

June 2015

Law Schools and the Legal Profession: A Way Forward

Peter A. Joy

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Recommended Citation

Joy, Peter A. (2014) "Law Schools and the Legal Profession: A Way Forward," *Akron Law Review*: Vol. 47 : Iss. 1 , Article 9.

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LAW SCHOOLS AND THE LEGAL PROFESSION: A WAY FORWARD

*Peter A. Joy**

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I. INTRODUCTION

Publicity about law schools for the past several years has been consistently bad. In news article after news article, the unifying theme has been that there are too many lawyers, too many law schools, and that going to law school for a legal career is either a costly, risky proposition or simply a bad idea.¹ Of course, these laments about the legal education and the legal profession stem from the decline in the employment for lawyers in the United States since the financial crisis of 2008.² While some see this simply as a mismatch in supply and demand

* Peter A. Joy is the Henry Hitchcock Professor of Law, Washington University School of Law.

1. See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1 (reporting law school debt loads and poor employment prospects).

2. *Law Firms: A Less Gilded Future*, THE ECONOMIST, May 5, 2011, available at <http://www.economist.com/node/18651114>.

– too many law schools graduating too many new lawyers for a weak demand – I believe it is that and much more. It is also a mismatch between what legal employers, law students, and clients need from law schools and what too many legal educators want to give. In this essay, I explore this phenomenon, and how law schools need to prepare students better for the practice of law and engage with the legal profession to meet society’s legal needs.

The supply and demand issue is working itself out, painfully, for both lawyers and law schools. The largest law firms reduced the number of lawyers by 9,500 in 2009 and 2010,³ and several other law firms closed, causing many lawyers to become unemployed.⁴ Employment rates for new graduates plummeted during those years and have remained low – only 56 percent of the class of 2012 had long-term, full-time employment requiring bar passage nine months after graduation.⁵ While most other law graduates in 2012 found part-time legal employment or employment that did not require a law degree, 11 percent were still unemployed nine months after graduation.⁶ The Bureau of Labor Statistics projects that competition for law jobs will remain strong because law schools continue to graduate more students than there are legal positions available.⁷

The softening of demand for lawyers has hit law schools as well, as fewer prospective students apply to law schools. The 2012 entering class at approximately half of the American Bar Association (“ABA”) approved law schools was 10 percent smaller than the 2011 entering class.⁸ As of May 2013, the number of applicants for the 2013 entering class was down by 14 percent compared to applicants in 2012,⁹ and the

3. *Id.*

4. *See, e.g.*, JAMES E. MOLITERNO, THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE 192-93 (2013) (identifying some of the law firms that closed).

5. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, EMPLOYMENT SUMMARY REPORT (2012), *available at* <http://employmentsummary.abaquestionnaire.org/>; *see also* Karen Sloan, *Law Graduates’ Job Rate – and Unemployment Rate – Increase Only Slightly*, NAT’L L. J., Mar. 29, 2013, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202594092381&Law_graduates_jobs_rate151and_unemployment_rate151increase_only_slightly&slreturn=20130418171538.

6. Sloan, *supra* note 5.

7. UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, LAWYERS, JOB OUTLOOK (2012), <http://www.bls.gov/ooh/legal/lawyers.htm#tab-6> [hereinafter BUREAU OF LABOR STATISTICS].

8. Bernard A. Berk, *Still More on What Matters Most (Or, a Guided Tour of Pandaemonium)*, THE FACULTY LOUNGE, Jan. 13, 2013, <http://www.thefacultylounge.org/2013/01/still-more-on-what-matters-most-or-a-guided-tour-of-pandaemonium.html>.

9. *Three-Year ABA Volume Comparison*, LAW SCHOOL ADMISSIONS COUNCIL (June 28,

number of persons applying to law school in 2013 is projected to hit a thirty-year low.¹⁰ It is very likely that the 2013 entering class at many, if not most, law schools will shrink further. This has led commentators to predict that some law schools will close within the next decade, and that most law schools will reduce the size of entering classes as well as shrink faculty and staff.¹¹ If this occurs, eventually the number of new lawyers entering the employment market will come closer to the demand.

The softening demand for lawyers is more than just the aftermath of the 2008 economic meltdown and a sluggish recovery. Demand for lawyers has changed and is continuing to change. Businesses are using accounting firms and paralegals for some work that lawyers used to perform, such as processing documents and employee-benefit counseling.¹² In addition, other consumers of legal services are turning to the Internet to create their own contracts and other documents by using services such as LegalZoom, which has more than two million customers.¹³ Richard Susskind, author of *Tomorrow's Lawyers*, predicts that the demand for traditional lawyers will continue to shrink and that lawyers will assume new roles in the future.¹⁴

At the same time that many of these changes were occurring, the ABA formed the 20/20 Commission in 2009 to review the ABA Model Rules of Professional Conduct and the system of lawyer regulation “in the context of advances in technology and global legal practice developments.”¹⁵ James Moliterno has been critical of the ABA and the

2013), <http://www.lsac.org/lsacresources/data/three-year-volume.asp>.

10. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1.

11. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 181-82 (2012) (stating “Schools will be downsized whether they want to or not”); Bronner, *supra* note 10, at A1 (stating that one professor predicts as many as ten law schools closing and cuts in class size, faculty and staff); Nancy B. Rapoport, *Rethinking U.S. Legal Education: No More “Same Old, Same Old”*, 45 CONN. L. REV. 1409, 1414 (2013) (stating that some law schools will close within the next decade); William D. Henderson, *The Calculus of University Presidents, Many Must Decide Between Two Difficult Paths: Tackle Law School Restructuring or Close Their Law Schools*, NAT’L L. J., May 20, 2013, at 14, 15 (arguing that many universities will either face devastating law school deficits or have to close their law schools).

12. BUREAU OF LABOR STATISTICS, *supra* note 7.

13. RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* 60 (2013).

14. *Id.* at 128-30; see also *infra* notes 93-103 and accompanying text.

15. *Message from Commission on Ethics 20/20 Co-Chairs Jamie S. Gorelik and Michael Traynor*, A.B.A., CENTER FOR PROFESSIONAL RESPONSIBILITY, http://www.americanbar.org/groups/professional_responsibility/aba_commission_on_ethics_20_20/about_us/message_from_the_co_chairs.html (last visited Aug. 13, 2013).

20/20 Commission for resisting change and for not looking forward and being better attuned to the needs of society.¹⁶ Moliterno claims that the ABA historically lags behind changes in society and that most changes to the legal profession have “been forced by influences of society, culture, technology, economics, and globalization, and not by the profession itself.”¹⁷

Whatever validity there is to Moliterno’s criticism of the ABA for being slow to act and for looking inward rather than outward, that criticism is amplified when it comes to how law schools have responded to the needs of the legal profession and society. Most law schools continue to sit on the sidelines rather than be engaged in a meaningful way with the legal profession about the changes taking place and the role that law schools should play. Law schools have been content to be disengaged from the profession both by what they teach and much of the scholarship faculty produce. This inaction has been bad for law schools and the legal profession, and law schools’ disengagement has done a disservice to clients and to society in general.

In exploring the role law schools should be playing by engaging more with the legal profession, I focus principally upon how law schools have ignored calls to prepare law students better for the practice of law. While I also briefly discuss the disengagement of legal scholarship from the legal profession, I concentrate more on legal education’s failure to prepare students better for present day and future practice of law. It is in this realm that law schools could play a more important role as a more engaged part of the legal profession, and would assist the legal profession in better serving society by meeting the demands of change.

This essay proceeds in four parts. Part II briefly examines the disengagement of law schools from the legal profession both in much of the scholarship produced and through courses required for graduation. Part III analyzes why some state bar regulators are imposing admission requirements in response to law schools failing to prepare students better for the practice of law. Part IV discusses the types of bar admission requirements being considered. Finally, in Part V, I argue that rather than being reactive and resistant to change, law schools should be forward looking and incorporate changes that will not only better prepare students for the practice of law as it is today, but also for the legal needs anticipated in the future. In this way, law schools may

16. James E. Moliterno, *Ethics 20/20 Successfully Achieved Its Mission: It “Protected, Preserved, and Maintained,”* 47 AKRON L. REV. 149, 150 (2014).

17. *Id.* at 162.

proactively and positively influence the norms of the legal profession.

II. LAW SCHOOLS' DISENGAGEMENT FROM THE LEGAL PROFESSION

Observations about law school disengagement from the legal profession are not new. In 1989, George Priest discussed “an increasing distance between legal practice and legal education,” which he noted had been going on for twenty-five years.¹⁸ Priest correctly predicted that over the next twenty-five years “[t]he distance between the bar and the law school will become greater.”¹⁹

Other commentators in the early 1990s noted this growing chasm.²⁰ This critique often focused on a criticism of law faculties for abandoning scholarship directed to judges, lawyers, and legislators in favor of scholarship engaging in theoretical dialogues with each other and academics in other fields, particularly the social and behavioral sciences.²¹ Judge Richard Posner observed that prior to the 1960s, “law professors were *in* the university but *of* the legal profession.”²² Posner also described that earlier legal scholarship was informed by lawyer professors identifying with “the practical profession,” and “the law professor was viewed as a superior lawyer.”²³

As this critique goes, legal scholarship that has little or no relationship to how judges decide cases, or lawyers practice law, has little effect on how law develops and represents law professors' disengagement from the profession.²⁴ This critique is supported by the data. One study found that federal courts of appeals cited law review articles in less than 8 percent of their published decisions between 1950 and 2008.²⁵ Another study found that the U.S. Supreme Court cited law review articles in approximately one-third of the majority, concurring,

18. George L. Priest, *The Increasing Division Between Legal Practice and Legal Education*, 37 BUFF. L. REV. 681, 681 (1989).

19. *Id.* at 683.

20. See, e.g., Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421 (1995); Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991).

21. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36-38 (1992).

22. RICHARD A. POSNER, *OVERCOMING LAW* 82 (1995).

23. *Id.* at 83.

24. Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313, 313 (1989); see also Robert W. Gordon, *Lawyers, Scholars and the Middle Ground*, 91 MICH. L. REV. 2017, 2096 (1993).

25. David L. Schwartz & Lee Petherbridge, *The Use of Legal Scholarship by the Federal Courts of Appeals: An Empirical Study*, 96 CORNELL L. REV. 1345, 1345-62 (2011).

and dissenting opinions from 2000 to 2010, which was down from citations in approximately one-half of the Court's opinions in the 1970s.²⁶ Even when one includes citations of law review articles by other academics, a study found that 43 percent of articles are not cited at all in court opinions or by other scholars.²⁷

The disengagement by many law professors with the legal profession is even more pronounced in the legal education law schools deliver, and this disengagement stretches back even further than the legal scholarship drift. In 1921, the Carnegie Foundation for the Advancement of Teaching identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training.²⁸ An undergraduate degree satisfies the general education requirement, and a 2007 Carnegie study, *Educating Lawyers*,²⁹ found that law schools do a good job of educating law students in theoretical knowledge of law through the Socratic case-dialogue method of instruction.³⁰ But the 1921 Carnegie study found that law schools needed to incorporate more practical skills training, noting: "The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly."³¹ More than eighty years later, *Educating Lawyers* reached a similar conclusion, finding that the emphasis on the cognitive or theoretical aspect of law has limited the emphasis on lawyering practice skills.³²

In addition to the Carnegie studies, several prominent individuals and other studies or task forces throughout the years have focused on the gap between law school education and preparation for the practice of law. For example, a 1944 Report of the Association of American Law Schools (AALS) Curriculum Committee, primarily authored by Karl Llewellyn, found that the "current case-instruction is somehow failing to do the job of producing *reliable professional competence* on the by-

26. Brent E. Newton, *Law Review Scholarship in the Eyes of the Twenty-First Century Supreme Court Justices: An Empirical Analysis*, 4 DREXEL L. REV. 399, 404 (2012).

27. In a study of 385,000 law review articles, notes, and comments appearing in law reviews and journals, one researcher found that 43 percent of the articles were not cited, and approximately 79 percent were cited ten or fewer times. Thomas A. Smith, *The Web of Law*, 44 SAN DIEGO L. REV. 309, 336 (2007).

28. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 276 (1921).

29. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter EDUCATING LAWYERS].

30. *Id.* at 6-7, 23-24.

31. REED, *supra* note 28, at 281.

32. EDUCATING LAWYERS, *supra* note 29, at 89-91.

product side *in half or more of our end-product, our graduates.*³³ In 1973, former Chief Justice Warren Burger observed that law schools were not training lawyers adequately, noting that the “medical profession does not try to teach surgery simply with books.”³⁴ In 1983, the Final Report of the ABA Task Force on Professional Competence found: “Law schools do well in teaching substantive law and developing analytic skills. The problems and issues in American legal education involve chiefly the teaching of other lawyering skills.”³⁵

In 1992, the ABA’s MacCrate Report developed a set of lawyering skills and professional values that it argued law schools should teach in addition to legal analysis, reasoning, research, and writing.³⁶ The MacCrate Report found that although law schools had steadily added or expanded lawyering skills simulation courses, externships, and clinical courses starting in the 1970s,³⁷ it found that “professional skills training occupies only nine percent of the total instructional time available to law schools.”³⁸

In 2007, Roy Stuckey and others published *Best Practices for Legal Education*,³⁹ premised upon the primary assumption that most law school graduates “are not as prepared as they could be to discharge the responsibilities of law practice.”⁴⁰ *Best Practices* argues that law schools can improve their education of students by engaging them “in context-based learning in hypotheticals as well as real life contexts.”⁴¹ The best way to do this is to “present students with progressively more challenging problems as their self-efficacy, lifelong learning skills, and practical judgment develop.”⁴² *Educating Lawyers* concurs with this

33. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM 1850S TO THE 1980S (1987) 214 (quoting *AALS Proceedings*, 168 (1944)).

34. Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227, 232 (1973).

35. AMERICAN BAR ASSOCIATION TASK FORCE ON PROFESSIONAL COMPETENCE, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 6 (1983).

36. AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 138-41, 233-36 (1992) [hereinafter the MACCRATE REPORT].

37. *Id.* at 236-40.

38. *Id.* at 241.

39. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

40. *Id.* at 1.

41. *Id.* at 105.

42. *Id.*

thesis.⁴³

Most law schools have only partially responded to these calls for change. A 2010 survey of law school curricula found that since 2002 law schools have increased all lawyering skills instruction, with half of the respondents listing ten or more types of lawyering skills courses.⁴⁴ The survey found that the greatest growth was in transactional drafting courses and upper level writing courses. More than 85 percent of responding schools offered in-house live-client clinical courses, almost all offered externships, “and without exception, placement opportunities have increased in each externship category since 2002.”⁴⁵

This good news, though, does not tell the whole story. Today, only nineteen out of more than 200 ABA-Approved law schools require credit-bearing in-house clinics or externships for graduation.⁴⁶ Some of these law schools require as few as two or three credits of these types of real-life experiential learning courses. Only an additional fourteen law schools guarantee students a credit-bearing in-house clinic or externship course.⁴⁷ The relatively low number of law schools requiring or guaranteeing an educational experience based in the real-life application of legal doctrine, lawyering skills, and professional values demonstrates a continuing disconnect between most legal educators and legal practitioners.

The consensus of opinion among the practicing bar and some legal educators is that law schools should require law students to engage in more professional skills and values instruction, especially in a progressive way including real life contexts. Yet, most law schools have not developed their curricula to require significant experiential professional education. Nor has the ABA been proactive in using the accreditation process to require meaningful professional skills and values instruction in law schools.⁴⁸ As a result, law schools have not been fully engaging with the legal profession through better preparing students for today’s legal practice, and have done very little to prepare

43. EDUCATING LAWYERS, *supra* note 29, at 95.

44. ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 15-16 (Catherine L. Carpenter ed., 2012).

45. *Id.* at 16.

46. See Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education at Crossroads: The Clamor for Expanded Experiential Legal Education and Mandatory Clinical Education*, 43 WASH U. J.L. & POL’Y (forthcoming Fall 2013) (listing law schools with mandatory or guaranteed clinical legal education requirements based on a July-August 2013 survey) (on file with author).

47. *Id.*

48. See *infra* notes 50-54 and accompanying text.

students for the legal practice settings of the future.⁴⁹ In light of this disengagement, some state bar regulators are taking some aspects of legal education and pre-admission preparation of new lawyers into their own hands.

III. WHY STATE BAR REGULATORS ARE IMPOSING ADMISSION REQUIREMENTS

In recent years, some state bar regulators have begun to impose pre-admission requirements to become a member of the legal profession. Other state bar regulators have made recommendations for changes in legal education. Common to these new requirements and recommendations is the recognition that law schools should be doing more to prepare students for the practice of law.

Despite the consensus that law schools should be preparing graduates better for the practice of law, the ABA has not required law schools to make significant lawyering skills instruction a requirement for graduation, even though a casual reading of the Standards suggest that there is such a requirement. The ABA Standards for Approval of Law Schools state: “A law school shall require that each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”⁵⁰ The ABA explains that these other professional skills include lawyering activities such as interviewing and client counseling, trial and appellate advocacy, negotiation, alternative dispute resolution, drafting, factual investigation, and organization and management of legal work.⁵¹

While the ABA Accreditation Standard states that it requires “substantial instruction” in these skills, in practice it does not in any meaningful way. A 2010 ABA Consultant on Legal Education Memorandum explains that “substantial instruction” in professional skills may be accomplished by requiring at least *one credit hour* of skills training where “instruction in (other) professional skills must engage *each* student in skills *performances* that are *assessed* by the instructor.”⁵²

49. See *infra* notes 93-103 and accompanying text.

50. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2012-2013 ABA STANDARDS AND PROCEDURE FOR APPROVAL OF LAW SCHOOLS, STANDARD 302(a)(4) (2012) [hereinafter ABA ACCREDITATION STANDARDS].

51. *Id.* at Interpretation 302-2.

52. American Bar Association Consultant on Legal Education, *Consultant’s Memo 3*, Standard 302(a), Standard 304, Standard 504, Standard 509 (Mar. 2010), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_20

Most law schools have either a thirteen or fourteen week semester, which means one credit of skills training consists of 13 or 14 classroom hours of instruction. To put this in perspective, the ABA Standards require a minimum of 58,000 minutes of instruction,⁵³ and typically one credit consists of 700 minutes of instruction, resulting in a requirement of 83 credits of instruction for a law degree.⁵⁴ This means that in fact the ABA requires law students to receive only 1.2 percent, one credit of the required 83 credits, of law school instruction in these other lawyering skills.

As a result of the ABA doing little to require law schools to prepare students for the practice of law, and most law schools taking their cue from the ABA, new law graduates are usually ill-equipped to provide meaningful legal services to clients. No wonder a 2010 survey by the American Lawyer found that 47 percent of law firms had clients who demanded that no first- or second-year associates work on their cases.⁵⁵ As one general counsel of a technology company explained, law schools are producing “lawyers in the sense that they have law degrees, but they aren’t ready to be a provider of services.”⁵⁶

In the face of this longstanding mismatch between what legal employers and clients want from law graduates, regulators in some states are taking action. They are beginning to take a hard look at legal education, and they are adopting changes and recommendations for bar admission that extend much further than what the ABA Accreditation Standards require.

IV. THE TYPES OF ADMISSION REQUIREMENTS STATE BAR REGULATORS ARE CONSIDERING

In recent years, state bar regulators have begun to look at legal education in their states and whether the law school requirements are sufficient to serve the objectives of the legal profession and society. Each of these efforts has resulted in recommendations for change. This Section will review some of those recommendations and how they either have resulted in or may result in new bar admission requirements.

13_aba_standards_and_rules.authcheckdam.pdf.

53. ABA ACCREDITATION STANDARDS, *supra* note 50, at STANDARD 304(b).

54. *Id.* at Interpretation 304-4.

55. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1.

56. *Id.* (quoting Jeffery W. Carr, General Counsel of FMC Technologies).

A. *New York*

In 2012, New York's highest court, the New York Court of Appeals, adopted, as part of its rules for admission, a requirement that "on or after January 1, 2015, other than applicants for admission without examination pursuant to Section 520.10 of this Part, [every applicant] shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission."⁵⁷ In announcing the new rule, Chief Judge Jonathan Lippman explained the purpose of this requirement is twofold: "to address the state's urgent access to justice gap, at the same time *helping prospective attorneys build valuable skills and imbuing in them the idea of working toward the greater good.*"⁵⁸

The New York rule is a modest step in the direction of addressing the unmet legal needs of those unable to afford lawyers. In the United States, more than 80 percent of the civil legal needs of low-income people go unmet.⁵⁹ In New York in 2012, a task force found that "at best, 20 percent of the legal needs of low-income New Yorkers involving the essentials of life are being met."⁶⁰ Currently, neither the New York Rules of Professional Conduct, nor the ABA Model Rules of Professional Conduct, require lawyers to perform pro bono work. Instead, the New York rule states that "[e]very lawyer should aspire to . . . provide at least 20 hours of pro bono legal services each year to poor persons,"⁶¹ and the ABA Model Rules provide that "[a] lawyer should aspire to render at least (50) hours of pro bono publico services per year."⁶² While the ABA Standards for Approval of Law Schools provide that law schools must make opportunities for student participation in pro bono activities, the Standards, like the Rules of Professional Conduct, do not require students to participate in pro bono activities.⁶³

57. STATE OF NEW YORK, RULES OF THE COURT OF APPEALS FOR ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW, § 520.16 (2012).

58. *New York State Bar Admission: Pro Bono Requirement FAQs* (Oct. 1, 2012 rev.), 3 (Oct. 1, 2012), <http://www.nycourts.gov/attorneys/probono/FAQsBarAdmission.pdf> (emphasis added).

59. Legal Services Corporation, *Document the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, 16 (Sept. 2009), http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

60. The Task Force to Expand Access to Civil Legal Services in New York, *Report to the Chief Judge of the State of New York*, 14 (Nov. 30, 2012), http://www.nycourts.gov/ip/access-civil-legal-services/PDF/CLS-TaskForceREPORT_Nov-2012.pdf.

61. N.Y. RULES OF PROF'L CONDUCT R. 6.1(a) (2009).

62. ABA MODEL RULES OF PROF'L CONDUCT R. 6.1 (2012).

63. Law schools are required to "offer substantial opportunities for . . . student participation in pro bono activities." ABA ACCREDITATION STANDARDS, *supra* note 50, at Standard 302(b)(2).

The New York pre-admission requirement is directly aimed at pro bono, but it also promises to expose every law student to some lawyering skills and client representation. The fifty hours of pro bono work translates out to much more than the minimum requirement for professional skills instruction the ABA requires of law schools.⁶⁴

The pro bono requirement may be just the first step in additional New York pre-admission requirements. In 2011, the New York State Bar Association (NYSBA) issued the Report of Task Force on the Future of the Legal Profession.⁶⁵ In the report, the Task Force recommended:

[T]hat the NYSBA should recommend that the New York Court of Appeals reevaluate its rules for the admission of attorneys and counselors of law to (1) emphasize how to apply theory and doctrine to actual practice and (2) encourage the process of acquiring and applying professional judgment through simulated and clinical activities under appropriate faculty supervision.⁶⁶

The Task Force explained: “The over-arching goal is to encourage students to participate in clinical and other courses that will provide them with the necessary skills to apply their knowledge in practical settings.”⁶⁷ If this recommendation is followed, it will likely achieve the desired result of better preparing students for the practice of law.

B. California

In June 2013, the State Bar of California Task Force on Admissions Regulation Reform issued a report that included proposed admission requirements.⁶⁸ The report noted that several past studies found a “perceived gap between law school education and preparation to practice law.”⁶⁹ Chief among the proposals is a new requirement for “15 units of coursework designed to foster the development of professional

64. See *supra* notes 50-54 and accompanying text.

65. New York State Bar Association, *Report of the Task Force on the Future of the Legal Profession* (Apr. 2, 2011), http://www.nysba.org/AM/Template.cfm?Section=Task_Force_on_the_Future_of_the_Legal_Profession_Home&Template=/CM/ContentDisplay.cfm&ContentID=48108.

66. *Id.* at 6.

67. *Id.* at 49.

68. The State Bar of California, *Draft Task Force Report and Recommendations*, 15-17 (June 24, 2013), http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/STATE_BAR_TASK_FORCE_REPORT_%28FINAL_AS_APPROVED_6_11_13%29_062413.pdf.

69. *Id.* at 3.

competency skills.”⁷⁰ As an alternative to skills courses and clinical courses integrated into or complementing doctrinal classes, the report would also permit some or all of the fifteen credits through “participation in Bar-approved externships, clerkships, or apprenticeships for courts, governmental agencies, law firms or legal service providers.”⁷¹ The report contemplates this requirement going into effect in 2017. Further, the report also recommends requiring fifty hours of pro bono or low bono (reduced fee) as a pre- or post-admission bar requirement.⁷² If adopted, this recommendation would go into effect in 2016.

In explaining the reasoning for these recommendations, the report echoes Chief Justice Burger’s lament that legal education teaches with books and does not require professional practice by stating that law is “the only learned profession that sends our newest members out into the world of practice without a period of intensive, supervised training.”⁷³ The report also states that it does not expect law schools to produce lawyers “fully formed,” but that we should expect that “new lawyers to enter the profession oriented to the actual experience of practice and values of ethics and professionalism.”⁷⁴

C. Other States

At least two other states, Illinois and Ohio, have issued reports that call for reform of the law school curricula. Both were critical of law schools for not preparing students better for the practice of law.

1. Illinois

In 2013, an Illinois State Bar Association special committee report primarily considered the impact of law school debt on the delivery of legal services.⁷⁵ The report concluded that law student debt had a number of negative consequences, both for new lawyers and on the public’s ability to access quality legal services,⁷⁶ and that “the training

70. *Id.* at 15.

71. *Id.*

72. *Id.* at 16-17.

73. *Id.* at 17.

74. State Bar of California, *supra* note 68, at 23.

75. Illinois State Bar Association, *Special Committee on the Impact of Law School Debt on the Delivery of Legal Services, Final Report & Recommendations* (Mar. 8, 2013), <http://www.isba.org/sites/default/files/committees/Law%20School%20Debt%20Report%20-%202013-8-13.pdf> [hereinafter Illinois Report on Impact of Law School Debt].

76. The negative consequences included: small firms cannot pay new attorneys salaries

that law students receive in law school today is increasingly not worth its high cost – essentially creating a ‘perfect’ storm.”⁷⁷

The committee found that the root of the problem is that law schools are not sufficiently preparing new lawyers for practice, which in turn makes them less employable.⁷⁸ The committee concluded that low teaching loads and faculty emphasis on scholarship are contributing both to the high cost of legal education and “contributing to the unavailability of affordable legal services for the public.”⁷⁹

The committee recommended several reforms to law school curricula which included: more focus on practice-oriented courses, making live-client clinics and simulation courses a higher priority; reducing the number of courses, such as “Law and Literature,” that have no practical application; incorporating more writing assignments and formative feedback prior to final exams; including law office management instruction; and teaching a bar review course at no extra cost to students.⁸⁰ The committee’s final curricula reform measure was a recommendation for law schools to transform “the second and third years of law school to help students transition to practice through apprenticeships in practice settings, practical courses, and teaching assistantship, rather than more traditional doctrinal courses.”⁸¹

Related to the reforms in legal education, the report contains suggested reforms to law school faculty that place an emphasis on teaching ability and practice skills. These reforms include: changing tenure and hiring requirements to put less emphasis on scholarship and more on teaching ability and practice skills; adding practicing lawyers and judges to hiring committees to ensure a hiring emphasis on teaching ability and practice skills; using more adjunct faculty to lower costs and expose students to the practice of law; and providing equal law school governance rights to clinical and legal writing faculty.⁸²

sufficient to service their debt; fewer lawyers are able to work in traditionally low paying public interest positions; new attorney debt prevents them from providing affordable services to low income families and individuals; lawyers burdened by debt are less likely to engage in pro bono work; debt burdened lawyers do not go to rural areas where it is harder to service their debt; people of color are less likely to enter the profession due to the cost of legal education; and lawyers with heavy debt loads may be more likely to commit ethical violations. *Id.* at 1-2.

77. *Id.* at 3.

78. “The inadequate ‘practice ready’ skills of new graduates has apparently contributed to the reality that only 55% of the law school class of 2011 had full-time, permanent jobs that required a JD nine months after graduation.” *Id.*

79. *Id.*

80. *Id.* at 45-46.

81. Illinois State Bar Association, *supra* note 75, at 6.

82. *Id.* at 46-48. These suggested reforms seek to orient law faculty more toward the practice

The report also recommends reforms for reducing the cost of legal education, the main topic of the report. The principal reform calls upon the federal government to make the federal student loans law schools receive contingent on each law school's success in educating lawyers.⁸³ The report also recommends revisions to accreditation standards to reduce costs and to emphasize practice greater.⁸⁴

The Illinois report demonstrates that even when investigating law

of law and to recognize that clinical and legal writing faculty, who primarily teach lawyering skills, should have an equal voice in setting the educational mission of the law school through faculty governance.

83. The report recommendations include: placing limits on the amount of loans students can borrow from the federal government so that law schools will have to reduce costs; restricting federal loan eligibility to schools who demonstrate that their graduates meet employment and debt-repayment benchmarks; and reallocating funds in the federal loan forgiveness program from aid to lawyers with a salary above a certain level to public interest attorneys, who would then be able to use the loan forgiveness on a yearly basis rather than requiring a ten-year commitment. *Id.* at 39-42.

84. Recommended changes include: allowing adjuncts to play a greater role in the law school, including in the first year; requiring debt counseling before students enroll; removing the requirement that all faculty produce scholarship; expanding the number of distance learning credits permitted; and requiring law schools to collect more salary, debt load, and employment data of graduates after graduation. *Id.* at 42-44.

Another accreditation recommendation, that requirements for library collection be permitted by digital access, is based on a faulty premise. The ABA Accreditation Standards presently do not require a law library to own any materials. The Standards state that "a law library shall also provide a collection that, through ownership or reliable access" meets the research, teaching, scholarship, and service needs of students and faculty. ABA ACCREDITATION STANDARDS, *supra* note 50, at Standard 606. An interpretation explains that this may require a mixture of formats depending upon the need of the library's clientele, faculty and students, and only cautions that "[a] collection that consists of a single format may violate Standard 606." *Id.* at Interpretation 606-2. This is a change from a prior interpretation that was in effect until 2006 and stated: "At present, no single publishing medium (electronic, print, microfilm, or audio-visual) provides sufficient access to the breadth and depth of recorded knowledge and information needed to bring a law school into compliance with Standard 606. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2004-2005 ABA STANDARDS AND PROCEDURE FOR APPROVAL OF LAW SCHOOLS Interpretation 606-3 (2004). When circulating this change for comments in 2005, the ABA explained:

The changes proposed here might be best described as requiring what the collection "provides" rather than what the collection "is" in terms of location and format. The Council believes this "functionality" test is a better approach to ensuring sufficient access to needed materials while facilitating law school efforts to provide information resources in a cost effective manner.

American Bar Association Section of Legal Educ. & Admissions to the Bar, *Proposed Revisions to Standards Chapters 6, 7 and 1*, 36, SYLLABUS 1, 14 (May 2005), http://www.americanbar.org/content/dam/aba/publications/syllabus/2005_vol36_no3_syllabus.authcheckdam.pdf. Others have made a similar error in believing that the ABA Standards require law schools to maintain large collections of physical materials and thereby add needlessly to the cost of legal education. *See, e.g., TAMANAHA, supra* note 11, at 173 ("These rules [ABA Standards] require law schools to maintain unnecessarily expensive library collections and large support staff; the book-on-the-shelf library is virtually obsolete in the electronic information age.").

student debt, bar authorities cannot help but comment on the failure of law schools to prepare graduates better for the practice of law. This conclusion is consistent with every other study of legal education.

2. Ohio

In 2009, the Ohio State Bar Association issued the Report of the Task Force on Legal Education.⁸⁵ The Task Force consisted of twenty-five members and included a representative from each of Ohio's nine law schools and one law school in Kentucky bordering Ohio.⁸⁶

The Task Force made several recommendations for the integration of theory and practice in law schools. Initially, the Task Force formally endorsed the recommendations of *Best Practices* and the 2007 Carnegie Report.⁸⁷ In addition, it made three specific recommendations. First, it recommended that law schools and the legal profession "work together to offer more practical training opportunities to Ohio law students."⁸⁸ Second, it recommended that the Supreme Court of Ohio adopt a rule requiring that "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 the practicing bar."⁸⁹ Finally, it recommended that law schools pursue initiatives to encourage law students to develop a sense of professionalism, professional identity, and ethical responsibility throughout the curricula.⁹⁰

The Task Force also made several recommendations to the Ohio Supreme Court to facilitate the changes in legal education. Some of these were: reducing or modifying the number of subjects on the bar exam to enable increased and in-house and externship courses; expanding the student practice rule to enable second-year law students to represent clients under proper supervision; working with law schools and the practicing bar to create new financial models to support clinical and other experiential learning education; and creating a Joint Working Group with law schools and the practicing bar "to seek modification or

85. Ohio State Bar Association, *Report of the Task Force on Legal Education Reform* (Dec. 2009), https://www.ohiobar.org/General%20Resources/pubs/OSBA_Legal_Education_Task_Force_Report.pdf.

86. *Id.* at 1.

87. *Id.* at 2.

88. *Id.* at 3.

89. *Id.*

90. *Id.*

waiver of certain ABA accreditation standards to facilitate experimental law school programs and curricula.”⁹¹

The thrust of the recommendations in Ohio are similar to recommendations elsewhere: Law schools need to focus on more experiential learning and lawyering skills education. If these recommendations are eventually implemented, they promise to effect change in law schools. But, as with other recommendations, are law schools interested in implementing any of these changes?

V. WHAT LAW SCHOOLS SHOULD BE DOING

Law schools need to become much more like other professional educational institutions by better preparing law students for their professional careers. To date, the ABA accreditation process has favored minimal regulation in terms of law school curricula and has left legal education largely in the hands of each law school. The only specific ABA requirements for all law schools are: two rigorous writing experiences, one in the first year and one thereafter; instruction in substantive law (leaving required courses to the discretion of each law school); instruction in legal analysis and reasoning, legal research, problem solving, and oral communication; at least one credit hour in other professional lawyering skills; and instruction in legal ethics.⁹² Absent more meaningful regulation from the ABA, law schools should consider the various state bar regulators’ recommendations and embrace those that would better prepare law students for the practice of law and

91. Ohio State Bar Association, *supra* note 85, at 2.

92. Standard 302 on curriculum provides:

- (a) A law school shall require that each student receives substantial instruction in:
- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
 - (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
 - (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
 - (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
 - (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

ABA ACCREDITATION STANDARDS, *supra* note 50, at Standard 302(a). In the context of “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession,” the phrase “substantial instruction” may be as little as one credit hour, or 700 minutes, of instruction. *See supra* notes 50-54 and accompanying text. There is no other definition of “substantial instruction” in terms of the other curriculum requirements.

complement their existing programs of legal education. Law schools need to be forward looking to prepare law students for legal practice needs in the future.

In *Tomorrow's Lawyers*, Richard Susskind predicts that the very nature of both lawyers' work and legal employment is changing, resulting in less need for traditional lawyers.⁹³ The new jobs for lawyers he identifies include: legal knowledge engineers, who can "organize and model huge quantities of complex legal materials and processes;"⁹⁴ legal technologists, "experienced and skilled individuals who can bridge the gap between law and technology;"⁹⁵ legal hybrids, lawyers schooled and expert in related disciplines;⁹⁶ legal process analysts, "individuals who could undertake reliable, insightful, rigorous, and informed analysis of their [law firms and in-house legal departments] central legal processes;"⁹⁷ legal project managers, individuals who allocate work to appropriate providers and ensure that providers complete work satisfactorily, on time, and within budget;⁹⁸ on-line dispute resolution (ODR) practitioners, "experts in resolving disputes conducted in electronic formats;"⁹⁹ legal management consultants, individuals engaged in "strategy consulting . . . and operational or management consulting (for example, on recruitment, selection of law firms, panel management, financial control, internal communications, and document management);" ¹⁰⁰ and legal risk managers, individuals whose "focus will be on anticipating the needs of those they advise, on containing and preempting legal problems."¹⁰¹

Law students are well-qualified to learn the types of professional skills that Susskind predicts they will need as lawyers in the future. But Susskind joins other critics of law schools for not preparing graduates for the practice of law today.¹⁰² In the context of the legal jobs for tomorrow's lawyers, Susskind observes "if graduates are not well equipped for legal practice as currently offered, they are profoundly ill-prepared for the legal work of the next decade or two."¹⁰³

93. SUSSKIND, *supra* note 13, at 128-30.

94. *Id.* at 128.

95. *Id.*

96. *Id.* at 131.

97. *Id.*

98. *Id.* at 131-32.

99. SUSSKIND, *supra* note 13, at 132.

100. *Id.*

101. *Id.* at 135.

102. *Id.* at 151.

103. *Id.*

If law schools are to become much more like schools in other professions, law schools will have to begin to emphasize professional lawyering competencies as part of their core mission. Key to that transition will be requiring more professional skills education, including experiential learning practice experiences both in in-house clinical courses and externship courses. As part of their professional education, architects, doctors, nurses, pharmacists, and social workers all receive much more skills and professional experience than law students do.¹⁰⁴ That law schools have resisted developing their educational programs similar to other professional schools is an anomaly that the market and state bar regulators may no longer support.

Still, there is mixed reaction to even modest proposals, such as the California recommended fifteen hours of experiential learning course admission requirements. Four deans of ABA-accredited law schools submitted comments to the March 2013 draft report, and all four stated that they shared the Task Force's goal of better preparing students for the practice of law.¹⁰⁵ Three deans were generally supportive of the proposed skills requirement, but one differed "fundamentally" with the Task Force on how to best achieve that goal.¹⁰⁶ Among the concerns this dean raised was a critique of how the Task Force determined the required fifteen credits of skills courses, stating that the Task Force's "ballpark guess of how many courses required borders on the reckless."¹⁰⁷

While the dean appears to raise a valid concern regarding the number of credits, this critique failed to acknowledge that there do not appear to be any empirical studies that justify the number of credits allocated for any courses law schools require, such as constitutional law, contracts, torts, or other doctrinal courses.¹⁰⁸ In comments from the

104. See *infra* notes 109-15 and accompanying text.

105. Memorandum from Penelope Bryan, Dean, Whittier Law School, to California Task Force on Admissions Regulation Reform (Apr. 7, 2013) (on file with author); E-mail from Erwin Chermersky, Dean, University of California – Irvine School of Law, to Jon Streeter, Chairman of the State of California Bar Association Task Force on Admissions Regulation Reform (Apr. 14, 2013: 6:19 PM PST) (on file with author); Memorandum from Stephen C. Ferruolo, Dean of University of San Diego School of Law, to Members of State Bar Task Force on Admissions Regulation Reform (Apr. 1, 2013) (on file with author); Letter from M. Elizabeth Magill, Dean, Stanford Law School, to Jon Streeter, Chairman Task Force on Admissions Regulation Reform 3 (Apr. 8, 2013) (on file with author).

106. Magill, *supra* note 105, at 1.

107. *Id.* at 5.

108. Memorandum from the Clinical Legal Education Association (CLEA), Second Comment to California State Bar Task Force on Admissions Regulation Reform 3 (May 30, 2013) (on file with author).

Clinical Legal Education Association (CLEA) to the Task Force, CLEA demonstrates that the proposed fifteen credits of experiential learning instruction is far less than the amount of skills instruction or professional experience California requires for the education and licensing of other professions.¹⁰⁹ Architecture education, for example, requires approximately one-third in design studio courses;¹¹⁰ medical education requires one-half of the student's education in clinical rotations;¹¹¹ nursing requires approximately one-third of the education in clinical practice courses;¹¹² pharmacy schools require 300 hours in the first three years of study in clinical settings and 1,440 hours in the final year of school in clinical settings;¹¹³ a masters of social work requires approximately one-third of the credit hours in field education courses;¹¹⁴ and veterinary medicine requires at least one-quarter of the education in clinical education.¹¹⁵ CLEA also states, "Notably, the professional skills requirements for accreditation and licensing in the other professions do not appear to be the product of empirical studies."¹¹⁶

The same dean who questioned the amount of lawyering skills credits also raised the potential cost of implementing the skills requirement.¹¹⁷ The dean opined that law schools would likely meet the requirement with poorly run externships.¹¹⁸ Another dean stated that "[t]he costs concerns are going to be the major objection for law schools."¹¹⁹ The other two deans differed on this point. One said that the fifteen credits of experiential learning would not "impose a great burden on any law school," especially if some of the credits could be earned in the first year of law school.¹²⁰ The second dean found "the flexibility of the requirement and the time of its implementation are reasonable."¹²¹

109. *Id.* at 2-3.

110. *Id.* at 2 (citing California Architects Board, "Licensing Requirements/Process").

111. *Id.* (citing Medical Board of California, "Licensure Information for U.S. or Canadian Medical School Graduates").

112. *Id.* at 3 (citing 16 CAL. CODE OF REGS. § 1426).

113. *Id.* at 2 (citing California State Board of Pharmacy, "Pharmacist Examination and Licensure Application Instructions").

114. Memorandum from the CLEA, *supra* note 108, at 3 (citing California Board of Behavioral Sciences, "LCSW License Requirements").

115. *Id.* at 2-3.

116. *Id.* at 3 n.12.

117. *See* Magill, *supra* note 105, at 6.

118. *Id.*

119. Chermerinsky, *supra* note 105.

120. Bryan, *supra* note 105, at 2.

121. Ferruolo, *supra* note 105, at 3-4.

If California adopts an experiential learning requirement, and if other states follow with similar requirements, each law school will have the flexibility to determine how to meet these new demands. Almost all ABA-Approved law schools have in-house clinical clinics and externships as well as simulation lawyering skills courses. Requiring more experiential learning may primarily be a question of adding additional faculty resources to existing courses. No one has compiled and analyzed comprehensive information about the number of credit hours in these courses law students already take, but a 2012 study of third year law students found that 76 percent had participated in an in-house clinical course or externship.¹²² The reliability of this number may be questioned because students from only 81 of more than 200 law schools responded and the average institutional response rate was only 46 percent.¹²³ Better national data is needed, but each law school should start by understanding how much experiential education students are already receiving to determine how much more needs to be done.

Furthermore, recent empirical research by Robert Kuehn into the cost of clinical legal education demonstrates that 79 percent of the nation's law schools currently have the capacity to provide a clinical experience to every student, and another eleven law schools (5 percent) currently have sufficient capacity for over 90 percent of their students.¹²⁴ After reviewing tuition, curricular, and enrollment data from law schools with sufficient in-house and externship positions for each student with those that do not currently offer enough positions, Kuehn concluded that "there is no statistically significant difference in the amount of tuition charged to make these law clinic and externship positions available to all students"¹²⁵

These empirical findings should belie much of the concern over the costs of requiring more experiential education, especially in-house clinical and externship courses. Although one California law school dean warns that at many law schools the resources for more experiential education would come from diverting resources away from in-house clinics,¹²⁶ that need not and should not be the case. Such reductions

122. Law School Survey of Student Engagement, *2012 Annual Survey Results: Lessons from Law Students on Legal Education*, 4 (2012), http://www.lssse.iub.edu/pdf/2012/LSSSE_2012_AnnualReport.pdf.

123. *Id.* at 3.

124. See Robert R. Kuehn, *Pricing Clinical Legal Education*, 30-31, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042.

125. *Id.* at 32.

126. Magill, *supra* note 105, at 2.

would miss the point about better preparing students for the practice of law. If in-house clinics are, as the dean states, “the gold standard in experiential learning,”¹²⁷ a more appropriate response would be for law schools to take steps to ensure that every student has such an experience as part of excellent legal education. Requiring each student to have an in-house clinical course experience would demonstrate that a law school is devoted to providing the very best experiential learning to each student.

Of course, more experiential learning, whether through in-house clinical courses, well-designed and taught externships, or meaningful simulation-based courses, may require more resources at many law schools. The question then becomes how to set priorities in allocating all resources, both in terms of the courses taught and the balance between law professor scholarship and teaching.

In allocating faculty resources within the law school, a logical approach would be to conduct a cost-benefit analysis of the entire program of legal education.¹²⁸ This analysis would consider educational goals and content of courses.¹²⁹ A law school would review each course in terms of the course learning outcomes, how the teacher assesses if students have achieved the learning outcomes, how the subject matter and the lawyering skills emphasized in each course contribute to preparing the student for the practice of law, and how each course relates to the overall objectives of the program of legal education. Law schools should also analyze the cost of courses and seminars that are consistently under-enrolled and consider shifting teaching resources away from such courses by offering the courses every other year, or possibly not at all if the courses remain under-enrolled. If a law school has to increase the number of seats available in experiential learning courses, whether in-house clinical, externship, or simulation courses, this may result in lesser demand for some doctrinal courses that could be taught in fewer sections or taught every other year. These and other actions could free up teaching resources that law schools could shift to accommodate areas of greatest curricula need. This is not to suggest that any law school should abandon teaching doctrine, but there needs to be a recognition that requiring some measure of lawyering skills and professional values is

127. *Id.*

128. I have argued this previously. See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J. OF LAW & SOC. JUSTICE 309 (2012).

129. Beverly Balos, *Conferring on the MacCrate Report: A Clinical Gaze*, 1 CLINICAL L. REV. 349, 354 (1994); Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 404 (1994).

necessary to complement and reinforce the doctrinal knowledge, legal analysis, and problem solving currently required for graduation.

Many have suggested that law schools also have to become smarter about resources devoted to scholarship. The resources are both money and time. Richard Neumann has estimated that a law review article written by a full professor may cost a law school more than \$100,000, assuming that approximately one-half of the faculty member's employment is to produce scholarship.¹³⁰ Brian Tamanaha states that most faculty receive between \$15,000 and \$20,000 in summer stipends to support their writing, but at top schools, it is in the tens of thousands of dollars.¹³¹ Tamanaha suggests that if law faculty is motivated by summer stipends to write, perhaps the scholarship "suffers in quality or value owing to the lack of an intrinsic desire on the part of the scholar to write."¹³² Tamanaha's quality and value question appears to be supported by how few judges, lawyers, and legislators rely on much of the current legal scholarship, and how a significant number of articles are never cited by other scholars.¹³³

Teaching loads have also fallen dramatically to produce more time for faculty scholarship. In 1941, faculty at larger, better-resourced law schools taught an average of 13.42 credit hours a year. Those at smaller, less-resourced schools averaged 15.3 credits. Those at the smallest schools, with the least resources, had annual teaching loads of 17.32 credit hours.¹³⁴ A 2006 study showed that at the highest ranked law schools, the average annual teaching load was 7.94 hours, and 11.13 hours at law schools ranked in the third and fourth tiers.¹³⁵

Throughout the legal academy, law faculty members teach less today than they did decades ago, and this puts pressure on law schools to hire more law faculty, which is a major law school expense.¹³⁶ Tamanaha reports salaries at top-ranked law schools in the range of

130. See Richard Neumann, *The Way to Carnegie: Practice, Practice, Practice – Pedagogy, Social Justice, and Cost in Experiential Legal Education*, BOSTON COLLEGE JOURNAL OF LAW AND SOCIAL JUSTICE (Oct. 7, 2011), http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html.

131. See TAMANAHA, *supra* note 11, at 50. Tamanaha reports that at the University of Texas School of Law twenty-eight law professors received summer stipends above \$60,000. *Id.*

132. *Id.*

133. See *supra* notes 24-27 and accompanying text.

134. Benjamin Franklin Boyer, *The Smaller Law Schools: Factors Affecting Their Methods and Objectives*, 20 OR. L. REV. 281, 284 (1941).

135. Theodore P. Seto, *Understanding the U.S. News Law School Ranking*, 60 SMU L. REV. 493, 546 (2007).

136. *Id.* at 546-48.

\$300,000-\$400,000.¹³⁷ The Society of American Law Teachers (SALT) survey in 2011-2012 reported average median salary of full-time professors was \$146,359, exclusive of benefits and summer stipends.¹³⁸ Only one-third of the 200 law schools surveyed replied, and not one of the twenty highest ranked schools replied.¹³⁹ Accordingly, the SALT survey appears skewed toward law schools with lower median salaries. Still, if one assumes fringe benefits of 27 percent and a summer stipend of \$15,000, it results in an average cost of \$200,000 per tenured professor at even the law schools with lower median salaries.¹⁴⁰ This expense would be less for assistant and associate professors who are not tenured.¹⁴¹

When one combines the expense of each law professor with the decreased teaching loads, it is easy to see where a law school could produce significant savings by increasing teaching loads and reducing the size of law faculties. Assume a law school with forty full-time law faculty and an average cost of \$160,000 per faculty member.¹⁴² If the law school required each faculty member to teach one extra course each year, it would produce the capacity for forty additional courses. If the law school had a three-course teaching load, which many law schools have, that would be the equivalent of the current teaching load of thirteen faculty members. If the law school had a four-course teaching load, that would be the equivalent of the current teaching load for ten faculty members. In both cases, such law schools could teach the same number of students with the same number of courses using fewer faculty and producing savings of \$1.6 million to \$2 million a year.

There are multiple ways to transition legal education to prepare

137. TAMANAHA, *supra* note 11, at 48-49.

138. Society of American Law Teachers, *2011-12 SALT Salary Survey*, SALT EQUALIZER 1-3 (May 2012) [hereinafter *SALT Survey*]. SALT received information from sixty-six law schools of 200 law schools SALT surveyed in the United States and Puerto Rico. *Id.* I arrived at the average median salary by dividing the total salaries reported for tenured professors and divided that number by the number of schools reporting that information.

139. *Id.*

140. One commentator estimates fringe benefits averaging 27 percent for law professors. See Jack Crittenden, *Why Is Tuition Up? Look at All the Profs*, NAT'L JURIST, Mar. 2010, at 40. An average summer stipend of \$15,000 is the lower end of the average Tamanaha found. See TAMANAHA, *supra* note 11, at 50.

141. The SALT survey reports lower salaries for assistant professors and pre-tenure associate professors than it does for tenured associate and full professors. See *Salt Survey*, *supra* note 135, at 1-3.

142. The average cost of \$160,000 assumes a mixture of untenured tenure-track faculty and tenured faculty at a law school that has median salaries consistent with the 2011-2012 SALT survey. See *supra* notes 134-137 and accompanying text.

students better for the practice of law, and it will require the determination to do so either within law schools acting on their own or through the demands of state bar regulators. If California and New York adopt pre-admission practice requirements, every law school that enrolls some students who seek admission to those jurisdictions will have to comply with the new requirements, or at least provide sufficient opportunities for professional skills development. It may require some changes in the curricula as well as priorities in law school expenditures to prepare students better for the practice of law, but it can and has been done.

Today, at least three law schools require sixteen or more credits in experiential learning courses as a graduation requirement. The CUNY School of Law requires all students to take a four credit lawyering seminar in their second year,¹⁴³ and a twelve-to-sixteen credit faculty supervised in-house clinic or field placement course in their final year.¹⁴⁴ The University of the District of Columbia School of Law requires each student to enroll in two seven-credit in-house clinics¹⁴⁵ and to complete a two-credit moot court course.¹⁴⁶ Washington & Lee School of Law requires twenty credits in simulated or real practice experiences that include one in-house clinic or externship, three problem-based electives, and two lawyering skills immersion courses.¹⁴⁷ If these three schools, including both public and private law schools, are able to provide this type of experiential professional legal education, every law school will be able to do so.

But for law schools to respond to legal needs today and those of tomorrow, they need to do more than even those schools that require substantial in-house clinics, externships, and lawyering skills simulation courses. Law schools need to prepare students for where the practice of law is heading. Law schools also need to incorporate an educational focus on the types of legal employment Susskind and others predict will

143. *Curriculum & Course Descriptions, Second Year Required Courses*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/courses/second-year.html> (last visited Aug. 13, 2013).

144. *Curriculum & Course Descriptions, The Lawyering Curriculum: Real-World Legal Work*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/courses/curriculum.html> (last visited Aug. 13, 2013).

145. *Clinic Guidelines*, UNIVERSITY OF THE DISTRICT OF COLUMBIA DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page=ClinicGuidelines> (last visited Aug. 13, 2013).

146. *Course Catalog*, UNIVERSITY OF THE DISTRICT OF COLUMBIA DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page=CourseCatalog#450> (last visited Aug. 13, 2013).

147. E-mail from James Moliterno, Professor of Law, Washington & Lee School of Law, to Peter Joy, Professor of Law, Washington University School of Law (May 26, 2013, 12:55 CST) (on file with author).

be available. For example, law students interested in litigation need to learn how to design, manage, and analyze e-discovery, and they can learn this best with hands-on experience. Courses in dispute resolution should incorporate on-line dispute resolution (ODR). Law schools need to do this and more.

Law schools should also communicate more with legal employers about which courses law schools should be teaching, and come to a better understanding about the new legal employment needs. Armed with this information, law schools need to do a thorough review of their existing curricula. Each course should be evaluated to see what should be updated. This process will also enable law schools to identify the courses they need to develop to educate their students for current and future legal employment. When legal educators engage more with the practicing bar and with experts in other fields, such as emerging technologies, they will have a better understanding of what needs to be done to prepare students better for the practice of law.

This will not be easy for law schools. Some existing law professors will have to learn new material and skills. Law schools will also have to employ new professors and adjuncts who have the experience to teach some of the new courses that the law schools will begin to offer. These will be fundamental changes, and law faculties content with the way things have been likely will resist.

VI. CONCLUSION

Law schools need to be forward looking and need to incorporate changes that will better prepare students for the practice of law as it is today and for the future. This has to start with a commitment by each law school to prepare students for law practice. Law schools also have to have a commitment to become involved with and seek guidance from practicing lawyers, judges, bar admission authorities, and others to improve their curricula. By taking these actions, law schools will better prepare students for the practice of law and how to engage with the legal profession in order to meet society's legal needs today and in the future.

The law schools that will be most successful in this endeavor will be those that proactively develop and require stronger practice-ready curricula without waiting for bar regulators to force change. They will develop curricula for tomorrow's lawyers. Yet, the history of law schools ignoring the calls to prepare students better for the practice of

law suggests that this change may not come easy at most law schools.¹⁴⁸

The biggest obstacle promises to be law school faculty members who are content with the way legal education has been during their careers, and who do not see the need for law schools to require more experiential and real-life learning. In many ways, law faculties have been the primary beneficiaries of how law schools have set priorities and operated. Salaries are high, teaching loads are low, and faculty members have more time to pursue their interest in scholarship rather than focusing on the challenges facing legal education and the legal profession. But changes, both in the demand for legal education and for legal services, should cause faculty members to care more about their students, the legal profession, and the legal needs of society. If they care, they will be prepared to make changes to the curricula, including an emphasis on experiential education, to prepare students better for the practice of law both for today and for tomorrow.

148. See *supra* Part II.