing alternate measures for screening applicants might yield better results for practice-readiness on the back end, though abandoning or deemphasizing the LSAT and undergraduate GPA as admissions metrics has its risks. After arriving at law school, students do not face major obstacles in matriculating through school, as low but not failing grades are all but guaranteed for the worst performers, permitting the awarding of J.D. degrees to those who have not truly demonstrated proficiency in their field. Might it be better to have a system that required a demonstration of merit to progress to the next year beyond individual course exams; perhaps a comprehensive exam such as the “baby bar” given in California that could assess whether students had the understanding and ability to proceed with their studies. Each of these are difficult areas that require further thought and detailed analysis. However, it is important to recognize these deficiencies and to begin imagining how law schools might respond to them.
Rationalized, Integrated Curriculum. The law school curriculum must be overhauled to provide a more solid foundation for legal learning with specified courses that introduce students to the American legal system and the legal profession; doctrinal, practical, and professional instruction should be blended throughout the three-year period; and students should universally be required pursue a broad topical concentration and extensive clinical training experiences. Where possible, the academic calendar should be divided into trimesters or quarters, with first-year students attending a summer term (before or after the 1L year), to permit the coverage of the necessary doctrinal, skills, and clinical coursework contemplated by the revised curriculum. The third year should feature a capstone course experience, in which students can combine their learning in an extended simulation within a particular field, as well as work on a major project that involves extensive research or advocacy.

More Effective Pedagogy. The case-dialogue method must be supplemented with a small-group tutorial method for basic doctrinal instruction and supplemented with a context-based method for advanced doctrinal, practical, and professional instruction. The case method is an inefficient and incomplete way of transmitting the knowledge, skills, and values that lawyer need to have. Practice simulations should be featured more heavily, and doctrinal courses should be delivered using a more problem-based, learning-in-role method than is currently the case.

Varied Assessment Models. The single-essay exam approach to assessment must be supplemented with multiple performance-based and portfolio-based formative and summative assessments graded based on proficiency and achievement rather than normalized measures relative merit. This means having something like a modified pass-fail system that assesses student performance against pre-determined learning objectives.

Practice-Oriented Faculty. Faculties at law schools desiring a more practical orientation—which might not be all law schools—must move from being primarily research-focused to practice-focused, with part-time and full-time professor-practitioners having active pro bono and fee-generating practices, along with a smaller core of doctrinal lecturers and research professors. Like the faculty practice plans of medical schools, law school faculty practices should be revenue generating to support salaries and the educational mission of the law school. Basic doctrinal courses could be taught by lecturers, who would carry a heavier course load and lack any expectation of producing legal scholarship. Research professors would be focused on supporting students in tutorials or in their capstone projects, and engaging in legal scholarship themselves.

C. Conclusion

Traditional legal education remains bound up with many of the fundamental attributes designed by Langdell at Harvard Law School more than a century ago. It is a decidedly academic, or cognitive model of legal education—centered on legal doctrine and case law—with varying degrees of elective opportunities to attain practical and professional competence. To be truly effective, however, professional legal education must give more attention to transmitting the skills and values that are essential compliments to doctrinal instruction. Mastering the cognitive, practical, and ethical dimensions of legal practice is what professional legal education must be about; focusing largely on the law in books cannot do the job. Students need to learn how to “think like a lawyer,” not just how to “think like a lawyer”; both are critical components of an effective legal education program.

This has been understood by at least some since the time of Langdell, as evidenced by the continual criticism emanating from the ABA, the Carnegie Foundation, and legal commentators since the late 19th Century. What makes change possible now is that the unprecedented confluence of factors: Disintermediation in the legal profession, the stagnation of incomes in the legal job market, a bubble in law school tuition and attendant student borrowing, and the prospect of a decline in law school applications and enrollments will require all but perhaps the most elite and secure law schools to innovate or die. I have no doubt that many law professors will react to these admonitions much as most law professors have reacted to previous efforts to improve legal education—with denial or sighs of impossibility. It may require bold leadership from deans to make the case for a new vision of Legal education and an insistence on the adoption of certain measures, perhaps as a condition of their taking on or continuing to serve in that role. Certainly, there may be faculties that take the lead in responding to the need for significant change. However we get there, it is clear that we need to get beyond the Langdellian model toward a truly 21st Century program of professional legal education that prepares graduates for practice; the time is ripe for getting there if we can all collectively muster the will to take the first steps. ✡
Two Questions for Law Schools about the Future Boundaries of the Legal Profession

Elizabeth Chambliss

It is a tough time to be teaching Professional Responsibility in U.S. law schools, at least insofar as one focuses on the economics of the current market. Law jobs are down, student debt loads are up, and students caught in the (seemingly) sudden downturn are angry and apprehensive.

It is especially hard to be teaching third-year students in a third-tier law school in New York City. For years, New York has been the economic epicenter of the U.S. legal profession, home to the oldest, richest, biggest private law firms in the country. Until recently, a cartoon map of the U.S. legal profession would have had a super-sized midtown Manhattan at the center, with the Harvard crest to the upper right and the scales of justice, for D.C., below. (If the map had been drawn in the late 1990s, it also would have an icon for Silicon Valley.)

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1 Professor of Law, New York Law School.


5 See Saul Steinberg, View of the World from Ninth Avenue, The New Yorker, Mar. 29, 1976 (cover) (depicting a map of the world as seen by self-absorbed New Yorkers).
Today’s cartoon map would have a big red downward arrow over Manhattan and bolded black and white chomp marks framing the map on all sides. China, India, e-discovery, legal process outsourcing: U.S. law firms are being besieged by foreign and non-legal competitors and (seemingly) suddenly, thousands of U.S. law graduates have nowhere to go. New York has been especially hard hit: a 2009 state-by-state comparison of new lawyers to new job openings found that New York had a surplus of 7,687 lawyers, accounting for 28 percent of the national surplus. No other state even came close.

What does one say to students who are about to enter this market?

One strategy is to downplay the numbers, although this is getting more difficult to do. In the early days of the acute downturn and law firm layoffs of 2008 and 2009, professional opinion was split as to whether the industry—specifically, corporate legal services—was going through a short-term correction or a more radical and permanent restructuring. A 2009 industry survey reported that only 53 percent of corporate counsel and 52 percent of private practice attorneys believed the recession would permanently change the way business is done in the legal industry. These days, most analysts acknowledge “enormous structural change,” with causes that predate the recession and are likely to have lasting impact.

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8 Catherine Rampell, The Lawyer Surplus, State by State, N.Y. Times, Jun. 27, 2011. The analysis compared the number of people who passed the state bar exam to the estimated number of legal job openings in the state in 2009. The estimated national surplus was 27,269 lawyers.

9 Id. California came in second with an estimated surplus of 2,951 lawyers.


Of course, even the short-term correction theory is cold comfort for students unlucky enough to be entering the market while the correction occurs. Short-term or not, it is bad for them. Research suggests they will never catch up.\(^{12}\) The short-term correction theory is better suited as a justification for down-playing the numbers—or skirting the subject of the job market for new lawyers altogether.

Another strategy is to blame the law schools, either individually, for misleading marketing, large class sizes, and high tuition; or collectively, for all of the above, plus being wedded to an increasingly outdated curriculum and/or regulatory system. Blaming the law schools is by far the most popular current angle within the blawgosphere and the popular press,\(^ {13}\) and includes both cheap shots among competitors as well as more systematic and fair-minded analysis.

But even a systematic, fair-minded analysis of the failings of U.S. law schools is, by itself, a difficult message to deliver, face-to-face, to one’s students. The punch line for many of them is still bad: you are screwed. There really is no way to dress this up, other than simply pandering to the most cynical views. (For instance: you are screwed, but everyone with those high-paying big law jobs was miserable, anyway. Or: you are screwed, and this never would have happened if I had been dean. Or, even more cynically: you are screwed, and what were you thinking, anyway? The job market for non-elite law graduates has been bad for years. Did you think you were “God’s special little snowflake”?\(^ {14}\))

\(^{12}\) See Vivia Chen, Lost Generation is Now a Forgotten Generation, The Careerist, Jun. 8, 2011 (reporting that most 2009 law graduates who were laid off in the initial downturn continue to be shunned by large law firms); Peter Coy, Recession Creating a Lost Generation, Bloomberg Business Week, Oct. 11, 2009.


\(^{14}\) Elie Mystal, The Times “Unearths” the Law School Scam But Still Can’t Explain It, Above the Law, Jul. 18, 2011 (arguing that “kids will go to law school regardless of facts”). See also Karen Sloan, Law School Hopefuls Undaunted by Dim Prospects, Nat’l L.J., Oct. 21, 2010 (survey of prospective law applicants found 81% would still apply even if “a significant number of law school graduates were unable to find jobs in their desired fields”).

Whatever truths lie in these various lines of analysis, they are not especially helpful to
students who are already enrolled in law school on either a personal, pragmatic or professional,
educational level. Law students need a strategic vision—for themselves, primarily (in the short
term, most urgently), but also for the profession. They need to know where the profession is
heading and how they will fit in. And law schools have an institutional duty to communicate—and
indeed, to create—such a vision.

Yet U.S. law schools are notably lacking in collective, strategic vision. At the
institutional level, most law schools are focused on marketing and the short-term (summer and
immediate post-graduate) placement of students in order to improve their U.S. News law school
ranking. Although a number of law schools have made institutional investments in research on
the profession, such programs focus disproportionately on the top of the existing market—that is,
large law firms and their global, corporate clients. Most law faculty research on the profession
likewise focuses on the large firm market, or on legal ethics. There is virtually no effort at the
institutional level (and only a little at the scholarly level) to rethink the functional and regulatory
boundaries of the profession—much less to shape the future of the legal services market(s).

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15 See Segal, Losing Game, supra note – (stating that it is an “open secret” that law schools finesse placement data in


One might argue that it is unrealistic to expect law deans and faculty to engage in plotting their own demise. One implication of the recent downturn is the need to reduce the number of law schools, or at least the number of law graduates competing in the current market. Why should law schools “invest” in downsizing, or trumpet messages about the contraction of the legal services market? Most law schools embrace downsizing only after their enrollments shrink.

But downsizing is not the only institutional strategy available. The market downturn and resulting pressure on the traditional law school business model create a strategic opportunity for law schools, especially mid-market and lower-ranked schools with little to gain by continuing to compete with Harvard. The downturn also creates an opportunity for critical scholarship on the profession, which traditionally has been marginalized within law schools. Indeed, not since the New Deal and the original Legal Realists has there been a better opportunity to rethink the mission of legal education and, by implication, the future of the legal profession.

This essay identifies two fundamental strategic issues confronting law schools and suggests how critical theory and research might contribute to institutional change. The first issue is the increasing segmentation of the profession—not just between corporate and personal legal services, but also between commodity and “bespoke” or “high-margin” work in both

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19 See Karen Sloan, Delaware Delays Plans to Launch Law School – and It’s Not Alone, Nat’l L.J., May 9, 2011 (discussing “a string of colleges that have backed away from plans to [start] a new law school”).


22 See John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Social Structure of the Bar 319 (1982) (survey of 800 lawyers finding that most lawyers practiced exclusively either for corporations and other large organizational clients or for individuals and small businesses); John P. Heinz, Robert L. Nelson, Rebecca Sandefur & Edward O. Laumann, Urban Lawyers: The New Social Structure of the Bar 7 (2005) (follow-up study finding that the division between corporate and personal legal services endures).

sectors. Law schools have three options for responding to segmentation: to ignore it, as most schools have done for decades (and continue to do, despite evidence that segmentation will only increase); to exploit it, as most top-tier law schools attempt to do, for instance by forming preferred-provider relationships with large law firms and other corporate-sector employers; or to combat it, as arguably it is in most law schools’ interest to do, for instance by repurposing law schools to provide training that applies across sectors, and promoting a collective commitment to access to justice.

Access to justice initiatives, however, lead directly to the second issue, which is the pressure for deregulation. Why should anyone pay monopoly rates for services that non-lawyers (such as information technologists) can competently and more efficiently provide? And what should be the role of law schools in training people and designing systems for the delivery of “law-related” (that is, unregulated) services? Deregulation presents a particular challenge for law school reformers, because it threatens the professional identity and status of legal academics. Moreover, the regulation of law schools is highly centralized and beyond any one school’s control. Yet the pressure to rethink the boundaries of monopoly regulation will only grow stronger in light of access to justice initiatives and deregulation in other markets, such as the U.K. Law schools either can be proactive and start a collective conversation about the future of the profession—or simply continue to react competitively to external shocks.


This essay aims to contribute to a collective conversation by proposing a direction and framework for institutional innovation. It argues, specifically, for shrinking the boundaries of the unified J.D. degree, to focus primarily on legal doctrine, method, and professional ethics; while expanding the development of specialized pre- and post-J.D. training. In other words, rather than further segmenting law schools according to the characteristics of employers, the essay argues for rethinking the sequencing of U.S. legal education, to create more flexible entry and exit points at various stages of specialization.

The essay draws heavily on the thinking of my colleagues Richard Matasar and David Johnson, who have been promoting innovation and experimentation within my own third-tier, independent law school as well as within the institutions that regulate legal education. Trying to reform law schools from within is largely a thankless task, as soon-to-be-former Dean Matasar might have noticed.\(^{29}\) Moreover, law deans and faculty have no monopoly over thinking about the legal profession. But, as Matasar and others have argued, legal academics have a special duty to think about the future of the profession and the value of formal legal education\(^{30}\)—a duty that comes to mind most forcefully in classroom and other interaction with students.

Part I examines the sources of segmentation in the legal profession and criticizes calls for further segmentation of law schools according to the size and wealth of law firms and other traditional employers. Part II examines the increasing pressure for the deregulation of law practice and the challenges it poses for the existing (costly, three-year) J.D. degree. Part III examines the strategic and regulatory implications for law schools and explains how critical theory and research can contribute to institutional innovation.

\(^{29}\) Due in part to Matasar’s activism and visibility in reform efforts, NYLS has become a poster child for complaints about legal education, including a $200 million class action law suit alleging that the law school reported misleading employment data. See Karen Sloan, “Poster Child” Shares Frustration About Pace of Law School Reform, Nat’l L.J., Jul. 26, 2011; Scott Jaschik, Suing Over Jobs, Inside Higher Ed, Aug. 11, 2011.

\(^{30}\) See Richard A. Matasar, Defining Our Responsibilities: Being an Academic Fiduciary, 17 J. Contemp. Legal Issues 67 (2008) (arguing that law deans and faculty have a fiduciary duty to prioritize the interests of students and other stakeholders over their own); David B. Wilkins, The Professional Responsibility of Professional Schools to Study and Teach About the Profession, 49 J. Legal Ed. 76 (1999) (arguing that law schools have an ethical duty to study and teach about the profession).
I. Segmentation

The legal profession historically has been segmented primarily by the type of client served. John P. Heinz and Edward O. Laumann famously distinguished between the “two hemispheres” of the profession, one serving primarily corporate and other large organizational clients and the other serving individuals.\(^31\) In the 1960s and 1970s, most lawyers spent their careers exclusively within one hemisphere or the other, with law school attended being the most important criterion for entry into corporate practice.\(^32\) In 1962, more than 70 percent of the lawyers in New York's leading law firms had graduated from Columbia, Harvard, or Yale.\(^33\)

Since the 1970s, the corporate sector has expanded from roughly half of the U.S. legal services market to two-thirds or more, suggesting that “hemisphere” may no longer be an accurate label.\(^34\) In addition, lawyer mobility between practice settings has increased.\(^35\) Still, the type of client served—large organizations versus individuals—remains an important source of segmentation among lawyers, and law school rank remains a significant predictor of which sector graduates enter.\(^36\) In 2005, most top ten law schools sent more than 50 percent of their graduates to the nation’s largest 250 law firms, whereas law schools ranked 26 or lower sent fewer than 20 percent.\(^37\) Moreover, large law firm recruiters use different grade point average cutoffs at different law schools.\(^38\) Thus, while—so far—there are no formal (regulatory)

\(^{31}\) Heinz & Laumann, supra note --, at 319.

\(^{32}\) Id. at 182.


\(^{34}\) See Heinz et al., supra note --, at 42, Table 2.1 (showing that 64 percent of Chicago lawyers’ time was devoted to corporate clients in 1995, up from 53 percent in 1975). Given the growth of corporate law firms between 1995 and 2008, that percentage is likely even higher now.

\(^{35}\) Id. at 142-146.

\(^{36}\) Id. at 58-59 (reporting the effects of law school status on lawyers’ careers).


divisions between the corporate and personal legal services sectors, law school stratification has become increasingly rigid over the past several decades,\(^\text{39}\) to the point that some argue law schools should be organized around the corporate-individual divide.

For instance, Randolph Jonakait argues that there is a “sharp and unbridgeable chasm” between “graduates of high-prestige law schools [who] primarily work on the corporate side,” and the graduates of “local law schools” who primarily represent individuals.\(^\text{40}\) He argues that “local law schools must recognize that they are not training attorneys primarily for the same segment of the bar as elite law schools, but rather for the personal client sphere.”\(^\text{41}\) According to Jonakait, personal services lawyering requires different skills than corporate lawyering, in that “personal-client attorneys seldom face legally complex matters, and seldom write briefs or memoranda, but, unlike corporate attorneys, they must be able to deal with difficult human problems and relations.”\(^\text{42}\) Jonakait therefore urges local law schools to focus on skills and training for the personal client sphere, specifically: technology training, social skills, office management, marketing, and taking responsibility for decisions.\(^\text{43}\)

Brian Tamanaha, likewise, argues that given corporate law firms’ preference for elite law school graduates, non-elite law schools “ought to develop a different model of education that better matches the jobs and careers of their graduates,”\(^\text{44}\) such as decreasing investment in


\(^{41}\) Id.

\(^{42}\) Id.

\(^{43}\) Id. at 887-896.

scholarship and limiting the number of students admitted. According to Tamanaha, writing in 2007, law school “is still a good investment for graduates of elite law schools, who are in line for lucrative (albeit life-draining) corporate law jobs. The same cannot be said for graduates of non-elite law schools.”

There are a number of problems with Jonakait and Tamanaha’s proposals, not the least of which is their uncritical channeling of all the best-credentialed law applicants into corporate law practice. Have law schools grown so stratified and competitive that they have lost all independence from corporate clients? Do law schools have no responsibility to shape the allocation of legal services? I return to this issue in Part III, below.

Further, even if we imagine a profession that is neatly divided between private practice for corporate versus individual clients—that is, not counting criminal practice, government service, public interest practice, academia, consulting, or the myriad other settings in which modern lawyers practice (or might soon practice)—it is debatable whether these two “hemispheres” require functionally different skills. Is it true that lawyers for individuals “seldom face legally complex matters”? Or is it simply that individual clients are less likely to be able pay for such services? Is it true that corporate practice does not involve “human problems and relations”? Certainly most corporate lawyers would debate this. In fact, elite law schools are scrambling to develop J.D. and executive education courses on emotional intelligence, problem


47 Tamanaha, A Slice of Information about Corporate Law Firms, supra note –.

48 Jonakait, supra note --, at 864.

49 Id.
solving, and law office management—some of the very skills that Jonakait identifies as necessary for solo and small firm practice.

Finally, even if we embrace the narrow perspective of corporate legal employers, and simply strive to tailor legal education to their interests—which arguably is what most U.S. law schools currently are competing to do—it is not obvious what large law firms and their clients will want from new law graduates in the coming years. Many “complex legal matters” that large law firm associates traditionally have performed in fact have turned out to be subject to automation and commoditization, leading to increased competition from foreign lawyers and non-legal service providers, and a drop in large law firms’ demand for new graduates. Corporate clients, likewise, have loudly declared that they do not want to pay for services from first- and second-year lawyers, and some corporate clients have begun to side-step large law firms altogether for much of their work.


51 See Stashenko, supra note --, at – (reporting the findings of a New York State Bar Association committee on challenges facing the New York legal profession).


53 See Henderson & Zahorsky, supra note --.

54 See Paul Lippe, Welcome to the Future: Are Law Schools Beached?, Am. Law. Daily, Apr. 15, 2010 (reporting the remarks of Paul Beach, Associate General Counsel of United Technologies, who stated that his company refused to pay for first- and second-year associates’ time because it was “worthless”).

55 See Interview with Mark Ross, supra note – (discussing Microsoft’s use of Integreon, a legal process outsourcing firm); Ashby Jones, Newcomer Law Firms are Creating Niches with Blue-Chip Clients, Wall St. J., Jul. 2, 2008 (discussing corporate clients’ use of lawyer staffing firms in place of large law firms); Debra Cassens Weiss, HP Decides to Hire New Law Grads Rather than Law Firm Associates, A.B.A.J., Jun. 21, 2010 (reporting that Hewlett Packard has begun to train its own in-house lawyers, rather than hiring laterally from large law firms).
Thus, the globalization of corporate legal services and advances in information technology have introduced a second important source of segmentation within the profession, and disrupted the traditional place of corporate law firms as training grounds—and gatekeepers—for so-called high-margin work. Instead, it may be that the most interesting, remunerative, and socially valuable legal work in the coming years will occur completely outside of large law firms, and in competition with them, in areas such as knowledge management and software system design. Such skills transcend the traditional divide between the corporate and individual client sectors, and potentially could lead to a radical reallocation of legal services.

II. Deregulation

Currently, of course, U.S. law firms are protected from competition (and innovation) by monopoly regulation. Although first Australia and now the U.K. have moved to deregulate private law practice by allowing non-lawyer ownership and investment in legal services, U.S. lawyers remain protected from non-lawyer competition by state licensing rules, unauthorized practice legislation, and ethics rules banning fee sharing and non-lawyer ownership. However, such protections are likely to erode considerably—or fall dramatically—in the decade to come.

56 See Bill Henderson, How the Cravath System Created the Bimodal Distribution, Empirical Legal Studies Blog, Jul. 18, 2008 (discussing the increasing segmentation of large law firms according to their ratio of high-margin work); Press, supra note — (discussing the widening gap in profitability between the top 23 law firms and the rest).

57 See Gillian K. Hadfield, Legal Services Wanted; Lawyers Need Not Apply, Miller-McCune, Jun. 28, 2011, http://www.miller-mccune.com/legal-affairs/legal-services-wanted-lawyers-need-not-apply-32128/ (stating “there is … a huge landscape of legal work that could be better done by differently-trained lawyers” or non-lawyers); Larry E. Ribstein, The Death of Big Law, 2010 Wis. L. Rev. 749 (2010) (predicting “the sale of legal expertise may move beyond client advice by law firms to include completely different types of businesses”); Susskind, supra note --, at 6 (stating “lawyers … face the threat of … being cut out of the supply chain [] by advanced systems”).


60 See, e.g., Model Rules of Professional Conduct, Rule 5.4 (Independence of Lawyers). D.C. is the only jurisdiction to allow non-lawyer investment in law firms. See District of Columbia Rule of Professional Conduct 5.4 (allowing up to 25 percent non-lawyer ownership).
Traditionally, the call for the deregulation of U.S. law practice has come primarily from the political left, in the name of low- and middle-income consumers priced out of access to basic legal services.\textsuperscript{61} “Improving access to justice” and “promoting the interests of consumers” also were among the central regulatory objectives of the U.K. Legal Services Act.\textsuperscript{62}

Increasingly, however, the call for deregulation is made in the name of corporate clients and linked to concerns about U.S. competitiveness in the global economy. For instance, Gillian Hadfield has mounted a campaign against “legal barriers to innovation,”\textsuperscript{63} focusing on the costs of regulation “for what has been for decades the core market in which legal services are provided: services to corporate and business entities.”\textsuperscript{64} Larry Ribstein, likewise, has argued that large law firms “need outside capital to survive” and without it are vulnerable to both market and regulatory competition.\textsuperscript{65} Large law firms themselves have proposed that the ABA relax the regulation of “relationships between law firms and sophisticated clients,” stating that “the current regimes of lawyer regulation in the U.S. are no longer adequate to serve the legitimate needs and expectations of large business clients that are the drivers of our national (and global) economy.”\textsuperscript{66} Most recently, two fellows at the Brookings Institution called for the deregulation of law practice on the opinion page of the Wall Street Journal.\textsuperscript{67}

\textsuperscript{61} See David Luban, Lawyers and Justice: An Ethical Study xx (1988) (calling for the deregulation of routine legal services); Deborah L. Rhode, Access to Justice: An Agenda for Legal Education and Research, J. Legal Ed. (forthcoming, 2011) (stating that “[t]he economic recession has brought new urgency to longstanding problems in the delivery of legal services … [to] the poor and … middle-income individuals”).


\textsuperscript{64} Id. See also Hadfield, supra note -- (explaining “why a globalized U.S. economy requires new legal infrastructure”).

\textsuperscript{65} Ribstein, supra note --, at 813.


\textsuperscript{67} Winston & Crandall, supra note --. See also Unlocking the Law Symposium, supra note --.
It is unclear by what mechanism(s) formal (de jure) deregulation will occur. A state-by-state revolution seems unlikely and in any case would be too slow to keep up with market developments. Possibly, if one state were the first-mover, other states would follow—or entrepreneurial firms (and schools) would relocate to the first-mover state. This is one theory behind the proposal to relax the regulation of large firm practice, for instance.\(^68\) North Carolina is considering a proposal to allow up to 49 percent non-lawyer ownership of a law firm.\(^69\) If passed, perhaps North Carolina will become the Delaware of multidisciplinary law practice.

Anthony Davis and others have suggested the possibility of federal legislation, either as a means for preempts state ethics rules that restrict large firm practice,\(^70\) or as a means for more radical nationalization of the legal services market.\(^71\) The federal government also could preempt state regulation under its treaty-making power.\(^72\) Although most commentators agree that express preemption would be “politically confrontational as well as problematic in practice,”\(^73\) the federalization of law practice already is proceeding in specialty areas such as securities, tax, patent and trademark, immigration, and labor.\(^74\)

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\(^68\) See Proposals of Law Firm General Counsel, supra note --.


\(^70\) Anthony Davis, A New Approach to Law Firm Regulation, Am. Law., Jul. 22, 2010 (arguing that recent Supreme Court precedent affirms Congress' authority to regulate lawyers “implicitly” and therefore explicitly). See also Fred C. Zacharias, Federalizing Legal Ethics, 73 Tex. L. Rev. 335, 345 (1994) (calling for the nationalization of legal ethics rules).


\(^73\) Daniel R. Coquillette & Judith A. McMorrow, Zacharias's Prophecy: The Federalization of Legal Ethics Through Legislative, Court, and Agency Regulation, 48 San Diego L. Rev. 123, 124 (2011). See also Wald, supra note --, at 530-31 (arguing that the nationalization of law practice is “inevitable” but “premature,” and advocating an intermediary approach based on open-border multijurisdictional practice).

\(^74\) Coquillette & McMorrow, supra note --, at 124 (stating that the federalization of law practice is occurring “not through a tectonic shift but through a more stealth, incremental approach”).
Litigation is another possible mechanism for deregulation. In May, 2011, law firm Jacoby & Meyers filed class action lawsuits in New York, Connecticut and New Jersey, claiming the ban on non-lawyer investment in legal services violates the Commerce Clause. The complaint argues that the ban interferes with the firm’s access to capital and thus its ability to expand legal services to "the lower, working, and middle classes." Blanket bans on non-lawyer ownership and the unauthorized practice of law also may be increasingly vulnerable to challenges under the First Amendment.

But whatever the mechanism(s) and timetable for de jure deregulation, de facto deregulation is underway. Thousands of lawyers already work outside the boundaries of lawyer regulation in accounting and consulting firms. Corporate counsel increasingly work outside the state(s) in which they are licensed and corporations increasingly rely on non-lawyer employees for law-related work. LawPivot, a legal website that offers crowdsourced answers to legal questions, recently received $600,000 from Google Ventures and other investors. Legal Zoom offers legal documents and “lifetime support” to consumers seeking routine legal services.

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80 See Herbert M. Kritzer, The Future Role of "Law Workers": Rethinking the Forms of Legal Practice and the Scope of Legal Education, 44 Ariz. L. Rev. 917 (2002).

81 Debra Cassens Weiss, Crowdsourced Legal Answers Website Gets $600k from Investors, Including Google Ventures, A.B.A. J., Jan. 21, 2011.

For law schools, then, the smart money is on the erosion of monopoly protections and the opening of diverse new markets for law and law-related training. This suggests both the need to rethink the boundaries of the U.S. J.D. degree, as well as the need to experiment with more flexible (and specialized) credentialing around it.\textsuperscript{83} Part III argues this is best accomplished by rethinking the educational sequence, rather than promoting specialization within the existing three-year model. In other words: rather than further segmenting law schools according to the size and wealth of employers, reformers should focus on establishing a less costly, more unified J.D. degree, while at the same time developing specialized pre- and post-J.D. training. This approach not only makes sense for law schools, as competitors in an increasingly global and diversified educational market, it also makes sense for students and clients, who seek access—as both suppliers and demanders—to legal and law-related expertise.

III. Implications for Law Schools

Rethinking the boundaries of the J.D. degree (and, by implication, the “practice of law”) has both a strategic (market) and normative (regulatory) component. Ideally, the two would be related, in that the regulation of educational requirements would be informed by market conditions; and market demands, in turn, would be regulated with an eye toward professional values (such as the rule of law, professional independence, and access to justice).

Currently, however, the U.S. profession faces market and regulatory upheaval; thus, it is hard to predict what the market—or professional values—will demand. Moreover, law schools operate in multiple markets that may be moving in different ways. Thus, institutional innovation in law schools should be approached as process, with a period of experimentation and assessment. Critical theory and research on the profession could play an significant role in this process.

\textsuperscript{83} See Richard A. Matasar, The Viability of the Law Degree: Cost, Value, and Intrinsic Worth, 96 Iowa L. Rev. 1579 (2011) (arguing that “the profession must be willing to experiment and permit new models of legal education to arise”); Aric Press, Fixing Law School, Am. Law. Daily, Sep. 7, 2011 (calling upon the ABA to end the “six-semester tyranny” and provide more “freedom to experiment”); Ribstein, supra note --, at 1675 (2011) (stating “one possible compromise is to retain the general-purpose law degree, but create alternative professional classifications” based on additional specialty training).
A. Implications of Segmentation

Schools at the very top of the market face little pressure for innovation—at least in terms of the price of tuition or the value of the credentials they offer. As is true of large law firms, where a dozen or so have established elite global brands, the very top law schools increasingly operate within exclusive international networks made up of other elite institutions, and serve as gatekeepers for those networks. It is hard to imagine what strategic missteps would be required to unseat them: unlike law firms, elite law schools are non-profit institutions that flourish mainly by attracting and providing symbolic capital—it almost does not matter what they teach.

But while the very top law schools such as Harvard, Yale, Columbia, Stanford, and perhaps five or ten others, can focus on expanding their brands based on the access they offer to international markets, few other law schools can rely on this strategy. Instead, most law schools need to position themselves to compete in a diverse set of markets: foreign and domestic, corporate and individual, bespoke and commodity, and private and public.

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84 See Matt Byrne, Introducing the Sweet Sixteen, The Lawyer, May 10, 2008 (using the label “sweet sixteen” to refer to “the group of firms we believe are currently leading the transatlantic market for the provision of top-end transactional legal services”); Matt Byrne, The Transatlantic Elite 2009: The Sweet Sixteen, The Lawyer, 2009 (follow-up article examining the effects of the downturn on this elite group of firms); Carole Silver, The Variable Value of U.S. Legal Education in the Global Legal Services Market, 24 Geo. J. Legal Ethics 1, 2 (2011) (discussing large law firms’ competition for “global” status).

85 See Yves Dezalay & Bryant Garth, Asian Legal Revivals: Lawyers in the Shadow of Empire 171 (2010) (noting the increasing importance of “alliances of Wall Street law firms and investment banks, philanthropic foundations, and elite law schools” in the foreign policy establishment); Silver, supra note --, at 10-11 (2011) (discussing the importance of elite law school credentials in the hiring practices of international law firms).


87 See Silver, supra note --, at 12 n. 41 (quoting the managing partner of an Am Law 100 firm as stating that among people who fit the profile of “the top 5% at the top five law schools. … we are indiscriminate of who we hire … [although] if they can’t carry on a personal conversation … you do reject them”).

88 As with law firms, there is some preoccupation with how many law schools may be called elite, or where in the rankings segmentation (versus stratification) occurs. See Wikipedia, Law Schools Rankings in the United States, http://en.wikipedia.org/wiki/Law_school_rankings_in_the_United_States#cite_note-books-16 (discussing the category “T14,” used to refer to the top 14 schools).
Most recent blueprints for innovation in legal education focus on adding value within (or on top of) the existing price structure, for instance by adding skills courses to make law graduates “practice-ready.” Inspired by the 2007 Carnegie Report, which identified the lack of “direct training in professional practice” as a major limitation of U.S. legal education, many law schools have increased their investment in live-client clinics, practice simulations, and other forms of experiential learning, as well as capstone courses “designed to pull together the various strands of a student’s education and prepare the student for the transition into practice.” Law schools also offer an increasing number of specialized LL.M. degrees aimed at U.S. J.D. graduates as well as the graduates of foreign law schools.


94 See, e.g., International Forum on Teaching Legal Ethics and Professionalism, Capstone Courses, at http://www.teachinglegalethics.org/category/teaching-methods/capstone-courses (noting that “capstone courses often include some experiential component and a focus on ethics and professionalism”).

95 More than 100 U.S. law schools offer the LL.M. degree, typically as a one year, stand-alone, course-based program. See generally ABA Section of Legal Education and Admissions to the Bar, Overview of Post J.D. Programs, http://www.abanet.org/legaled/postjdprograms/postjd.html. Some programs attract both U.S. and foreign law graduates, whereas others are aimed exclusively at the graduates of foreign law schools. See Silver, supra note -, at 17-18. The LL.M. degree is the most common U.S. law degree among foreign law graduates. Id. at 5.
The problem is that there is no unified set of practical or experiential skills that will equip law graduates for diverse and emerging markets, so schools’ offerings tend to be idiosyncratic and difficult to assess. A recent survey of clinical programs in ABA-accredited law schools identified over 800 clinics with thirty-four different substantive focuses. Moreover, adding value by adding more specialized components to the three-year degree does not address the need for lower-cost entry into lower-priced markets—or give law schools the flexibility to adapt to continuing change. On the contrary, some proponents of clinical education call for increasing the number of years of study required for the J.D. degree.

A better strategy is to focus on lowering the cost of the unified J.D. degree, at least in part by making it shorter, while continuing to experiment with specialized forms of pre- and post-J.D. training. These specialized forms could include both integrated and stand-alone programs offered by law schools, such as clinics, certificate programs, executive education, and the LL.M.; as well as interdisciplinary, proprietary, and for-profit programs at both the pre- and post-J.D. levels. Such a framework would increase flexibility for students, law schools, and employers, and promote competition (and collaboration) between law schools and other training providers. Moreover, embracing competition within these boundaries might help to stave off more radical proposals to eliminate the J.D. requirement altogether.

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96 See Silver, supra note --, at 18 (discussing employers’ difficulties in assessing the quality of LL.M. degrees). There is no entrance exam for the LL.M. and no standardized curriculum. The only standards to which “nearly all LL.M. programs for foreign law graduates adhere” are those defined by New York’s rule on bar eligibility. Id. at 19.

97 CSALE Survey, supra note --, at 11.

98 See Adam J. T.W. White, Note & Comment: Upholding the Oath of Competency While Filling the Indigent Void: Why the Law School Curriculum Should be Extended to a Fourth Year, 11 Fl. Coastal L. Rev. 425, 455 (2010) (calling for a mandatory year of practice for the J.D. degree, with the cost to be “borne by the students”).

99 See Matasar, supra note --, at 1621-22 (suggesting that law schools “add new degrees for students seeking only a part of a legal education,” including “certificates that might be appended to other graduate degrees”).

100 See Andrew Cook, James R. Faulconbridge & Daniel Muzio, The Firm as a New Actor in Legal Education: Implications for Lawyers’ Identity Formation (draft) (discussing the trend toward proprietary training programs in global law firms); Weiss, supra note – (discussing Hewlett Packard’s recent decision to train its own lawyers).

B. Implications for Regulation

Of course, any serious shortening would require changes in ABA accreditation or state licensing requirements. Perhaps in part for this reason, despite years of criticism about the wasted third year of law school, there are few concrete proposals for cutting it, or otherwise compressing the time-frame (and opportunity costs) of the J.D. degree. So far, the best ideas on the table are the “accelerated” J.D. degree, in which students can compress law study into two years and three summers (but at the same price as a three-year degree);102 “three-plus-three” programs, in which students can apply to law school after three years of college, for the combined completion of an undergraduate and J.D. degree;103 and New York Law School’s proposal to allow the admission of applicants after two years of college, for the combined completion of a B.A. and J.D. degree (“two-plus-three”).104

Notice that none of these proposals actually argues for shortening law school. The cuts all come from someone else’s budget. Regulatory barriers are one reason, obviously; but the real barrier is incumbents’ reluctance to rethink the boundaries of monopoly protection. Because the question for a two-year law school is: what should come out? Is it all that high-falutin’ scholarship, as Jonakait, Tamanaha, and even Matasar105 have suggested? Such a move would save on staffing and has populist political appeal.106 No one reads all those law review articles,

102 See Inside Higher Ed, A Law Degree in Two Years, Jan. 21, 2005, at http://www.insidehighered.com/news/2005/01/21/Dayton (announcing that the University of Dayton School of Law was offering a two year J.D. program, the first in the nation); Inside Higher Ed, An Elite Law Degree in Two Years, Jun. 20, 2008, at http://www.insidehighered.com/news/2008/06/20/northwestern (announcing the Northwestern would offer a two-year program). Both programs require students to take the same number of credits as required for a three-year degree, “with accelerated students simply taking an extra course most semesters.”

103 Matasar, supra note --, at 1625.

104 Id.

105 See Matasar, supra note --, at 1622 (stating that “the research mission of a law school is costly” and further stratification of schools according to their support for scholarship is “inexorable”); Karen Sloan, Legal Scholarship Carries a High Price Tag, Nat’l L. J. Apr. 20, 2011 (citing Professor Richard Neumann’s estimate that law review articles by tenured law professors cost roughly $100,000 per article in salary and benefits).

106 See Ribstein, supra note --, at 1661 (suggesting that lowering the costs of lawyer licensing “could resonate with the emerging populist Tea Party political movement”).
Anyway.\textsuperscript{107} Another answer is to rely more heavily on distance learning\textsuperscript{108} and other, more scalable (commoditized) delivery methods, such as educational software\textsuperscript{109} and games.\textsuperscript{110}

But while there is obvious merit in rethinking the form and financing of law faculty scholarship—being a law professor recently was rated as the second-cushiest job in America\textsuperscript{111}—and information technology clearly has the potential to radically lower educational costs, neither of these strategies puts forth a substantive vision of legal education (except to insist that it be more “practical”). Yet, from a strategic—and regulatory—standpoint, substance is the key question. What constitutes the “practice of law” in an increasingly global and information-driven economy? What part of U.S. legal education, if any, deserves continuing monopoly protection? What is the core value of the U.S. J.D. degree?

Or, to put the question more pointedly: what should stay in?

C. Implications for Scholarship on the Profession

Here, then, is an opening for critical engagement and research. Rather than stripping away the scholarly and research mission of law schools, law schools should be investing in research and scholarship on the profession and the evolving role of lawyers in the global political economy. There are at least two sets of questions on the table.


\textsuperscript{109} See Barton et al., supra note – (discussing the benefits of online simulations); David I.C. Thomson, Law School 2.0: Legal Education in a Digital Age (2009) (discussing various forms and potential uses of educational technology in law schools).


First, what are the implications of foreign demand for domestic law school reform? Much of the current critique of U.S. law schools is parochial, taking little account of educational or political developments elsewhere. Yet while the domestic market for the J.D. appears, finally, to be contracting, the foreign demand for “American-style” (graduate) legal education is increasing, particularly in Australia, India, and East Asia.

What do they see in us? Does this demand primarily represent a desire for access to international markets? Such a desire clearly motivates foreign enrollment in U.S. LL.M.s and may help to explain the rapid development of J.D. programs in foreign markets. Are these countries beefing up their “legal infrastructure” to support economic development? Research

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112 See Nathan Koppel, Bloom’s Off Law School Rose, Wall St. J., Sep 28, 2011 (reporting that the number of law school applicants for the fall, 2011 class was down 10 percent from 2010, and the number of LSAT test-takers was down 18.7 percent). See also Law School Admission Council, http://www.lsac.org/LSACResources/Data/lsats-administered.asp (showing the number of LSAT tests administered on each administration date since June, 1987).


114 See John Flood, Legal Education in the Global Context, Report for the Legal Services Board 1 (2011) (finding “an inexorable move in the world towards the Americanization of legal education, in the form of the widespread adoption of the J.D. degree over the LL.B.”).


116 See Flood, supra note --, at 10 (describing the Jindal Global Law School’s alliances with American law schools), and 22, Table 1 (comparing the flow of Indian students to U.S. versus U.K. training institutions).


118 See Flood, supra note --, at 7-8 (noting that U.S. LL.M. graduates can sit for the New York bar examination); Silver, supra note --, at 19 (examining the role of U.S. LL.M.s as an element of professional capital).

119 See, e.g., Melbourne Law School, About The Melbourne J.D., at http://www.law.unimelb.edu.au/jd/course-and-subjects/about-the-melbourne-jd, “The Melbourne J.D. will provide you with a degree that is highly regarded and readily recognised, both nationally and internationally. The J.D. leads to admission to the legal profession in all Australian jurisdictions. It can also be used as a basis for seeking admission in many common law jurisdictions overseas, including the United States, Canada, England and Wales, and New Zealand.”

120 Hadfield, supra note --, at 41 (referring to the set of legal materials available to economic actors).
suggests that this, too, is part of the story, as East Asian countries move toward market economies.\textsuperscript{121} What, then, is (and should be) the relationship between the “economic” and the “political/democratic” sectors of the legal profession?\textsuperscript{122} Should they be taught and regulated separately, as Hadfield has suggested?\textsuperscript{123} What would be the “political/democratic” consequences of such disaggregation?

The Carnegie Report found that U.S. law schools do an impressively good job of socializing students into “a distinctive habit of thinking that forms the basis for their students’ development as legal professionals,”\textsuperscript{124} but “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 legal institutions and the varied forms of legal practice.\textsuperscript{125}

This critique has been taken by domestic reformers to mean that law schools need more applied ethics training through case studies of practice and hands-on experience with clients.\textsuperscript{126}

\begin{thebibliography}{9}
\bibitem{121} See Miyazawa et al., supra note --, at xx; Saegusa, supra note --, at 366; (discussing rule of law projects in Japan, South Korea, Taiwan and China).
\bibitem{122} Hadfield, supra note --, at 1695 (arguing that the two sectors “face fundamentally different issues” and require different regulatory analysis).
\bibitem{123} Id. at 1732 (arguing that professional regulation should be “unburdened by the need to infuse the structure of corporate legal markets with the ponderous weight of upholding the American constitutional order”).
\bibitem{124} Carnegie Report, supra note --, at 7. “Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules.”
\bibitem{125} Id. at 8.
\bibitem{126} See, e.g., William Henderson, Jerome Organ, Patrick Longan, John Berry & Clark Cunningham, Are We Making a Difference? Developing Outcome Measures to Evaluate the Effectiveness of Law School Efforts to Teach Ethics and Develop Professionalism, \url{http://www.nyls.edu/user_files/1/3/4/30/58/1053/Henderson&Organ&Longan&Berry&Cunningham.pdf}, (proposal for October, 2010 Future Ed conference at Harvard Law School).
\end{thebibliography}
One might argue, however, that within the context of global economy, “applied” legal ethics involves a broader set of political/democratic questions about the foundations of the rule of law and lawyers’ professional independence from markets and the state. For instance, what is the relative importance of elite lawyers and law schools in the globalization of law? What are the consequences of different law school models for the “nature and distribution of legal knowledge in society”? A related set of questions involves lawyers’ professional responsibilities outside of the lawyer-client relationship, for instance in acting as system designers, manufacturers, or entrepreneurs. Johnson, Ribstein, and others predict that law practice increasingly will move beyond individualized advice to clients toward the design of legal products and expert systems. Embracing this role of “system designer” or “legal-information engineer” could dramatically improve access to justice (or at least information) by ordinary consumers, as well as providing the legal infrastructure required for complex economic transactions.

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127 See Frank Munger, Globalization Through the Lens of Palace Wars: What Elite Lawyers’ Careers Can and Cannot Tell us About Globalization of Law, Law & Social Inquiry (forthcoming) (review of Yves Dezalay and Bryant Garth’s trilogy of studies about the globalization of law, arguing that elite lawyers provide a limited point of entry for understanding globalization); Silver, supra note – (analyzing the variable role of U.S. legal education in China and Germany).


130 Lippe, supra note – (quoting Johnson). “The great lawyers of the prior age were relationship lawyers…. [M]aybe the great lawyers of the new age will be system designers.”

131 Ribstein, supra note --, at 1662.

132 See Kobayashi & Ribstein, supra note --, at 46 (predicting that the development of the legal information market “will enable ordinary middle class consumers to cheaply obtain legal information); [more].

133 See Hadfield, supra note --, at --.
So far, however, law schools have done little to prepare students for this transformation, either by teaching the specialized skills that lawyers will need for such roles, or more importantly (within the framework of an argument for a shorter J.D.), addressing the professional responsibilities associated with its development. What are the professional responsibilities of lawyers in the market for legal information? To what extent should contract and intellectual property protections supplant professional regulation? How can the core values of the profession be effected in an increasingly diverse and deregulated market?

Conclusion

U.S. law students face a future in which they will be competing not just with other U.S. lawyers but also with foreign lawyers and non-lawyers, who will not be regulated—or socialized—the way U.S. lawyers traditionally have been. Law schools owe it to their students to put forth a positive, substantive vision of the profession that includes a commitment to analytical rigor and shared professional norms.

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135 See Kobayashi & Ribstein, supra note --, at 6 (arguing that the protection of property rights in legal information can “simultaneously reduce the need for and increase the benefits of deregulating legal advice”).

136 See Kritzer, supra note --, at 917-18 (arguing that increased segmentation and the growth of information technology makes it possible for “services that were previously provided only by ... the professions to be delivered by specialized nonprofessionals”); Ribstein, supra note --, at 1662 (arguing that legal-information engineers would not need to be licensed because they would not be advising clients or representing them in court).

137 See, e.g., James Grimmelmann, The Lawyer as Hacker, email to author, Sep. 13, 2011.

The pitch is that programmers have developed a professional model that could serve as a good template for a positive vision of lawyering. Programmers, like lawyers, do things with words that have highly precise formal meanings. Like lawyers, they have clients and employers, and are expected to produce code that gets the job done. The “hacker” mindset provides a kind of culture hero/pattern/model for how they can take pride in their work, be faithful to their clients, and serve the greater good. (This is “hacker” in the sense of someone who is a skillful programmer with integrity, not someone who breaks into computer systems.) Some elements: (1) Technical skill is valued as a craft; one earns status by doing good work. (2) Work product is judged both on its objective efficiency and its (ineffable but commonly recognized) elegance. (3) Doing the technically "right" thing and being ruthlessly pragmatic are both legitimate, and good hackers know when to move between these modes. (4) Entrepreneurialism is good, but the goal should be to make something good in the world, not the financial reward for its own sake. (5) "Information
Research and scholarship on the profession are essential for constructing this vision. The traditional boundaries of the U.S. legal profession are being challenged and likely will be redrawn, either around a strong, unified core of accessible, high quality training—or not. Strategic choices by individual law schools will play an important role in this story, as will the collective investment of deans, law faculty, regulators, and reformers. This essay calls for greater institutional investment by law schools in defining and enhancing the value of the U.S. J.D. degree, in part by ceding some of the benefits of monopoly protection. It calls, in other words, for law schools to embrace competition and collaboration with other training providers, in order to improve the value of legal training to students, clients, and consumers.
Back in November, an editorial in this newspaper began by declaring that “American legal education is in crisis.” I was struck at the time by how unlikely it would be for an editorial to announce that “humanities education is in crisis,” if only because a state of crisis, along with ritual lamentations about it, has characterized humanities education for much longer than I have been alive. There would be no news there, but it was news, apparently, that the legal academy was in trouble.

In fact, that news was itself not so new. Uneasiness about the state of legal education has been around for some time, but in the wake of the financial meltdown of 2008, uneasiness ripened into a conviction that something was terribly wrong as law school applications declined, thousands of lawyers lost their jobs, employers complained that law school graduates had not been trained to practice law, and law school graduates complained that they had been led into debt by false promises of employment and high salaries. And while all this was happening, law schools continued to raise tuition, take in more and more students, and construct elaborate new facilities.

That at least is the story told in a book to be published later this year, “Failing Law Schools,” by Brian Tamanaha. Tamanaha is a law professor, a former law school dean, a prolific legal theorist and, by his own account, a malefactor who in the past did some of the things he now criticizes. Having seen the light, he feels compelled to spread and document the bad news.

Tamanaha predicts that his “pages will put off many of my fellow legal educators,” and given the legal academy’s responses (including mine) to a series of critical articles by David Segal, he is probably right. Tamanaha’s analysis pretty much tracks Segal’s, but his book is more ambitious in its scope and puts statistical flesh on the bones of Segal’s polemic. He catalogs a large number of failings on the part of law schools, but his emphasis is less on particular bad actors (although he names more than a few) than on the structural conditions — conditions put in place by no one, but affecting everyone — that generate and drive their behavior.

Two such conditions can be colloquially named “the ABA made me do it” and “the rankings made me do it.” Tamanaha faults the American Bar Association for instituting policies that have the effect of forcing all law schools, no matter what demographic they serve, to model themselves on wealthy elites like Yale, Harvard and Stanford. ABA requirements that accredited
law schools have state-of-the-art facilities, substantial libraries, an academically credentialed faculty and low student-teacher ratios operate to dis-accredit law schools “built on a low cost model which emphasizes teaching rather than research, relies upon a smaller number of full time faculty without tenure at lower pay, uses a large number of lawyers and judges to teach courses ... possesses basic facilities and library collections, and focuses on teaching students practice skills.”

The U.S. News and World Report rankings, says Tamanaha, produce even worse deformations; in fact they produce behavior that is at least deceptive and borders on fraud. A law school dean who knows that the rank of her school will in large part determine the faculty it can attract, the quality of the applicants, the support provided by her university and the job opportunities of graduates will be tempted to fiddle with the numbers by (among other things) reporting high salaries for graduates when the pool surveyed is a tiny fraction of those who have the school’s degree, devising schemes to keep students with low test scores off the books by shunting them off to evening programs and inflating the employment rate by hiring its own for a short term.

Tamanaha finds these and other “disreputable actions” understandable if not excusable given the structural situation: “A conscientious dean who refused to engage in questionable number reporting ... risked not just her continued tenure as dean but the standing of her institution.” And all of this is happening, he adds, because “a bunch of folks” are sitting around in the offices of an almost defunct magazine “brain-storming about what they will choose to count ... and not count” and thus setting in motion “a phenomenon that is reshaping the internal composition of law schools.” As a result, he concludes, “the contours of a five billion dollar educational industry are being carved by a self-appointed maker of lists sold for profit.”

Tamanaha does not spare the internal practices of law schools and is particularly distressed about the amount of debt incurred by those least able to get out from under it — graduates of lower-ranked schools. He also takes aim at the claim of law professors that their high salaries and low teaching loads (relative to other academics) are justified by the revenue they forgo when they enter the academy. No, he replies. Not only is “our pay far better than that of other professors,” not only do we have lifetime security and hours of work that are “whatever we want them to be,” but “our quality of life is far better than that of lawyers and we make more money than most lawyers.”

Will these fortunate conditions persist? Can law schools keep doing what they’re doing? Not according to the statistics Tamanaha marshals, statistics that show, among other things, that while law schools produce annually 45,000 new graduates, only 25,000 openings for lawyers are projected “each year through 2018.” Not that the oversupply of lawyers means that Americans have all the legal services they need. In fact, Tamanaha reports, large populations are underserved. The paradox is easily explained: the kind of lawyering poor and disadvantaged
communities require does not bring in enough money to attract newly minted lawyers trailing clouds of debt. “Law schools have created a systemic mismatch between graduates and jobs.”

And the solution? In a word, differentiation. Don’t let the A.B.A. and U.S. News call the tune. Instead, take a good look at the educational landscape, at the market, at the costs, at the demographics and come up with a flexible system that matches law school graduates to needs: “Research oriented schools will remain as they are. Practice-oriented schools will be staffed by experienced lawyers; ... research institutions will be staffed by scholars mainly engaged in research; other schools will be staffed by both types.” Different strokes for different folks.

Will it happen? Tamanaha is not optimistic, and he cites the (to him) discouraging example of the new law school at the University of California at Irvine, which, he says, chose “elite status” over “affordability,” chose to enter the “ranking sweepstakes” rather than opting for a “different design.” Still, he finds hope in a number of public law schools that do “charge tuition well below $20,000.” He’s just not generally hopeful.

He also anticipates readers who will be “unconvinced that the economics of legal education are as badly askew” as he argues they are. That is no doubt correct, but even those who disagree with him and challenge his analyses will be participating in a conversation shaped by his contentions. “Failing Law Schools” does not say entirely, or even mainly, new things, but it does present a comprehensive case for the negative side of this debate and I am sure that many legal academics and every law school dean will be talking about it.

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**NOTE: For comments to this article, see:**

http://opinionator.blogs.nytimes.com/2012/02/20/the-bad-news-law-schools/?nl=opinion&emc=tya1
The Iowa Law Review hosted a symposium entitled *Rethinking Legal Education* on February 25–26, 2011. Several excellent articles related to the subject matter of Conclave 2012 are available using the above link.

The following symposium papers are reprinted in these materials:

- *Foreword* – Gail B. Agrawal  
  96 IOWA L. REV. 1449 (2011)

- *What Will Our Future Look Like and How Will We Respond?* – Michael A. Fitts  
  96 IOWA L. REV. 1539 (2011)

- *Training The Whole Lawyer* – Deanell Reece Tacha  
  96 IOWA L. REV. 1699 (2011)
Foreword

Gail B. Agrawal

The *Iowa Law Review* hosted a thought-provoking symposium entitled “Rethinking Legal Education” on February 25–26, 2011. The symposium—nearly a year in the planning—brought together leaders in legal education, the practicing Bar, and the Bench to discuss and assess their shared mission to prepare the next generation of legal professionals. The conversations occurred at a time of great challenge for legal education and for legal practice. These challenges, including the cost of legal education and the employment opportunities for recent graduates, are being debated publicly in the news media and the blogosphere and, presumably, privately as prospective students consider whether law school is a sound investment. The debt burden of recent law graduates and the competition for jobs that pay well enough to service that debt lend a new focus to an old question: how to ensure that law graduates are ready for the demands of law practice as they leave law school to begin their careers. The new legal economy must also confront some long unsolved problems—foremost among them the need to increase diversity within the profession. The presentations on these issues were thoughtful and the questions probing. The symposium papers are published in this issue.

**FRAMING THE DISCUSSION**

“Rethinking,” or perhaps more to the point, *redoing* legal education will require significant change in a profession long characterized by its resiliency and resistance to change. While change has often been characterized as the only constant, comprehensive change is many multiples more difficult than the incremental changes that have long characterized legal education. From basic doctrinal offerings with a single teacher, a hundred students, and a chalkboard, to specialized seminars, tutorials, and independent studies, from large classrooms to clinics and the offices of externships, today’s law students have a very different law school experience than the law deans, law professors, lawyers, and judges who made up the symposium panels. The face of the modern law-school classroom is increasingly diverse, with more

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1. The quotation is sometimes attributed to François de La Rochefoucauld, a French classical author (1613–1680).
women, people of color, and persons with physical challenges among both students and faculty, although much work remains. During the symposium, Dean Kent Syverud of the Washington University in St. Louis School of Law observed, "At least fifty law schools today provide an education better than Harvard Law School provided fifty years ago." The assessment was met first with contemplative expressions, which quickly turned to nods of agreement. That we are better than we were in the past, however, does not mean that we are as good as we should or could be for the present or the future.

Law schools and legal education have evolved in response to increased complexity in the legal system, the demands of the legal marketplace, and published reports highlighting legal education's shortcomings and urging improvements. Some reform, perhaps even comprehensive reform, is warranted. But, lost in the cacophony of calls for change, fundamental issues that should guide the process remain not only unresolved, but rarely even discussed.

To use the vernacular of the day, what are the desired outcome measures for this legal-education redo? As we move beyond the usual (and usually helpful) tweaks that are a constant in legal education—expansion in course offerings and increased and different experiential learning opportunities—to transformative change, we should have a shared understanding of the problem we are trying to solve, if we are to develop a shared commitment to the solutions we identify. A legal-education reformer could sensibly ask why developing that shared vision is proving so hard with the intense focus on and seemingly general agreement about the need for change in legal education. The answer quickly becomes obvious. Start with the premise that the principal purpose of law schools is to prepare legal professionals for their careers—careers that could easily span four or five decades. No one can predict with any degree of certainty the future direction of the market for legal services. Among the issues that legal futurists have identified when predicting the trends that will affect the legal marketplace in the next decade are: whether the legal profession will become deregulated, and perhaps globalized as well; the extent to which legal services will be unbundled, standardized, and outsourced; which means of public or private dispute resolution will predominate; and what regulatory, self-regulatory, or compliance model will exist to govern the

4. I am putting aside for this discussion the sometimes controversial and often criticized role of legal academics as academics charged with creating and advancing new knowledge.
behavior of individuals and institutions. The pace of change in the legal marketplace has perhaps never been faster or the directions of change more diverse than that which exist in the current economy. The difficulty of comprehensive reform of legal education then is exacerbated by the uncertainty about the legal marketplace in which today’s law students will spend their professional careers. If the predominant goal of law schools is to prepare lawyers, there remains the question “for what?”

Recent reform efforts have emphasized increasing and improving so-called skills training in law school. The measure of success for these efforts is typically how well students are prepared to begin their first jobs as lawyers. Can they interview a client? Take a deposition? Draft and argue a simple motion? Prepare and negotiate a basic contract? Being “practice ready” is important for the new law graduate, especially in a competitive legal market with more lawyers seeking jobs than the number of available legal jobs. A sensible beginning point for discussions of reform, therefore, might be whether law students graduate with the skill set to accomplish the tasks commonly assigned to young associates or to handle the types of cases that tend to present themselves in the storefront offices of the solo lawyer or in small firms. But, does that ask too little of legal education?

Recent calls for reform have tended to give much less consideration to an arguably much more important question: how well prepared are law graduates to succeed, and to lead, for a lifetime in the law? Are they prepared to solve problems as uncertainties increase, matters get more complex, and the answers require judgment, even wisdom? If law schools fail to lay the groundwork that will enable law students to mature as lawyers and professionals throughout their careers, the pressures of practice, billable hours, and “rain making” might preclude a second chance at accomplishing that critical undertaking.

As generations of lawyers can attest, many basic tasks can be accomplished with resort to form books, practice guides, and the cut-and-paste function on a computer well stocked with previously drafted pleadings, contracts, and corporate documents. If we hone a laser-like focus on the immediate—“practice ready at graduation”—do we give up something important to the long term? Do we give too little attention to building the deep understanding and firm intellectual foundation that are essential to the success of the “first chair,” the senior counselor, or the presiding judge? Practice ready and prepared for long-term success are quite different measures and might lead to quite different solutions, even if legal practice were to remain static, which it will not.

5. See, e.g., Hildebrandt Baker Robbins & Citi Private Bank, 2010 Client Advisory
   Client_Advisory.pdf; Scott Snyder et al., Legal Transformation Study: Your 2020 Vision
   of the Future (James Scidl et al. eds., 2008–09).
6. E.g., Stuckey, supra note 3, at 125.
Finally, we should not allow ourselves to forget that lawyers are the guardians of the rule of law—as quaint and naïve as that sounds. Lawyers can and have been called upon here and abroad to take on society’s weightiest problems. As reform proceeds, we might usefully reflect on an observation by former dean and current Professor Judith Wegner of the University of North Carolina School of Law faculty: based on nearly 200 classroom visits, she reported she heard almost no mention of “justice.”

While matters directly implicating notions of justice might not figure prominently in the first job of most young lawyers or even the day-to-day work of many experienced lawyers, legal-education reform should take care not to lose sight of the most fundamental and most important roles of law and lawyers in society, lest no one step up to take them on when the question is called.

As we question the goal of transforming contemporary legal education, one might argue the answer to these fundamental questions is simply “yes”—we need to prepare today’s law students to be practice ready when they graduate, to have the tools to develop the deep understanding of a learned counsel and the wise judge, and to have the commitment required to take on the unpopular cause or client. All of these tasks must be accomplished in three years, or perhaps less. And, they must be achieved without large increases in the already too high cost of legal education. This is quite an undertaking.

**IMPEDIMENTS TO CHANGE**

Legal education is subject to exacting accreditation standards, which limit the differences among law schools. Several panelists addressed the uniformity that exists today among law schools and the generic nature of legal education. Although no one contends that every law school is identical in all particulars, most observers acknowledge that they are substantially similar in key respects. A successful effort to reform legal education, therefore, might include as one outcome greater product differentiation, providing consumer–students choices among an “elite” model of legal education with its emphasis on interdisciplinary study and costly clinical programs with eight-to-one student-faculty ratios and a range of lower priced options. Lower priced options might rely more heavily on adjunct faculty members; they might be shorter in duration; they might

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7. I am grateful to Professor Judith Wegner for sharing this observation with me.

8. Cf. William L. Prosser, *The Ten Year Curriculum*, 6 J. LEGAL EDUC. 149, 155 (1953) (noting that if law schools were to accomplish everything demanded of them, law school would last a decade).

forego small, specialized classes and live-client clinics in favor of large classes and online instruction. They might declare openly a mission to “teach to the bar exam.” Students might be allowed, or even encouraged, to work while they pursue their law studies. These new participants in the market for legal education might incorporate formal apprenticeships to reduce the number of credit hours required to obtain a law degree. Assuming legal education could avoid a race to the bottom, differentiation might provide significant benefits and reduce the costs of both obtaining a legal education and of providing legal services to clients.

The blame for the generic nature of legal education varies. One explanation is the highly prescriptive nature of the Standards for Approval of Law Schools promulgated by the American Bar Association (“ABA”) in its role as accrediting body for law schools. For example, the Standards call for a “full-time faculty” to teach a “major portion” of the curriculum, limiting the ability of a law school to rely on primarily practicing lawyers or judges who would teach as part-time faculty while deriving the majority of their incomes from other sources.10 Law schools are also expected to have and to provide tenure for full-time faculty and tenure-like job security for legal-writing instructors and clinical-faculty members, further defining employment practices and limiting options to experiment.11 Students are to spend at least 700 minutes in class for each credit hour earned, and they must have at least 58,000 minutes of instruction to obtain a degree, limiting the ability of law schools to shorten their programs of study.12 Strict limits are also imposed on distance education and on the number of hours full-time students are allowed to work.13 These Standards protect and prevent deterioration of a model of legal education that does many things very well: impart substantive knowledge of the law, develop critical thinking and dispassionate analysis, and hone written and oral-advocacy skills, among them. They also impede transformative change that might reduce the cost of and increase access to legal education.

Changing the Standards for Approval of Law Schools, however, might not lead to transformative change in legal education. The Standards establish a floor, albeit an ambitious one. But, law-school rankings bestow prestige, and status can be a powerful motivator. The insidious effects of the U.S. News and World Report rankings of American law schools—not the

11. Id. Standard 405(c)-(d), at 32–33.
12. Id. Standard 304(b), at 22; id. Standard 304 interpretation 304-4, at 23.
13. Id. Standard 304(f), at 22 (“A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.”); id. Standard 306, at 26–27 (setting out the rules on distance education).
Standards for Approval—offer an alternative explanation for law schools’ failure to take the risks required to differentiate themselves in meaningful ways.14 Regardless whether the rankings measure anything of importance to the quality of education or the competence of graduates, their effects are ignored at a law school’s—or a law dean’s—peril. Prospective students consider a law school’s ranking by U.S. News and World Report in deciding where to apply and where to matriculate; anecdotal experience suggests even small shifts in ranking matter to the quantity and quality of applicants a law school receives. Law alumni enjoy the prestige that comes with a degree awarded by a highly ranked school. Even modest shifts are watched closely and agonized over endlessly. Law firms use the law-school rankings in deciding whether to participate in on-campus interviews or consider applications from a school’s law students. Dean Richard Matasar, in this symposium and elsewhere, has observed that a “school’s reputation becomes an end in itself.”15 Maintaining that reputation requires ever greater expenditures as law schools compete for a coveted (high) spot in the widely read, but equally widely criticized, U.S. News and World Report rankings. In American legal education, the business axiom, “you manage what you measure,” rings true. And, law schools measure, and provide funding to enhance, the factors that U.S. News and World Report considers in its annual rankings. With the combined force of the ABA and U.S. News and World Report, powerful forces support the current uniformity among American law schools.

INCREASING DIVERSITY AND CHANGING THE FACE OF THE LEGAL PROFESSION

Law schools, the practicing Bar, and large institutional clients have long expressed concern about the small numbers of women and people of color in the legal profession. During the symposium, the discussion quickly moved beyond why diversity is important to how to increase the diversity and inclusiveness of the legal profession. Educational institutions have long argued that diversity brings different experiences and perspectives to the classroom.16 Those differences influence scholarship in the legal academy and decision-making in legal practice. While transforming legal education to


16. See Grutter v. Bollinger, 539 U.S. 306, 330 (2003) (describing the benefits of diversity as “‘important and laudable’ because ‘classroom discussion is livelier, more spirited, and simply more enlightening and interesting’ when the students have ‘the greatest possible variety of backgrounds’”) (citing Petition for Writ of Certiorari app. at 244a, 246a, Grutter, 539 U.S. 306 (No. 02-241)).
increase diversity and create a culture of inclusiveness in the legal profession is an important shared goal, the means to succeed on that measure remain elusive.

In a widely watched debate, the ABA is considering eliminating the requirement that law schools admit only students who have taken “a valid and reliable admission test.” The Law School Admission Test (“LSAT”) is the admissions test almost uniformly required by American law schools; it is offered under the jurisdiction of the Law School Admission Council (“LSAC”). The underlying assumption of this proposed change is that eliminating the LSAT requirement would increase diversity in law schools. On average, students of color perform less well on the LSAT than do majority students. And, because the median LSAT score is a factor in the U.S. News and World Report rankings of law schools, schools compete to admit high-scoring students. This change could be transformative, but would it be? Standardized tests, including the LSAT, were developed to create a meritocracy to replace a system of admissions to higher education that was perceived to rely more on social capital than intellectual ability. If the LSAT was not required, alternative measures could take on greater significance: undergraduate institution, major, and grade point average are the most obvious. References could be given greater weight, perhaps creating more opportunities for who you know to influence the admissions process. As Dean Syverud cogently argues, the elimination of the LSAT requirement might not have the hoped-for effect on increasing the diversity in law schools. There is no substitute for leadership, commitment, and hard work on issues of diversity.

The legal academy continues to experiment with actions designed to increase diversity among students and faculty. A panelist urged taking the long-term view and reaching out to students from underrepresented groups long before they were ready to apply to law schools to increase the pipeline of diverse students considering law as a career. The University of Iowa College of Law sponsors a summer program for college undergraduates from underrepresented groups. The University of Kansas School of Law recently established a pipeline program for local high school students. Many other schools have similar initiatives. Each law school that invests in pipeline  

17. ABA STANDARDS & RULES Standard 503, at 36 (the current requirement).
20. Syverud, supra note 2.
21. Catherine E. Smith, Assoc. Dean, Univ. of Denver Sturm Coll. of Law, Address at The University of Iowa Law Review Symposium: The Future of Legal Education (Feb. 26, 2011) (discussing efforts that the University of Denver’s Sturm College of Law is implementing).
programs for high school or college students should accept that true success of this effort is not measured by the diversity of the students and faculty at an individual law school, but on the success across all law schools and in the legal profession in reflecting among lawyers the diversity that exists in society. Among the suggestions raised were to plan strategically and focus locally. Take advantage of opportunities to form partnerships within the community to educate high school and college students about the law and legal careers. Remove structural barriers to access, for example, by providing a low cost alternative to prepare for the LSAT. While long-term solutions are underway, law schools must continue to focus efforts on recruiting and retaining diverse students and faculty.

LESSONS FOR THE CLASSROOM

To begin the daunting task of rethinking legal education within existing constraints, clearing the cobwebs of earlier debates can be a useful exercise. Too often conversations about reformulating legal education begin with fruitless avenues of inquiry: the false dichotomies of “theory” versus “doctrine”; “knowledge” versus “skills”; and even “legal academics” versus “practicing lawyers.” The answer to the questions of theory versus doctrine or knowledge versus skills is once again “yes.” Law students must learn doctrine and the theory that underlies it—the “learn about” dimension of developing expertise—and they must learn to use their knowledge to find solutions and to implement those solutions effectively—the “learn how” dimension of developing expertise. They must also “learn to be”: to internalize the norms of a learned profession practiced in the public interest. Over a lifetime in the law, lawyers must also learn how to teach themselves new substance and new skills. The law changes, the legal system changes, and the work of the lawyer changes as well in dramatic and unpredictable ways.

Discussions about legal-education reform often focus on teaching methods: how we teach more than what we teach. This symposium was no exception. The case method is a skill a student masters—or not—by the end of the first year, which might account for the oft-lamented disengagement of third-year law students. Christopher Columbus Langdell enriched legal education with the development of the case method in 1870, but a wealth of experience has ably demonstrated its shortcomings as the sole method of instruction. The practicing-lawyer panelists suggested instructors incorporate more writing into basic doctrinal classes, aptly noting that words

22. See SULLIVAN ET AL., supra note 3, at 87.


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FOREWORD

are a lawyer’s tools and her trade. In his keynote address, Dean Erwin Chemerinsky of the University of California, Irvine School of Law urged the use of live-client clinics and simulations as a second-choice substitute beginning in the first year of law school. For-credit judicial and public-sector externships can be a lower cost method than on-site, live-client clinics to give students practical experience with the work of lawyers. Others discussed the problem method as a substitute for or an important addition to the traditional focus on appellate cases. Comparisons were made to extensive clinical training in medical schools and case studies worked on in teams in business schools.

Lawyers rarely work on difficult matters alone, yet solitary work has long been a hallmark of American legal education. An opportunity to improve student learning might include mastering skills of project management and working effectively in teams. Lawyers do much of their work with and on behalf of “non-lawyers.” Therefore, interacting across professional disciplines while in law school with students who approach problems differently and who will someday be clients—those studying banking, management, or medicine—would be a meaningful addition to contemporary legal education. Although law professors are using a range of methods of instruction, how we teach remains a work in progress in most classrooms and law schools.

In this symposium, less attention was given to what we teach. This lack of emphasis is not entirely surprising. The offerings in contemporary law schools have never been richer or broader. This is the era of “law and,” as the perspectives of economics, philosophy, psychology, and social science are added to the law-school classroom. Subjects taught are numerous, specialized, and wide ranging, but not entirely without gaps. In her remarks, Kelly Hnatt urged “Wall Street Journal fluency” for lawyers. Some observers of the legal marketplace predict an increasingly segmented legal marketplace in which a future lawyer’s value to her clients will likely be based on both what she knows about a particular body of law and what she knows about a client’s industry or substantive concerns. If that observation is correct, the law school of tomorrow might look more interdisciplinary than the law school of today, moving beyond adding perspectives to the study of law to studying subjects entirely separate from law. Future law students might spend less time in the law-school building and more time in elective classes in the schools of business, public health, or pharmacy seeking to gain expertise about their future clients’ endeavors.

26. Erwin Chemerinsky, Dean, Univ. of Cal., Irvine Sch. of Law, Keynote Address at The University of Iowa Law Review Symposium: The Future of Legal Education (Feb. 25, 2011).
27. Hnatt, supra note 25.
The view presented from the Bench was perhaps the most cautionary. Three jurists, reportedly without collaborating on their remarks before the conference, identified issues of professionalism and civility as the most pressing concerns of the day: the “learning to be” aspect of becoming a professional. Former Iowa Supreme Court Justice Baker quoted retired Supreme Court Justice O’Connor describing professionalism as a higher level of conduct than that permitted by law or dictated by the marketplace. Judge Melloy of the United States Court of Appeals for the Eighth Circuit likened the lack of civility observed today to the crisis in ethics occasioned by the Watergate scandal of an earlier era. Judge Tacha of the Tenth Circuit Court of Appeals—soon to be dean of the Pepperdine Law School—called for the preparing of the “whole lawyer,” one who integrates a deep knowledge base with strong interpersonal skills and a commitment to service. Their suggestions for law schools were powerful challenges: inculcate professionalism and promote civility. Teach students to disagree agreeably. To long-time observers of the legal profession, these themes were not new. Issues of professionalism and incivility have been areas of concern for decades. One is left wondering whether professionalism and civility have deteriorated further, and if so, whether and how law schools should respond in an attempt to alleviate the problem through socialization of students to the traditional values of the legal profession.

The jurists on the panel recommended that law teachers mirror the professional behavior expected of lawyers in society, set a respectful tone for contentious classroom debate, and demand the same behavior from law students. Law schools should take steps to invite the leaders of the Bar into the law schools and to engage the practicing Bar in a rich conversation about the profession and the preparation of lawyers for the practice. Law schools were urged to help students identify the myriad of opportunities open to lawyers, to meet unmet legal needs, and to redefine success to include not just so-called Big Law, but leadership in the community and making a difference in the lives of individual clients.

To those of us who have chosen to fulfill our own professional obligations to Bar and Bench by preparing the next generation of lawyers, the symposium was both engaging and sobering. The conclusion that while much has been achieved, much work remains inescapable. The conversations about ongoing efforts to engage and improve were

28. Shapero v. Ky. Bar Ass’n, 486 U.S. 466, 488–89 (1988) (O’Connor, J., dissenting) (“One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one’s selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.”).

heartening. I was moved by the declaration of Dean Cynthia Nance of the University of Arkansas School of Law and a graduate of the University of Iowa College of Law, “I am a believer. I am glad to be a lawyer. I would do it again.”

To my friend and colleague, I say only so would I. I hope you find inspiration for your own teaching and your own institutions in the pages of this symposium issue.

What Will Our Future Look Like and How
Will We Respond?

Michael A. Fitts

Over the past quarter century, American society has served as a global model in a number of different arenas: scientific research, technological innovation, university education, and business entrepreneurship. There are many reasons for our comparative leadership, including a dynamic economic and social structure, a relatively diverse and open society, and stable political institutions.

Legal education is an excellent example of just such an American model. As Judith Areen nicely describes in her accompanying article, the decentralized and dynamic quality of the American educational system, which lacks the intrusive governmental presence or control that is found throughout much of the world, has been a major ingredient in our leadership.1 For these and other reasons, the scholarship that emanates from our universities, on a theoretical as well as a more practical level, is in many respects the envy of the world. It is no accident that thousands of law faculty and students flock to the United States each year to study in our classrooms, work with our faculty, and gain an understanding of how our legal system works. Equally important is exposure to the academic process through which we analyze and teach the next generation how to understand and shape legal institutions. If the measure of excellence is the level of external interest in, and imitation of, an institution, we are very successful indeed.

In spite of—or perhaps because of—the preeminence of our system of legal education, the last thirty years have seen sustained debates over questions surrounding where legal education should develop most and the nature and extent of the regulatory framework that helps oversee its development.2 Almost every aspect of this system and its regulation has been

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discussed and criticized. In light of our academic accomplishments during this same time period, it would be a mistake to suggest that our system of legal education or its regulatory framework under the American Bar Association’s (“ABA”) peer-review process is fundamentally flawed. Whatever criticisms are raised, legal education in the United States remains a significant success by most social and economic measures—intellectual excitement, pedagogical innovation, scholarly productivity, professional placement, professional imitation, and global application. Interest in a legal career and legal education in the United States, as compared to interest in other professions or legal education in other nations, has skyrocketed.3 We continue to attract the best and brightest minds domestically and internationally—a demonstration that the intellectual elite understand the value of a legal career.

Having said this, I wish to focus on a related but separate question: how the recently changed professional environment may affect this process in years to come. While this system of legal education has proved highly successful, we should be mindful of the challenges we all face going forward. To put the matter succinctly, our past success is due at least in part to an extraordinary infusion of resources to the legal profession and the legal academy over the past quarter century. This financial cushion has allowed us to attract the best and the brightest—and for the best and brightest to do what they do best, namely, to develop a legal environment that stands second to none. Our regulatory system of ABA accreditation—which explores each aspect of a legal institution through rigorous peer and professional review—brings representatives from each field and intellectual style to the evaluation process.4 In many ways, it is ideally suited for developing an academic program with comprehensive coverage as well as high degrees of academic depth and intellectual and professional diversity.

The question becomes: will we be able to pursue this type of regulatory strategy in the same way in the future as we have in the past? By raising the issue, I do not suggest that I have an answer. But from almost any

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3. See Section of Legal Educ. & Admissions to the Bar, Enrollment and Degrees Awarded, AM. BAR ASS’N, http://www.americanbar.org/content/dam/aba/migrated/legal/spagecharts/stats_1.authcheckdam.pdf (last visited Apr. 6, 2011) (citing statistics showing that from the 1976–77 academic year to the 2009–10 academic year, the number of ABA approved law schools increased from 163 to 200, while first-year law-school enrollment increased from 39,996 to 51,646 students).

perspective, we have experienced a period of unprecedented expansion that has allowed us to pursue multiple and diverse professional and academic strategies simply because we have not had to make highly constrained choices. If we do not enjoy such continued expansion going forward, and there follows a need to undertake substantial innovations, does this implicate not only the programmatic decisions we are able to make in the future but also the nature of the regulatory system that oversees us?

A natural starting point for this discussion is a look at the existing system. What is our current regulatory structure? As Jay Conison nicely describes in his accompanying article, our current system of ABA regulation pursues an educational model geared to developing and ensuring diverse programmatic offerings. We include requirements on inputs, outputs, transparency, and empowerment of numerous actors. As a result, the process ensures internal institutional diversity. Broadly defined, all of the different constituencies that make up the law-school community have a seat at the table. Nobody truly dominates—though everyone thinks someone else does! The likelihood of radical change within this structure is small, since decisions will tend to be made through a series of incremental adjustments and debates, but valuable input will be solicited on any major proposed change.

Such a system works well in a world of expanding resources and evolutionary change. To the extent a law school offers depth and breadth, it furthers what many people think of as the ideal professional training: teaching students how to navigate intellectually across complex issues and problems. In this sense, legal training may be the quintessential generalist education for the modern world. Since lawyers must be able to navigate across different fields and approaches and work with a variety of diverse groups and perspectives, a richly diverse program furthers one important element of our shared professional ideal.

How does the system work when resources are more constrained and institutions must react increasingly quickly to a more fast-paced external environment? Take, for example, the ABA’s standards regulating law libraries, which tend to be more input oriented. American law libraries (like American law schools in general) are historically among the best and best-resourced in the world. On our university campuses, law libraries are more often than not the best funded when measured per student and faculty member. Yet over the last twenty years, the revolution in information technology has changed the use of traditional library buildings, the use of

5. See generally Jay Conison, The Architecture of Accreditation, 96 IOWA L. REV. 1515, 1525–28 (2011) (analyzing different choices that can be made in choosing an accreditation system and describing the ABA’s current system as one in which the chosen primary purpose relates to “program quality” rather than “quality of outcomes”).
(and access to) books, and the profile of library staff. Similar systemic changes have occurred in other university professional schools, especially medical schools, and in professional legal practice—leading to a radical restructuring of their physical and staffing systems. One needs only to compare the library at a major law firm a decade ago to its counterpart today to understand the transformation that has occurred.

The traditional, input-oriented regulation of law libraries, however, took relatively more time to adapt to the changed environment. Until recently, the ABA had fairly narrow restrictions for law libraries, including specifying the minimum number of seats a library needed to have. Whatever the value of these requirements twenty or thirty years ago, they became more open to question in the face of rapidly changing information technology, study and research patterns by students and faculty, and management approaches. A situation at my own institution, the University of Pennsylvania Law School, illustrates these tradeoffs. In the 1990s, the ABA’s Accreditation Council required us to build a new law library because we were viewed as having an insufficient number of seats. Today, such a requirement seems odd. Students research and study all over our campus and not necessarily at desks in the law library. The ABA since dropped this rule from its Standards, but not before Penn expended a significant amount of its resources to build its new library. At the time, there was a sustained debate over whether the funds would be better devoted to expanding the faculty or scholarships, but fortunately, this occurred during a period of rapidly expanding resources, and we were able to grow in these areas as well.

My purpose is not to debate the regulation of libraries. Most of the law-school accreditation requirements probably made sense when they were originally adopted. Indeed, input restrictions are often a reasonable method to ensure maintenance of certain minimal standards and reflect traditional professional norms developed over time. But most people would agree that the input requirements on law-library seating remained on the books too long, which becomes problematic in a world of rapid change and cost pressures.

What does the future look like for the legal profession, as well as the legal academy? Obviously, nobody knows. In assessing this question, however, it is important to appreciate the period of rapid expansion we have experienced over the last quarter century in the markets for legal

professions and legal education. Until recently, the size of the legal profession grew at an extraordinary rate, especially at the high end, with the revenue of the top 200 firms growing at an annualized rate of 9.8\%. Correspondingly, the number of lawyers entering major law firms rose substantially, as did the median income of partners at these firms.

The consequences of this economic growth for law schools have been clear: tuition at American law schools has risen at a rate greater than overall inflation for every year of the last twenty-five years. As Marc Galanter and William Henderson write, “[E]lite and semi-elite law schools are able to take a proportionate share through ever-higher tuition (and corresponding debt loads).” Since 1987, “law school tuition rose 448 percent for in-state residents at public institutions and 224 percent at private institutions,” far outpacing overall inflation. Government-guaranteed loans and private philanthropy have added to the infusion of resources.

As a result, the resources available to major law schools have increased logarithmically. The average per-student expenditure at ABA approved law schools quadrupled in the 1980s and 1990s, from $5000 in the 1979–80 academic year to $20,713 in the 1999–2000 academic year. The same type of increases occurred in the 2000–08 period. This influx of resources has supported the growth of law schools in almost every direction: increasing the size of faculty, legal clinics, international programs, legal-writing programs, skills programs, and career planning. I would guess that there has not been a major contraction in coverage or offerings in almost any American law school during this period. The same could probably not be said for the different institutions in any other sector of the American economy outside education.

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8. Id.
The structure of legal education almost certainly assists this growth. As Conison has observed:

[T]he more a school spends to enhance the quality of students, faculty, and programs, the better it is likely to be and the better the education it is able to provide . . . . The competitive incentives on cost are, to a significant degree, the exact opposite of the incentives in most for-profit businesses.\textsuperscript{16}

The \textit{U.S. News \\& World Report}’s ranking system further reinforces this process. The more money a school spends, the higher—all else held equal—its rankings, which hold disproportionate influence in a world where potential students may find it difficult to evaluate the substance of a school’s academic offerings and its long-term effect on their careers. Legal education’s regulatory environment has undoubtedly meshed well with this type of expansion. Extensive peer review for the many different elements of law-school education has proven well suited for supporting and providing feedback on each program as we grow the breadth of our programs. And our responsiveness to each peer assessment enriches the overall program. American law schools have become internally incredibly diverse institutions in virtually every way.

Will changes in the size and nature of the legal profession place different pressures on our academic programs and, indirectly, on our regulatory structure? As we all know, the United States and our profession are going through a period of major transition, the scope and extent of which is still unclear. On a systemic level, the U.S. economy is significantly deleveraging, causing a contraction in the GNP and overall employment levels. We are probably looking at a period of less significant growth in our economy over the next five to ten years. As the Congressional Budget Office (“CBO”) recently observed, “The recovery in employment has been slowed not only by the moderate growth in output in the past year and a half but also by structural changes in the labor market, such as a mismatch between the requirements of available jobs and the skills of job seekers.”\textsuperscript{17} The CBO expects that the unemployment rate will fall only to 8.2\% in the fourth quarter of 2012 before ultimately reaching what it calls the “natural rate of unemployment” at 5.3\% in 2016.\textsuperscript{18}

A similar contraction has occurred within the legal profession. The general downturn has created more domestic and global competition among law firms. At the same time, in-house counsel have scrutinized billing to outside law firms much more significantly, increasing pressure on billing

\textsuperscript{16} Conison, \textit{supra} note 13, at 43 (citation omitted).
\textsuperscript{18} Id. at xii.
rates in general and in particular for younger associates, who are perceived as less able to justify the fees. The immediate impact is clear: large numbers of associate layoffs, deferring hiring, reducing summer classes, freezing salaries, and de-equitizing partners.

The downturn also may well have disproportionately impacted the professional training of young lawyers. Unlike medical schools (which have profitable hospitals as part of student training), law schools have not partnered with external professional institutions in-house to jumpstart students’ training while in school. Instead, they have relied on their graduates’ first employers to offer much of their skills training. But in the present environment, firms may be less likely to train associates, billing out their time to clients as they have in the past, or to carry them over the years with the same level of overall profitability. We have begun to see a number of major changes in the levels of hiring, starting salaries, and training. Several large firms have even discussed the need for two-year law degrees, have sent their first-year associates to mini-business-school programs, and have pressed for significant changes in the training of law students entering the firm in order to ensure they will be better able to “hit the ground running.”


23. See generally Frank Michael D’Amore, Five Future Trends Could Impact Young Lawyers, LEGAL INTELLIGENCER, Apr. 9, 2009, available at 2009 WLNR 2462496 (discussing law firms’ needs for law-school graduates to be immediately profitable in the wake of the economic downturn as well as post-economic recovery); Kimberly K. Egan, Everything Associates Didn’t Learn in Law School, NAT’L L.J., Feb. 28, 2011, at 17 (same); Jeff Jeffrey, Apprentice Programs Give First-
The pressures are even greater on law schools that have not, or cannot expect in the future, to send a significant number of their students to these large employers. As Morriss and Henderson note:

law school pays handsome dividends [as a general matter]. With starting salaries at $160,000 and above at large New York City firms, even students who borrow $100,000 or more to attend law school [should] reap substantial economic rewards. But most lawyers do not start at $160,000; the median starting salary at a two- to 10-lawyer firm is a whopping $110,000 less than at a Wall Street powerhouse.

Because the nature and extent of these changes are still unclear, the consequences for law schools are still unfolding. Nevertheless, it is not obvious we will enjoy the type of extraordinary bull market and growth we have seen over the last thirty years. Will starting salaries and hiring continue to increase at the same rate over the next decade in the way they have in the past? Will the historical yearly expansion in entry-level positions continue, along with salary increases? And if they do not, will tuitions rise over the next decade as they have in the past? More to the point, how will this impact the resources law schools have and their needs to innovate? Will we be able to rely on the employers of our graduates to the extent we have in the past, or will there be increased pressure for us to change our academic programs?

Depending on how the professional world changes, a series of issues legal education has not previously had to confront quite so directly may be brought to the fore more concretely. How can we continue to support and expand the interdisciplinary scholarship, which is the envy of the world, but which we recognize is not financially self-sustaining? How do we train students in practical skills when they must hit the ground running without direct links to financially profitable institutions in the profession (as medical schools have) to provide them? How do we evolve to offer the business and

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management training for law students of the future that may prove critical to success in a changing legal environment?

If we are subject to these evolving forces, my guess is that the institutional response to these challenges will, and should be, quite varied. In some cases, law schools may simply act as they have in the past and continue to expand their offerings dramatically across the board. These schools’ future world will look much like their past—only more of the same. For such institutions, the traditional model, which expands internal pedagogical breadth and depth, will simply continue—their fundamental goal of educating students through experiences across the broadest spectrum of possible professional and leadership capacities will remain. As those potential experiences expand, so should the offerings within the educational environment.

In other instances, more resource pressures may lead schools in a somewhat different direction: to pursue greater individualization and specialization. This may mean maintaining the size of certain programs or reducing them, while expanding strategically in particular areas. In this vein, institutions might, for example, pursue creative partnerships with outside institutions such as private firms and government entities along the medical-school model; others might integrate horizontally with other professional programs (such as business or engineering schools) with two- or three-year degrees; still others might look to a pared-down model and offer reduced tuition with less intensive training across the board.

If some schools want to, or must, pursue these or other strategies, we may need to ask whether our regulatory system will be sufficiently flexible to accommodate such innovation. In short, if our future looks more like the library world in the 1990s, we may need to be less input focused in terms of regulation; more open to the possibilities of law schools defining alternative outputs and goals (since the practice of law and legal careers may be different and more varied going forward); and more willing to support greater variation between law schools as they seek to differentiate the programs they offer within a changing and evolving profession. The pursuit of different relationships with institutions inside and outside of the academy, as well as greater specialization in programmatic focus, may not be as easy in a world that specifies tightly institutional inputs or does not allow for a wider variety of professional goals. Indeed, if one of the sources of the success of the American academic system is, as Areen observes, its relatively decentralized structure and control, this ability to continue to innovate on an individual institutional level may need to be supported more directly.26

We share a common goal of continuing the tradition of American legal education as the leader in this changing environment. The principal question we must answer is how much legal institutions, as well as the

26.  See Areen, supra note 1, at 1473–74; 1493–94.
regulatory structure of legal education, must change to allow us to continue to play that role.
Training the Whole Lawyer

Deanell Reece Tacha*

“The training of lawyers is a training in logic.”

“The result [of American legal education] is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients.”

I am honored to be involved in this important Symposium. As a sitting judge, I have been fortunate to observe and read the work of hundreds—or probably thousands—of lawyers. In very real ways, we judges are the consumers of legal education. The clients, of course, benefit from their lawyers’ education, and society reaps the long-term benefits of perpetuation of the rule of law; but it is we the judges that scrutinize, criticize, and utilize the analytical, written, and oral-advocacy skills of lawyers, so one could describe this Article as a consumer report for legal education. If I could be so bold, this consumer thinks that, in most ways, American legal education has done a good job of training millions of lawyers. If measured in sheer numbers, the number of law-school graduates represents an extraordinary feat; but in those numbers may be a central weakness: by training so many lawyers, we may have ignored (or at least given short shrift to) what I call “training the whole lawyer.” Lawyers are not, and should not be, simply an amalgam of the law-school courses they have taken. The whole lawyer is all the torts, contracts, securities law—all the courses—but also a big “plus.” The “plus” is, in my opinion, the difference between the adequate lawyer and the great lawyer. The whole lawyer (1) integrates the knowledge base, (2) possesses both legal and interpersonal skills, (3) models professionalism, and (4) fosters civic engagement.

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* At the time of the Symposium, Deanell Tacha was a judge on the United States Court of Appeals for the Tenth Circuit. On June 1, 2011, she became Dean at Pepperdine University School of Law.

1. Oliver Wendell Holmes, Jr., The Path of the Law, 10 HARV. L. REV. 457, 465 (1897).

INTEGRATION OF KNOWLEDGE

In America’s earliest years, the most common way for a man (and they were all men at the time) to prepare for a legal career was to serve as an apprentice to a practicing attorney. “Reading the law,” as it was called, entailed studying the practitioner’s words, writing, and interactions with the court and other members of the bar. The apprentice also steeped himself in the study of law books, engaging in a self-directed course in the law’s substantive components. (Such was also the norm in England, although aspiring barristers might also apply for membership in one of the country’s Inns of Court to obtain a more formal legal education.) Apprenticeships produced some of our nation’s finest practitioners—Thomas Jefferson and Abraham Lincoln, to name just a few.

But the apprenticeship tradition was not so uniformly successful. Lawyers trained in this manner varied widely in their skill and knowledge base. In part because of the inadequacy of the apprenticeship model, the United States began experimenting with formal legal education through universities in the middle of the eighteenth century. With the 1870 advent of the case-method system of teaching by Christopher Columbus Langdell, the first dean of Harvard Law School, the modern era of legal education was born.

Today, the United States is one of the few countries that trains its attorneys solely through postgraduate study. Why is that? Why do we not follow the system found so predominately elsewhere in which eager eighteen-year-olds are immediately immersed into the world of academic law, emerging only to start their professional careers? With all due respect to our friends and colleagues around the world, I am convinced that we have it right. Why am I so convinced? Put simply, it is because I feel that, even more than the acquisition of information, law school is, and should be, about the integration of knowledge.

This is why our graduate system of legal education is so valuable. Our law students come to us with a broad knowledge base, having had exposure not only to the writings of the ancient philosophers, but also to biology and accounting and economics and Spanish. In this day of ever-increasingly complex legal work filled with international clients and corporate jargon and expert witnesses, it is imperative that aspiring law students understand more than just black-letter law. A county prosecutor trying a murder case must be able to grasp the fundamentals of human anatomy and the physics of blood spatter. An intellectual-property lawyer must be well-versed in the science that underpins his client’s product. A bankruptcy trustee must also know accounting. And given the diversity of our nation’s people and the

burgeoning practice of international law, nearly every lawyer will be well-
served at some point in her career by speaking another language.

Some have suggested that law schools should require a set
undergraduate curriculum. One cannot go to medical school without having
taken organic chemistry, biology, and a smattering of other science- and
math-based courses; the thought is that law schools might be equally well-
served by requiring students to have an exposure to business principles or
economics or government. On the other hand, the legal community has
been well-served by embracing lawyers who are former chemists or
journalists or medical doctors, and imposing a particular undergraduate
emphasis would certainly discourage this needed benefit. Regardless of
whether law schools ever impose such a requirement, however, the fact
remains that a challenging and comprehensive undergraduate education
remains the foundation upon which a legal education must rest.

LEGAL SKILLS AND PERSONAL SKILLS

Integration among disciplines is not the only benefit of the American
system of legal education. It is imperative that our law schools continue to
integrate the way the law is taught—to bridge the gap between seemingly
unconnected areas of thinking and knowledge. It is no secret that American
law schools do a superb job of teaching the substantive law. We all vividly
remember our first year of law school as a sort of “boot camp” where we
delved into the intricacies of subject-matter jurisdiction, the rule against
perpetuities, and Hadley v. Baxendale.4 The Socratic method forces the law
student to consider a position, defend it, and then perhaps abandon it in
favor of a more supportable proposition, all the while steeping him in the
fundamentals of the legal topic at hand.

However, it is also no secret that law schools must do more to prepare
students for the actual practice of the law. Integrating substance and
practice, while also weaving in ethics and standards of professionalism, is
perhaps the biggest challenge currently facing law schools today. How can
law schools achieve this? Simply adding a few extra clinics or externship
opportunities is probably not enough. Some schools have begun
overhauling the traditional law-school model, reformatting core courses
and/or freeing the third year for practicing real skills. The University of
California, Irvine School of Law has an innovative first-year curriculum.
Instead of taking the traditional courses in torts, contracts, civil procedure,
property, and legal writing, first-year law students enroll in a variety of
courses that analyze the different ways the law is created and utilized.5 For

4. (1854) 156 Eng. Rep. 145 (Ex.). For those who are unfamiliar with this seminal case
in contract law, see Melvin Aron Eisenberg, The Principle of Hadley v. Baxendale, 80 CALIF. L.
REV. 563 (1992), for a comprehensive explanation of the case.
uci.edu/registrar/curriculum.html (last visited May 10, 2011).
example, instead of torts or contracts, students enroll in courses on common-law analysis, which use the substantive areas of torts and contracts to teach the principles of common law. Similarly, a procedural-analysis course uses the rules of civil procedure as its foundation. Irvine students also take a heavy dose of writing and professionalism courses—ten hours’ worth over the first year. Law schools might also begin to integrate substance with practice and professionalism by teaching contract drafting as part of a contracts class, with an emphasis on ethics and other professionalism issues that arise in such a context. Indeed, the most recent proposed standards for law-school accreditation require every law student to complete at least one course “that integrates doctrine, theory, skills and ethics and engages students in performance of one or more professional skills.” Thus, regardless of the way that law schools integrate their curricula, it is clear that issue-spotting cannot be the sole approach to legal education; rather, integration focuses on problem-solving.

Intensive opportunities for real-life practice also make a difference. At Washington and Lee University School of Law, the entire third year is based exclusively on “learning through engagement”—practicum courses, mock simulations, and developing real practicing skills such as oral advocacy and mediation. The University of Pennsylvania Law School requires students to complete seventy hours of legal public service to graduate. Northwestern University School of Law released a report in 2008 that similarly recognizes the need for a more comprehensive approach to teaching lawyering skills.

Of course, implementing these ideas is not without its difficulties. It is much more labor-intensive to integrate substantive points of contract law with the art of contract drafting and ethical issues lurking beneath the surface than it is simply to use the case-method approach as an instruction model. Faculty members, who are already under pressure not simply to teach but also to contribute to scholarship, may balk at the idea of such an increased workload. Perhaps schools might consider adding more practitioners to the faculty, although this also presents its own set of challenges as schools seek to hire and retain tenure-track professors, as well as to recruit incoming students.

The integration of knowledge alone is not enough. A law-school graduate should also possess the personal skills necessary to be a


professional and ethical advocate. Northwestern Law now strongly encourages its applicants to interview as part of the application process so that the school can better ensure that its students have the requisite communication skills, maturity, and motivation to become successful students and practitioners.10 Other schools are trying their hands at fostering the development of these types of personal skills. At Georgetown University Law Center, a new clinical program called the Community Justice Project creates learning experiences that encourage discussions about judgment—how to identify choices, deciding the pros and cons of each, and then reflecting after the fact to help prepare oneself for future experiences.11

Is there room in the law-school curriculum for the notion of justice? One critique of legal education today is that students are repeatedly told that social needs or issues of justice are irrelevant to legal analysis.12 As a result, students often conclude that such issues are unimportant and become ill-prepared to confront them in interactions with real clients and real problems. Law schools would be well-served not to cast aside these concepts, instead weaving them into a variety of courses and teaching students about moral and ethical dilemmas they are certain to encounter outside the classroom.

These ideals may influence who law schools hire as faculty members. Faculty must, of course, demand the highest levels of academic excellence from their students and from themselves, but faculty must also model the whole lawyer. Empathy, tolerance, humility—these are but a few of the characteristics that schools might look for in professors. Modeling these behaviors may be a more effective way of instilling values and appropriate personal skills in students than any formal method of teaching.

**Professionalism**

A discussion of the term “professionalism” inevitably follows. Having taught students to think like lawyers and having encouraged students to consider a variety of ethical obligations, it becomes necessary to teach students to act as honorable professionals. Professionalism is the key to successful lawyering and, in my opinion, to the health of our legal system as

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12. SULLIVAN ET AL., supra note 2, at 6 ("Law schools fail to complement the focus on skill in legal analyses 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 legal institutions and the varied forms of legal practice.").
a whole. Shakespeare, in *The Taming of the Shrew*, described adversaries in law as those who “[s]trive mightily, but eat and drink as friends.” It is this type of lawyer that we encourage by teaching professionalism. Through the term professionalism, I advocate the following: (1) a shared set of knowledge, (2) a recognition of the importance of spirited debate espousing differing points of view, and (3) a commitment to discourse and decision making conducted in a tenor that is respectful of and substantively engages with others.

In my view, although the Socratic method is not the be-all and end-all of modern legal education, I do believe it plays an important role in the development of professionalism. First, it nurtures a shared set of knowledge among lawyers. This uniform introduction to the law gives every lawyer the same linguistic tools and thus facilitates communication. It gives every lawyer an understanding of the core principles of our legal system and thus provides a common starting point for discussion. It inculcates a respect for procedure and process independent of outcomes, and thus encourages the growth of fora where difficult issues can be seriously debated.

Second, the Socratic method fosters a respect for spirited debate of pointedly opposing views. Legal education depends on actively engaging students in different perspectives on the law. One cannot survive the modern teaching method of law school without being forced to consider and to advocate both sides of difficult, and often heated, legal issues. In doing so, we instill in students the basic assumption of our adversarial system—that issues are best understood and decided by hearing both sides of a position.

Third, it illustrates that to disagree effectively, one need not, and in fact should not, be disagreeable. The Socratic method is about the intense exchange of ideas. Often in Socratic discourse, law students are forced to defend positions that they do not personally espouse and articulate technical legal arguments about issues where they previously had only a gut reaction. By examining their own beliefs more intensely and putting themselves in the shoes of those who are normally their opponents, students enhance their advocacy skills while coming to appreciate the value of the opposing view and the person espousing it. As Justice Oliver Wendell Holmes stated, “[A] lawyer [can] try his case like a gentleman without giving up any portion of his energy and force.”

I am not blind to the reality that many legal practitioners fail to follow the urging of Justice Holmes. Indeed, it is no secret that an increasing number of attorneys push debate and advocacy beyond the bounds of

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propriety. While the pressures of contemporary practice contribute to this unfortunate occurrence, the law schools are partially culpable as well.

As a former law professor and a sitting judge, I encourage law schools to take three easy steps, and to think creatively, to help remedy this situation. First, require participation in clinical education. Through this common experience, law students who increasingly graduate to represent the more affluent elements of our society will grow to appreciate the legal needs of those less fortunate and their greater responsibility to the legal profession. Second, establish an Inns of Court program at your schools. The greatest teachers of professionalism are those successful lawyers and judges who embody it. Show your students through real-life examples that professionalism and a successful legal career go hand-in-hand. Third (and this may sound a bit homespun), teach students to follow the Golden Rule as it applies to the practice of law. Associate them with practitioners who “treat other attorneys as they wish to be treated” but who still function as effective and successful advocates. These steps will cultivate relationships between impressionable students and older, upstanding members of the bar who will guide and mentor.

**CIVIC ENGAGEMENT**

This discussion leads to my final, but perhaps most critical, point. Law schools function as more than professional training grounds for future attorneys. From the beginning of American legal education, law schools have stood as a pillar of our democratic way of life. As stated by Paul Carrington, “Early law teachers were . . . prophets of democracy.” This is still an important goal of modern legal education, but I fear our diligence has not produced satisfactory results.

American society suffers from a plague of civic ignorance. It has been the central animating premise of our democracy that every citizen would be informed and take an active part in governing the nation. Moreover, civic knowledge begets respect for our nation’s institutions. As Thomas Jefferson so aptly put it: “If a nation expects to be ignorant and free, it expects what never was and never will be.” Recent surveys of the American populace, however, paint a troubling picture. Only thirty-five percent of Americans can name even one member of the Supreme Court. Half think that the Civil War, the Emancipation Proclamation, and the War of 1812 occurred prior
to the American Revolution.18 One-third do not know that the right to a jury trial is guaranteed by the Bill of Rights.19 Likewise, one-third do not even know that the first ten amendments to the Constitution are called the Bill of Rights!20

In training the whole lawyer, I believe that legal educators have a duty to help the general public learn the basics about our law and system of government. Indeed, knowledge of governmental affairs is key to self-governance! The promotion of this knowledge, to some extent, is in law schools’ hands as they help to shape the minds, goals, and careers of the next generation of lawyers.

Law schools can also encourage students to become public servants. Lawyers played a crucial role in founding our democracy. They were statesmen of integrity and idealism who helped to conceive and sustain this Republic. But fewer and fewer law-school graduates are following a similar course and engaging in public service. Instead, many of us sit in offices behind closed doors without fully recognizing our obligation to give back to the system of government that has enabled us to be who we are today. Thus, in addition to training the law student in the substance of the law, law schools can rise to an even greater challenge and encourage our next generation of lawyer–citizens to promote our democratic way of life.

THE WHOLE LAWYER

Law schools today do an excellent job of covering the intricacies of the law and teaching students to “think like a lawyer.” But training the whole lawyer requires more. It necessitates an exercise in integration—of disciplines, of models of thought, and of substance and practice. It demands attention to personal qualities and the use of judgment in ways not previously explored. And it should be focused on a lawyer–citizen model that is founded on the nation’s forefathers. The result is a lawyer who is capable of not only resolving a legal dilemma, but one who reaches conclusions and finds solutions in ways that promote clients’ interests more fully and personally, one who readily and respectfully engages with his colleagues and the bench, and one who advances the democratic ideal. That, to me, is the whole lawyer.

19. Id.