

OHIO STATE BAR ASSOCIATION

Report of the Task Force on Legal Education Reform

December 2009

**This Report was approved by the Ohio State Bar Association
Board of Governors and the Council of Delegates**

OHIO STATE BAR ASSOCIATION

Task Force on Legal Education Reform Report and Recommendations

Task Force Charge

A primary topic of discussion for the past decade at the annual Bench Bar Deans Conference has been legal education, the bar examination and whether newly admitted lawyers were adequately prepared for the practice of law. Similar discussions were being held across the country and several comprehensive studies were conducted. This task force was established by (Ohio State Bar Association (OSBA) then-President Robert F. Ware and President-elect Gary J. Leppla to review the Carnegie Foundation Report on Educating Lawyers (Carnegie), and the Clinical Legal Education Association Report on Best Practices for Legal Education (Stuckey); to develop recommendations for including more practice-centered instruction in the law school curriculum; and to consider changes to the Ohio Bar examination, which may be necessary to enable law schools to modify their curricula.

Task Force Members

The Task Force consisted of 25 members. Heather G. Sowald, past OSBA president was appointed to chair the Task Force. Each of Ohio's nine law schools plus Northern Kentucky was asked to name a representative to the Task Force. The Supreme Court of Ohio was represented by its administrative director, the chair of the Board of Bar Examiners and the director of the Office of Bar Admission. Several practitioners from law firms of varying sizes across the state, two recently licensed attorneys and a law student were also appointed to the Task Force. A roster of Task Force members is attached as Appendix A.

Task Force Work

The Task Force began its work by studying the history of the legal profession and its evolution in the United States. The Task Force then reviewed many documents, including various reports on legal education and law review articles; reviewed the bar examination in Ohio; studied how other countries prepare students for law practice; studied how other professions in Ohio prepare students for practice; and surveyed recent Ohio law graduates as to their readiness to practice. The Task Force also reviewed innovative curricula at Ohio and out-of-state law schools.

The Task Force found that the curricula at all Ohio law schools include a variety of programs and courses, including simulations, clinics and externships, which provide practice-centered instruction. In some cases Ohio's law schools are among the nation's leaders in innovative professional skills training. However, all of the law school representatives on the Task Force acknowledged that more can and should be done to make this training available to every student, and to improve the professional preparation of all students prior to graduation.

The Task Force believes that the experience of the Ohio law schools, as well as the commitment of the Ohio judiciary, bar, and legal academy to collaborate in expanding existing training and to create new and innovative forms of professional skills training, will make it possible for Ohio to be the national model for preparing new lawyers for practice in the coming years.

Committees

Chair Heather Sowald established three committees (bar examination, law school curriculum and internships/externships) to review the legal education reports, other information received, and to make specific recommendations for consideration by the full Task Force. The committees, their specific charges; and their recommendations are attached as Exhibits B-E.

Task Force Recommendations

I. Endorsement of Reports

- A. **Resolved**, that the Task Force endorses and supports the recommendations of the report of The Carnegie Foundation for the Advancement of Teaching entitled "Educating Lawyers: Preparation for the Profession of Law" (the "Carnegie Report"). An executive summary of the Carnegie Report is attached as Exhibit F.
- B. **Resolved**, that the Task Force endorses and supports the recommendations for best practices described in the report of Roy Stuckey, et al., entitled "Best Practices for Legal Education: A Vision and Road Map" (the "Stuckey Report"). An executive summary of the Stuckey Report is attached as Exhibit G.

II. Recommendations for Encouraging Innovation and Change

- A. **Resolved**, that the Task Force recommends that the State of Ohio become the national leader in advancing systemic change in legal education and licensing by developing innovative programs and new models for admission to the practice of law.

To facilitate the foregoing recommendation, the Task Force recommends the following initiatives:

1. The Supreme Court of Ohio reduce or otherwise modify the subjects tested on the essay portion of the Ohio Bar Exam to enable Ohio law schools to offer enhanced and increased clinical and externship opportunities;
2. The Supreme Court of Ohio expand student licenses to include second-year students when under proper supervision and in appropriate circumstances;
3. The Supreme Court of Ohio, the Ohio law schools, and the practicing bar (through its associations) create a Joint Working Group to work together to seek modification or waiver of certain ABA accreditation standards to facilitate experimental law school programs and curricula;
4. The Supreme Court of Ohio, Ohio law schools, and practicing bar (through its associations) work together to create new financial models supporting clinical and other experiential legal education;
5. The Supreme Court of Ohio, through its Commission on Professionalism, develop an electronic database and/or network, and an annual statewide

conference, to facilitate the sharing of best practices and innovative teaching materials among professors at Ohio law schools, especially in regard to courses and teaching materials on professionalism, ethics, and professional identification; and

6. The Supreme Court of Ohio study, and implement if appropriate, alternative paths to licensing new Ohio lawyers, such as: (a) an examination consisting of simulations and application of professional skills; (b) an apprenticeship program; and/or (c) an honors professional practice program.

III. **Recommendations for Integration of Theory and Practice**

- A. **Resolved**, that the Task Force recommends that Ohio law schools, courts, bar associations, and practitioners work together to offer more practical training opportunities to Ohio law students.
- B. **Resolved**, that the Task Force recommends that the Supreme Court of Ohio adopt a rule that requires, prior to taking the Ohio Bar Examination, the completion of a performance experience consisting of either a clinic in law school, a performance externship in law school, or a practice experience through an organized bar association program which involves law school faculty and practicing bar.
- C. **Resolved**, that the Task Force recommends that law students in Ohio law schools be encouraged to develop an abiding sense of professionalism, professional identity, and ethical responsibility throughout their law school career.

To facilitate the foregoing recommendation, Ohio law schools are encouraged to pursue the following initiatives, and similar initiatives and recommendations from the Joint Commission and the Supreme Court of Ohio Commission on Professionalism:

1. Require professionalism training and ethics curricula for law students incorporating practical or practitioner perspectives;
2. Provide opportunities for greater collaboration and interaction between practitioners and professors, such as bar association activities, joint projects (e.g., a summer law professor in residence at a law firm or courthouse), and guest lecturers;
3. Develop teaching materials based on actual legal matters, similar to business school case studies, and encourage participation of practitioners in presenting and discussing these materials especially in the second and third year classes;
4. Incorporate of professionalism, ethics, and professional skills education within substantive courses across the curriculum starting with the first year; and

5. Develop of a system of “portfolios” of law students’ activities during law school, and, especially, of legal performance experiences.

IV. Time Frame for Implementation

- A. Resolved,** that the Task Force recommends that while the recommendations in Section II and III are pending before the Supreme Court of Ohio (or its designated commission, task force, or board) for review, analysis, and promulgation, that the Ohio law schools, practicing bar, bar associations, and courts of Ohio proceed with the immediate and full development of the recommendations outlined in Sections II and III of this Report.

To ensure the full and speedy implementation of the foregoing recommendations found in Sections II and III of this Report, the Task Force recommends the following:

1. The Supreme Court of Ohio (or its designated commission, task force, or board) issue rules implementing, as appropriate, the recommendations found in Section II of this Report no later than August 1, 2010, and ensure that those rules apply to law students graduating from Ohio law schools during and after May/June, 2013;
2. That the Supreme Court of Ohio, the OSBA, the metropolitan bar associations, and the Ohio law schools create a Joint Commission to review annually Ohio’s progress in implementing the Task Force’s recommendations found in this Report and to report accordingly to the Supreme Court of Ohio, the OSBA, and the metropolitan bar associations; and
3. That Ohio’s law schools, bar associations, and the practicing bar first report to that Joint Commission no later than June 1, 2010, on how each is acting to implement the Task Force’s recommendations found in this Report.

Appendix

Exhibit A	Roster of the Task Force
Exhibit B	Subcommittees and Charges
Exhibit C	Charge and Report of the Practical Applications committee
Exhibit D	Charge and Report of the Externship and Internship committee
Exhibit E	Charge and Report of the Bar Examination committee
Exhibit F	Executive Summary of Carnegie Report
Exhibit G	Executive Summary of Stuckey Report.

Separate Statement

I join the Task Force’s report except for recommendation III.B. That recommendation concerns me for several reasons, two of which I note here. First, the proposed mandate is likely to increase costs for law students. The Carnegie and Stuckey Reports acknowledge the substantial financial costs of expanding well-supervised clinics and externships; our own subcommittee reports note the same challenges. Unless the initiative described in II.A.4 (creating new financial

models for clinical education) succeeds, the mandate in III.B is likely to raise tuition costs significantly for law students.

Second, the Task Force does not define “performance experience,” and I am not sure whether that phrase allows the bar and law schools to continue developing the best professional training for our graduates. Medical students gain much of their clinical training by completing well constructed simulations and shadowing doctors; they, like many other professionals, complete the “performance” part of their training primarily after graduation and while paid members of the workforce. Pre-degree externships include performance, but they often lack the supervision and feedback that education researchers agree are essential to mastering professional skills. Unless the “performance experiences” recommended in III.B include simulations, shadowing programs, and other forms of experiential education, the recommendation may force schools and students to favor externships over other forms of training that are more effective in developing professional expertise.

If the Supreme Court adopts recommendation III.B, my concerns could be reduced by:

1. Requiring completion of the performance experience before admission to the Ohio bar, rather than before taking the Ohio bar examination.
2. Specifying that applicants may satisfy the requirement through experiences that earn academic credit, appropriately supervised pro bono work, *or* appropriately supervised work for pay.
3. Clarifying that experiences satisfying this requirement could include externships with judges, government agencies, and other employers who offer valuable professional training without serving clients directly.
4. Acknowledging the role of well constructed simulations, shadowing programs, mentoring relationships, and other forms of experiential learning in providing appropriate “performance experiences.”
5. Directing the Joint Commission, within two years after implementation of the recommendation, to issue a report detailing the economic and educational impact of the recommendation on law students and recent graduates.

Respectfully submitted,

Deborah J. Merritt
James M. Klein

Appendix A

TASK FORCE ON LEGAL EDUCATION

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Legal Education Task Force Report Appendix

Exhibit B Subcommittees and Charges

Exhibit C Charge and Report of the Practical Applications committee

Exhibit D Charge and Report of the Externship and Internship committee

Exhibit E Charge and Report of the Bar Examination committee

Exhibit F Executive Summary of Carnegie Report

Exhibit G Executive Summary of Stuckey Report

SUBCOMMITTEE ASSIGNMENTS

I. Practical Applications in the Classroom: Chair, Deborah J. Merritt.

Curriculum changes to ensure that legal practice skills are integrated throughout all law school classes.

- a. (Subset) Curriculum changes to ensure that legal ethics and professionalism are taught and integrated throughout law school classes.
- b. See notes below at asterisk.

- 1. Nicole VanderDoes
- 2. Katherine Chappellear
- 3. William Harsha
- 4. Patrick Fisher
- 5. Michael Distelhorst
- 6. Shirley Mays

II. Internship/Externships: Chair, David Patterson

Curriculum changes and bar support to ensure that all students have mandatory externship/internship.

- a. (Subset) Curriculum changes and bar support to ensure that as many students as possible are exposed to simulated or actual legal clinic work while in law school.
- b. (Subset) Internship requirement occurring post-graduation.
- c. See notes below at asterisk.

- 1. Geoffrey Mearns
- 2. Kenneth Margolis
- 3. James Klein
- 4. Maria Crist
- 5. Jason Dolin

6. Jessica Emch
7. Nicole VanderDoes
8. Robert Ware

III. **Ohio Bar Examination:** Chair, Martin Belsky

Changes to the bar exam such as different or fewer courses tested, giving test at end of second year, etc.

- a. (Subset) Adding Family Law back into the Ohio bar exam.
- b. See notes below at asterisk.

1. Lee Ann Ward
2. Michael Morrison
3. Louis Bilonis
4. David Crago
5. Dennis Honabach
6. Douglas Cole

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***Each group to consider the following, if applicable:**

- A. Best practices (in other law schools, in other states, outside of the U.S., by other professions).
- B. Other schools'/states' experiences with this option.
- C. Effect on students' finances.
- D. Effect on students' loans.
- E. Effect on bar examination.
- F. Effect on law school accreditation by ABA.
- G. How to implement suggested changes?

H. Possible Ohio Supreme Court rule changes.

I. What about Ohio students to other states?

J. What about outside students/practitioners coming into Ohio?

Recommendations from the Subcommittee On Practical Applications in the Classroom

Our subcommittee agrees with the Carnegie Report, Best Practices Report, and our own Task Force discussions: We have an opportunity to make legal education deeper, richer, more engaging to students, and more responsive to clients. Key improvements would:

- Introduce students to professional identity, ethics, and client contact starting in the first year of law school.
- Integrate these experiences throughout all three years. Law students, unlike their counterparts in other professions, have limited contact with clients or their multi-dimensional problems. That isolation reduces students' ability to solve complex problems and think creatively. To practice law at the most sophisticated levels, students must learn both to *think like lawyers* and to *respond to clients*.
- Educate students to exercise independent professional judgment. Responding to clients does not mean facilitating every client wish; lawyers base their counsel on independent judgments bound by law and ethics. Law students should begin mastering that difficult task before graduation.
- Rely more extensively on simulations, shadowing, mentoring externships, and clinics to prepare students for law practice. Didactic instruction has limited ability to teach the full range of complex skills that lawyers use.
- Make greater use of statutes, regulations, transactional documents, mediated agreements, and other materials that characterize contemporary law practice. Legal education relies too heavily on appellate opinions to teach students the law.

Although we are enthusiastic about improving legal education in these ways, our recommendations also try to account for several significant constraints:

- Law practice is very diverse, and students frequently shift career goals while enrolled in law school. Individual schools, therefore, must meet a wide range of student interests and employer demands. Although all employers show some support for the goals identified above, they prioritize educational experiences differently. Law schools have limited resources to respond to these diverse demands.
- Excellence in law practice, like mastery in other fields, takes time to develop. Even the best designed law school curriculum cannot produce a fully developed professional in three years. We need to set realistic expectations for what students can accomplish in three years and what schools can deliver during that time. Professional education should focus on (a) helping students acquire basic competence in the skills and knowledge they need to

function as lawyers, and (b) teaching the tools that graduates will use to continue developing those competencies.

- Expanded reliance on clinical training, shadowing, mentoring externships, and other forms of experiential learning will require significant time/financial investments from both law schools and practitioners. Academics may have to develop new teaching materials and pedagogies; practitioners may need to learn new mentoring skills and workplace routines. High-quality clinical learning imposes significant costs on both classroom educators and practitioners.
- The economy is suffering a severe recession; this is a difficult time to impose new costs on law schools or practitioners. At the same time, we need to be particularly careful that we don't impose any new costs on students and novice lawyers. Law school tuition is already high, graduates already carry significant debt loads, and recently hired workers are suffering disproportionately from layoffs.
- Statewide regulation can effectively foster some types of change, but not others. Especially during a time of rapid market shifts, we need to choose regulations and incentives carefully. We offer some recommendations—such as those related to the bar examination—that would have to be adopted by the Supreme Court of Ohio. Other innovations might be fostered through statewide incentive programs or academic/bar partnerships. Still others are recommendations that individual schools or practitioners might choose to follow, but that are inappropriate for mandates.

We report below 30 recommendations related to (a) the bar exam, (b) upper level courses, and (c) first-year courses. We realize that it would be impractical to implement all of these recommendations. In fact, some of the recommendations offer alternative means of achieving similar goals. We viewed our role as partly a brainstorming one, so we forward all of these ideas for consideration by the Task Force, OSBA, Supreme Court of Ohio, law schools, and practitioners.

Recommendations Related to the Bar Exam

The bar exam should reflect the competencies that the profession believes are basic to practicing law. In addition to identifying applicants who hold those competencies, the exam sends a strong signal to law schools about what the profession values. Even if professors don't "teach to the test," they respond to those signals.

Much of the current bar exam tests memorized doctrinal principles. The multiple-choice MBE and MPRE questions require relatively little problem solving, critical thinking, or professional judgment. Instead, these portions of the exam require students to spot doctrinal or ethical issues and to recall from memory the applicable principles. Even the 30-minute Ohio essay questions require primarily issue-spotting and doctrinal recall. The 90-minute MPT exercises come closest to testing the full range of skills that we associate with legal competence:

defining problems, synthesizing legal principles, applying those principles to the facts, and addressing a client problem.

Since the bar exam tests almost exclusively doctrine, it is very difficult to persuade professors to teach less doctrine and more professional skills. Even for professors who claim to ignore the bar exam, or who teach in fields outside its reach, the exam's doctrinal focus sends a strong signal that the profession values doctrinal learning over all other goals. To change legal education, we need to change the bar exam.

1. Reduce the subjects tested on the Ohio essay portion of the exam. If possible, narrow those subjects to those tested on the MBE and MPRE.

Rationale: Law students spend too much time studying doctrinal subjects and memorizing principles within those areas. Professors, similarly, believe that doctrine matters more than other forms of professional preparation. To encourage a more balanced course of study, including more clinical experiences, simulations, problem courses, writing practice, and skills training, we need to reduce doctrinal pressures. The MBE and MPRE subjects represent an appropriate core of fundamental doctrinal principles for testing. Even if we disagree with the particular choice of subjects on those exams, it is very difficult for one state to modify the national exam; the best course for Ohio is to narrow our topics to those covered by the national exam.

Note that reducing the number of essay subjects will not inflate Ohio's bar passage rates. Like other states, Ohio keys the pass rate for each exam to that group of test takers' performance on the MBE. Reducing the number of subjects tested on the essay portion of the exam thus will not significantly change the pass rate. Instead, this reduction will allow us to make the essays more like the MPT questions—a change we discuss further in the next recommendation. It will also encourage students to devote more of their legal education to skills training.

2. Increase the percentage of the bar exam devoted to the MPT or similar exercises. Exercises like these might entirely replace the current essay portion of the exam.

Rationale: The MPT, which asks applicants to address issues raised in a hypothetical client file and to produce a document appropriate to the problem, most closely parallels the work that lawyers do. If we want students to acquire problem-solving skills, we should test them on those skills. Converting the Ohio essay questions to MPT-like problems (whether developed within Ohio or taken from an expanded national test) would better test applicants' ability to work effectively as lawyers. This change would also encourage development of additional problem-solving, client-focused courses in law schools—a trend that has already started, but that could increase.

These MPT-like questions would not be easier than those currently posed on the essay questions. On the contrary, they would require students to engage in more analytic

thinking, synthesizing, and problem solving. The difference is that these questions would test a more complete range of lawyering skills, rather than focusing on memorization of detailed rules from a large number of distinct practice areas.

3. Alternatively, replace some or all of the bar exam with selected simulations in which students demonstrate proficiency in a range of professional skills.

Rationale: Drafting and grading the bar exam requires significant financial resources; studying for the exam similarly absorbs significant time and expense. In addition to the money invested by bar examiners, applicants spend thousands of dollars to take the courses needed to help them memorize principles tested on the exam. Applicants have *studied* most of these principles during law school; they purchase expensive bar review courses because they need to *memorize* all of these principles to display on the exam.

If bar examiners could add the substantial resources students currently spend on bar review courses to the money that examiners currently devote to exam preparation and grading, examiners could provide much better assessments of lawyer competency. The assessments, moreover, would provide more meaningful educational experiences for the new lawyers themselves.

During the months after law school graduation, bar applicants could enroll in several simulations that require them to perform real lawyering tasks. The simulations, like real law practice, would rest on basic doctrinal principles taught in law school. But these simulations would allow students to consult resources, as real lawyers do; they would not demand detailed memorization of hundreds of doctrinal rules. Students would not succeed in these simulations unless they possessed a basic understanding of Torts, Contracts, Evidence, and other basic subjects from their law school courses, but they would not need to recall detailed UCC provisions or evidentiary rules from memory.

Most important, the simulations would require students to engage in tasks like client counseling; interviewing; negotiating; explaining conclusions to a colleague; advocating arguments to a decision maker; drafting documents; and writing memos, briefs, and other products. In addition to completing one or two basic simulations, students could choose one or two experiences focused in a particular practice area.

These simulations would be more expensive to administer than current exams, but applicants would be willing to pay much more for them. The aim is to shift dollars spent on bar review courses and other parts of the ever-growing bar preparation industry (including dollars that law schools increasingly allocate for this purpose) to more meaningful evaluation. The evaluations, moreover, could be done with more detailed feedback than a simple “pass” or “fail.” Although examiners would not publish more detailed scores, they could share feedback with the examinees during the simulations and through any written scoring. The test could contribute some learning value to the applicant rather than serve solely as a licensing hurdle.

These simulations are a condensed version of the New Hampshire honors program described below. Note, however, that they could rely entirely on evaluation controlled directly by bar examiners. Professors might contribute substance to the simulations, as they currently consult on bar exam questions, but bar examiners and practitioners would evaluate applicants (as they currently grade exam answers).

4. Any changes in the bar exam should NOT increase the total amount of time or money devoted to bar preparation or testing.

Rationale: The simulations described above would increase the amount of time and money that applicants spend on assessment sessions, but they would replace substantial amounts of time and money that applicants currently devote to bar review courses. The “bar exam” currently consists of three days of testing (including the MPRE, which applicants take separately from other parts of the bar) and two and a half months of intensive preparation. Those burdens are already heavy. Whatever changes we make in bar examination or licensing requirements, we would not want to increase these overall burdens. Any additions should replace current components of the system.

5. Create an Honors Professional Practice Program Alternative to the Bar Exam (like the one adopted in New Hampshire).

Rationale: Students who participate in a rigorous honors curriculum focused on professional practice, and who document their abilities through a series of exercises documented in a portfolio, ably demonstrate proficiency to practice law. Exercises completed in programs like this are more comprehensive than those completed in a 90-minute MPT exercise or other portion of the bar exam. In addition to providing an appropriate means of testing professional competence, these programs have a spillover effect for other students: They maintain commitment to high-level simulations, clinics, and other professional practice courses at law schools, creating opportunities even for students outside the honors curriculum. Other states are considering adoption of programs like the one in New Hampshire. If Ohio acts ahead of other states in creating these programs, we will attract highly qualified students to the state’s law schools and encourage highly qualified law graduates to remain in Ohio.

Note that bar examiners, judges, and practitioners could participate in assessments conducted during an honors program of this type. This would assure that schools maintain rigor in these programs.

This type of program could also serve as a pilot way to explore more expansive changes in the bar admission system. I.e., if this type of program succeeds for a small group of students at participating law schools, it could pave the way for the full simulation exams described above.

6. Create an LLM Professional Practice Alternative to the Bar Exam.

Rationale: Some observers have suggested increasing law school to four years, with the final two years devoted to clinical rotations as in medical school. Others have proposed requiring all bar applicants to complete a year-long apprenticeship after law school and before being admitted to practice. We view both of these options as economically impractical, given the cost of law school, mounting debt obligations, and typically low salaries for apprentices. For law graduates who want a year of supervised professional practice, however, and for employers who would like to hire lawyers with that additional training, we think it would be feasible to create LLM programs focused on professional practice. We discuss this option in further detail below. In addition to giving enrollees advanced training, successful completion of one of these programs would demonstrate legal competency at a level supporting bar admission. Participants in these programs, like those enrolled in the honors programs described above, would complete a series of professional experiences and exercises documented through portfolios. If those were completed with at a required level of excellence (which could include review by statewide bar examiners), that should satisfy admission to the bar.

7. Create an Apprenticeship Option for Bar Admission.

Rationale: For the reasons stated in the previous paragraph, we see a mandatory apprenticeship program as economically unworkable or unfair; for many new lawyers, it may also be unnecessary. But apprenticeships completed after law school graduation, under sufficiently rigorous guidelines, and with close oversight, could offer an alternative path to bar admission. As with the previous suggestions, this option would demonstrate the bar's commitment to professional problem-solving and other practice skills as the core of lawyer competence. Only a small number of lawyers might elect this time-consuming and expensive option, but the model might have ripple effects on the practice: It would involve some senior lawyers very directly in mentoring and apprentice supervision, and it would remind all lawyers of the value of apprentice-like relationships.

8. Reduce the imbalance between litigation and non-litigation practices on the bar exam.

Rationale: Much of legal education, explicitly or implicitly, focuses on courtroom litigation. Most doctrinal courses use appellate opinions as the primary source of information, and a preponderance of skills courses and clinics focus on litigation-related skills. The bar exam perpetuates this bias in numerous ways. E.g., evidence is one of just six MBE subjects, and the other five subjects draw from first-year courses focused almost exclusively on appellate opinions. For bar applicants who plan to practice in transaction or counseling focused fields, this imbalance is particularly unfortunate; it distracts them from acquiring competencies most relevant to serving their clients. But even for lawyers who practice in litigation-heavy fields, the tilt focuses students on competencies like appellate

brief-writing, appellate arguments, and trial advocacy rather than client counseling, fact analysis, negotiation, and alternative forms of problem solving. Reducing the “litigation tilt” in professional preparation would improve the education of all lawyers.

Changes in the bar exam alone are unlikely to fix this problem. At the very least, however, we recommend addressing this problem when implementing any of the above recommendations. E.g., MPT-like exercises should include settings and skills outside litigation; honors practice programs should offer transaction, ADR, and other “non litigation” options; schools should strive to create LLM professional practice programs for a variety of practice tracks; and apprenticeship programs should actively seek mentors in both litigation and non-litigation practices.

9. Work with national bar examiners to reduce the scope of topics tested within subject areas.

Rationale: We examined the topic outlines for subjects tested on the MBE and found them very broad. Few, if any, first-year courses cover all of the topics tested in these areas. The doctrinal principles tested in each area seem to range beyond foundation principles and into practice specialties. To learn the material tested in each MBE subject, students often have to take at least two law school courses, the required first-year one and an upper level one. This intensifies the pressures to memorize doctrine rather than develop more fully as a professional during law school.

10. Lead other states on bar exam practices.

Rationale: States often worry about deviating from nationwide bar exam practices; they fear creating an exam that is too easy compared to other states. This is a time, however, when innovation and leadership will pay off. Given the increasingly cross-jurisdictional nature of law practice, states are likely to join together in a national bar exam within the next 5-10 years. If Ohio leads the way with innovative approaches during the next few years, we can gain significant attention and respect from other states. In addition, if we create a system that tests new lawyer competencies better than the exams used in other states, we will strengthen the competitive position of our current practitioners. Clients increasingly rely on lawyers in multiple states to fill their legal needs. If Ohio leads the way in developing lawyers who meet those needs, our practicing bar will benefit.

Recommendations Related to Upper Level Courses

Although we believe that an invigorated, more client-focused form of legal education should start in the first year, we start by outlining proposals for the upper level; many of these provide context for our first-year recommendations.

We focused on three overriding problems in second- and third-year law courses. First, these courses lack an engaging, effective, and distinctive pedagogy. As the Carnegie Commission recognized, legal education's "signature pedagogy" is the case method. But that method works most effectively in the first year; a steady diet of appellate opinions produces diminishing returns in the upper level. Second- and third-year courses need new pedagogies that are as effective and esteemed as the first year's "signature" method. Professors are starting to develop these pedagogies; we want to stimulate those efforts and increase their presence.

Second, at least for some students, the upper level years fail to provide an effective bridge between 1L study and the early years of law practice. The nature of this transition differs depending on practice area and the individual student's needs; one size won't fit all. But it is important for students to feel that upper level contributes meaningfully to their professional development. This upper level progression, moreover, should help students plan for continued development throughout their early years of practice.

Third, these years should build on the first year to develop more sophisticated approaches to professionalism and legal ethics. We should integrate these experiences more fully into students' upper level study, building a strong foundation for continued growth as practitioners.

11. Create a template for a "Competencies for Law Practice" portfolio. The template would identify a large number of skills, knowledge, and experiences that prepare students for law practice. Students could use the template to identify competencies important to their personal goals, and could record steps taken toward achieving those competencies. They could also use portions of the portfolio to demonstrate competencies to employers; these "external" parts of the portfolio would include writing samples, drafted documents, videotapes, and other summaries of a student's work. Employers could use the portfolios directly in hiring; they could also signal to students the competencies that are particularly relevant to their particular field or organization.

Rationale: Competency-based portfolios will help students document their progression in the upper level years, creating a bridge between law school and practice. These portfolios will also help students identify and seek skills, experiences, and knowledge that contribute to effective lawyering. Equally important, students using the portfolios will start to understand the ongoing nature of professional development and the need for each lawyer to assert control over his/her own development.

We found that law schools offer an increasingly diverse array of upper level courses, including clinics, externships, simulations, and innovative practice-based courses. We see portfolios as a way to organize diverse upper level offerings, and to assure that students and employers consider a full array of competencies, without forcing a single model on everyone.

We also believe that portfolios will form a particularly effective way to spur continued innovation in the law school curriculum. As explained further below, portfolios are

flexible, they adapt readily to changing circumstances, and they focus on skills or knowledge rather than course units. Professors, therefore, can incorporate a new skill or experience into an existing class without developing an entirely new offering.

What would a portfolio look like? The portfolios would be electronic templates with categories like (a) mastery of fundamental doctrinal principles, such as those covered in first-year courses; (b) acquisition of knowledge about more specialized doctrinal areas; (c) instruction, experience, and feedback on a range of written products; (d) instruction, experience, and feedback on a variety of lawyering tasks (e.g., client counseling, interviewing, fact gathering, negotiating, contract drafting); (e) grappling with ethical and professional issues; (f) critiquing the law and offering reform proposals; (g) exposure to international clients or legal issues; and (h) acquisition of basic accounting, statistical, or other tools that assist lawyers. These are just examples; one advantage of the portfolio approach is that students, schools, and employers can add new categories as practice evolves.

Within each category, students would record relevant experiences and achievements. The template might suggest steps that students commonly take to pursue a particular competency, but students would be free to document other means. The portfolios would integrate students' curricular work with their achievements in the workplace, extracurricular activities, and community groups; a student, for example, might document client counseling experiences from all of these sources. The portfolios would also allow students to record multi-faceted classroom experiences. A course on Mergers & Acquisitions that included a simulated negotiation, for example, would allow students to record both study of that doctrinal field and completion of the negotiation exercise. This aspect of portfolios encourages the development of new pedagogies across the entire upper level curriculum.

No student would complete every competency during three years of law school. On the contrary, the portfolios would help students realize that professional development is a long-term, ongoing process. Students, however, could consult academic advisors, career service counselors, and potential employers about the competencies most relevant to their personal development and career goals. The student portfolios could also dovetail with development guidelines offered under the OSBA's mentoring program or an individual employer's professional development program; this would aid long-term development.

At this point, we view portfolios as a voluntary tool that students could adopt, although individual law schools or employers might ultimately require them. Individual schools might create portfolios on their own, but collaboration could establish the concept more quickly and cost effectively. Steps to develop this concept include:

- A. An OSBA working group could develop an initial template for statewide use.**
- B. The Bar Foundation could fund a team of practitioners and professors to design a template.**

C. Funding by the OSBA, Bar Foundation, or some other central source would be especially useful to develop the software supporting portfolios.

- 12. Create student Professionalism/Ethics Journals.** In these journals, students would record professionalism or ethics issues raised in doctrinal courses; experienced in the workplace; and encountered in clinics, externships, or simulations. In addition to noting these issues, students would record how the issue was discussed or resolved by others, as well as their own assessment of the issue and resolution. The journals might be part of the portfolios described above, or they could stand apart. They might be mandatory or voluntary. One way to encourage use of the journals would be to offer third-year students one academic credit for maintaining these journals throughout law school. Those third-year students could also attend 2-3 small-group discussions with faculty or practitioners at which they would discuss a few of the issues encountered by students in the group.

Rationale: The journals would encourage students to look for professionalism and ethical issues in all of their law school classes and workplace assignments. They would also encourage both faculty and practitioners to identify and discuss these issues. Since students would produce a written record of professionalism/ethics issues they had discussed with others, we could track how frequently those discussions occur. This would help spread consideration of ethics and professionalism throughout the curriculum and workplace.

- 13. Encourage expansion of clinical programs; collaborate to create new financial models supporting clinical education.**

Rationale: Clinics offer significant opportunities for students to develop as lawyers. In clinics, students address real-client problems; at the same time, instructors are available to provide substantial mentoring and instruction. Clinics thus provide opportunities that neither doctrinal classes nor post-graduation practice consistently offer in such depth.

These assets, however, make clinical education very expensive. In many professions (like architecture, accounting, and elementary/secondary education), clinical instruction occurs after graduation or in the field, with practitioners bearing the instructional costs for the students or new professionals. Similar costs occur when medical and other health science students perform clinical work outside university-based hospitals; office practitioners provide feedback and mentoring to those students. When clinical education occurs in the field, the costs for practitioners are substantial: One study of doctors found that, on average, office practitioners devoted an extra 30 minutes of unbillable time to each day that they supervised a medical student; these doctors averaged 30 days/year supervising students.

In-school clinics impose few costs on practitioners (unless they compete for paying business), but they require funds to pay faculty and support the office infrastructure for a legal practice. In medicine, significant funds for in-school clinical training come from

patient insurance, Medicaid, Medicare, and Veteran's Administration benefits; the medical school clinics receive reimbursement for patient care from these sources. Law practice, unfortunately, includes very few pre-paid insurance plans and enjoys very little government support. The costs of in-school legal clinics, therefore, are borne primarily by students paying tuition. In the current economy, with declines in state funds, private giving, and endowment interest, tuition increasingly will provide the sole source for new programs of any type.

Faced with these realities, we recommend expanded clinical opportunities; ideally, every law student would have the opportunity to take a full-semester clinic before graduation. But we have to couple that recommendation with one for the academy and profession to collaborate in finding new financial models to support clinics. If bar requirements and employer expectations change, law schools may be able to shift some resources from classroom doctrinal instruction to clinical education. But those prospects are limited; law school faculties are relatively small. The medical school financial model is not available to law schools, because we cannot draw upon private insurance or government resources to reimburse client care. To succeed, enhanced clinical education may have to demand more from practitioners, either as supervisors or financial collaborators.

14. Develop “mentoring externships.”

Rationale: Externships offer an alternative to clinical instruction. In externships, students typically provide free services for an employer, while receiving workplace experience. At their best, externships offer a cost-effective way for students to learn hands-on practice skills. Law practice, however, is a demanding profession that has faced escalating economic pressures during the last two decades. In this environment, it has been hard for some employers to provide the opportunities and feedback that offer the most educational benefit to students serving externships. At their worst, poorly structured externships require students to pay tuition while performing unpaid clerical or paralegal work that offers them few educational experiences.

To assure worthwhile externships, we could create a new model of “mentoring externships.” These externships would focus on the mentoring that the employer provides to the student, rather than the unpaid work that the student offers the employer. Supervisors accepting students in these programs would receive training in mentoring; law schools could bear the cost of those programs. Externs and supervisors would identify specific skills and experiences that the extern would receive; these goals might appear in the portfolios identified above. Externs could also provide useful unpaid work for supervisors, but the externship would have to provide clear professional development for the extern in return. CLE credits might compensate supervisors for some of their mentoring time, analogously to the CLE credits given mentors for new lawyers.

15. Facilitate more widespread use of shadowing programs.

Rationale: Law schools make relatively little use of shadowing as a learning tool; this differs sharply from medical school, where medical students spend significant time shadowing the work of residents and attending physicians. Although “shadowing” suggests a relatively passive role for student-observers, the activity can produce more pedagogic payoff than traditional externships. A shadowing program requires the practitioner to include the student in his/her professional activities and to share insights about those events. Steps to support development of shadowing programs include:

- A. OSBA could help identify a core group of lawyers committed to working with law students in shadowing programs.**
- B. The Bar Foundation could fund a small team of professors and practitioners to develop a framework and materials for shadowing programs.** An effective program would include orientation materials for both practitioners and students, guidelines or checklists to structure the relationship, and a way of collecting feedback from both students and practitioners. Developing these materials collaboratively would benefit all Ohio/Northern Kentucky law students.
- C. This design team should address confidentiality issues, developing clear instructional materials for students.** The team could also develop a “swearing in” ceremony, to be used by schools before students participate as shadows. The ceremony would reinforce professional standards and, like the “white coat” ceremony in medical school, serve as a marker of student’s progression.
- D. CLE credit should be available for practitioners who participate in the program.**
- E. OSBA could help develop a system-wide response to liability concerns:**
Practitioners may worry that their malpractice insurance won’t cover student shadows. Could law schools cover student shadows through their liability insurance? If not, what other options are available?

16. Explore expansion of student licenses to include second-year students, at least for some types of legal service.

Rationale: Some states offer limited licenses to second-year students. Expanding availability of these licenses in Ohio would give second-year students more options in clinics, externships, and shadowing programs.

17. Support development of alternative teaching materials for the upper level, including case studies like those used in business schools.

Rationale: The upper level needs new pedagogic approaches and materials. Professors continue to rely on appellate opinions and the traditional case method in part because they lack other materials. And, since appellate opinions form the basis of law's "signature pedagogy," professors are reluctant to depart from that gold standard. Innovations are occurring within law schools, but we need to encourage more use of alternative materials. A few well-considered incentives could expand on that foundation to create a new gold standard for the upper level years.

A. Encourage law schools to create summer grants for development of innovative upper level course materials. Many law schools offer professors summer research grants to support scholarship. If each of our ten law schools agreed to apply one of these summer grants to development of a case study, simulation, or other innovative set of upper level materials, we could generate 50 sets of these materials in just five years.

B. Use Bar Foundation grants to seed development of innovative materials. The Ohio State Bar Foundation could also support development of new materials for the upper level curriculum. In addition to supporting work by professors, the Bar Foundation could offer grants for practitioners who plan to develop materials for courses they teach as adjuncts. Or the Foundation could offer grants to teams of professors and practitioners developing materials together: The Foundation might play a particular role in stimulating those partnerships.

18. Encourage professors to share innovative materials through databases.

Rationale: New teaching materials are time-intensive to create. We should encourage professors to share new materials as widely as possible through electronic databases. Several legal publishers (e.g., West and CALI) recently launched databases that attempt to fill this void. Rather than creating our own database, we should help Ohio professors gain familiarity with these resources.

19. Encourage cooperation between firms/organizations and law schools to offer professional training.

Rationale: Some law firms and other organizations have developed training programs for their new lawyers. These programs may offer particularly efficient training in new-lawyer skills. Rather than reinvent the wheel (especially in areas like transactional practice, where law school programs lag behind), law schools might be able to collaborate with firms to offer these programs to JD students. Some firms may prefer to maintain the proprietary nature of their programs, but others—especially in the current recession—might welcome shared expenses with law schools. Training JD students with new lawyers has the

collateral advantage of exposing students to possible mentors only a few years ahead of them in practice.

20. Identify practice materials that can be used in legal education.

Rationale: Law firms and other organizations produce materials that might be recycled for effective legal education. A firm that conducts a mock trial to test trial strategies, for example, might share the video with law schools. Memos, briefs, contracts, and other materials likewise offer significant educational benefits. Practitioners obviously must protect the interests of their clients, but finding ways to use practice materials in law schools would offer significant benefits to students. One reason that professors rely so heavily on appellate opinions is that these materials are readily available for classroom use.

21. Explore potential use of CLE programs in law schools.

Rationale: Bar associations and other groups produce a large number of CLE programs each year. Some of these programs might offer suitable training experiences for law students—especially for a generation of students accustomed to learning through video, podcasts, and other means. Law schools and the OSBA could identify low-cost ways to offer these programs to students. Although the programs would not carry law school credit, students might pursue some of them to reach particular portfolio objectives; they would enhance the student’s professional development.

22. Explore new types of collaboration between professors and practitioners.

Rationale: Even professors who practiced law for several years can quickly lose touch with practice developments; this is especially true in an era of fast-paced changes. Practitioners, meanwhile, need up-to-date information on doctrinal and theoretical developments. We would like to find new ways for practitioners and professors to collaborate productively. Some possibilities include:

- A. Create CLE small-group workshops focused on case studies.** A small group of professors and practitioners could meet to discuss a case study created in advance by one participant. The workshop would invite each participant to share perspectives, allowing an exchange of practical and theoretical perspectives.
- B. Create “professor in residence” programs at law firms and other organizations.** These programs could range from a single day of shadowing (during which a professor has the opportunity to observe a practitioner’s activities) to week-long, month-long, or longer residencies.

C. Establish professor/practice teams to create new materials for courses. Some of the recommendations listed above (such as identifying practice materials to use in law school courses) could offer goals for productive collaboration. In addition to producing a particular set of materials, professors and practitioners might benefit from related exchanges.

23. Create a Distinguished Society of Professors and Practitioners Dedicated to Professional Development. This society would be analogous to the American Law Institute, with a selective membership, but it would focus on methods for improving professional development (from law school admission through retirement) rather than doctrinal law.

Rationale: This group would support innovation in legal education through workshops, publications, “best practice” guidelines, and other means. The group would define “legal education” broadly to include both pre- and post-JD development. In addition to supporting innovation in law schools, therefore, the group could support new forms of mentoring and professional development in practice. All of these activities would contribute directly to improvements in professional development. In addition, the society would offer recognition to both practitioners and professors committed to excellence in this area.

24. Create LLM or certificate programs that focus on professional skills.

Rationale: As noted above, some observers favor expanding law school to four years and/or creating a mandatory apprenticeship year after graduation. We concluded that, although these options might enhance the quality of professional training secured by some lawyers, the costs of these mandates outweighed their potential benefits. Both options would significantly increase the costs of legal education and bar admission. Other approaches offer greater promise without concentrating new costs on those least able to bear them.

On the other hand, some students might choose an extra year of professional training and some employers might prefer students with that training. Some practicing lawyers also want to improve their skills or shift to a different type of practice. Law schools already offer many LLM and certificate programs, but most of these focus on advanced work in doctrinal areas. We recommend complementing those programs with advanced study that focuses specifically on acquiring professional skills. LLMs in civil trial practice, transactional practice, business/law problem solving, administrative practice, or other professional practice orientations would offer new options to students and practitioners.

25. Fund statewide conferences on innovations in legal education and professional development.

Rationale: Several organizations already sponsor nationwide conferences on innovations in legal education. We are wary of duplicating those efforts, but see three possible roles for a statewide conference: (1) Some professors are unable or unwilling to travel long distances for conferences focused on teaching. Travel within Ohio is relatively easy. (2) A statewide conference could create ongoing collaborations among Ohio professors, which could benefit all of our schools. (3) A statewide conference could draw together professors *and practitioners* interested in improving professional development. Ongoing collaborations between these professional groups may be easier within the same city or state than on a national level. Relatively few conferences on law school pedagogy, moreover, include practitioners or consider professional development that occurs after law school. Including these components might generate new insights and approaches.

26. Develop a set of “best practices” for law schools.

Rationale: Our subcommittee discussed a number of proposed mandates for legal education and/or bar admission, but encountered serious obstacles to mandates: (1) Considerable disagreement exists over what law students or new lawyers should do to prepare themselves for practice. While many practitioners favor clinics, for example, others advise students to avoid them. Academics similarly disagree about the best curriculum for law students. (2) To some extent, this disagreement reflects variation in practice areas. Some educational experiences seem more suitable for particular areas and organizations than others. Law students prepare for a particularly diverse set of professional experiences. (3) Mandates devote resources to the current perceived crisis, while drawing those resources away from other areas of need. While strengthening externships, for example, we might weaken programs in international law. (4) Mandates create strong vested interests. This may be desirable in the short run, if the mandated programs need strengthening. But those interests, in turn, can hamper future innovation.

Given these concerns, we see the development of “best practices” as more productive than attempts to design new mandates for legal education. Even development of these guidelines might prove overly time-consuming. Both educators and practitioners are very busy; it might be more productive to devote time to the recommendations described above rather than to articulating and refining guidelines. But an ongoing commission of practitioners and academics might be able to develop a useful set of best practices. Law schools could advertise their compliance with the practices; law students and employers could inquire about practices that schools don’t meet.

Recommendations Related to the First Year

Many of the recommendations outlined above would encompass the first year. Portfolios, professionalism logs, best practices, new pedagogies, and other ideas could all begin during the first year. We identify here some special needs or approaches for the first year.

27. Develop professionalism and professional identity from the first day of law school.

Rationale: Many students come to law school with unrealistic beliefs about law practice; others have little idea about how they might apply their legal education. At the same time, our profession is changing rapidly: We are creating new economic models, new types of lawyer-client relationships, and new ways to address client needs. Given these trends, it is more important than ever for students to explore the legal profession itself during their first year of law school.

We are not sure of the best way for schools to structure this learning. Previous attempts to create first-year courses in the legal profession have tended to founder. One problem may be that the case method creates its own sense of professional identity during the first year. Although that identity is a narrow one, it pervades the first-year curriculum; other approaches have difficulty competing.

This is an area in which we might invest in innovation. If the Bar Foundation, a team of law schools, and/or a group of employers could support creative thinking in this area, we might be able to design new programs that would give first-year students a more expansive sense of professional identity.

28. Expose first-year students to clients, practitioners, and/or law practice.

Rationale: Although the first year teaches a large body of classroom material, some exposure to clients, practitioners, and law practice would give students better context for that study. Shadowing experiences could be particularly helpful for first-year students. Schools and practitioners could also work to identify practice experiences (such as client intake at legal aid or public defender programs) that first-year students could handle.

Traditional views of professional education held that students should learn theory first, and perform hands-on work only after mastering that theory. Educators, however, have discovered that this layer-cake approach is not optimal: Integrating theory and practice achieves better learning. Medical schools have followed this advice; they now offer first-year medical students simulated, then real, contact with patients. We should encourage law schools to pursue the same path, giving all first-year students some exposure to law practice or clients.

29. Encourage schools to re-examine the first-year curriculum in light of contemporary students and current law practice.

Rationale: The first-year curriculum has many strengths; we do not envision either its methods or subject matter changing dramatically. But today's students differ significantly from previous generations. Some bring more advanced thinking skills to law school than their predecessors did; they may also think and learn faster than earlier generations. At the same time, law practice is more demanding than ever. To prepare for this practice, today's students must master more material and skills than the lawyers before them. We could fine tune the first-year curriculum to accommodate these changes.

Current students, for example, may tire of the basic case method more quickly than previous generations did. Introducing new materials and methods of instruction during the second semester might enhance their learning. Conversely (and somewhat ironically) today's students might reap more from the case method if they received some explicit instruction in case briefing and other legal methods at the start of law school. Today, it is impossible to insulate students from study aids, how-to-succeed books, and even day-long courses offered by outside vendors. Incorporating top-quality instruction and feedback into the first semester—as law schools increasingly do—would enhance learning and reduce stress.

30. Offer feedback throughout the first year.

Rationale: Effective learning depends on feedback. The limited feedback given to first-year students slows their learning; with better feedback, students could master more skills and knowledge throughout law school. The first year's limited feedback may also deprive lawyers of models for how to provide effective feedback in practice. To promote more effective mentoring and feedback in law practice, legal educators need to model mentoring/feedback skills.

Throughout much of the twentieth century, the Socratic method provided more feedback than many other types of instruction. Compared to college lecture courses with a single final exam, first-year law school courses abounded with feedback: Law courses offered daily interaction between the professor and students. Today, however, first-year law school courses lag behind other educational methods in offering feedback. Today's students are accustomed to significant feedback from educational computer programs, online courses, and the small classes offered at many colleges.

Increasing student feedback is expensive: Unlike undergraduate and master's programs, law schools rarely have doctoral students to serve as teaching assistants. Tenured faculty provide feedback, but those hours cost substantially more than hours purchased from graduate teaching assistants. First-year law school classes, moreover, are quite large. For a class of 75-80 students (typical for a first-year section), most college departments would hire 3-4 graduate teaching assistants to grade papers and offer feedback.

Despite these challenges, we think it is essential for law schools to provide more feedback to first-year students. Computerized instruction, part-time teaching assistants, collaboration among professors (with each offering in-depth feedback to one portion of a shared first-year section), and other methods may address this feedback gap. We encourage schools to explore as many options as possible to increase the amount of feedback during the first year.

Deborah Merritt, Chair
Katherine Chappellear
Michael Distelhorst
Patrick Fisher
William Harsha
Shirley Mays
Nicole VanderDoes

Report of the Internship/Externships Subcommittee

To members of the Legal Education Task Force:

In response to the Subcommittee's charge, Kenneth Margolis identified three possible options for an internship/externship requirement to be fulfilled prior to sitting for the bar exam and posed questions that needed to be addressed. After the options were identified, Maria Crist and James Klein offered several issues for consideration and Jason Dolin offered a detailed vision for Option #2, which is attached Exhibit A.

Options for mandatory lawyering skills training for Ohio bar exam applicants

Each option would include the following components:

1. *Fundamental Skills Training*: A series of required skills and values training courses/experiences in law school addressing *fundamental* lawyering skills – PLUS
2. *Specialized Skills Training*: A variety of elective *specialized* skills training courses or experiences – PLUS one of the three options below.

If a school has a broad enough clinical program involving real clients or performance externship activities that cover a broad enough range of skills and “acting in role” opportunities, these requirements could be satisfied through those programs. (Option #1.) This does not exist currently at any Ohio law school, and due to resource constraints may not be economically feasible in the near future. Assuming such programs do not exist in Ohio, the above training would begin with the use of simulation based courses, and would conclude with clinics, externships or outside practice experiences as in Option #2 or #3:

Option #1:

A required performance experience consisting of EITHER:

- a. A clinic in law school OR
- b. A performance externship in law school

Option #2: (See Exhibit A)

A required performance experience consisting of EITHER:

- a. A clinic in law school OR
- b. A performance externship in law school OR
- c. A practice experience through an organized bar association program which involves law school faculty and practicing bar

Option #3:

A required clerkship experience like Delaware or Vermont with a checklist approach to what applicants must accomplish. This could be satisfied by EITHER:

- a. A clinic in law school
- b. A performance externship in law school OR

- c. A clerkship out in practice like Delaware or Vermont

Questions to be resolved

1. What are the fundamental skills that all law students should be taught in law school?

MacCrate Fundamental Skills:

- a. Problem solving
- b. Legal Analysis & Reasoning
- c. Legal Research
- d. Factual Investigation
- e. Communication
- f. Counseling
- g. Negotiation
- h. Litigation and ADR
- i. Organization and Management of Legal Work
- j. Recognizing and Resolving Ethical Dilemmas

MacCrate Fundamental Values:

- a. Provision of Competent Representation
- b. Striving to Promote Justice, Fairness & Morality
- c. Striving to Improve the Profession
- d. Professional Self Development

2. How much additional specialized skills training should be required?
3. What are the characteristics of a clinical, externship or bar association program that would satisfy the requirements?
 - a. How many hours per week would students be required to dedicate to a internship/externship?
 - b. Would the subject of specialized skills training be broad (general) or narrow (criminal defense)?
 - c. What range of lawyering experiences would be required?
 - d. Would a Rule require real client contact? If so, how much contact would be required?
 - e. Should a Rule include a checklist of required experiences/abilities be developed? If so, would the list be mostly observational or experiential? (See Exhibit B—example of Australian Skills Taxonomy.)
 - f. What level of supervision is required?
 - g. Who should perform the supervision? Should law school faculty provide or on site lawyers provide supervision? Would a combination be more beneficial?
4. What are the characteristics of a bar association/practitioner “apprenticeship” program that would satisfy the requirements?

- a. Who would participate in this type of program and who would coordinate the program?
- b. What incentives can be given to volunteer practitioners to participate?
- c. What measures would be taken to ensure accountability?

Issues for consideration

From: Maria Crist

Thanks to Ken for his draft concerning mandatory lawyering skills training for applicants for licensure in Ohio. I appreciate his hard work in framing the options and addressing the issues that would need to be resolved. I've also reviewed Jason's and Jim's responses, as well as information from Deborah Merritt and her sub-committee's report. Because of the potential obstacles, I'm not in favor of recommending a lawyering skills mandate, without further study of how the mandate would be implemented. Besides the concerns expressed below, a mandate may also create "minimum" standards that might undermine the growth of legal skills education. Among Ken's options, option two would appear to merit further study.

Difficulty defining an acceptable format for lawyering skills training:

In reviewing responses, it seems that genuine disagreement exists as to what is the acceptable setting for "lawyering skills training." Jim suggests that simulation classes are best suited, while Ken suggests that only "performance" courses would be acceptable. I believe that lawyering skills training can be achieved in simulation classes, performance clinics/externships, and even in "observational" externships. Regardless of the format, skillful teachers can create a learning environment where students can develop lawyering skills in any of these settings. I also believe that students can develop lawyering skills while on the job in paid clerkships, although no gauge exists to determine this. The problem we face is that each law school as part of its mission, and in recognition of its available resources, may have very different views as to how best expose its students to lawyering skills training. This difference of views is already emerging as law schools attempt to satisfy the new "professional skills" requirement for ABA accreditation.

Difficulty in defining the skills that would be mandated in lawyering skills training:

As we already know, law graduates seeking Ohio licensure will enter a wide variety of practice settings, each with its unique emphasis on what skills will be needed. For one student, lawyering skills training that emphasizes transactional skills would be more useful than litigation skills. If we are to mandate skills training, then we would essentially be requiring law schools to cover all skills that students might want or need. If the skills are defined less specifically (as in the Australian model), then some could argue that almost any law school course would qualify. Who would decide if a course did not sufficiently address attitudinal, cognitive, communication, or relational skills?

Ken's list of the characteristics of a clinical, externship, or bar association program that would satisfy the requirements provides a great sense of the level of administration that would be necessary. If we could decide what the scope of a lawyering skills mandate would entail, what resources would be needed to insure appropriate oversight? For our own mandatory externship

program at Dayton, we hired two full-time instructors to train and supervise the field supervisors, as well as teach the classroom component and meet regularly with the students.

Need for consistency towards students coming from Ohio or non-Ohio law schools:

I would not favor a rule that only applies to students from Ohio law schools. Regardless of where a student attends law school, the student is seeking licensure in Ohio. The Ohio Supreme Court in its licensure rules establishes what law graduates need to qualify to practice in Ohio. Just because a mandate would be difficult to apply to students coming from non-Ohio law schools, does not mean they should be excused from the mandate. If the difficulty can't be overcome, such an obstacle would also weigh against imposing a mandate. In addition, the committee should recognize that not all students who attend Ohio law schools intend to stay and practice in Ohio.

A related issue would be the need to respect a jurisdiction's student practice rule. If a mandate were to require a "performance" type of skills training, then it would also have to conform to any applicable state practice rules. For example, Ohio's student practice rule¹ limits the type of activity and who can supervise students, and those limitations would necessarily limit the type of performance type skills training that would be available to students. Even if Ohio were to change its rules, other jurisdictions would still have similar restrictions.

Recognition that teaching lawyering skills and doing it well requires extensive planning and resources:

While I recognize the value of skills training and agree that law schools and the legal profession need to do a better job of including those skills within the curriculum, it will take more than a simple mandate. Many of the ideas described in Deborah Merritt's sub-committee report are a step in the right direction. For example, the idea of creating a template for a required "Competencies for Law Practice" portfolio has promise, and its recommendation for increased financial support for clinical programs would be welcome.

¹ Ohio Supreme Court Rules of Practice, Rule II, Limited Practice of Law by a Legal Intern, states in Section 5:

(A) A legal intern may represent either of the following:

- (1) Any person who qualifies for legal services at a law school clinic, legal aid bureau, public defender's office, or other legal services organization that provides legal assistance primarily to financially needy individuals, provided the person obtaining legal assistance from the legal intern consents in writing to the legal intern's representation;
- (2) The state of Ohio or any municipal corporation, with the consent of the official charged with the responsibility of handling or prosecuting the matters or cases that are referred to the legal intern.

In Section 1, only the following attorneys can serve as supervising attorneys:

(B) "Supervising attorney" means an attorney who satisfies all of the following:

- (1) Has been admitted to practice law in Ohio pursuant to Gov. Bar R. I or has been temporarily certified to practice law in Ohio pursuant to Gov. Bar R. IX;
- (2) Is in good standing with the Supreme Court;
- (3) Is either employed by or associated with a law school clinic, legal aid bureau, public defender's office, or other legal services organization that provides legal assistance primarily to financially needy individuals, or is responsible for handling civil cases or prosecuting criminal misdemeanor cases for the state of Ohio or a municipal corporation.

The complete rules are available at: <http://www.sconet.state.oh.us/LegalResources/Rules/govbar/govbar.pdf#Rule1>

From James Klein:

Ensuring access to access to internship/externship opportunities for part-time students

Law schools with part-time evening programs may have difficulty requiring clinical experience for these students. Adequate simulation courses would be a solution to this problem and would allow us to accomplish our goals.

Respectfully submitted,

David Patterson, Chair; Kenneth Margolis; James Klein; Maria Crist; Jason Dolin; Jessica Emch; Nicole VanderDoes; and Robert Ware

EXHIBIT A

March 14, 2009

At the outset, I want to thank Ken for sending out his draft. It provides much food for thought and raises important and necessary discussion points for our subcommittee.

The “Questions to Be Resolved” in Ken’s draft are important and need to be addressed. In my view, however, the best approach is for the subcommittee first to determine if we want a clinical requirement. The vision comes first. The details, significant as they may be, follow the vision and will be worked to meet the vision or at least as much of the vision as can be met.

With that said, I have the following comments.

Clinical Requirement

I would opt for Ken’s Option #2. My view is that the Supreme Court should require that all those taking the bar exam beginning in “X” year be required to take 9 credit hours of any combination of in-school clinic, externships/internships, or in-school practicum. There would need to be some kind of approval or certification process for these courses, but I do not see that as an obstacle to that requirement. Because all law U.S. law schools have clinics and externships, if sufficient advance notice is sent to all law schools (ie: 2 or 3 years before the requirement goes into effect) then the 9 hour requirement should not present an impediment to out of state students.

I suggest 9 hours for the following reasons:

1. Educationally, a Clinical Requirement is the Right Thing to Do. The best educational, scientific, and anecdotal evidence – including the Carnegie and Best Practices Reports - makes clear beyond any reasonable debate that clinical education works and is a significant tool in preparing attorneys to practice. Supervised clinical/externship/internship training is required by virtually all other professions in Ohio and in amounts significantly beyond what I am suggesting here. Carnegie and Best Practices make clear that the status quo in legal education is not a good option if we are to adequately prepare attorneys for future practice. If clinical training is an effective tool in preparing attorneys to practice, then it should be required like any other important law school course.¹

¹ The argument that many students will never practice law at all, or won’t practice in the substantive areas in which clinic is taught, is a straw man. There are a host of required courses in law school. Many students will never practice in the substantive areas of many of these required courses (torts, criminal law, civil procedure (litigation), etc.). Despite that, students are quite properly required by every law school to take those courses because they are an important component of a well rounded and well informed attorney. Clinical courses should be no different.

2. Ethically, a Clinical Requirement is the Right Thing to Do for Law Students. Law students pay high tuition and leave law school with a high debt burden. The job market they face – since well before the current recession – is and was, to say the least, unwelcoming. The job prospects for many law graduates are nothing short of grim. Given the high cost of education and faced with the prospect that many recent graduates may increasingly open their own practices, the least that law school can do is attempt to prepare them to practice. The argument has often been made that law school can't fully prepare students for practice upon graduation. There is little doubt that such is the case, but it should not prevent us from trying to *better* prepare them. We should not let the perfect drive out the good.
3. Ethically, a Clinical Requirement is the Right Thing to Do for the Public. Given the increasingly grim job market and the corresponding increased likelihood that many students will start practicing on their own, legal education owes it to the law consuming public to better prepare new attorneys for practice. The public pays significant tax dollars for our courts, judges, prosecutors, public defenders, and other aspects of our legal system. Further, and significantly, public tax dollars subsidize the compensation of law professors and the budgets of law schools at the five publicly funded law schools in this state. Our profession serves the public and our law schools, especially our publicly funded law schools, serve a public purpose. As a simple matter of consumer protection, we should not be granting licenses to practice where the graduate has received no mandated training in how to practice.
4. There is sufficient room in the curriculum to allow for a 9 credit clinical requirement. As part of her subcommittee's work, Deborah Merritt conducted a study at Moritz where she reviewed 50 student transcripts to determine the type of courses taken by the average Moritz student. After concluding that analysis, she said the following:

The average Moritz student completes 44 credits of work in bar subjects (25 required and 19 elective); 16 credits of professional practice/skills courses (5 required and 11 elective); 2 credits of a seminar that requires a substantial research paper; and 3 credits of work for a law journal. That totals 65 credits out of 88 required for graduation.

She then discussed some of the other courses that students took to make up the balance of the 88 credits. Her study demonstrates conclusively that there is room in the curriculum for a 9 credit hour clinical requirement.

5. The 9 Credit Hour Requirement is Significantly Below that Required by the Other Non-Medical Professional Programs in Ohio. The 9 credit hour requirement is a fraction of the clinical/externship time required by virtually all other licensed

professionals in Ohio and, based upon what is required in other professions, we should require significantly more training than that.² No one – not one person – on our committee, in any of the literature I have read on this, or in any of the meetings I have held on this matter over the last several years, has even attempted to argue that clinical training is unhelpful, ineffective, or pedagogically unsound. Indeed, Carnegie, Best Practices, and virtually all of the scientific and educational literature in this area clearly show that clinical training is effective. Pedagogically and, in my view, ethically a clinical requirement is the right thing to do.

The problem, many say, is cost.

Costs of Clinical Training

Complaints that clinical education should not be required because it is too expensive have been heard over the years, most recently in the wake of the MacCrate Report.³ There is no question that the personnel costs of clinical education are, in

² For example before being able to sit for their respective licensing examinations, social workers require 6 clinical hours and 400 clock hours of supervised practicum or field experience; pharmacists require 1,500 documented clock hours of supervised practical experience; psychologists require substantial training which includes at least 1,800 clock hours of work in one calendar year; professional engineers require at least 4 years of practical experience; architects require 700 training units with each training unit being the equivalent of 8 hours of acceptable activity in a given training area.

³ An article that appeared in the Clinical Law Review in 2001 discussing the tenth anniversary of the MacCrate Report, brings a sense of perspective, if not a certain sense of déjà vu, to current objections to clinical requirements. In that article Russell Engler discusses the reaction to the MacCrate Report shortly after it was issued.

The MacCrate Report became a lightning rod for discussion, strategizing and critique both inside the world of legal education and in the profession as a whole. Following the Report's publication, a steady stream of conferences focused on the Report, as well as on the teaching of skills and values in general. Both the American Bar Association (ABA) and the Association of American Law Schools (AALS) dedicated considerable energy to the Report, its recommendations and the reaction triggered by the report.

The discussions around the country were soon accompanied by scholarly articles involving descriptions, analyses and critiques of the Report and its recommendations. The trickle of law review articles that began to appear in 1993 became a flood by 1994. Law reviews published individual articles and symposia dedicated to issues raised by the MacCrate Report.

The earliest scholarly responses included a scathing critique from Dean John J. Costonis. Dean Costonis excoriated the Report for “essentially ignoring the most visible impediment to its implementation: the costs of its recommendations and the trade-offs that must be struck.” ...

Other law school Deans joined Dean Costonis in his critique, most notably through a “Dean's letter” co-signed by fourteen law school Deans. The Deans' Letter explicitly opposed use of the accreditation process in its implementation. As part of their critique, the Deans fought back directly at clinicians, citing the costs of clinical legal education, the dangers of using the accreditation process to push skills training and clinical legal education, and the flaw in any strategy that might use the MacCrate Report to enhance the status of clinical teachers....

Law School Deans were not the only group that produced critics of the MacCrate Report. Inside the law school, non-skills teachers also worried about the restrictions on academic freedom and

general, greater than those in large doctrinal classes. Some of the costs are real, others are perceived. Nonetheless, there are ways - few of which have been tried – to reduce the cost of clinical training.

All segments of the legal establishment – practitioners, the institutions of the organized bar, the judiciary, and law schools – bear some responsibility for the current lack of required practical training for law students and, in my view, should bear some of its costs. This will require changes in current behavior by all segments of the bar. Below, I list a few suggestions of steps that can be taken to engage in an equitable cost sharing:

Costs - Law Schools Should Reallocate Resources and Faculty Incentives

It is neither equitable nor realistic to have law schools bear the entire cost of training attorneys to practice. On the other hand, if clinical training is to be required, it is neither equitable nor realistic for law schools to refuse to increase or reallocate the resources that they devote to that training. If clinical education is required, it will be necessary for law schools to examine and modify the manner in which they allocate their resources – both dollars and human resources – to free up the resources needed to implement the clinical requirement. This will, no doubt, entail changes in the way things have been done.

Reallocation of Resources. Like practicing attorneys, law schools do not produce a tangible product. Instead, like practicing attorneys, their primary convertible resource is time (professor-hours). Law professors produce significant amounts of legal scholarship, most of which appears in law reviews or other scholarly journals. Given the multitude of hours that go into this scholarship, it is costly to produce and according to citation counts and anecdotal information is of limited impact (certainly there are exceptions) on the profession and the public. The literature shows that as a general matter this scholarship has taken an increasingly theoretical bent and is largely

re-allocation of resources that would result were the Report implemented. Legal writing and research teachers criticized the Report for failing to elevate the status and role of their field, and teachers of Alternative Dispute Resolution (ADR) critiqued the Report's emphasis on litigation. Outside the academy, bar administration leaders criticized the advocacy of performance testing, and bar association leaders criticized the lack of implementation of the report's recommendations.

Clinical teachers joined in the critique as well, questioning the Report's efforts to set forth a taxonomy of fundamental lawyering skills and values in the first place, but also lamenting “the poor prospects for effective implementation of the MacCrate Report's pro-clinical recommendations” Proponents of in-house clinics worried that the effect of the Report would be to lead to an expansion of simulation courses or externship programs at the expense of in-house clinics. Externship proponents argued that the Report had undervalued the learning that occurs in field placements and exalted a particular form of clinical pedagogy that relied too heavily on top-down, supervisory structures. (citations omitted).

See Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow*, 8 Clinical L. Rev. 109, 116 – 119.

disregarded by judges, the practicing bar, and the public. In short, there is a small return for the large time commitment used to produce this scholarship.

There is an important place in law school, and there always should be, for the production of legal scholarship and nothing in this recommendation seeks to change that. Nonetheless, a more equitable balance needs to be struck between the use of professor-hours to produce scholarship with seemingly little public impact and the significantly more impactful use of those hours to help train young attorneys. A significant portion of those professor-hours can be converted from scholarship hours to training/skills hours.

In order to facilitate that transition, I would recommend that scholarship requirements for tenure and promotion be reduced by a significant percent (to be determined) and that the time that would otherwise be used by faculty for the production of scholarship be converted into training hours. Certainly there may be resistance to such a proposal from some quarters of the faculty who have not practiced and are not comfortable in practice settings. These objections can be overcome, to some degree, by the reallocation of faculty incentives and the manner in which law schools evaluate faculty performance. Some examples:

- a. Tenure and Promotion. In addition to the production of scholarship, law schools can choose to evaluate faculty based upon their work in law school clinics, overseeing student externs, teaching practical skills, or the production of materials for the teaching of practical skills.
- b. Practice Stipends. Instead of traditional research stipends (often given for research over the summer) professors can be given incentives to learn practice. For example, a summer stipend can be given for a professor to work in a prosecutor's office⁴ or attach himself/herself to a private sector law office. Scholarship more useful to practitioners may well result from such experiences. In addition, the knowledge gained through such practice experience will help infuse the professor's classroom with current real world examples.
- c. Teach the Teachers. Those faculty members who don't teach practical courses or clinics can be utilized to "teach the teachers", that is, to train adjunct professors in up to date teaching and student evaluation methods. In that regard, the strengths of these faculty members can be utilized to further the teaching skills of the cadre of adjuncts. In addition, these faculty members can help to develop materials, templates, evaluation forms and other real world practice materials to assist those who teach the clinical or other training courses.

⁴ This was in fact done, when I worked in the Manhattan District Attorney's Office. We had professors from Columbia Law School and Yale Law School spend several months in our office learning about the functions of a prosecutor's office. The same thing could be done with private sector offices.

- d. Adjuncts. Some schools currently use a significant number of adjuncts but there may be accreditation issues regarding the number of adjuncts that a law school may utilize. If that is the case, then I would urge that the Ohio law schools along with their colleagues in other states attempt to influence the ABA regarding the ability to increase and provide training for qualified adjuncts.
- e. Hiring Practices – Practice Experience. In hiring new faculty, law schools may be able to effect savings if they hire new faculty with practice experience who can both produce scholarship and teach practical courses. This may entail a review of whom and how law schools hire but will pay dividends in the long run.
- f. Hiring Practices - Salaries. Finally, on a cost-saving note, it may be possible to achieve significant savings in the hiring of new faculty. Typically new law school faculty hires have relatively little practice experience. The attached survey of the Society of American Law Teachers (SALT) for March 2009 shows median compensation across three different academic ranks for schools in Ohio and the rest of the United States. Given the abundance of well qualified attorneys seeking clinical or teaching positions, the possibility of a teaching position that holds lifetime tenure, and an attractive health and benefits package that often includes a tuition remission component for members of the professor's family, it may be possible to attract well qualified candidates for significantly less salary than is currently being offered new hires. Over the course of a 20 or 30 year teaching career, savings effected at the time of hire could result in lifetime savings of several hundred thousand dollars that could be used for clinical training. For purposes of comparison with practicing attorneys in Ohio, I have listed below the most recent income data from the OSBA.⁵

These are just some thoughts on some of the alternative uses of law school resources that will assist in paying for a clinical requirement.

Costs – Institutions of the Bar Should Provide Resources for Training

Although there are segments of the bar that have been actively involved in training for years, large segments of the bar have been indifferent to the training of young attorneys. In general, the response of the organized bar to the training needs of new attorneys has been limited, uncoordinated, and non-systematic. There is much that the organized bar can do to enhance and support the training of attorneys. Below, I have listed some suggestions on how to better utilize bar resources in that endeavor.

⁵ See *The Economics of Law Practice in Ohio, Desktop Reference for 2006*. According to this survey, the median net income in 2006 for full time attorneys in Ohio was as follows: for attorneys with 1 – 5 years of practice, \$55,000; 6 – 10 years of practice, \$75,000; 11 – 15 years of practice, \$80,000; 16 – 25 years of practice, \$100,000; and more than 25 years of practice, \$110,000 (Exhibit 10). The median net income for all full time attorneys, all age groups, and all practice categories, in Ohio in 2006 was \$89,000.

- a. Public Offices. All publicly funded law offices in the state (prosecutor, public defender, all judges, Attorney General) should be required on a year-round basis to take on and provide training to law students.⁶ This training may well take different forms and would be done in coordination with the law schools. To lower the time involved in this endeavor, the OSBA could assist in the development of a programmatic template that will assist public and private offices in structuring their training. This could include, amongst other things, a proposed schedule of skills to be emphasized and experiences to be undertaken.
- b. Private Sector Offices. The private sector must also bear some of the costs for training. While this will require that firms and practitioners incur the near term expenditure of resources, the enhanced practical experience gained by graduates should better prepare them to practice sooner and thereby shorten the learning curve, make them more efficient, and make them less prone to the mistakes that new attorneys are most likely to make. This benefits the entire profession and the public. Some thoughts on this:
 1. Train Faculty. Law firms could volunteer to assist in the training of law school faculty regarding the nuts and bolts of practice in their respective areas of expertise.
 2. The “Teaching Firm”. Like teaching hospitals in medicine that tend to be regarded as prestigious, a designation could be created by the Supreme Court or the OSBA for a “certified teaching firm” and given to those firms that engage in best practices and have made a commitment (to be determined) to train attorneys in addition to their own associates. Obviously, an accreditation process would have to be created to maintain the integrity of such a distinction. Like teaching hospitals, such firms could be affiliated with a single law school, or a group of law schools. The certified teaching firm designation would not be limited to large firms only. Indeed, smaller firms and solo practitioners could get a similar designation as well. The Supreme Court could devise rules that would permit such a designation to appear on law firm letterhead and materials and to be used in the firm’s marketing endeavors. In addition, firms and attorneys that engage in the training of attorneys would be given significant or total credit toward their biannual CLE requirements.

⁶ There may be small public offices that cannot realistically comply with this requirement. An exemption procedure could be developed for such offices to provide other written materials or needed services in connection with such training.

3. A Pro Bono Requirement. Over the years the Supreme Court has considered a pro bono requirement for attorneys. Such a requirement, if it is ever imposed, should enable attorneys to train new attorneys in satisfaction of that requirement.
- c. Training Materials. Those involved in the OSBA and local bar associations have a wealth of practical experience, talent, and knowledge. The bar associations, in coordination with the law schools, can be helpful in developing training materials. For example, in conjunction with law schools the bar associations can develop or provide practical training materials – checklists, outlines, forms, documents – and other items that can be utilized by law schools in their clinics and practice courses. This will lower training costs for the law schools and help free professor time for the teaching and oversight of clinics.
- d. OSBA Academy. If we are to convert professors’ “scholarship hours” to “clinic hours” some retraining of current faculty in practice will be needed. In assisting law schools in “converting” that time, the OSBA can establish courses taught by practitioners to bring current faculty up to speed in the nuances of existing practice. These courses would be taught by experienced practitioners from both the public and private sectors who would volunteer their time in the development and teaching of those courses.
- e. Adjunct Academy. To better prepare a corps of adjuncts who are “clinic ready”, the OSBA in coordination with the law schools would develop a course in which law school faculty would teach prospective adjuncts on the latest teaching and student evaluation techniques. These courses would be taught by experienced law school clinical and other faculty from both public and private law schools who would volunteer their time in the development and teaching of these courses.
- f. Funding. To provide a portion of the funds that might be needed to develop the training and courses described above, the OSBA and/or local bar associations should consider the addition of a fee to current dues that would be earmarked solely for training programs. While such a fee might not fully fund the endeavors described above, it will provide at least partial funding and make clear that all segments of the bar and all practitioners must bear some of the costs of training.

These are just a few of the things that the organized bar can do to absorb some of the costs of training new attorneys to practice.

Costs – The Supreme Court

As the entity that controls attorney licensing in Ohio, there is obviously much the Supreme Court can do to implement more effective training.

- a. Bar Exam. My understanding is that another subcommittee is addressing the issue of the bar exam so I will not address it here. Nonetheless, changes in emphasis on the bar exam could go have significant influence in guiding more effective practical education at Ohio's law schools.
- b. Student Practice Licenses. I know that students can engage in limited practice in certain settings but I am not fully conversant with the extent of that limited practice authority. If training is required it may be productive to revisit these rules to determine if, consistent with the protection of the public, greater supervised training opportunities can be afforded to law students.
- c. Office of Training Coordinator. Many of the initiatives discussed above will involve a substantial amount of coordination between and amongst the institutions of the bar and law schools. This will be an ongoing process that will require significant and ongoing coordination amongst a number of stakeholders. The creation of a high level Office of Training Coordinator within the Supreme Court, with significant oversight responsibilities and the authority to recommend rules to the Supreme Court for the furtherance of practical training, could help focus the efforts of the disparate groups needed to further effective clinical training in this state. This Office could be included within one of the existing Supreme Court offices or could be a new office entirely.
- d. Bridge the Gap Training. The mandated 12 credit Bridge the Gap training has been largely regarded as ineffective and is in need of retooling. The resources that have been devoted to that program could be reallocated to some of the other programs discussed herein.
- e. American Bar Association. The Ohio Supreme Court, along with the Supreme Courts of the other states, could play a significant role in encouraging the American Bar Association to review and revise its accreditation standards regarding the need for mandatory clinical training.

The above are some thoughts on ways in which the costs of clinical training can be shared amongst the various stakeholders in the system. There is no question that many of the above suggestions will raise practical and logistical issues. These issues may well be real, but are not insurmountable, and can be addressed with further study or focused committee work. In all events the costs – both dollars and human resources - of this endeavor must be shared and will require changes to existing behavior in all sectors.

SALT EQUALIZER

Volume 2009, Issue 1

Society of American Law Teachers

March 2009

In This Issue

This issue of the SALT Equalizer contains the 2008–09 SALT salary survey results. Information for Regions III–VII continues on pages 2 and 3.

Survey Information

This survey of 2008–09 academic year law faculty salaries by Aviam Soifer, Dean of the School of Law at the University of Hawai'i, reports the median salaries for the three faculty ranks, in alphabetical order by school, in seven regions. SALT received information from 95 (48%) of the 196 surveyed schools in the U.S. and Puerto Rico, including two schools that did not respond but whose salary information was located in publicly-available documents. 101 schools (52%) refused or failed to participate in the survey.

Although SALT does not survey schools for information on the salaries of non-tenure-track legal writing faculty, the Association of Legal Writing Directors (ALWD) and the Legal Writing Institute (LWI) jointly sponsor an annual national survey of legal writing programs at approximately 140 law schools.

That data can be found on the LWI website at **Survey Information**, continued on page 2

SALT EQUALIZER

The SALT *Equalizer* is a publication of the Society of American Law Teachers.

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2008–09 SALT Salary Survey

Region I (Far West)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Chapman	101,267	119,319	144,915	35.5%
Golden Gate	Not applicable or not available ("NA")	123,235	126,450	33.21%
Hawai'i	NA	135,048	170,061	31%
La Verne	89,175	100,132	115,255	23%
Nevada-Las Vegas*	86,677	108,887	150,138	NA
UC-Hastings	NA	131,200	178,200	13%
Whittier	119,117	117,260	160,476	19.36%

Schools that did not report information: Arizona, Arizona State, Brigham Young, Cal Western, Loyola-Los Angeles, Pacific-McGeorge, Pepperdine, Phoenix, San Diego, San Francisco, Santa Clara, Southern California, Southwestern, Stanford, Thomas Jefferson, UC-Berkeley, UC-Davis, UCLA, Utah, and Western State.

Region II (Northwest and Great Plains)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Hamline	94,244	97,810	128,461	25%
Idaho	NA	93,434	127,317	25%
Iowa	NA	112,394	156,496	29.3%
Minnesota	NA	146,667	220,000	30.4%
Montana	74,675	83,561	112,818	24.47%
Nebraska	101,665	102,500	151,089	28%
North Dakota	77,175	97,489	109,275	30%
Oregon	110,240	139,324	150,006	34.6%
South Dakota	78,000	95,011	122,765	23%
William Mitchell	111,409	101,641	142,284	28.5%
Wyoming	85,296	97,350	127,566	36%

Schools that did not report information: Creighton, Drake, Gonzaga, Lewis & Clark, Saint Thomas-MN, Seattle, Washington, and Willamette.

Footnote

*School did not participate in survey, but SALT staff and volunteers gathered the relevant data from publicly-available documents.

Region III (Southwest and South Central)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Arkansas-Fayetteville	83,940	102,145	140,100	23.5
Arkansas-Little Rock	86,513	100,698	132,272	20%
Colorado	NA	122,336	172,881	26.8%
Denver	94,308	108,420	133,767	27.2%
Houston	111,000	115,954	138,653	28%
Kansas	NA	110,600	158,638	28%
Louisiana State	92,000	116,836	156,351	22.2%
Loyola-New Orleans	97,000	103,630	134,937	28%
Missouri-Columbia	NA	105,500	153,887	28.9%
Missouri-Kansas City	NA	95,500	125,000	28%
New Mexico	90,537	106,388	123,544	29%
Oklahoma	110,000	124,900	168,200	32.7%
Oklahoma City	97,500	102,000	128,000	30%
Saint Mary's	87,879	NA	133,442	20%
South Texas	86,663	101,920	150,665	25%
Southern	84,622	101,208	119,418	25%
Texas Southern	98,087	116,939	146,750	26%
Texas Tech	103,250	108,472	139,641	28%
Texas Wesleyan	NA	94,630	126,000	24%
Tulsa	88,424	108,331	127,088	33%
Washburn	NA	106,550	151,971	25%
Schools that did not report information: Baylor, Saint Louis, Southern Methodist, Texas, Tulane, and Washington-Saint Louis.				

Region IV (Great Lakes)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Akron	82,000	97,408	129,940	28.5%
Capital	86,000	105,984	146,534	24%
Illinois	130,000	147,408	185,394	40%
Indiana-Indianapolis	NA	98,992	132,615	40.6%
John Marshall-Chicago	105,000	120,200	143,700	38%
Marquette	96,350	111,433	138,829	22%
Michigan	166,000	NA	254,500	24%
Michigan State	106,189	114,968	149,475	30%
Northern Illinois	84,104	100,037	104,256	Varies
Ohio State	113,178	123,122	182,556	27.7%
Southern Illinois	87,219	94,739	132,084	20%
Thomas M. Cooley	91,534	129,674	152,557	29%
Toledo	89,973	104,197	143,967	34.8%
Valparaiso	NA	NA	148,922	32.5%
West Virginia	NA	90,191	136,261	27.5%
Schools that did not report information: Ave Maria, Case Western, Chicago, Chicago-Kent, Cincinnati, Cleveland-Marshall, Dayton, DePaul, Detroit, Indiana-Bloomington, Loyola-Chicago, Northwestern, Notre Dame, Ohio Northern, Wayne State, and Wisconsin.				

Region V (Southeast)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Emory	74,652	135,707	212,004	37%
Florida	102,274	113,300	154,997	26.5%
Florida A&M	89,073	115,965	136,787	NA
Georgia	116,114	141,377	176,863	26%
Georgia State	NA	112,606	144,915	26.74%
Louisville	88,463	92,239	132,414	17%
Memphis	86,000	124,961	131,529	29%
Mercer	85,000	103,025	132,001	26%
Mississippi	95,880	109,140	145,163	30%
Mississippi College	90,000	105,000	119,000	24%
Northern Kentucky	91,489	99,518	122,084	20%
Nova Southeastern	75,000	NA	140,552	26.2%
Tennessee	NA	92,273	136,075	28%
Schools that did not report information: Alabama, Barry, Faulkner, Florida Coastal, Florida International, Florida State, Inter American-PR, John Marshall-Atlanta, Kentucky, Miami, Pontifical Catholic-PR, Puerto Rico, Saint Thomas-FL, Samford-Cumberland, Stetson, and Vanderbilt.				

Region VI (Mid-Atlantic)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Baltimore	95,400	125,100	147,700	27%
Catholic-DC	97,750	118,391	151,787	22.5%
Charleston	107,640	113,620	162,774	15%
District of Columbia	74,126	78,414	88,626	23%
Duquesne	88,500	115,432	152,514	33%
Howard	NA	104,784	133,231	27.1%
North Carolina	112,100	134,000	175,678	19.1%
North Carolina Central	92,250	115,000	148,400	NA
Penn State	122,505	139,200	158,248	27.7%
Pittsburgh	NA	NA	144,420	32.3%
Rutgers-Camden	93,020	111,980	168,505	35.2%
Rutgers-Newark	NA	NA	170,000	34.5%
South Carolina	99,190	108,278	153,040	28%
Widener	92,725	102,830	134,432	48%
Schools that did not report information: American, Appalachian, Campbell, Duke, George Mason, George Washington, Georgetown, JAG, Liberty, Maryland, Pennsylvania, Regent, Richmond, Seton Hall, Temple, Villanova, Virginia, Wake Forest, Washington & Lee, and William & Mary.				

Survey Information, continued from page 1

<http://www.lwionline.org/surveys.html>.

The American Association of Law Libraries (AALL) collects data on law librarian salaries. AALL members may access the survey results online, at no charge, at http://www.aallnet.org/products/pub_salary_survey.asp. Non-members may purchase a hard copy version from the same website.

The Center for the Study of Applied Legal Education has collected salary and compensation data for clinicians, available by emailing administrator@csale.org.

Region VII (Northeast)				
NAME OF SCHOOL	ASST. PROFESSOR	ASSOC. PROFESSOR	FULL PROFESSOR	FRINGE BENEFITS
Albany	97,000	104,100	142,165	31.6%
Connecticut	NA	120,339	170,000	26.19%
CUNY	88,558	108,302	127,034	33.5%
Franklin Pierce	NA	108,000	117,000	30%
Harvard	150,000	NA	252,450	25%
Hofstra	NA	141,794	199,499	25%
Maine	88,340	100,700	125,300	47.8%
Northeastern	NA	139,075	162,775	29.3%
Pace	118,000	138,500	165,000	34%
Suffolk	108,530	122,030	144,030	24%
SUNY-Buffalo*	43,366-98,202	51,263-113,932	63,586-156,206	NA
Touro	128,544	129,081	182,353	20%
Vermont	NA	114,792	124,909	29%
Western New England	92,393	100,468	144,866	38.5%
Schools that did not report information: Boston College, Boston University, Brooklyn, Cardozo, Columbia, Cornell, Fordham, New England, New York Law, NYU, Quinnipiac, Roger Williams, Saint John's, Syracuse, and Yale.				

About SALT

Since 1973, the Society of American Law Teachers (SALT) has been an independent organization of law teachers, law deans, law librarians, and other legal educational professionals working to enhance the quality of legal education, make the legal profession more inclusive, and extend legal representation to under-served individuals and communities. SALT has been at the forefront of national debates about legal education and legal institutions. SALT challenges faculty, staff, and students to promote the profession's core values of equality and justice, and to oppose illegal and inequitable practices. You can learn more about SALT at www.saltlaw.org. Please join us by registering to become a member online or with the membership application included below.

Society of American Law Teachers

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You can register to become a member online and pay by credit card by going to www.saltlaw.org, or you can complete and mail in this form, together with a check or credit card information.

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- ☐ \$40 (for those earning less than \$75,000 per year)
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Credit card number: _____ Expiration date: _____

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Public Advocacy Center, Rm. 223, 225 Eastview Drive, Central Islip, NY 11722**

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EXHIBIT B

Example of Australian Skills Taxonomy

BROAD SKILLS CATEGORIES (Queensland University of Technology Law School)

Attitudinal skills

1. Ethical values
2. Creative outlook
3. Reflective practice
4. Inclusive perspective
5. Social justice orientation
6. Adaptive behaviour
7. Pro-active behaviour

Cognitive skills

1. Problem solving
2. Legal analysis
3. Information literacy
4. Legal research
5. Document management
6. Discipline & ethical knowledge

Communication skills

1. Oral communication
2. Oral presentations
3. Advocacy
4. Legal interviewing
5. Mooting
6. Negotiation
7. Written communication
8. Drafting

Relational skills

1. Work independently
2. Teamwork
3. Appreciation of diversity
4. Time management
5. International perspective
6. Indigenous perspective

EXAMPLE

- Graduate Capability – Communication
- Skill – written communication/ legal letter writing

- Course Objective – Demonstrate ability to write legal letter in plain English; “customised” depending on the purpose for which it is written by identifying whether the function of letter is (a)information (b)request (c)persuasion (d)record or a combination of these functions; utilising formalities such as salutations; for appropriate audience.
- Queensland University of Technology Law created 3 levels of demonstrated abilities – each requiring student to move through experiential learning cycle of instruction, practice, feedback, reflection & plan
 - **Level 1** instructed in theoretical framework and application of skill – usually at generic level – practiced under guidance and feedback provided
 - **Level 2** additional guidance at advanced level in authentic context – feedback provided – reflection – individual and w/i group utilise a range of skills in simple legal matter
 - **Level 3** utilise skills in different contexts w/o guidance – greater complexity of discipline contexts and emphasis on relating level

Report and Recommendations from the Subcommittee on the Ohio Bar Exam of the Legal Education

Introduction

Members of the Sub-committee reviewed a number of topics related to the bar exam in Ohio, including the location of the exam, options to the bar exam, costs of bar exam preparation, and alternatives to the bar exam. The members decided to focus specifically on the bar exam as it relates to legal education. Specifically, we believed that any recommendations we would make should directly relate to how the bar exam impacts teaching and learning in our law schools. As a result of this focus, we are presenting only one set of recommendations but will note other issues that might deserve further study.

Scope of the Bar Exam

Early on in our discussions, we noted that there are subjects that are included in the coverage of the Ohio Essay Exam that are broader than those covered in the multi-state practice exam [MPT], in the multi-state multiple choice exam [MBE], and the Multi-state Professional Responsibility Exam [MPRE]. This, in turn led to a discussion of the purpose of the bar exam process and how this purpose affects legal education.

There was a consensus that the bar exam should measure core competencies. Of course, there was not consensus as to what those core competencies are. Yet, with the dissent of one member of the sub-committee, the members agreed that testing of the content covered in first year courses, and a few selected upper level course was sufficient to measure such competencies. The MBE, MPT, and MPRE cover these courses. Yet the Ohio Essay exam covers other topics.

Specifically, the MPE covers contracts, torts, constitutional law, criminal law, evidence, and real property. The MPRE, of course, covers legal ethics. The MPT covers legal analysis, fact analysis, problem solving, resolution of ethical dilemmas, organization and management of a lawyering task, and communication.

The Ohio Essay exam covers these topics plus business associations, civil procedure, commercial transactions, and wills.

During the discussions of the sub-committee, the academic members noted the impact of having these additional courses as subjects on the bar exam. While the profession [in the 1992 Maccrate and 2007 Carnegie Foundation Reports] encourages schools to increase their skills offerings, students continue to believe that they should take “one more commercial course” or “one more estates course,” even though they did not plan to practice in an area with those specializations. This student demand forced school administrators, in turn, to provide more sections or offerings in these areas, thus limiting the ability of schools to offer and students to take clinics, simulations, and other skills training courses.

On another level, many students wish to start specializing in one or more subject areas during their law school career, and many schools wish to carve out areas of concentration and faculty expertise in some subject matters. Having a broad array of courses in a bar exam decreases the opportunities for students to focus in areas other than those in the bar exam [commercial transactions, business associations, wills] or even focus in more depth on one of the three topics covered. It also decreases the opportunities of students to have specialized writing experiences in seminars as students and the academic administrators focus resources on those additional courses in the Ohio Essay exam.

The sub-committee also discussed the possible impact of reducing the subjects in the Ohio essay exam. The consensus was that there would be little if any negative impact. There is already a close correlation of the results in the MBE and the Essay. Moreover, test-takers responses to essay questions on the additional topics also have a close correlation to their responses to essay questions on the topics covered in other exams.

So, with one dissent, we agree with the recommendation of another subcommittee [on Practical Applications in the Classroom] –

Recommendation - The Supreme Court should reduce the subjects tested on the Ohio essay portion of the Ohio Bar Exam. If possible, the subjects should be narrowed to those tested on the MBE and MPRE.

Other Issues

As noted above, the subcommittee considered a number of other issues but determined that it did not have the expertise to make specific recommendations or that any recommendations might not directly affect the limited focus of our charge.

We, however, urge the Bar and the Supreme Court to establish special study groups, who could invite representatives of other constituencies, professionals with experience in other states, and consultants who have unique competency to review the following topics:

- - use of the multi-state essay exam;
- - review of other alternatives to the bar exam for some or all students;
 - - analysis of the success of the Webster program in New Hampshire that provides an alternative to the bar exam in certain circumstances;
 - - post-graduate requirements as alternative to the bar exam in certain circumstances;

Bar Examination Subcommittee Report - 3

- - an apprenticeship option to the bar exam in certain circumstances;
- - law school certification of competencies as an alternative to the bar in certain circumstances
- - reduction in the length of the bar exam to two days;
- - use of alternatives to portions of the bar exam;
- - use of only some but not all of the MBE;
- - the impact of the cost of bar review preparation courses and possible alternatives;
- - mandates to law schools for skills and certification of competencies; and
- - cooperation with other states in reviewing the subjects covered in multi-state and independent portions of the bar exam.

The subcommittee takes no position on these topics but only suggests that further study might be useful.

Martin H. Belsky, Chair
Louis D. Bilionis
Douglas R. Cole
David C. Crago
Dennis R. Honabach
Geoffrey S. Mearns
Michael P. Morrison
Lee Ann Ward



THE CARNEGIE FOUNDATION
FOR THE ADVANCEMENT
OF TEACHING

PREPARATION FOR
THE PROFESSIONS



EDUCATING LAWYERS

Preparation for the
Profession of Law

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

Educating Lawyers

Preparation for the Profession of Law

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

WILLIAM M. SULLIVAN is a senior scholar at The Carnegie Foundation for the Advancement of Teaching. He is the author of *Work and Integrity* and co-author of *Habits of the Heart*.

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LEE S. SHULMAN is the 8th president of The Carnegie Foundation for the Advancement of Teaching. He is the first Charles E. Ducommun Professor of Education Emeritus and Professor of Psychology Emeritus (by courtesy) at Stanford University, past president of the American Educational Research Association (AERA), and a member of the National Academy of Education.

SUMMARY

EDUCATING LAWYERS

PREPARATION FOR THE
PROFESSION OF LAW

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

A PUBLICATION OF

 THE CARNEGIE FOUNDATION
for the ADVANCEMENT *of* TEACHING

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.

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.

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-

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.

honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strengths and address its most serious limitations. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers and clergy, as well as from research on learning.

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.

IN THEIR ALL-CONSUMING FIRST YEAR, STUDENTS ARE TOLD TO SET ASIDE THEIR DESIRE FOR JUSTICE.

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, seminars 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.

OBSERVATION 4 **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.

OBSERVATION 5 **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.

Providing additional classroom coverage of professionalism issues will not be an easy task. Law school curriculum reform is a tedious and often frustrating task and seems to work best when modest changes are made at the margin by adding one or two additional courses. If the proponents of the need for increased law school training in ethics and professionalism are right, however, an effort equivalent to that which led to the increase in clinical legal education in the 1970s and the increased emphasis on skills training in the 1990s is required. The aim of this effort should be to elevate the twin concepts of the practice of law as a public service calling and the development of the capacity for reflective moral judgment to the same level as legal knowledge and traditional legal skills. This is indeed an ambitious goal. (American Bar Association, 1996)

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.² 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.³ 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

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

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.

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.⁴ 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.

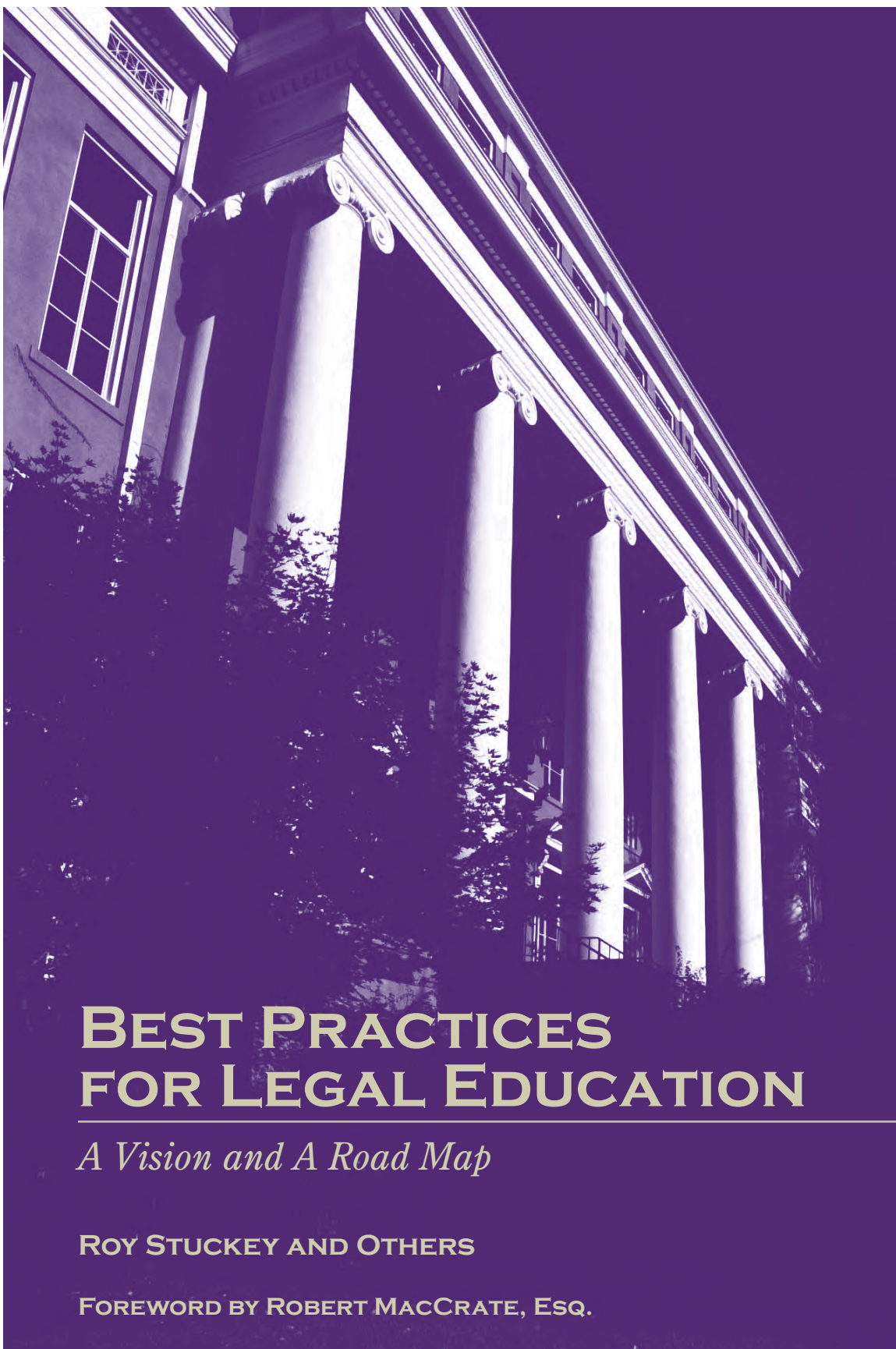
It is well worth the effort. The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty. That is, 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.

¹ Dinovitzer, R., and others, *After the JD: First Results of a National Study of Legal Careers*. Overland Park, KS: The National Association for Law Placement Foundation for Law Career Research and Education and the American Bar Foundation, 2004, pp. 77–82.

² Dinovitzer and others, *After the JD*, pp. 79, 82.

³ Stuckey, R. and others. "Best Practices for Legal Education." Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law. [<http://professionalism.law.sc.edu/news.html#CLEA>].

⁴ Huber, M. T., and Hutchings, P. *The Advancement of Learning: Building the Teaching Commons*. San Francisco: Jossey-Bass, 2005.



BEST PRACTICES FOR LEGAL EDUCATION

A Vision and A Road Map

ROY STUCKEY AND OTHERS

FOREWORD BY ROBERT MACCRATE, ESQ.

Executive Summary and Key Recommendations

Developing a Statement of Best Practices (Introduction and Chapter One)

There is a compelling need to change legal education in the United States in significant ways. Law schools do some things well, but they do some things poorly or not at all. While law schools help students acquire some of the essential skills and knowledge required for law practice, most law schools are not committed to preparing students for practice. It is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better.

Our key recommendations for improving legal education are listed below. One can quickly grasp the full breadth of our recommendations by reviewing the table of contents.

We divide our discussion of best practices into seven categories: 1) setting goals, 2) organizing the program of instruction, 3) delivering instruction, generally, 4) conducting experiential courses, 5) employing non-experiential methods of instruction, 6) assessing student learning, and 7) evaluating the success of the program of instruction. We also include an example of a “model” best practices program of instruction.

We call on law schools to make a commitment to improve the preparation of their students for practice, clarify and expand their educational objectives, improve and diversify methods for delivering instruction, and give more attention to evaluating the success of their programs of instruction. The importance of accomplishing these goals was explained by Greg Munro:

A law school can best achieve excellence and have the most effective academic program when it possesses a clear mission, a plan to achieve that mission, and the capacity and willingness to measure its success or failure. Absent a defined mission and the identification of attendant student and institutional outcomes, a law school lacks focus and its curriculum becomes a collection of discrete activities without coherence. If a school does not assess its performance, it can easily be deluded about its success, the effectiveness of its pedagogical methods, the relevance of its curriculum, and the value of its services to its constituencies. A law school that fails to assess student performance or its performance as an institution, or that uses the wrong measures in doing so, has no real evidence that it is achieving any goals or objectives. A law school that lacks evidence of achievement invites demands for accountability.¹⁷

It may not be possible to prepare students fully for the practice of law in three years, but law schools can come much closer than they are doing today. It is

¹⁷ MUNRO, *supra* note 4, at 3-4.

especially important for law schools to make an institutional commitment to do the best they can to prepare their students for practice.

An important step is to articulate clear educational objectives for the program of instruction and, preferably, to describe those objectives in terms of desired outcomes. Outcomes-focused education is becoming the norm throughout higher education. In fact, regional accrediting agencies are requiring institutions of higher education, including some law schools, not only to state educational outcomes but also to prove that their students are attaining those outcomes.¹⁸ Legal education programs in the United Kingdom and other countries have outcomes-focused curriculums, and a few law schools in the United States are making progress toward becoming outcomes-focused. It is time for all law schools to make the transition.

Descriptions of desired outcomes of legal education should include statements of what graduates should know, what they should be able to do, and how they should do it. We describe some general outcomes that all law schools should seek to achieve as they try to develop basic competence.

The key recommendations in this document are set forth below.

Setting Goals (Chapter Two)

1. Law schools should demonstrate a commitment to preparing their students for bar examinations and for law practice. They should engage in a continuing dialogue with academics, practitioners, judges, licensing authorities, and the general public about how best to accomplish this goal.
2. Law schools should clearly articulate their educational goals and share them with their students.
3. Law schools should shift from content-focused programs of instruction to outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.
4. The primary goal of legal education should be to develop competence, that is, the ability to resolve legal problems effectively and responsibly.
5. Law schools should help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of law, professional skills, and professionalism.

Organizing the Program of Instruction (Chapter Three)

6. Law schools should organize their curriculums to develop knowledge, skills,

¹⁸ See, e.g., Standards 2 & 4, WESTERN ASSOCIATION OF SCHOOLS AND COLLEGES, ACCREDITING COMMISSION FOR SENIOR COLLEGES AND UNIVERSITIES, HANDBOOK OF ACCREDITATION (2001), available at http://wacsenior.org/wasc/Doc_Lib/2001%20Handbook.pdf (last visited September 19, 2006) [hereinafter WESTERN ASSOCIATION ACCREDITATION HANDBOOK].

and values progressively; integrate the teaching of theory, doctrine, and practice; and teach professionalism pervasively throughout all three years of law school.

Delivering Instruction (Chapters Four, Five, and Six)

7. Law schools should use teaching methods that most effectively and efficiently achieve desired educational objectives, employ context-based instruction throughout the program of instruction, and employ best practices when using any instructional methodology.
8. Law schools should create and maintain healthy teaching and learning environments.
9. Law schools should enhance the quality of their programs of instruction with technology and by making appropriate use of practicing lawyers and judges.
10. Law schools should have effective teacher development programs and establish learning centers.

Assessing Student Learning (Chapter Seven)

11. Law schools should use best practices for assessing student learning, including criteria-referenced assessments, multiple formative and summative assessments, and various methods of assessment.

Evaluating the Success of the Program of Instruction (Chapter Eight)

12. Law schools should regularly evaluate their effectiveness and use best practices for conducting such evaluations.

Many of our recommendations do not have cost or time implications, and others have none beyond the initial effort involved in making the transition from current practices. It will require hard work and, perhaps, additional or reallocated resources to implement some of our recommendations. We are convinced, however, that the major impediment to reforming legal education is a lack of vision and commitment, not a lack of resources. Hopefully, this document provides some of the needed vision and will inspire more people to become committed to implementing positive changes in legal education.