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The Questions

We are here today to answer two questions: (1) How can law school better prepare students to practice law? and (2) Why hasn't it happened? We're also here to propose some remedies which many thoughtful and concerned observers of legal education say are obvious and long overdue but, for reasons I will discuss, have not been implemented.

I come here as a solo practitioner and as an adjunct law professor. Since 1998 I have taught a practicum to third year students here at Capital Law on general practice. In that capacity, I have taught many of the "how tos" of law practice: how to implement the doctrine they learned into the work product of a practicing lawyer; how to draft a will; and how to draft and file a complaint; how to deal with clients, to name a few.

As someone who has one foot in practice and the other in law school academia, I've had the opportunity to observe up close my students who are months or weeks from graduation. Sadly, but not surprisingly, it is not a pretty picture. Although my students are eager, intelligent, and willing to learn, they know almost nothing about law practice. *By design*, they have been taught almost nothing about law practice. And to the extent they know anything about being a practicing lawyer, they have learned it on their own, "on the street". In that regard my students are fairly typical of other American law students.

The Problem

So what's the problem? The current system is the way we were all taught, the way that law students have been taught for generations. What's the problem?

In my view there are two interconnected problems, both of which emanate from failings in the world of legal education. The first, is that law schools continue to produce large numbers of lawyers, flooding an already drowning market. The second is, that having flooded the market, law schools have refused to teach new lawyers how to swim – how to practice. Individually, the effects of either would be bad enough. Together, however, the effects of these two shortcomings have had a tremendously damaging effect on law students, the legal profession, and most importantly, the public. Let's see why.

Too Many Lawyers – Law Schools Flood the Market

It is old news that law schools don't prepare students to practice, even at the most minimally competent level. That's not a change from the way it is been. But while law school hasn't changed, law practice has dramatically changed, and at an ever-quickening pace.

The legal education that many found adequate in a bygone day is, today, inefficient, inadequate, and costly. Law schools still use teaching methods and casebooks modeled on those developed by candlelight by Christopher Columbus Langdell at Harvard Law School in his contracts course in 1870.[1] We don't know if George Armstrong Custer ever saw one of Langdell's contracts casebooks; but he could have, for he would die on the plains of Montana six years later.

Current law school pedagogy is stuck in Langdell's 19th century. Except for word processing and the greater speed of electronic research, law school hasn't changed much since Langdell. The teaching methods and casebooks we use today seek to replicate those of Langdell. Despite the passage of over 130 years, Langdell's methods remain the dominant teaching modality, largely unquestioned by those who populate legal academia even though there is no sound pedagogical reason for its pervasive use. By and large, law teaching has stagnated.[2]

Langdell, at least, had an excuse. He did not have access to the substantial scientific advances that have been made in the study of how students learn, as well as advances in educational psychology, social psychology, and neuroscience. We now have a much greater understanding of how the brain works. We now know the most effective methods for teaching students of all kinds, including law students, how to learn. Those advances happened years after Langdell. Further, Langdell did not have the benefit of 130 years of experience in the legal profession as to what makes an effective lawyer. Langdell, at least, had an excuse. Today's legal educators do not. For reasons we will discuss, legal educators have refused to acknowledge, in any substantial way, 130 years of learning about learning. While other graduate and professional schools have long since adopted more modern teaching methods, including mandatory clinical or field training, law school has barely moved beyond Langdell.

Later this morning Susan Daicoff will discuss the results of the many scientific studies that show that the Socratic – Casebook method through which law students are taught is not only pedagogically ineffective, but is downright damaging to their mental and emotional health and well being.[3] There is substantial evidence through a number of

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[1] Bruce A. Kimball, *Christopher Langdell: The Case of an 'Abomination' in Teaching Practice,* The NEA Higher Education Journal, Summer 2004, at 24.

[2] *Best Practices of Law Schools for Preparing Lawyers to Practice Law,* Clinical Legal Education Association, Draft of August 25, 2004, at 13.

[3] See, for example, G. Andrew H. Benjamin, Alfred Kaszniak, Bruce Sales, and Stephen B. Shandfield, *The Role of Legal Education in Producing Psychological Distress Among Law Students*, 1986 Am. B. Found. Res. J. 225; Kennon M. Sheldon and Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well Being*, Behav. Sci Law 22:

studies that this damage carries over into practice and has a damaging impact on the practice**.** The results of these studies have been widely known for years. Challenging, as they do, the pedagogy of the status quo, they have also been widely disregarded in legal academia.

Yet, while law school remains mired in the past, law practice today is more complex, more competitive, and more stressful than ever before. In a consumer oriented world, consumers of legal services are demanding greater services at lower price points than ever before. A premium has been placed on speed and efficiency in the delivery of legal services. It is a world, and a practice, alien to the one that Langdell knew.

The Glut

Driving a lot of the change in the world of law practice has been the glut of lawyers on the market; a glut fostered and even encouraged by the ABA and by law schools. According to the American Bar Foundation, in 1951 there was one lawyer for every 695 Americans. Since then, in the year 2000 there was 1 lawyer for every 264 Americans.[4] At that rate, in the year 2050 there will be 1 lawyer for every 100 Americans. I think it is safe to say that, as a nation, the supply of lawyers long ago outstripped the demand for their services. There are simply too many lawyers and too many law schools in the United States. Given the oversupply of lawyers, if law schools were at all sensitive to market forces they would be shutting their doors or at least reducing their student headcount. Instead, new law schools continue to open each year. Since 1970, 51 new law schools have been approved by the ABA.[5] In 2006 alone, the ABA granted full approval to two new law schools and provisional approval to two others.[6]

261-286 (2004). There is also substantial anecdotal evidence supporting this point. See for example, Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. Legal Educ. 91 (2001) where Watson, the holder of an endowed chair at the University of Georgia Law School, who has also taught at law schools in England, Scotland, South Africa, Dutch Antilles and Italy, in surveying his students found that most of those students felt that first year of law school was "terrifying" and a horrible experience, with some saying it was the worst year of their lives. In general, Watson's students felt that some of their teachers set out to deliberately intimidate them and gave them little guidance. In criticizing the Socratic method for causing some of these ills, Watson observes that not only does the Socratic method not stimulate classroom discussion it "freezes students with fear and deters voluntary student participation." See Watson, at 91, and at footnote 2. In a prescient observation by Duncan Kennedy, now holder of an endowed chair at Harvard Law School, written when Kennedy was a student at Yale Law School more than a decade before the scientific findings of Benjamin, et al., supra, Kennedy criticized the Socratic method and its intimidating nature and noted that law professors, in creating a hostile classroom atmosphere, were "guilty of an astounding lack of awareness of what they are doing" and "have inflicted emotional harm on their students." Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 Yale Rev. L. & Soc. Action 72, 73 (1970-1971).

[4] *Researching Law,* Volume 16, Number 1, Winter 2005, at 1.

[5] See ABA Section of Legal Education and Admissions to the Bar, http://www.abanet.org/legaled/approvedlawschools/year.html

[6] In June 2006 the Council of the Section of Legal Education and Admissions to the Bar ("the Council") granted full approval to Appalachian School of Law and provisional approval to Faulkner University Thomas Goode Jones School of Law. In December 2006, the Council granted full approval to Barry University School of Law and provisional approval to Charleston School of Law. See website for ABA Section of Legal Education and Admissions to the Bar at http://www.abanet.org/legaled/.

The overabundance of lawyers is not without consequence. It is not benign. It has hurt the practice and, more importantly, it has hurt the public. This glut of lawyers has made competition for clients greater than it has ever been. While the overabundance of lawyers may have the short term consumer benefit of depressing legal fees, there is more to competent lawyering than cost. The low cost provider is not always the competent provider. The oversupply has caused sometimes vicious and underhanded competition for clients. When there are too many lawyers and not enough clients, there is a greater temptation for attorneys to over promise and, once the client has been landed, to overbill. Stories of bill padding are legion. The lack of business can encourage those on the margin to file frivolous lawsuits, built on little evidence, in the hope of a fast settlement. Further, in a too-competitive market lawyers are tempted to handle cases that are beyond their competence or outside their area of expertise. The results can be disastrous and the clients pay the price.

The overheated competition for clients has often fostered a win-at-any-cost mentality for fear of losing the client. We hear, too often, of scorched earth litigation and Rambo-like tactics. There has been a loss of civility and professionalism in the practice. As one experienced Southern lawyer observed "Ten dogs fighting over two or three bones don't waste much time on being polite or courteous."[7] A survey conducted for the State Bar of California in 1994 found that two thirds of the attorneys surveyed believed that lawyers "compromise their professionalism as a result of economic pressures."[8] Is it just coincidence that the increased loss of civility and professionalism coincides with the explosive growth of law schools? While you can't blame the loss of professionalism entirely on the glut of lawyers, it is certainly a large contributing factor.[9] The glut has turned lawyering almost entirely into a business, with an attendant loss of the professional values that once made lawyering a great and justifiably proud profession.

The result of all this is that law practice today is faster, more competitive, and more pressurized than ever before. Lawyers today face pressures and challenges unknown by those who practiced as recently as twenty or thirty years ago. Lawyers, many new but some old, struggle to survive in such a marketplace. The temptation to cut ethical corners increases as it becomes more difficult to make a living. According to former Chief Justice Rehnquist, "The greater the pressure of maximization of income, the more likely some sort of ethical difficulties will be encountered…."[10]

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[7] Philip Lyon, Speech to the ABA Section of Labor and Employment Law Committee on Ethics and Professional Responsibility, January 2004. Lyon served as the initial chair of the Labor and Employment Law Section of the Arkansas Bar Association as well as an officer in the ABA's Labor & Employment Law Section, most recently as Management Co-Chair of the Ethics and Professional Responsibility Committee from 2000-2003. In 1996 he was elected as member of the Inaugural Class of Fellows of the College of Labor and Employment Lawyers.

[8] California Bar Journal, November 1994, *Pessimism for the future: Given a Second Chance, Half of the State's Attorneys Would Not Become Lawyers*

[9] See Susan Daicoff, *Lawyer Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism,* 48 Am. U. L. Rev, 1337, footnotes 16 and 17 at 1344 – 1345 (1996 – 1997).

[10] William H. Rehnquist, *Dedicatory Address: The Legal Profession Today,* 62 Ind. L. J. 151, 155 (1986 – 1987).

Law Schools Make Money

Why then, given the glut of lawyers, do new law schools continue to open and existing law schools continue to graduate new lawyers in large numbers? The answer, of course, is that by and large law schools make money. Law schools and their affiliated universities have benefited handsomely from the increased number of those who desire law degrees and they continue to mint graduates in large numbers. Whereas many, if not most, graduate programs are money losers for their universities, law schools are moneymakers and profit centers. Law school tuition is high, there is relatively little tuition discounting, and relatively little outright scholarship assistance. Since 1985, at public law schools, median tuition and fees have increased over 600% while private law school tuition and fees have increased almost 500%.[11] According to the ABA: "Since the early 1970's, there has been a steep and persistent rise in the cost of legal education and in tuitions law schools charge students. During the period 1992 – 2002, the cost of living in the U.S. has risen 28%, while the cost of tuition for public law schools has risen 134% (for residents) and 100% (for non-residents) and private law school tuition has increased 76%."[12]

Simply stated, law schools are university cash cows, contributing dollars to the university's bottom line. Langdell endures because, although his pedagogy no longer makes sense, his system makes money. As David Franklin, a legal commentator and former clerk to Supreme Court Justice Ruth Bader Ginsberg wrote: "Langdell's genius, it turns out, lay in devising a system in which one professor could keep a hundred or more students awake and paying attention for an entire hour without the aid of teaching assistants. Law schools are profit centers…Overhead costs are low, financial aid is the exception rather than the rule…The Socratic method allows law schools to maintain a high student-to-teacher (tuition-to-salary) ratio."[13] Cash starved universities are only too happy to take the funds generated by law schools and use them for their general purposes.[14] Indeed, the universities have every incentive to keep the law school classes

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[11] See "statistics" on webpage of ABA Section of Legal Education and Admissions to the Bar, at http://www.abanet.org/legaled/statistics/charts/tuition.pdf

[12] *Lifting the Burden: Law Student Debt as a Barrier to Public Service,* The Final Report of the ABA Commission on Loan Repayment and Forgiveness, 2003, at 10.

[13] David Franklin, *The Trial of Socrates,* Slate.com, posted July 31, 1997 at http://www.slate.com/id/3133/. See also Benjamin, Kazniak, Sales, and Shanfield, *The Role of Education in Producing Psychological Distress Among Law Students and Lawyers,* 1986 Am. B. Found. Res. J. 225, at 250 citing Roger C. Cramton, *The Current State of Law Curriculum, 32 J. Legal Education 321, 333 (1982).* See also Andrew Hacker, *Shame of Professional Schools,* 32 J. Legal Education 278, 278 (1982); Robert Stevens, Legal Education in America from the 1850s to the 1980s, The University of North Carolina Press, 1983 at 63.

[14] For example, John Jeffries, Dean of the University of Virginia's School of Law wrote on November 28, 2006 that for 2006, alone, his law school's contribution to the rest of the University would "exceed $3 million." See Letters to the Editor, *The Cavalier Daily,* November 28, 2006 edition, at http://www.cavalierdaily.com/CVArticle.asp?ID=28685&pid=1519. See also, *Teaching Law by Design,* 38 San Diego Law Review 347, 361 (2001) ("Law Schools traditionally do well economically in large part because, unlike most graduate school classes, law school classes…range in size from 50 to 120 students."; See also Randall T. Shepard, *From Students to Lawyers: Joint Ventures in Legal Learning for the Academy, Bench, and Bar*, 31 Ind. L. Rev. 445, 448 0 449 (1998) ("Until quite recently, for example, George Washington University siphoned off forty percent of its law school's revenue…"); Judge Richard A. Posner, *Legal Scholarship Today*, 45 Stan. L. Rev. 1647, 1655 (1992 – 1993) ("Relative to most other

large and the funds from these larger classes flowing. Law schools, in turn, while sometimes complaining about forking over the money, nonetheless enjoy the prestige and power in their respective university communities that comes from the profit they generate and the funds they supply to the larger university, or main campus.

Regrettably, there is little evidence that the escalating cost of law school education will diminish. The continued increase in tuition has had a damaging financial effect on law students. According to the 2003 Final Report of the ABA Commission on Loan Repayment and Forgiveness, "The typical law student today graduates with debts of around $80,000."[15] This debt has negative consequences, and not just for the students. Society suffers as well. It has long been known that the crushing law school debt burden drives graduates away from lower paying public service jobs into higher paying, but less altruistic ones. The ABA found that "law school debt prevented 66% of student respondents from considering a public interest or government job."[16] Thus, while law schools charge high tuitions and spin off excess profits to their universities, law students sink further into debt, and the poorest segments of society suffer the lack of attorneys to address a range of social ills.

Having flooded the market with lawyers, many of whom are burdened with high five figure law school debt, one would think, one would hope, that out of simple decency law schools would do everything they could to prepare these students to make a living. Unfortunately, while happy to accept their tuition dollars, law schools have done little to prepare the tuition payers for the dramatic changes they will face in practice when the tuition bill comes due. Changes, I might add, brought on in substantial part by the glut of lawyers put on the market by law schools. Of course, preparing their students to really meet the challenges of practice would mean that law schools would have to revamp their curriculum and institute changes like mandatory supervised internships or meaningful clinical training. These, of course, have lower student-to-teacher ratios and are less profitable than the Langdellian economic model of mass production in large lecture halls.

For generations, law schools have called themselves the gatekeepers to the profession. Gatekeeper is more than a name. It is a position of responsibility. Law schools have a public trust. Lawyers in our society are given considerable power and special privileges to handle the sensitive and important matters of a sometimes vulnerable

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departments in a university, law schools are awash in tuition income and gifts from wealthy alums."); James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 Duke L. J. 292, 304 (1987) ("…many still complain that the parent university siphons off too much of the excess profits [from law school]…" and see note 46 at 304; Philip J. Closius, *The Incredible Shrinking Law School,* 31 U. Tol. L. Rev. 581, 584 (1999 – 2000) ("In many academic settings, universities have utilized the law school as a 'cash cow,' with 'excess' law income being used to fund other programs at the University."); Lawrence Ponoroff, *Law School/Central University Relations. Sleeping with the Enemy,* 34 U. Tol. L. Rev. 147 (2002 – 2003) ("There is a pervasive attitude among law faculty that…the central university is robbing the law school blind…[and] that the powers above perceive and treat the law school as a 'cash cow'…In truth, these feelings, if perhaps somewhat exaggerated, are not entirely without justification.');

[15] *Lifting the Burden: Law Student Debt as a Barrier to Public Service,* The Final Report of the ABA Commission on Loan Repayment and Forgiveness, 2003, at 14.

[16] *Lifting the Burden: Law Student Debt as a Barrier to Public Service,* The Final Report of the ABA Commission on Loan Repayment and Forgiveness, 2003, at 9.

public. That is why the state demands that lawyers be licensed and regulated, but doesn't require the same of academics. The legal profession and the law schools that produce lawyers exist to serve the needs of the public, not to serve as profit centers for our affiliated universities, and not to make the *U.S. News* top ten. Those are all asides and if they occur along the way to our mission, so much the better. But it is not why we exist.

One can understand why universities are happy to accept the spinoff dollars that result from mass production legal education. What is less understandable, however, is the complicity of law schools with this bottom-line system at the expense of their students, the public, and the profession. This may all be the result of a game of internal university politics in the fight for resources, but if it is, it is clear that the law schools, and the profession and public they are supposed to represent, are losing that battle.

Law schools have always called themselves the "gatekeepers to the legal profession". We are gatekeepers, not toll collectors. When the gatekeepers open the gates, the floodwaters swamp the village.

Ineffective Pedagogy

Worse still, is that the gatekeepers are flooding the market with lawyers who are incompetent to practice. If we are flooding the market, let's at least flood it with people who know what they're doing. Unfortunately, that is not the case.

We know what it takes to build a good lawyer. Although the skills necessary to be a competent attorney have been known for generations, the ABA's blue ribbon MacCrate Commission ("MacCrate") put it in black and white 14 years ago. While MacCrate outlined ten minimal competencies, law schools teach only two or three. Our students leave law school virtually in the dark about how to practice law. The ABA which accredits law schools does not require that law students take a clinic, practicum, participate in an internship, or have any hands-on client experience whatsoever in order to graduate. It should come as no surprise that the ABA committees that set law school standards are dominated by those who have succeeded and are comfortable in the current system: law deans and professors.[17] Further, there is a very real question as to whether

17. According to Professor Roy Stuckey, the Alumni Professional Skills Professor of Law at the University of South Carolina School of Law where he also serves as the Director of the Nelson Mullins Riley & Scarborough Center on Professionalism, "Most states require a law school to be accredited by the American Bar Association before its graduates can apply for admission to practice law. The accreditation process is controlled by the Council of the American Bar Association Section of Legal Education and Admissions to the Bar. The membership of the Section overwhelmingly consists of members of law school faculties, and law school deans and former deans control the Council and the key committees of the Section. Thus, the people who are the subject of regulation set the standards for themselves and control the regulating process (underlining added). The results are predictable. The accreditation standards related to curriculum matters are very general for the most part, unlike the accreditation standards for most other professional schools. The standards do not even define a core curriculum. As long as legal educators control the accreditation process, it will not be an effective tool for ensuring adequate preparation to enter the legal profession. (underlining added). See Stuckey, *Why Johnny Can't Practice and What We Can Do About It*, Footnote 8, THE BAR EXAMINER, Vol. 72, No. 2, May 2003.

the accreditation process effectively monitors the quality or type of teaching in law school.[18]

Legal education is an outlier in the world of professional education. It is virtually alone among professional education in its durable refusal to require practical training prior to licensure. One can hardly think of a profession today that does not require some form of clinical or supervised training prior to licensure. Indeed, in Ohio the following professions, among many others, require their practitioners to have either clinical training or apprenticeship practice prior to being admitted to licensure: social workers[19], teachers, medical doctors, accountants[20], pharmacists[21], nurses[22], psychologists[23], architects[24], professional engineers[25], veterinarians[26], professional clinical counselors[27], marriage and family therapists[28], occupational therapists[29], and last, but not least licensed embalmers[30]. It may provide cold comfort to the deceased, literally, that their embalmer is required to have more practical training prior to licensure than the attorney that drafted their estate plan. My barber is required to have more hands-on experience prior to licensure than any student graduating law school in Ohio this year.[31]

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[18] See John S. Elson, *Why and How The Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia,* 64 Tenn. L. Rev. 1135 (1996 – 1997) Elson, who served on the ABA's Accreditation Committee stated that "…after eighteen ABA/AALS site inspection visits and two years on the ABA Accreditation Committee, I can say with some assurance that the ABA/AALS inspections give no more than a pretense of systematically reviewing the effectiveness of teaching that actually goes on in the classroom." See Elson, at 1142.

[19] OAC 4757-19-01(C)(1)(e) – "(e) Not less than four hundred clock hours of supervised practicum and/or field experience, with a primary focus on social intervention coordinated by a an individual with an advanced degree in social work."

[20] RC 4701.06(D)(2)(a) – In order to sit for the CPA exam, the candidate who otherwise meets the educational degree requirements must have one year of "one year of experience satisfactory to the board in any of the following: (i) A public accounting firm; (ii) Government; (iii) Business; (iv) Academia."

[21] RC 4729.08; OAC 4729-3-01;
[22] OAC 4723-5-13(C)(4);
[23] RC 4732.10(B)(5);
[24] RC 4703.07(D); OAC 4703-1-01(E);
[25] RC 4733.11;
[26] *Accreditation Policies and Procedures of the AVMA Council on Education,* January 2006, Sections 9.4; 9.9(c);
[27] RC 4757.22(B)(4);
[28] RC 4757.30(A)(50;
[29] RC 4755.06(C).
[30] RC 4717.05(A)(6). In addition to the foregoing, the State of Ohio requires practitioners of the following professions to have a practical, work, or apprenticeship experience prior to certification or licensure: Audiologists [RC 4753.06(F)]; Athletic Trainers [RC 4755.62(C)(6)]; Auctioneers [RC 4707.09]; Dieticians [RC 4759.06(A)(6)]; Dialysis Technicians [RC 4723.75(B)]; Landscape Architects [RC 4703.34(D)]; Nursing Home Administrators [RC 4751.05(A)(4)]; Pawnbrokers [RC 4727.03(A)]; Private Investigators [RC 4749.03(A)(1)(b)]; Surveyors [RC 4733.11(B)(1)(b); and Real Estate Appraisers [RC 4763.05(B)].
[31] RC 4709.07; OAC 4709-03-04

Why are we given this special, virtually exclusive, privilege among the professions to obtain a license to practice without being required to know a thing about practice? Are we that much smarter, that much more intuitive, that much better than every other profession? Have we been blessed from above with attributes that are not to be found in those who practice other professions? One can excuse a cynic for believing that if lawyers didn't control the court system and historically dominate the legislature that this state of affairs would never be allowed to exist. No; as we will discuss later, this system continues to exist because those in legal academia have effectively blocked change.

It is bad enough that law schools don't train their students to practice. What is worse is that the education that law schools *do* provide – the traditional Socratic – Casebook method - is inefficient, ineffective, and pedagogically unsound. We know through numerous studies, which Susan Daicoff has discussed, that the traditional and widely used Socratic teaching method is not only ineffective but also damaging to the emotional well-being of law students. Studies going back at least to 1986, have consistently shown that the emotional damage caused by law school education does not end with graduation, but carries over into practice. This, of course, has very negative ramifications for the delivery of client services.

We practice in a very unhappy and emotionally unhealthy profession. The studies and anecdotal evidence are legion about lawyer unhappiness in the practice and the psychological, emotional, and substance abuse problems faced by attorneys. Lawyers experience depression and other emotional maladies at rates between five and fifteen times higher than the general population. The rate of attorney substance abuse and suicide is exceptionally high as well. The difference between lawyer mental health and that of the public starts in law school.[32] Most law professors are unaware of these findings. Those who are aware of them tend to discount them as inaccurate or stemming from other causes. [33]

If the manner in which law school educates its students has not contributed to these rates of depression and substance abuse – and the overwhelming evidence is that it has – then at a minimum law school has profoundly failed to address these persistent problems. Yet although these findings are widely accepted, and have never seriously been refuted, they are also widely ignored within the legal academy. Over the generations, law schools

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[32] K. M. Sheldon and L.S. Krieger, 22 Behav. Sci. Law. 261, 262 (2004)

[33] According to Robert Schuwerk, Professor of Law at the University of Houston Law Center: "Most law professors are not familiar with the ever-increasing literature documenting the extreme levels of mental illness and substance abuse that develop among law students while in law school, with the instances of students suffering from one or more clinical levels of depression, alcohol abuse, or cocaine abuse rising from 8 – 9% prior to matriculation to 27% after one semester, 34% after two semesters, and 40% after three years, and persisting after students pass the bar and begin practicing law." Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe Our Students*, 45 S. Tex. L. Rev 753, 64 – 765 (2003 – 2004).

have consistently neglected the best science on learning and educational psychology, choosing instead to stick with their old friend Langdell.[34]

Law schools are either in a state of denial about their outdated methods or they are in a state of something much worse: indifference. They see the problem – a problem they could address - and say, "Not my job". Would this neglect, of the best science, of the best practices, be allowed to persist in medicine, engineering, architecture or any other learned profession? If we knew that public school education was causing emotional damage to students, would we let that situation persist? Why then, does it persist in legal education?

There are a multiplicity of reasons but let's cut right to it. The dogged refusal to get with the program, update curricula, and make law school more relevant and practical lies at the doorstep of law faculty, who are quite happy with the way things are and reluctant to change. This is the opinion of many thoughtful and conscientious voices inside the legal academy.

In discussing roadblocks to change in the law school curriculum, Roger Cramton, a pre-eminent legal scholar who was Dean of Cornell Law School and then held an endowed chair at Cornell, discussed the attitude of law faculty to changes in curriculum as follows:

> … we are jealous of our prerogatives, comfortable with the way things are, and intensely conservative about matters as central to our selfhood as what and how we teach. . . .our special strengths and weaknesses are perpetuated by the hiring process, which tends to filter out people who do not have the same accomplishments and interests, have not attended the same schools and shared the same experiences. We are threatened by discussions of values, by messy human emotions, by personal involvement with students or clients, and we place these matters out of bounds for classroom discussion. We are tied to familiar teaching materials and methods…[35]

One law professor, questioned about the lack of change in the world of legal education, had the following to say: "The present structure of law school is very

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[34] In an article appearing in last year's Indiana Law Journal Nancy Rapoport wrote:
"…there's very little innovation at the core of legal education. We're still playing Christopher Columbus Langdell's song – not his song of innovation in legal education, but the monotonous refrain of education in the form of Socratic classes and case law."

[35] Roger C. Cramton, *The Current State of Law Curriculum, 32 J. Legal Education 321, 333 – 334* (1982*);* See also Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education,* 45 Stan. L. Rev. 1547, 1549 (1992 – 1993) who holds an endowed chair at Stanford Law School and who wrote: "The questions I want to ask are typically missing from the day-to-day curricular decisions at most law schools. Are we as educators effectively equipping students to address the needs of clients? … Are we serving faculty interests at the expense of others in the way we structure the educational experience? Our [the faculty's] unwillingness to face that last question has gotten in the way of thinking about the others…we have managed to create a structure that maximizes our autonomy and keeps messiness at bay."

congenial to us [the faculty]…We're not indifferent to the fact that our students are bored, but that to one side, law school works pretty well for us."[36] Professor Robert Schuwerk of the University of Houston Law Center perhaps said it most succinctly: "Law schools are run primarily for the benefit of law professors – not for the benefit of law students, not for the benefit of the legal community, and most certainly not for the benefit of the public at large". [37]

But while the professorate may be quite happy with the academic bent of law school, students are not. Students come to law school to be trained as lawyers, not as academics.[38] On a personal level, I hear frequently from my students about the irrelevance of what they learn, especially in the third year, and of their deep desire for more practical skills. A number of them have expressed to me the sentiment that they have spent $90,000 for nothing.

Why, then, is the professorate reluctant to change and incorporate greater skills training in the curriculum? There are a number of reasons. First, in general any kind of significant change is frequently perceived as uncomfortable and like many of us, law professors resist it. Secondly, and more specifically, law professors are primarily academics, not practitioners. This is the residue of the Langdellian system. By and large, they have spent very little and sometimes no time practicing law prior to teaching. Many of them do not like practice, or are unfamiliar or uncomfortable with it. A 1991 study showed that more than 20% of law professors had no practice experience at all prior to teaching. Overall, the average length of practice prior to teaching averaged 4.3 years.[39] A full 37% of the law professors at the seven highest ranked schools had no practice experience prior to teaching.[40] If anything, the anecdotal evidence indicates that recent hires have less practical experience than those hired years ago. Thus, I suspect that the average length of practice today is even less than the 4.3 years indicated in that 1991 survey. Many law professors continue to go from elite schools to judicial clerkships, and

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[36] See Rhode, Id, at 1549 quoting David Margolick in the New York Times.

[37] Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe To Our Students,* 45 S. Tex. L. Rev. 753, 761 (2003 – 2004). For other writings on the resistance of the professorate to change see Morrisson Torey, *You Call That Education,* 19 Wis. Women's L. J. 93, 105 – 106 (2004); Elson, Id, ("…significant reform in legal education will not come from the voluntary efforts of the leadership of either the law schools or the ABA Section of Legal Education.") at 1135; Rhode, Id, at 1549; Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law School?*, 53 J. Legal Educ. 48 (2003) ("Law schools' practices are based on tradition, not on a regular assessment and reassessment of the needs of the public, students, and the legal profession. That these practices persist is largely due to a combination of institutional inertia and financial disincentives for change.") at 72;

[38] Jay Feinman and Marc Feldman, *Pedagogy and Politics*, 73 Geo. L.J. 875, 876 - 877 (1985) ("The primary function of law schools is to train novice lawyers, yet there is widespread agreement that they do not do this job very well…We believe that only by a new consciousness of law, lawyering, and learning can law schools perform their most basic task: the training of competent lawyers.")

[39] Robert J. Borthwick and Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors,* 25 U. Mich. J. L. Reform 191, 217 – 218 (1991 – 1992). The study concluded that "the vast majority of professors teaching law have had very little experience practicing law." Id, at 219.

[40] Ibid.

then directly to teaching, or from elite schools to elite firms as low level associates, to teaching.[41]

The practice of law, even at the small firm level, involves a nuanced and complex set of skills that take many years to acquire and refine. Those who have practiced less than five years are just beginning to develop their lawyering capabilities and have much to learn. Of those first five years of practice, much of it is spent in the library, far from the flesh and blood issues faced by practicing lawyers.[42] With all due respect to our law professors, their limited practice experience means that when they exhort their students to "think like a lawyer", very few of them have practiced long enough to know first hand how practicing lawyers think.[43] As such, it is very difficult for academic lawyers to impart through first hand knowledge the mores and practices of the profession about which they teach. Law schools pursue the very laudable goal of having a diverse student body on the theory that diversity brings a variety of perspectives that enhance learning. Unfortunately, most law schools do not pursue a faculty that is *diverse in practical experience*, preferring instead to consistently hire those with little experience in practice. Just as a non-diverse student body diminishes the educational experience in law school, so too does a faculty that is not diverse in practice experience.

Third, law schools are primarily academic institutions. Decisions on promotion and tenure are made primarily on academic output, usually meaning the production of law review articles.[44] Law schools recruit and reward faculty members for research, not teaching. There is little, if anything, to be gained by a faculty member who seeks pedagogical reform.[45] Indeed, a non-tenured faculty member seeking to rock the

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[41] Borthwick and Schau further showed that almost one third of all law professors received their law degree from one of only five schools (Harvard, Yale, Columbia, Chicago, and Michigan). Id, at 226. Inasmuch at the faculty at the top schools have a much higher proportion of faculty with no practice prior to teaching (37% vs. 20%), and inasmuch as these top schools produce a disproportionately high number of law professors, "…the effects or biases, if any, that flow from professors with little practical experience are presumably passed on at a disproportionate rate." Id., at 219 – 220. According to one commentator, "…for many faculty members the road to teaching has been short and narrow: a brilliant record in an Ivy League law school, a clerkship for a distinguished judge or a judge or a distinguished court, and then straight to the classroom." See Judith T. Younger, *Legal Education: An Illusion*, 75 Minn. L. Rev. 1037, 1041 (1990).

[42] Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 Minn. L. Rev. 705, 758 (1997 – 1998)("Most lawyers practice in law firms, and the first few years in a law firm rarely give an attorney a realistic impression of the practice of law. A young practitioner's first few years are heavy on legal research and writing, and light on precisely those things that make up the professional life of most lawyers: counseling, negotiation, client contact, trials, firm management…To gain a real understanding of the practice of law, one must do it for more than a few years.")

[43] Nancy L. Schultz, *How Do Lawyers Really Think*, 42 J. Legal Educ. 57, 57 (1992) ("Few [law faculty] seem to recognize that we cannot really teach students how lawyers think without teaching them at the same time what lawyers do. Thinking like a lawyer is a much richer and more intricate process than collecting and manipulating doctrine.")

[44] See Schuwerk, Id., at 762 – 763.

[45] See Rhode, supra, at 1549 ("Yet even those faculty who are most committed to teaching rarely storm the barricades seeking pedagogical reform. Few academics have anything to gain by underscoring problems that their colleagues find discomfiting to acknowledge, let alone address.") See also Schiltz, supra, at 754 – 756.

pedagogical boat may be putting his or her academic career at risk. Given the rewards of research and the career risks of promoting teaching reform from within the academy, it is not surprising that most law faculty spend most of their time and energy on research and not training the next generation of the profession.

Finally, law professors have good reason to be very happy with the status quo. Teaching at law school is a coveted job, and with good reason. Once tenured, law professors have secure jobs, are well compensated[46], and hold positions of status within the legal world and within society in general. As stated by Nancy Rapoport:

"There's no question that life for a tenured professor at a research university has to be one of the all-time best deals in the world: as long as the university can afford to keep running…the freedom that the professor has is unparalleled. No boss can dictate to the professor what her field of research should be; most of the time, the professor teaches in areas that complement her research interests; and the service components of the job are often interesting…Even another of the all-time great jobs…federal judge…pales in comparison. The lifetime tenure is the same, but the cases before the judge somewhat dictate the issues that the judge gets to consider…"[47]

Why, on earth, would anyone rock *that* boat? Regrettably, when it comes to examining legal education and what is good for law students and the public, legal educators by and large don't think like lawyers at all. That is, they don't think like

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[46] According to a study conducted by the Ohio Bar Association, median lawyer income for full time lawyers in Ohio in 2003 was $85,000. See Ohio State Bar Association, *2004 Economics of Law Practice in Ohio Survey*, at 10. The Bureau of Labor Statistics states that median lawyer income in the United States is $94,930. See BLS website at http://www.bls.gov/oco/ocos053.htm#earnings. Typical salaries for tenured law professors varied. However, of those schools that reported their professor's compensation, typical median professor salaries (in the Midwest, for example) in 2005 – 2006 ranged from a low of $110,032 at some schools to a high of $164,774 at others, with the vast majority of the median salaries in the $120,000s and $130,000s. See SALT Equalizer (Society of American Law Teachers), Volume 2006, Issue, March 2006, at 2. In addition to salary, law professors affiliated with a university typically receive full health and other fringe benefits and many are eligible for tuition reimbursement or other subsidies for their children who attend college, making the full compensation package worth substantially in excess of their salaries.

[47] Nancy B. Rapoport, *Eating Our Cake and Having it Too: Why Real Change Is So Difficult in Law Schools*, 81 Ind. L. J. 359, 363. See also, R. Michael Cassidy, *Why I Teach (A Prescription for the Post-Tenure Blues)*, 55 J. Legal Educ. 381, 381 (2005) in which a recently tenured law professor observes that "With job security in an intellectually challenging, fairly well-paying profession (coupled with high social status and a large amount of autonomy), it is unlikely that many of us [law professors] will ever give up teaching to do something else." Finally, see William L. Prosser, *Lighthouse No Good*, 1 J. Legal Educ. 257 at 260 – 261.

> "The professor works when he feels like it; and if on any given afternoon, he decides to go to the ball game, he merely closes his office and walks away…No one will object, and the odds are a hundred to one that no one will even know he is gone. He is not required to work on anything that he finds uninteresting or boring or too difficult; and if he encounters some horrible rat's nest of the law…he is not compelled to stay up struggling with it for four consecutive nights with a wet towel around his head, as is his brother in practice. He can just let it alone, in the serene confidence that [some other professor] will some day work it all out and put it in a book."

people who objectively analyze a problem, break it down into its component parts, and seek a rational and effective solution. Instead, they think like people who are protecting their turf. Despite the obvious shortcomings of the current system it has its comforts, at least if you're on the professor's side of the podium, and no one in legal academia is penalized for going along with the status quo.[48]

In this environment, it is extremely unlikely that meaningful change will come from within the academy. Since the 1930s critics including Karl Llewellyn, the father of the Uniform Commercial Code, and Jerome Frank, Second Circuit court judge, have brought trenchant critiques offering practical solutions to foster better lawyer training in law school.[49] These critiques have gone largely unheeded in legal academia.[50] In recognition of this reality, John Elson, a clinical professor at Northwestern University Law School and a former member of the ABA's Law School Accreditation Committee has said that:

"…significant reform in legal education will not come from the voluntary efforts of the leadership of either the law schools or the ABA Section of Legal Education. It will only happen if the leadership of the legal profession…use their considerable authority to compel law schools to change."[51]

If we are serious about meaningful change in legal education, we - the practicing bar and the judiciary - must take the lead. We cannot count on the academy to fix a system that works too well for the professorate but not very well for anyone else. For too long, the bench and bar have been uninvolved in addressing the shortcomings of legal education. We have been intimidated by the professorate, assuming that they know better than practitioners about the best way to educate practicing lawyers. In my view, they do not. In an article published in 2000 entitled "Letter to a Young Law Student" Professor Corinne Cooper of the University of Missouri Kansas City Law School, discusses law school's "ugly little secret." She writes:

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[48] James J. Alfini, now Dean of the South Texas College of Law in Houston, laments the "lack of knowledge and attention" that the legal academy pays to the legal profession. In talking about changes in law practice, particularly those that relate to the increasing levels of stress in law practice, he states: "Law professors regularly hear from their law school classmates how much the profession has changed (for the worse), and from recent law school graduates how much they dislike the bottom-line orientation of their firms. However, we tend to simply shrug our shoulders and go about our business of educating the next crop of law firm associates. The changes in the legal profession merely make us more content in the knowledge that our decision to forego the monetary benefits of legal practice and enter the more comfortable and satisfying world of teaching the law has been confirmed." 10 J.L. & Health 61, 67 1995 – 1996.

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[49] Karl N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 Colum. L. Rev. 651 (1935); Jerome Frank, *Why Not a Clinical Lawyer School*, 81 U. Pa. L. Rev. 907 (1933); Jerome Frank, *A Plea for Lawyer Schools*, 56 Yale L. J. 1303 (1947)

[50] John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 Tenn. L. Rev. 1135, 1135 (1996-1997) ("Anyone who reviews the extensive literature on law schools' duty to prepare students for practice must be struck by how the same critiques and responses have been repeated over the last seventy-five years. It has become something of a ritual attack and counter-attack, where the verbal shots of the attackers always seem to fall on deaf ears.").

[51] Ibid.

"There is one other thing that I hesitate to mention, but it is a fact of law school life. Your professors are not trained to be educators. We got here mostly by being good law students, not because we have any background in higher education theory. This is true of most of graduate school, but it is even worse for law professors, because very few of us go through the traditional doctoral level educational system where one apprentices under a professor who may actually know something about education. As a result, most elementary school teachers have a stronger background in educational theory than do law professors."[52]

Having neither a solid grounding in educational theory nor in law practice, the professorate has strong credentials in neither. They were trained as neither educators nor practitioners. They were hired to teach primarily because they were outstanding law students. But for all of their other attributes, in general they know little of practice, do not get sufficient feedback as to whether the training they provide is effective, and do not have sufficient personal knowledge in either education or law practice to draw upon in their teaching. It is hard to imagine a less rational system to train new attorneys.

Remedies

So the question remains, how do we make it better? Recently, there have been signs of hope for an improved and more practice-based brand of legal education. In January 2007 the Carnegie Foundation published its long awaited study on legal education.[53] The Foundation's report echoes the need for the changes that many thoughtful and conscientious observers have been seeking for years. After an extensive survey and review of many law schools, the Foundation concluded that while law school provides its students with important analytical tools, substantial changes are called for, including a curriculum that integrates practical with doctrinal training and a movement towards the medical school training model.

In early 2007, the Clinical Legal Education Association ("CLEA") published Best Practices for Legal Education[54], a multi-year comprehensive study of existing and best practices in legal education. The study found "the unfortunate reality…that law schools are simply not committed to making their best efforts to prepare all of their students to enter the practice settings that await them"[55] and urged, amongst other things, that legal education would better serve the public if it included a mandatory period of supervised practice before full bar admission.[56]

Further, Harvard Law School recently announced that it is revamping its first year law curriculum to include a greater practical skills component. Included in this new

[52] Corinne Cooper, *Letter to a Young Law Student,* 35 Tulsa L.J. 275, 278 (2000).
[53] William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, Educating Lawyers: Preparation for the Profession (The Carnegie Foundation for the Advancement of Teaching, Jossey-Bass, 2007).
[54] Roy Stuckey, et al., Best Practices for Legal Education: A Vision and a Road Map, (Clinical Legal Education Association, 2007).
[55] Id, at 19.
[56] Id, at 16.

curriculum is a required problem solving course that crosses substantive lines where students, in teams or individually, address fact-intensive problems as they arise in the world and are required to generate solutions.[57]

Finally, in November 2006 Stanford Law School announced changes to the second and third year curricula that combine the study of other disciplines with team-oriented, problem-solving techniques and expanded clinical training. According to Stanford, this change "…is being driven by the new demands on modern lawyers, which are fundamentally different from those present when the law school curriculum was formed."[58] Among the other innovations in the Stanford curriculum is "a 'clinical rotation' where students take only a clinic during a particular quarter—with no competing exams or classes. This approach mirrors the way that medical students have been trained as doctors for the past century."[59]

These are promising signs but only a start. There have been promising signs in the past that have made little headway due to delay-and stall-tactics by the academy.[60] Given the history of delay, avoidance, and denial in the academy, we can have no confidence that these initiatives will be advanced beyond their nascent stages or even taken seriously.[61] In particular, pressure is needed from outside the academy because if the history of legal education for the last seventy years has taught us anything, it is that change is almost always resisted. If consistent pressure to change is not sustained on the academy, these initiatives will die a neglected death.

In addition to the changes suggested by Carnegie, the CLEA, Harvard, and Stanford, I offer three suggested starting points:

Medical School Model for Third Year

1. The third year of law school is a waste of time and needs to be radically restructured. After two years of pedagogical abuse, third year students have had enough. The evidence, both empirical and anecdotal, is that many of them have mentally checked out and when they do physically attend their classes they are bored and unprepared.[62] The students resent having to suffer one more year of classes and the professors resent the students who, no longer fearful of flunking out, show up unprepared and uninterested. According to Stanford Law School Dean Larry Kramer:

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[57] See Harvard Law School Website, at http://www.law.harvard.edu/news/2006/10/06_curriculum.php.
[58] See Stanford Law School Website, at http://www.law.stanford.edu/news/pr/47/.
[59] Id.
[60] As some observers have noted, some of these initiatives died "on that immovable rock of opposition – the deans of American law schools." Mitu Gulati, Richard Sander, and Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. Legal Educ. 235, 236 (1991)
[61] The best example might be the much vaunted ABA MacCrate Report, which despite its call for substantial change in legal education has had minimal impact.
[62] Mitu Gulati, Richard Sander, and Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. Legal Educ. 235, 244-245.

"Talk to any lawyer or law school graduate and they will tell you they were increasingly disengaged in their second and third years…because the second and third year curriculum is for the most part repeating what they did in their first year and adds little of intellectual and professional value. They learn more doctrine, which is certainly valuable, but in a way that is inefficient and progressively less useful. The upper years, as presently configured, are a lost opportunity to teach today's lawyers things they need to know. Lawyers need to be educated more broadly—with courses beyond the traditional law school curriculum—if they are to serve their clients and society well."[63]

Law schools do not have resources to waste and we shouldn't be parties to wasting our students' limited resources. The existing reality is that the third year of law school is, at best, a massive underutilization and, at worst, a frivolous waste of time, energy, and money that could be used to train our students as they head out the door to the world of practice. I do not advocate the elimination of the third year. I advocate that it be better used. In any event, law schools would never give up the third year and the income that it generates. The third year should be based on the medical school model of higher clinical and practical concentrations as one gets closer to practice. Thoughtful educators and now the Carnegie Foundation have advocated that practical and doctrinal training be integrated throughout the curriculum and that skills training be elevated to a position of greater parity with doctrinal classes.[64] These changes are long past due. It should be a source of embarrassment to the legal teaching establishment that despite overwhelming evidence showing the need for these changes, they still have not been generally embraced.

Greater Balance Between Scholarship and Clinical Training

2. In order to create a greater balance between scholarship and practical training, law school resources and faculty incentives should be redirected in part from scholarship to teaching and, in particular, to clinical and practical teaching. Promotion and tenure of law professors is almost entirely dependent upon successful publication in law reviews. It is well known that legal scholarship has become increasingly theoretical and removed from the concerns of practitioners and of little influence with the bench or bar. Once written and used for promotion or tenure, these scholarly articles are almost always ignored. In addition, because these articles are not peer reviewed, the quality of the scholarship is sometimes suspect and has come under increasing scrutiny. One U.S. Circuit Court Judge, Judge Harry Edwards, of the U.S. Court of Appeals for the D.C. Circuit has written that "judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy."[65] Judge Richard Posner of the Seventh Circuit Court of Appeals has written: "How good is this scholarship? Some of it is good, but much of it is embarrassingly bad…"[66] And Judge Laurence Silberman, of the D.C. Circuit Court of Appeals has, characterized the

[63] See Stanford Law School Website at http://www.law.stanford.edu/news/pr/47/.
[64] See footnote 53, supra.
[65] Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 Mich. L. Rev. 34, 35 (1992).
[66] See Posner, supra, at 1655.

writings contained in law reviews as "dominated by [the] rather exotic offerings of increasingly out-of-touch faculty members…"[67]

When was the last time that any of us practitioners, when faced with a thorny legal problem, trotted off to the law library to research an answer in a law review article? Given the hundreds of professor hours that can go into the production of a single law review article, and the fact that the articles are generally disregarded by the bench and bar, it seems like law review articles produce a very small return on investment. The hundreds of hours put into each law review article primarily serve an audience of one, the professor who wrote the article for promotion or tenure. That huge investment of time and energy can be more effectively utilized for the betterment of a larger audience, law students and the public. Scholarship, of course, has an important place in law school and always should. What I suggest, however, is that a sizable portion of professor-hours now spent on scholarship with little impact, be reallocated to the training of law students in practica, clinics, and other hands-on programs which have a much larger impact. Such change would need to come incrementally and will require some changes to who and how law schools hire to teach. It will also necessitate the broadening of the education of many current law professors to include an understanding of practice. The hours put into the production of law review articles with little impact represent a huge underutilized resource of time and energy that can be turned into highly impactful practical training.

Limit the Reliance on the Overused Socratic-Casebook Method

3. Move away from the Socratic-Casebook method after the first year. It is a highly inefficient way to learn the law. If there is too much law to learn, as professors always complain, then we need to move to a teaching method that can teach more law in less time. Socratic-Casebook is not that method. After the terror of the first year has abated, students are bored with the Socratic give and take, even if it is well conducted. If our law students haven't gotten skills of case analysis after a full year of it, then odds are that two more years of it will not matter. The relatively high failure rate when recent law graduates take the bar exam only highlights the inefficiencies of the current teaching methodologies. Let's get on with the business of teaching students the law in a comprehensive and efficient manner. The Socratic-Casebook method isn't it.

Concluding Words

Our entire system of justice is premised upon a search for the truth. In the final analysis, a good legal education aims to produce lawyers who seek and have the tools to discover the truth. A justice system disconnected from a search for the truth is a system adrift. Historically, as a profession, we have not shied away from the truth. Nor have we shied away from the hard corrective work that the discovery of the truth has sometimes necessitated. It has been one of the ennobling features of our profession.

But it is now time, long past due, to face the truth about legal education and, more importantly, to do something about it. The truth is that we are not building competent

[67] United States v. $639,558, 955 F.2d 712, 722 (D.C. Cir. 1992) (Silberman, J., concurring).

lawyers. The truth is that the current system is out of date and only held in place by a self-perpetuating, entrenched professorate. The truth is that we have the knowledge and the means to build a better, more competent lawyer. The truth is that we can do a much better job. We know the truth about legal education. The important question for the future of legal education and our profession is, do we have the will?.
