

*Twenty Years After the MacCrate Report: A Review of the  
Current State of the Legal Education Continuum and the  
Challenges Facing the Academy, Bar, and Judiciary*

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## *Introduction*

When the Council of the ABA Section of Legal Education and Admissions to the Bar formed the MacCrate Task Force on “Law Schools and the Profession: Narrowing the Gap” almost twenty-five years ago, there was a general perception that there was a “gap between the teaching and practice segments of the profession.”<sup>1</sup> As the Task Force explained in the Introduction to its report:

It has long been apparent that law schools cannot reasonably be expected to shoulder the task of converting even very able students into full-fledged lawyers licensed to handle legal matters. Thus a gap develops between the expectation and the reality, resulting in complaints and recriminations from legal educators and practicing lawyers.<sup>2</sup>

After extensive study of the then-existing state of the systems for preparing new members of the legal profession for practice, the Task Force concluded that the apparent “gap” was more a function of perception than reality, “reflect[ing] an unwillingness of the academy and the practicing bar fully to understand the culture, needs, aspirations, value systems, and accomplishments of each community.”<sup>3</sup> The Task Force conducted an “in-depth survey to document the full extent of [law school] curriculum development in the skills training area, and the availability of such resources to students,” and found that, contrary to the perception of a “‘gap’ between legal education and the needs of the profession,” law schools made a “major commitment of resources . . . to the development of skills training programs.”<sup>4</sup>

Now, two decades after the issuance of the MacCrate Report, there is once again a public perception of a problematic gap between legal education and legal practice. In the past couple of years, articles have appeared in various media sources, criticizing law schools for their alleged failure to do enough to prepare students for legal practice, and reporting law firms’ complaints about the quality of legal education.<sup>5</sup>

As was the case in the pre-MacCrate era, the criticisms of legal education are based mostly on anecdote rather than empirical research and often overlook or give short shrift to the many important ways in which the academy actually *does* prepare students for legal practice. Moreover, these criticisms often fail to bring to bear the crucial, systemic perspective that the

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<sup>1</sup> ABA SECTION OF LEGAL EDUCATION AND 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) 5 (1992) (hereafter cited as “MacCrate Report”).

<sup>2</sup> *Id.* at 4.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 6.

<sup>5</sup> See, e.g., David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at 1. See also, e.g., Michele Goodwin, *Law Schools’ Failure to Prepare Students ... It’s Complicated*, Chronicle of Higher Education, Dec. 13, 2011 (describing “[r]ecent reports in *The New York Times*, *Washington Post*, and other national media” of law firms’ “claim[s] that law students are not prepared to perform basic tasks such as drafting contracts, negotiating mergers, and other key features of law practice”).

MacCrate Report presented: that the processes of education and training of new members of the legal profession are best viewed as a “continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer’s professional career.”<sup>6</sup>

This Report attempts to present a more nuanced view of the current state of the professional educational continuum and the challenges currently facing the academy, bar, and judiciary. The Report begins by briefly reviewing the MacCrate Report’s vision, content, and impact. The Report then examines the current state of the professional educational continuum and the challenges that loom.

### I. *The MacCrate Report and Follow-Up Efforts to Improve the Professional Educational Continuum*

The MacCrate Report certainly was not the first examination of the degree to which law schools do (or do not) prepare students for legal practice. As Task Force Chair Bob MacCrate has observed, the Report built on prior studies like the Reed Report of 1921, the work of Jerome Frank in the early 20th Century, and a 1979 report by the Section of Legal Education and Admissions to the Bar.<sup>7</sup> What set the MacCrate Report apart from earlier studies was that it was “the most comprehensive effort to date to bridge the perceived gap between law schools and the bar.”<sup>8</sup> Moreover, the MacCrate Report broke new ground, first by conceptualizing the law school years as part of a continuous spectrum of professional development, and second by developing a conceptual blueprint of what lawyers need to know in practice, which informed every aspect of the report’s analysis and recommendations.<sup>9</sup>

The publication of the MacCrate Report set off a wide-ranging discussion among academics, practitioners, bar examiners, and the judiciary in a variety of contexts including: statewide conclaves, held in 25 states, that brought together local bar associations, representatives of local law schools, and the judiciary, to discuss means to improve the state’s legal educational continuum; meetings, in various law schools, of special faculty committees and sometimes the entire faculty to discuss reforms of the curriculum; law school conferences to discuss the Report; and numerous law review articles discussing the Report and/or issues identified by the Report.<sup>10</sup> In 2007, on the 15th anniversary of the MacCrate Report, William R. Rakes, the then-Chair of the Section of Legal Education and Admissions to the Bar and the

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<sup>6</sup> MacCrate Report, *supra* note 1, at 3.

<sup>7</sup> See Robert MacCrate, *Keynote Address – The 21st Century Lawyer: Is There A Gap to Be Narrowed?*, 69 WASH. L. REV. 517, 517-20 (1994).

<sup>8</sup> Wallace Loh, *The MacCrate Report – Heuristic or Prescriptive?*, 69 WASH. L. REV. 505, 507 (1994).

<sup>9</sup> See generally Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report Over the Next Decade*, 23 PACE L. REV. 519 (2003).

<sup>10</sup> See Engler, *The MacCrate Turns 10*, *supra* note 9, at 116-24; Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805, 818-19 (2004); William R. Rakes, *Conclaves on Legal Education: Catalyst for Improvement of the Profession*, 72 NOTRE DAME L. REV. 1119 (1997).

prime mover of the first convocation in Virginia in 1993, convened a national conclave of legal educators, practitioners, bar examiners, and the judiciary to take stock of the reforms that had taken place and the work that still lay ahead.

The MacCrate Report's analysis and recommendations prompted the Section of Legal Education and Admissions to the Bar to modify several of the American Bar Association's Standards for Approval of Law Schools and Interpretations. Among other things, Standard 301(a), which had previously defined the educational mission of law schools exclusively in terms of "qualify[ing] . . . graduates for admission to the bar," was expanded to recognize that law schools also must "prepare [their graduates] to participate effectively in the profession"; and Standard 302 and its Interpretations were revised to ensure that law schools will devote sufficient attention to skills training and will offer live-client or other real-life practice experiences," and furthermore will "engage in periodic review of the curriculum to ensure that [the law school] prepares the school's graduates to participate effectively in the legal profession."<sup>11</sup>

In the years since the issuance of the MacCrate Report, other organizations, groups, and individuals have devoted extensive attention to further improving the legal professional educational continuum. For example, in a highly influential study of legal education, the Carnegie Foundation explained that the common goal of all professional education is to "initiate novice practitioners to think, to perform and to conduct themselves (that is, to act morally and ethically) like professionals," and articulated a conceptual superstructure to explain the process by which law schools guide students through three essential apprenticeships – the cognitive or intellectual apprenticeship, which provides students with an academic knowledge base; an apprenticeship in the forms of expert practice shared by practitioners; and an apprenticeship of identity and purposes, which introduces students to the values of the professional community.<sup>12</sup> The Clinical Legal Education Association's "Best Practices Project" issued a set of "best practices for legal education," founded upon "a vision of what legal education might be if legal educators step back and consider how they can most effectively prepare students for practice."<sup>13</sup> As Bob MacCrate explained in a Foreword to the Best Practices book, the "central message in both Best Practices and in the contemporaneous Carnegie Report is that law schools should broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method; integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses; and give much greater attention to instruction in professionalism."<sup>14</sup>

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<sup>11</sup> See MacCrate, *Building the Continuum of Legal Education and Professional Development*, *supra* note 10, at 819-21.

<sup>12</sup> See WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 22, 27-28 (Carnegie Foundation for the Advancement of Teaching 2007) ("Carnegie Report").

<sup>13</sup> ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 1 (Clinical Legal Education Association 2007) ("Best Practices Report").

<sup>14</sup> *Id.* at vii.

II. *The Challenges and Opportunities Currently Facing the Academy, Practicing Bar and Bar Examiners in Preparing New Members of the Legal Profession for the Nature and Demands of Practice and the Profession in Today's World*

If one subscribes to the theory that even negative publicity is better than no publicity, then law schools should be happy with the attention they have been getting from the *New York Times* and other publications<sup>15</sup> during the past several months. But the articles raise difficult – and somewhat misleading – questions about the cost and value of a legal education, leading many legal educators to conclude that, with this kind of scrutiny, it would be better to be ignored. Most notably, the articles, written primarily from the perspective of prospective employers in large firms,<sup>16</sup> question why the case method, pioneered in the 1870s, is still the dominant way of teaching and studying law; whether most law school graduates even know the basics of practice, such as how to write a contract or how to draft a complaint<sup>17</sup>; whether complying with standards set by the American Bar Association prohibitively increases the cost of providing a legal education<sup>18</sup>; whether those costs could be reduced by decreasing the value of scholarship, such as written law review articles by law professors, and according greater value to practical experience; and whether less expensive alternatives for providing legal services should be explored more vigorously.

Many of these questions are simply being raised anew in the mainstream media at a time when the legal profession, like so many others, is trying to cope with the lingering effects of the recession. Applications to the nation's 200 law schools are dropping, but current enrollment is at capacity. At the same time, law school tuition has been steadily increasing faster than the inflation rate, leaving many graduates saddled with burdensome debts. And so-called Big Law jobs – at major law firms – appear to be shrinking. Thus, the *Times* articles and others<sup>19</sup> cause some to wonder whether law schools are selling their students a bill of goods.

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<sup>15</sup> William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And It May Be a Sign of Lasting Change*, ABA JOURNAL, July 1, 2011, [http://www.abajournal.com/magazine/article/paradigm\\_shift/](http://www.abajournal.com/magazine/article/paradigm_shift/)

<sup>16</sup> Interestingly, David Segal, the *New York Times* reporter who has written a number of the critical articles about legal education, also regularly writes The Hagglers column, which appears periodically in the Sunday Business Section of the *Times*, and addresses the failure of various companies to provide adequate redress to unhappy consumers.

<sup>17</sup> David Segal, *After Law School, Associates Learn to Be Lawyers*, N.Y. TIMES, Nov. 19, 2011, <http://nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all>; Patrick G. Lee, *Law Schools to Get Practical*, WALL STREET JOURNAL, July 11, 2011.

<sup>18</sup> David Segal, *For Law Schools, a Price to Play the ABA's Way*, N.Y. TIMES, Dec. 7, 2011, <http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?scp=1&sq=%22The%20Price%20to%20Its%20Way%22&st=cse>

*But see* U.S. Gov't Accountability Office, *Higher Education: Issues Related to Law School Cost and Access* (Oct. 2009) (concluding accreditation standards are not a major factor in increasing the cost of law schools).

<sup>19</sup> Jordan Weissmann, *Pop! Goes the Law School Bubble*, THE ATLANTIC, March 20, 2012; John O. McGinnis & Russell D. Mangas, *First Thing We Do, Let's Kill All the Law Schools*, WALL STREET J., Jan. 17, 2012.

The recent press also surfaces the effects of the *U.S. News* rankings on both the cost and contours of legal education. David Segal, the author of the *Times* series, notes that the impetus to achieve higher rankings has heavily influenced law school resource decisions: “Forget about looking for cost efficiencies. The more that law schools charge their students, and the more they spend to educate them, the better they fare in the US News rankings.”<sup>20</sup> Whatever the cause, notes commentator and law professor William Henderson, the combination of increasing costs, readily-obtainable loans, and the current recession has hit recent law graduates hard. “In 2010, [a]t 29 schools, [average student indebtedness] exceeded \$120,000. In contrast, only 68 percent of those grads reported employment in positions that require a JD [and] [l]ess than 51 percent found employment in private law firms.”<sup>21</sup>

The questions raised in these articles echo, in part, on-going lively debate and discussion within legal education. Prompted by the Carnegie Report and harking back to the MacCrate Report, legal educators have been exploring many of these same issues.<sup>22</sup> Consideration of these concerns can be seen in innovations adopted by individual law schools and in publications ranging from books and articles critiquing legal education to publications recommending far-reaching change in legal education, including *Best Practices in Legal Education*. Aspects of this debate have also played a significant role in the discussions concerning the revisions to the ABA Standards.

This combination of internal and external scrutiny of the shape of legal education, fueled by what appears to be a declining demand for lawyers and a declining applicant pool, create an opportunity to seriously consider how law schools might best address their responsibilities as part of the “legal education continuum” posited by Robert MacCrate.

#### A. *Who We Teach*

After years of growth<sup>23</sup> – in law school applications, the number of seats, the number of law schools, and the number of admitted students – law schools are facing their second straight year in double-digit drop in applications.<sup>24</sup> Thus, one challenge law schools face is whether to decrease enrollment and, if not, how to choose the students they will admit. This challenge creates an opportunity for reconsideration of what has become an almost universally-employed law school admissions process that relies overwhelmingly on two criteria – the LSAT and the UGPA. This system, both magnified and reified by *U.S. News and World Reports* rankings, led to what many consider an under-emphasis on other potentially relevant admissions criteria, causing schools to admit higher scoring students at the expense of applicants with marginally

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<sup>20</sup> David Segal, *Law School Economics: Ka-Ching!*, N. Y. TIMES, July 16, 2011.

<sup>21</sup> William Henderson & Rachel Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can't Pay Bills?*, ABA JOURNAL, Jan. 1, 2012.

<sup>22</sup> The most recent effort in this respect is BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

<sup>23</sup> Between 1970 and 2010, the number of law schools increased from 144 to 200 and the number of law students more than doubled, growing from 64,000 to 145,000.

<sup>24</sup> See Law School Admission Council, *Three-Year ABA Volume Comparison*, available at <http://www.lsac.org/lisacresources/data/three-year-volume.asp>.

different predictors whose work experience or personal qualities went unexplored. A decline in the pool creates a challenge for law schools with the lowest yield, particularly those in markets with multiple law schools. This enrollment challenge might push institutions to explore other measures of success such as those developed in the recent research undertaken by Professors Shultz and Zedeck, who identified 26 factors that are both measurable and crucial to effective lawyering, including practical judgment, creativity, diligence, and honesty.<sup>25</sup> The need to deal with declining applications not only creates the occasion to revisit admissions criteria but also presents an opportunity to consider institutional differentiation and creating missions targeted toward other factors, including diversity interests and practice opportunities.

Some law schools appear to have chosen to deal with the drop in applications by reducing the size of the entering class. Although this solution may seem like a sensible one to those who believe there are too many lawyers, it bodes ill for those who see a civil justice crisis that leaves scores of people facing eviction or foreclosure without representation, or who otherwise lack representation in crucial areas of their lives.<sup>26</sup> Other law schools, particularly those that are tuition-driven and those whose endowments were hit the hardest by the stock market downturn, will be very hard-pressed to reduce class size over the long-term. If, to maintain class size, they are required to go deeper into their applicant pool they may face hard choices about whether their academic program and faculty are well-suited to meet the needs of students who are less prepared on conventional measures than they are used to serving.

Another challenge faced by law schools is how to enroll and support a student body that reflects the demographics of the society and create access for students from communities currently underrepresented in the profession. Between 1993 and 2008, law schools added 3,000 seats. Yet, snapshots of those two years show a 7.5% decrease in proportion of enrollment of African Americans and an 11.7% decrease in the enrollment of Mexican Americans. Even in real numbers, there were fewer African-American and Mexican-American matriculants in the 2008 class (4,060 combined) than existed in the fall 1993 class (4,142 combined). Over this same period of time, the undergraduate grade-point average and the LSAT scores of these two groups increased. In Fall 2008, there were 46,500 total law school matriculants and 3392 (7.3%) of them were African American.<sup>27</sup> The 2010 Census counts African-Americans as more than 12% of the population. These statistics create an impetus to recommit to the value of diversity found in ABA Standards and recognized in the AALS membership core values.

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<sup>25</sup> MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING (Sept. 2008); Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 L. & SOC. INQ. 620 (2011).

<sup>26</sup> Chief Judge Jonathan Lippman, "Law in the 21<sup>st</sup> Century: Enduring Traditions, Emerging Challenges, Law Day Remarks," May 3, 2010, available at <http://www.nycourts.gov/whatsnew/pdf/Law%20Day%202010.pdf>. See also Task Force to Expand Access to Civil Legal Services in NY, <http://www.nycourts.gov/ip/access-civil-legal-services/>. Other jurisdictions have created similar task forces or commissions; see, e.g., the District of Columbia's Access to Justice Commission, created by the D.C. Court of Appeals in 2005, <http://www.dcaccesstojustice.org/>. For a recent discussion of the absence of lawyers in the welfare fair hearing process, see Jason Parkin, *Adaptable Due Process*, 160 U. PENN. L. REV. 1309, 1360 (2012).

<sup>27</sup> See Tamar Lewin, *Law School Admissions Lag Among Minorities*, N.Y. TIMES Jan. 6, 2010.

The current decline in applications is almost certainly related to the reported decline in job prospects, increasing tuition rates, and an increase in information about the relationship between debt load and starting salary prospects. In a cycle of increasing costs for law schools (to improve ranking, as well as to respond to the challenge of the Carnegie Report, Best Practices and others), the need to maintain a diverse pool and enroll diverse classes is threatened both by the increased demand on resources of law schools and the impact of the economic deterrents on those prospective students with the fewest resources. It is also exacerbated by the switch from need-based to merit-based scholarship support by many institutions that compete for students with the highest GPA and LSAT scores and consequent higher rankings.

These challenges may push law schools to explore admissions recruitment more creatively. To meet the forces that work against enrolling diverse classes, some schools have adopted programs aimed at closing the preparation and performance gaps for high-achieving, high-potential college students who have not had the advantage of rigorous educational opportunities. In addition, some law schools have been exploring whether mission-differentiation may be a way to increase applications as well as post-graduation employment rates. Finally, the growth in applications and students from outside the United States – both in LLM programs and increasingly in JD programs as well – has been seen by some schools as a way to close the enrollment gap. The impact of this group and its particular needs has not been systematically addressed by the law school community.

#### B. *What We Teach*

The MacCrate, Carnegie, and Best Practices Reports, as well as the bench and bar, urge law schools to move from a focus primarily on legal doctrine and theory to include more of an emphasis on programs that prepare students for the profession. Law schools have been exhorted to teach more skills, to develop habits and values, to modify or expand the curriculum to prepare students for the global, regulatory world we live in, and to ensure that students understand the economics of the market and are business-literate.

The first challenge to law schools is deciding whether to change anything at all. Historically, law schools have been slow to rethink their curricula holistically. Curriculum change is cumbersome, expensive, and risky. However, there is certainly much more curricular innovation taking place today than in recent memory. Although many law schools have already added skills courses to their curricula, the Carnegie Report and others have also challenged law schools to integrate doctrine, theory, skills, values, and ethics more broadly across the curriculum. This seismic shift called for by critics is difficult to accomplish. First, in a system that depends both for its teaching and governance on a tenured faculty that is largely without significant practice experience (and almost totally without recent practice experience), most professors may be ill-equipped either to conceive of such an integrated curriculum or to teach it. Second, the bifurcation of faculty and faculty status between “doctrine” and “skills” at most law schools, and the separation of most tenured faculty from practicing lawyers and those devoted to clinical work, makes it hard for a faculty to find and agree on new approaches that emphasize integrating legal theory and practice. The problem is compounded by the practical impossibility of teaching students in three years to be truly practice-ready across the range of practices that they will take up, by a lack of consensus about the skills necessary for new practitioners, and by the lack of agreement on the division of responsibility for the continued education and mentoring

of new lawyers. Solving this problem presents an opportunity for a strengthened relationship between legal education and the bar aimed at developing a shared understanding of the skills necessary for new practitioners and of the division of responsibility for the continued education and mentoring of new lawyers.<sup>28</sup>

The existence and effect of barriers to change in what law schools teach is perhaps most evident in the fact that the core, required curriculum of most law schools varies little from that introduced by Langdell in 1870. Some schools have recently re-examined the first year, adding courses integrating doctrine and theory, courses focused on professionalism, and courses focused on international law; others have introduced perspective courses or electives that offer students exposure to particular fields of interest. The current climate may encourage a deeper examination of the core, focused both on the sequencing of doctrine, skills and values across a curriculum designed to prepare students for practice and the extent to which the current curriculum reflects the core legal concepts necessary for entering the profession today. This exploration creates an opportunity for the academy and the bar to consider the joint development of a recursive framework based on a shared understanding of the realities of practice and of pedagogy.

Law schools are also wrestling with whether they should offer more options for student specialization, whether they should better equip students to deal with the business of practice, and whether they should take responsibility for preparing more culturally competent graduates. In addition, many law schools are exploring how and whether they might meet the challenge of the MacCrate Report to develop in their students the habits of good lawyers and the call of the Carnegie Report to attend to the apprenticeship of professional identity.

If law schools embark on significant curriculum change, they will be challenged to consider the effect that changes in both skills and doctrinal goals have on student performance on the bar examination and what revised, effective assessment should entail. Each of these challenges creates an opportunity for dialogue between the academy and the bar to move toward resolutions grounded in the expectations and realities of both professional education and practice.

### C. *How We Teach*

By all accounts, law schools have shifted away from using the Socratic method as the unitary teaching methodology. Even in required, first-year classes, most law students experience a combination of modified Socratic method, discussion, and lecture. A growing group of law faculty, particularly in upper division classes, has begun to use problem-based teaching methods, modeled loosely after the business school approach. Through faculty retreats about teaching and dissemination of best practices and other materials, law faculties are becoming exposed to a variety of teaching methods and techniques, most focused on active learning and increased feedback to both teacher and student. The growing numbers and professionalization of academic support teachers are not only providing safety nets for students who are struggling but also offer ready resources for other faculty members seeking to improve their teaching. The outcomes and

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<sup>28</sup> Although many lawyers would agree that it is nearly impossible to imagine a new lawyer hanging out a shingle, last year 5.7% of all graduates going into private practice did precisely that.

assessments movement often championed by academic success and clinical teachers has made an impact at some schools, where faculty are beginning to understand goals in terms of what they want students to be able to do and to develop both syllabi and lesson plans tailored to advance those goals. Law schools are faced with the questions of whether and how to support these efforts in an ongoing way. They may confront even more formidable, consequential challenges if this focus on learning (rather than teaching) takes hold. This change in focus would raise questions such as: Should expected student performance outcomes be sequenced, and if so, should they be sequenced both in individual courses and across the curriculum? What happens to the grading and sorting system if students are assessed across different skills? Should teacher quality be measured by teacher performance or student performance?

Many law schools have committed resources to support technology in the classroom, but most law schools have only tentatively considered venturing into the area of on-line instruction, even in the limited way permitted by the current ABA Standards.<sup>29</sup> Given the rising costs of legal education combined with the push to more active learning, law schools may well want to consider other technological innovations, including computer-assisted learning exercises and captured lectures combined with live, in-class workshops. Technology could also be used to broaden the range of electives available to students (for example, through courses shared with other schools on campus and other law schools) or to enable students to secure for-credit externships in distant cities, while still being enrolled in classes on campus.

A significant challenge facing law schools today is how to meet the challenge of providing more clinical opportunities for students given the high cost of quality experiential education. Some law schools have now made the commitment to offer at least one clinical or externship opportunity to all students.<sup>30</sup> Although there are still a few dissenters regarding the value of experiential education in law school, the primary obstacle to requiring a clinical experience for every student is cost; for clinical programs to be successful, the student:faculty ratio must be low, generally in the range of 8 students per faculty member.<sup>31</sup> Most schools do offer externship programs, because they are less expensive, because there is valuable learning to be had about practicing law in a non-law school based practice, and because they provide valuable networking opportunities for students. Law schools will need to think hard about questions of resource allocation that have begun to drive responses to experiential learning. Most legal educators agree that there is no substitute for a learning experience in which a student is “in role” as a lawyer, making professional judgments under the supervision of a faculty member in

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<sup>29</sup> See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 306, Distance Education (among other requirements, law students may not receive more than four credit hours per term in distance education courses, nor more than 12 credit hours toward the J.D. degree).

<sup>30</sup> According to a recent survey of clinical teachers that Karen Tokarz of Washington University School of Law conducted, 14 law schools now require either a clinical or externship experience for all students. Lawclinic listserv posting from Karen Tokarz, Oct. 9, 2012. Two additional law schools guarantee a clinic or externship position to all students who want them, and another dozen or schools report that they have enough positions to meet student demand in these courses, though they do not make an explicit guarantee. *Id.*

<sup>31</sup> See Robert Dinerstein, et al., *Report of the Committee on The Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 538 (1992) (average student:faculty ratio in the late 1980s was approximately 8.41:1). The modal ratio has probably dropped slightly since that time, but not significantly.

an environment designed to maximize learning, but there is a danger that cost pressures will inhibit creative thinking about this kind of learning.

Another challenge facing law schools is whether the current educational model prepares students to operate in the collaborative, cross-discipline, problem-solving mode that is experienced in practice. Is our current emphasis on individual study and individual performance and the competition it inspires developing the skills and style necessary for future work?

At the same time that law schools are considering enhancing teaching methods, they are grappling with whether to change the way they assess student learning in order to promote and measure student outcomes. Gregory Munro defines student outcomes as “the abilities, knowledge base, skills, perspective, and personal attributes which the school desires the students to exhibit on graduation.”<sup>32</sup> Traditionally, law student outcomes have been measured by finite and heavily quantified measures: end-of-semester exams graded on a strict curve, bar passage rates, employment statistics. There is little doubt that any professional school must be responsible for preparing its students to practice in the field to which it is dedicated. Like people in other professions, legal educators, particularly clinicians and academic support faculty, have championed outcome measures. These efforts have been embraced more broadly by faculty who want to promote recognition of core competencies and ethical and other professionalism-related formation important to students’ development in law school and their futures as practitioners. Even supporters of outcome measures, however, recognize that most law schools lack expertise in this area and caution against defining outcomes in purely numeric terms or selecting assessment models that fail to capture important, non-quantifiable aspects of preparation for practice.

Finally, spanning both how we teach and what we teach, law schools must assess whether and how they are instilling their academic program with the profession’s core value of justice and building in students an understanding that it is the obligation of every member of the profession to participate in public service and *pro bono* representation.

#### D. *Who Teaches*

##### 1. *Race and Class Diversity*

Among full-time academic faculty, racial diversity is increasing, but the numbers, especially of tenured faculty, remain disproportionate. In 2010, whites comprised 72.4% of the population.<sup>33</sup> In the 2008–09 academic year, the most recent for which the American Bar Association has compiled statistics, people of color comprised 28 percent of tenure-track faculty but only 14.9 percent of tenured faculty; meanwhile, whites are 69.9 percent of tenure-track faculty but 84.3 percent of tenured faculty.<sup>34</sup> People from nonwhite groups make up 18 percent

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<sup>32</sup> Gregory S. Munro, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 17 (2000).

<sup>33</sup> U.S. Census Bureau, *2010 Census Briefs: The White Population: 2010*, 3 (Table 1) (Sept. 2011), available at <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf>

<sup>34</sup> American Bar Association. TABLE B-6. Available at <http://www.americanbar.org/content/dam/aba/migrated/legaled/statistics/charts/facultyinformationbygender.authcheckdam.pdf>.

of full-time skills faculty and 15 percent of full-time writing faculty.<sup>35</sup> There is greater representation of these groups among administrators than among all categories of full-time faculty except tenure-track: nonwhites represent 18.9 percent of law school deans, 20.3 percent of associate deans, and 22 percent of assistant deans and directors.<sup>36</sup>

The present decline in law student diversity may ultimately have an impact in the future faculty and administrator pool unless there is careful attention to the admissions pipeline and deliberate efforts to recruit and mentor diverse candidates for these positions.

Data about social class diversity in law school hiring is less readily available, but that which exists suggests that law school administration and faculty still come from predominantly educated white-collar backgrounds. For example, a 2008 study of law school deans revealed that the respondents' parents were nearly eight times more likely than the general population of the United States to have completed college, and the respondents' fathers "had, by a ratio of roughly 4:1, completed more graduate and professional schooling than the US population had achieved of undergraduate, graduate, or professional degrees combined."<sup>37</sup> Law professors also come overwhelmingly from a relatively few elite schools and students at those schools, even if racially and ethnically diverse, tend overwhelmingly to come from relatively privileged backgrounds.

## 2. Faculty Classifications and Hiring

With the increased call for practice-based learning, many law schools face a dilemma about hiring. Rankings and other factors, such as the elite schools' competitive prominence in the faculty hiring market, have affected hiring decisions in the past. Recently, law schools have placed increased value on hiring candidates who possess Ph.Ds with well-developed and often interdisciplinary scholarly research agendas. The call for increased skills training and greater focus on professional identity and values challenges the high priority traditionally given to academic pedigree rather than (and sometimes to the exclusion of) practice experience. Some schools face difficult choices posed by faculty and other constituents about hiring for the future; others have re-structured the discussion in a way that does not polarize but seeks to

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* The following table contains a breakdown by ethnic group of the above data. The categories "Mexican American," "Puerto Rican," and "Other Hispanic" have been collapsed into "Latino" for ease of interpretation:

	African-American	Native American	Asian	Latino
Tenured	7.8%	0.5%	2.9%	3.6%
Tenure-track	14.2%	0.8%	7.5%	5.5%
Full-time Skills	7.3%	0%	3.4%	7.2%
Full-time writing	8.3%	0%	5.3%	1.6%
Dean	10.9%	0.8%	1.7%	5.5%
Associate/Vice Dean	12.9%	0.5%	3%	3.9%
Assistant Dean/Director	11.2%	0.6%	4.8%	5.4%
Full-time Librarians	5.9%	0.3%	6.3%	5.1%

<sup>37</sup> Kenneth Oldfield, *Social Class-Based Affirmative Action in High Places: Democratizing Dean Selection at America's Elite Law Schools*, 34 J. LEGAL PROFESSOR 307, 317 (Spring 2010).

accommodate the need for both scholars and practitioners. For some law schools this challenge presents an opportunity to address the quandary by developing theory-into-practice or theory-and-practice curricula requiring both substantive expertise and practice experience. The use of adjunct faculty to teach some of the more specialized, advanced courses is common at most schools. Other alternatives such as tracking, programs of specialization, faculty positions dedicated to practice, co-teaching, and other avenues to introduce practicing lawyers into the classroom are also being explored by some institutions.

One consequence of the proliferation of faculty classifications (typically with differential salary scales and job security) based on academic, clinical, adjunct, contract and other designations is that it establishes or confirms hierarchies built on historical understandings of status and perceived superior and inferior roles of academic scholars as compared with practitioners. This issue is not unique to the legal profession and has certainly been explored in other places.<sup>38</sup> But the concern about status is nonetheless significant because it bears on notions of tenure, job security and academic freedom. The status and security of employment of clinical and legal writing faculty in many law schools continue to be problematic and exacerbated by administrative and faculty discussion of rising costs that suggest there is a zero sum game. These persistent equality challenges have been affected by the economic downturn in several ways. First, there is the increasing effort of some universities to reconsider and move to eliminate tenure in all parts of the academy and to move to the option of hiring part-time employees.<sup>39</sup> Second, decreasing resources (and student debt) make it impossible to continue the earlier approach of increasing the permanent or even long-term faculty complement in response to newly defined areas of need, at least without thinking of what can be eliminated. How these issues will be addressed in the ABA standards and more generally by law school communities will affect issues such as faculty governance of law schools as well as faculty status.

Using adjuncts or other part-time faculty primarily to supplement the “core curriculum” poses a set of additional problems. Having full-time faculty predominate in the teaching of core curriculum courses, while using adjuncts and lower-status faculty to teach in areas outside of the core, historically sent a message to students about the perceived value of these respective substantive areas. Using adjuncts to teach practice modules or participate in skills teaching solves an immediate problem for some schools but may also be signaling to students the low value of these courses. Because many law school adjuncts are practitioners who work at their primary job during the day, they may not be able to participate in faculty development and other law school activities. They may have difficulty holding office hours as well. The cost of these missed opportunities is twofold: adjunct faculty may not be exposed to or have the means to learn new teaching skills, or develop innovations in approaching material and they may feel disconnected from the community of the school. Some schools have instituted mentoring or co-

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<sup>38</sup> See, e.g., Gary L. Anderson & Kathryn Herr, *The New Paradigm Wars: Is There Room for Rigorous Practitioner Knowledge in Schools and Universities?*, 28 EDUCATIONAL RESEARCHER 12 (June-July 1999).

<sup>39</sup> For the trend toward reduction of the percentage of tenure track/tenured faculty at universities, see, e.g., Judith M. Gappa & Ann E. Austin, *Rethinking Academic Traditions for Twenty-First Century Faculty*, 1 AAUP J. OF ACAD. FREEDOM 1 (2010), available at <http://www.academicfreedomjournal.org/VolumeOne/Gappa-Austin.pdf>

learning programs for full-time and adjunct faculty, particularly between full-time and adjunct faculty within the same academic areas of interest, that can help bridge this gap.

E. *Effects on Education of the Changing World of Practice*

Law schools must prepare graduates for a legal world that is not only very different from what graduates faced even a decade ago, but one that is also changing more rapidly than in the past. The constant now for all graduates, wherever they start their careers, is change. First, the relatively simple career trajectories of the past – a one-firm career that runs from associate to partnership to retirement; or the public service career that runs from prosecutor to judge to retirement; or the stable employment in a single small firm – would be anomalies today. Every graduate can expect to change positions and even sectors, within and outside of so-called “law jobs” a number of times in the course of a career. The increased mobility is a direct result of the fact that the legal world is much more competitive than in the past. In order to navigate this world over the course of a career, law graduates will have to find ways to continue to enhance their attractiveness to clients and potential employers. They will be evaluated in terms of, *inter alia*, the skills, judgment, contacts, and clout that they can bring to a particular position.

The increased competition transforms potential employers as well. Large law firms that once counted on stable relationships with corporate clients who rarely questioned large fees that helped to sustain and train huge numbers of associates now must compete for virtually every aspect of every client’s business. General counsel now scrutinize every expense and may even exclude from billing statements the work of first-year associates who are perceived to have no valuable skills. The size of associate classes, already reduced as a result of the weak economy of the past three years, may be reduced permanently as a result of these pressures.

Alternatively, law firms may insist that their associates be capable from the outset of contributing substantively to the work of a client. One reason some of the wealthiest law firms, such as Milbank Tweed, are now putting associates through “mini-MBA” programs is to provide them with more tools for serving corporate clients. Beyond such corporate programs, the lesson again is that more pressure is on law schools to find ways to enhance the skills to graduates entering an increasingly competitive legal world.

Changing technologies have accelerated competitive trends, created new careers and career options, and made other careers more challenging. New technologies, for example, have blurred the distinction between home and work, equalized access to once arcane know-how (such as form contracts), and globalized the U.S. legal market. U.S. law graduates now have many more opportunities abroad, but they also compete with legal services offered by the many more non-U.S. residents conversant with U.S. legal approaches and practices. These include mega law firms based abroad and outsourcing operations in India and the Philippines. These are manifestations of the increasingly competitive market and the need for new generations to be able to thrive and build their careers in that market. There are still other examples of places where law schools will feel pressure to try to do more for their graduates. Several law schools have attempted to meet this challenge by teaching transnational law and exposing students to the variety of differences in legal cultures across the globe.

In short, the changing world of legal practice increases the need for law schools to prepare graduates to start their legal careers faster, to be adaptive, to innovate, and to grow over the course of what will be multi-dimensional careers. These changes will increase the pressures on law schools not only to address curricular needs of changing practice and professional needs but also to prepare students to be agile, less risk averse and creative.

F. *Other Developments*

1. *Interdisciplinary Connections with the Rest of the Academy*

Some law schools, particularly those situated within larger universities, have begun to establish more robust, interdisciplinary connections for faculty and students with their counterparts at other schools. These efforts can provide a range of practical, professional and intellectual benefits for both students and faculty, including new and valuable insights about the law and its relationship to other professional and academic disciplines, particularly in the humanities and sciences.

Research and co-teaching opportunities that cross these traditional discipline borders are of interest to some faculty. There may be increased efforts to engage in joint hires that bring faculty whose research agendas and interdisciplinary interests complement those of other schools and departments. Distance-learning and other innovations can create similar opportunities for independent law schools, or university-affiliated law schools that lack a particular program and that can cultivate these relationships with other institutions some distance away. Law school consortia have also begun to emerge for the purpose of sharing new curricular proposals, teaching innovations and other educational developments.

Interdisciplinary relationships may also benefit students and faculty interested in clinical and service opportunities. For example, a legal scholar of bioethics may partner with colleagues at a medical school to study best practices in clinical trials, or a clinical professor may partner with social work colleagues to deliver holistic services to clients. These efforts may prove attractive since they can boost the reputation of schools while also providing expanded learning opportunities for students, enabling them to be better problem solvers in a socially complex world. Joint degree programs, opportunities to take classes that cross traditional boundaries of disciplines and to engage in cross-discipline research offer attractive options for students. Law schools may also enhance student learning by maintaining such programs at their own university or through long-distance relationships with other schools through the use of technology. These programs provide students with educational experiences beyond the scope of a legal education and are useful to an attorney or policymaker in a particular specialty. A law student who aspires to become a corporate officer may benefit from an MBA as well as a JD. However, given the debt load that most law students carry for a single degree, schools must be judicious in the joint degrees they offer so that these programs do not result in overwhelming debt burdens that fail to offer substantial corresponding long-term professional benefit. Law schools have begun to be more innovative in providing exposure to these other programs through 3+2 programs and other options.

## 2. *Increasing Concerns about Costs*

Because they have mostly been tuition-driven and traditionally have lower overhead costs, law schools historically have sometimes been seen as “cash cows” and asked to contribute more to the university than other, less prosperous schools within the institution.<sup>40</sup> Additionally, law schools affiliated with larger universities often must compete with other schools on their campuses for a share of university funding.

Publicly supported schools must vie with another competitor: the state’s own budget constraints. Declining state support has been a pattern over the past decade, but it has grown sharper as the recession has continued. State schools, which are often the least experienced with fundraising, are now facing the loss of a previously reliable revenue stream. No longer can public universities count on a substantial portion of the state’s general revenue for their annual budget or even for occasional necessary projects such as building repairs.

The endowments of many private colleges and universities suffered in the stock market crash and, in some cases, as a result of the Madoff scandal as well,<sup>41</sup> so did the investments of their donors. The recession left no educational institution untouched.

Tuition has drastically increased throughout higher education, including law schools. This increase has led to a correspondingly high debt load, around \$100,000 per individual, among law graduates. The federal student loan system has not discouraged these patterns, and in fact may have been a contributing factor: Most graduate and professional students can take out nearly unlimited loan amounts from the federal government and private lenders. Loan forgiveness programs offer some relief but can be misused; additionally, some critics have warned of a future federal budget crisis caused by large numbers of loans that are never repaid.

Factoring into this debt load may be scholarship practices. Although undergraduate institutions often have a solid commitment to need-based aid, the quest for higher GPAs, higher LSATs, and higher rankings has led many law schools largely to abandon need-based aid and focus on merit scholarships instead. Although this strategy has led to recruitment of talented students, it may serve to foist the bulk of the cost of a legal education on those who are least able to pay.

The assumption of the law school cash cow is increasingly outdated, however. No longer does a legal education consist of one professor, two hundred students, and a lecture hall. With the increased push for skills education and a more personalized education, class sizes and faculty/student ratios are down, while costs are up. A clinical program, for example, requires

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<sup>40</sup> See, e.g., Elie Mystal, *Law School Dean Blasts University in Passionate Resignation Letter*, ABOVE THE LAW, Aug. 8, 2012, available at <http://abovethelaw.com/2012/08/law-school-dean-blasts-university-in-passionate-resignation-letter/>

<sup>41</sup> *Madoff’s Victims*, THE WALL STREET JOURNAL (March 6, 2009), available at [http://s.wsj.net/public/resources/documents/st\\_madoff\\_victims\\_20081215.html](http://s.wsj.net/public/resources/documents/st_madoff_victims_20081215.html); Alison Go, *Tufts, Yeshiva, New York Law School, and Harvard Hurt by Madoff*, US NEWS & WORLD REPORT (December 22, 2008), available at <http://www.usnews.com/education/blogs/paper-trail/2008/12/22/tufts-yeshiva-new-york-law-school-and-harvard-hurt-by-madoff>.

small-group instruction space, offices where students can work and meet confidentially with clients, physical and electronic storage facilities, computers and Internet access, and malpractice insurance.

Every law school, public or private, must identify revenue sources besides tuition. Though private schools may be more experienced fundraisers than their public counterparts, they are likely accustomed to soliciting traditional individual donors. Public law schools must learn to be aggressive fundraisers. Private institutions have long cultivated a culture of giving among their alumni, beginning at matriculation and continuing throughout the lives of alumni, but this type of development is still new for many public law schools. All law schools must be creative in searching out partnerships with foundations, government entities, and even corporations if appropriate. Law schools may find it advantageous to engage in partnerships and consortia with other educational institutions in order to share resources and offer greater opportunities to students without substantially greater financial investment.

### III. *Adjusting to the Challenges: Reforms that Have Taken Place in the Academy and Ongoing Efforts to Study and Improve Legal Education*

Although there was a great deal of activity in law schools following the publication of the MacCrate Report in 1992, including various law review symposia, other law review articles, state bar conclaves, and faculty discussions about implementing the report – especially, within clinical programs, the Statement of Fundamental Lawyering Skills and Professional Values – the risk averseness of faculties when considering curricular reform and the sheer passage of time served to some extent to dull its reformist impact. With the publication in 2007 of the Carnegie Report and CLEA’s Best Practices Report, law schools and their faculties had another opportunity to address the relationship between law school education and the development of competent, ethical lawyers. The result has been an impressive set of conferences, colloquia, alliances and law school-specific curricular changes that present opportunities for law schools to re-examine their educational missions. In this Part, we describe some, though by no means all, of these developments.

#### A. *Post-Carnegie Report Consortia*

An early multi-law school response to the Carnegie Report was the creation in December 2007 of the Legal Education Analysis and Reform Network (LEARN). The Carnegie Foundation, working with Stanford Law School, established LEARN, a consortium of ten law schools – CUNY, Dayton, Georgetown, Harvard, Indiana-Bloomington, New Mexico, NYU, Southwestern, Stanford and Vanderbilt – the goal of which was to continue the legal education reform efforts introduced in the Carnegie Report.<sup>42</sup> Among other things, the LEARN consortium

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<sup>42</sup> Law Librarian Blog, March 11, 2009, available at [http://lawprofessors.typepad.com/law\\_librarian\\_blog/2009/03/legal-education.html](http://lawprofessors.typepad.com/law_librarian_blog/2009/03/legal-education.html). See also Kristen Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353, 354 n.2 (2012).

planned to focus on the overall law school curriculum, educating individual law professors on the teaching enterprise and developing learning outcome measures.<sup>43</sup>

LEARN developed a series of working groups and was led by a steering committee that included legal educators from law schools beyond the ten consortium schools. Although the consortium generated some productive conversations on Carnegie Report implementation, it ceased to function sometime in 2010-11.

A new post-Carnegie Report group formed in fall 2011, *Educating Tomorrow's Lawyers* (ETL), created under the auspices of the Institute for the Advancement of the American Legal System (IAALS) housed at the University of Denver.<sup>44</sup> William Sullivan, one of the primary authors of the Carnegie Report, is the executive director of ETL. As with LEARN, ETL represents a consortium of law schools interested in implementing Carnegie Report reforms, expanded, however, to include 25 law schools.<sup>45</sup> The ETL website is a rich source of material for law professors and others interested in curricular reform. It includes postings of approximately 13 course portfolios (as of this writing) of innovative teaching in a range of courses, from first-year Contracts to upper-level courses in International Business Negotiations, Copyright, Family Law and others. Each portfolio contains a course syllabus, additional materials and interviews with the course instructor and students.

Around the same time as ETL was created, Northeastern University School of Law spearheaded the development of what is now called the *Alliance for Experiential Learning in Law*.<sup>46</sup> Formed in Sept. 2011, with legal educators from approximately 20 law schools, the Alliance now boasts approximately 100 members from 80 law schools.<sup>47</sup> Although not explicitly a “post-Carnegie” entity, the goals of the Alliance fit comfortably within the professional skills and professional identity apprenticeships that the Carnegie Report identified. These goals include:

- Develop a shared vision of experiential education and promote best practices for its delivery within law schools
- Create a framework for integrating experience-based educational components into the broader law school curriculum

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<sup>43</sup> Law School Innovation Blog, March 7, 2009, available at <http://lsi.typepad.com/lsi/2009/03/an-early-report-from-the-folks-of-learn-legal-education-analysis-reform-network.html>; Hannah Hayes, *Recession Places Law School Reform in the Eye of the Storm*, 18 (4) PERSPECTIVES 8 (Spring 2010).

<sup>44</sup> ETL's website is <http://educatingtomorrowlawyers.du.edu/>

<sup>45</sup> ETL includes the law schools at Albany, American, Cornell, Denver, Hofstra, Loyola-New Orleans, Maryland, Miami, New Hampshire, Northeastern, NYU, Pittsburgh, Regent, Seattle, University of Southern California, St. Thomas (Minnesota), Suffolk and Washington & Lee.

<sup>46</sup> The Alliance's website is <http://www.northeastern.edu/law/academics/institutes/alliance-experiential-learning.html>

<sup>47</sup> See E-mail from Luke Bierman, Associate Dean for Experiential Education and Distinguished Professor of Practice of Law, Northeastern University School of Law, to [experientiallearninginlaw@listserv.neu.edu](mailto:experientiallearninginlaw@listserv.neu.edu), Dec. 3, 2012.

- “Recognize the profound changes taking place in the legal profession and analyze the relationship between academia and the profession. . .”
- Establish a new paradigm for legal education benefitting students and educators, and ultimately changes in the legal profession itself.<sup>48</sup>

The Alliance has created a series of committees to advance its mission, including Vision and Mission; Integrating Curricular Goals; Vocabulary and Collaboration; Integration with the Profession; and Outcomes Assessment.

#### B. *Best Practices Project*

CLEA’s Best Practices Project has extended well beyond the publication of the 2007 report. CLEA established a “Best Practices Implementation Committee” that has met regularly since the issuance of the report. The Committee, currently co-chaired by Professors Carrie Kaas (Quinnipiac) and Lisa Bliss (Georgia State), has put on programs about Best Practices at AALS annual meetings and clinical conferences, among other forums. Committee members have consulted with, and made presentations at, law schools interested in learning about and possibly implementing some of the Best Practice Report’s recommendations. There also is a Best Practices Blog,<sup>49</sup> supervised by Professor Mary Lynch of Albany Law School, that includes postings by a number of legal educators (mostly clinicians, though not exclusively so) and summaries of conference presentations that relate to Best Practices, Carnegie Report and experiential education subjects.

#### C. *Post-Carnegie Report Conferences on Legal Education*

Conferences bringing together legal educators to discuss the Carnegie and Best Practices Reports have provided another important setting in which law faculty, deans, bar leaders, practitioners, and students have had opportunities to share ideas and perspectives on legal education and its relationship to the practice of law.

The first set of conferences was called the Crossroads conferences, connoting the idea that legal education was at a crossroads because of the issuance of the Carnegie and Best Practices Reports. Professors Roy Stuckey, the primary author of the Best Practices Report, and Judith Welch Wegner, a co-author of the Carnegie Report, were co-conveners of the first conference, “Legal Education at the Crossroads: Ideas to Action Part I,” held at the University of South Carolina School of Law on November 4-7, 2007.<sup>50</sup> The conference was invitation-only, and gathered 57 legal educators to discuss “strategies and tactics” for implementing the recommendations in the two reports. Professors Stuckey and Wegner conceived of the University of South Carolina conference as the first of a series of three conferences that would be held around the country to permit law professors from other parts of the conference to attend. The second Crossroads conference was held at the University of Washington School of Law on September 5-7, 2008. Entitled “Legal Education at the Crossroads – Ideas to Accomplishments:

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<sup>48</sup> *Id.*

<sup>49</sup> The Best Practices blog is at <http://bestpracticeslegaled.albanylawblogs.org/>

<sup>50</sup> The website for the conference is <http://law.sc.edu/crossroads/>

Sharing New Ideas for an Integrated Curriculum,” the conference planners solicited proposals from legal educators to give presentations on pedagogical and curricular innovations. The conference was a mix of showcase presentations, plenary sessions and concurrent workshop teaching demonstrations. It was organized around a series of themes: law teacher professional development, business law curriculum reforms, first-year reforms supplementing the cognitive apprenticeship, multi-year reforms supplementing the cognitive apprenticeship, second- and third-year reforms, and whole curriculum reforms.<sup>51</sup> The third Crossroads conference was held at the University of Denver School of Law on September 11-13, 2009, and was entitled, “Legal Education at the Crossroads – V.3.0 – A Conference on Assessment.”<sup>52</sup> This third conference, as its title implies, presented a number of sessions on formative and summative assessments, institutional assessment, student self-assessment, and related topics.

The ETL and Alliance for Experiential Learning consortia mentioned above also have held recent conferences on Carnegie Report-related and experiential education topics. ETL held its conference (the first of what promises to be a series) on September 26-28, 2012, focused in particular on the professional identity apprenticeship of the Carnegie Report.<sup>53</sup> Among the innovations at this conference was a series of “speed dating” sessions, in which representatives from participating law schools described their curricular focus on professional identity to representatives from another law school for 15 minutes, then moved on to another school for 15 minutes, and so on until each school’s representatives had an opportunity to share ideas with, and learn about, the programs of a half-dozen law schools. The conference also provided an opportunity for several faculty to give presentations on how they teach about professional identity in their classes.

The Alliance for Experiential Learning in Law convened the “Inaugural National Symposium on Experiential Education in Law,” at Northeastern University School of Law on October 26-28, 2012. This conference brought together approximately 240 law professors, deans, practitioners, professional development directors in law firms and law students to discuss (in plenary and small group settings) and observe demonstrations in an impressive variety of innovative programs, including solo practice incubator programs, law firm associate training programs, and web-based legal instruction, as well as institution-wide curricular reform initiatives.

#### D. *Other Conferences*

The Association of American Law Schools (AALS) sponsors a clinical legal education conference or workshop every year (since the late 1970s), as well as mid-year conferences (since 2003) on different topics (usually in areas of substantive law, such as property or criminal law, or

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<sup>51</sup> The URL for this second Crossroads conference is no longer accessible. However, there is an excellent printed booklet of materials that was made available to conference attendees.

<sup>52</sup> The web site for this third Crossroads conference is <http://law.du.edu/index.php/assessment-conference>. The program itself is available at <http://www.law.du.edu/index.php/assessment-conference/program>

<sup>53</sup> A report on the conference can be found on David Thomson’s Law 2.0 website, <http://www.lawschool2.org/l2/carnegie-report/> (posted Oct. 16, 2012).

on cross-cutting issues such as civil rights or gender equality). On June 11-14, 2011, the AALS convened two overlapping conferences: the 2011 Conference on the Future of the Law School Curriculum and the Conference on Clinical Legal Education – Learning for Transfer: (Re)conceptualizing What We Do in Clinics and Across the Curriculum.<sup>54</sup> This unusual combined professional development initiative provided an opportunity for “doctrinal” law professors and deans to interact with clinical faculty who had been focusing on Carnegie Report recommendations since the report’s issuance. The AALS’s “Why Attend?” is worth quoting at length:

Every so often, there is a conference that leaves its mark on legal education for years to come. What sets these conferences apart is that they address a critical topic at a critical time. We are at a pivotal moment in the history of legal education. Forces from outside and inside the academy have generated a powerful impetus for legal educators to reconsider the law school curriculum. Outside the academy, changes in the legal profession driven by the economy, technology, and the law, are unsettling long-held views about the types of intellectual tools and skills our graduates require. We can no longer comfortably assume that students will receive apprenticeships in practice or that their professional endeavors will be confined to a single legal system and culture. Moreover, reformist initiatives fashioned outside the academy, such as the Carnegie Report, are calling on law schools to improve the way they prepare students for professional roles, offering their own distinctive vision of the law school curriculum and pedagogy. Simultaneously, new developments within the academy are generating momentum for curricular change as well. These developments include advances in learning theory, growth of experiential learning opportunities, new understandings of how the law operates, cost considerations associated with increased tuition, and a proliferation of faculty with advanced degrees in other fields relating to law. Among the ranks of both established law schools and recently-founded institutions can be found instances of significant innovation in response to these forces.

As legal educators, our responsibility is to assess the need for change in light of core values of legal education, and to fashion a worthy law school curriculum. This Conference will provide attendees with knowledge and ideas that can inform curricular initiatives at their own schools. Day One will focus on challenges confronting legal education from without and within, drawing on social scientists and leaders in the legal profession as well as knowledgeable law faculty and university administrators. Days Two and Three, held jointly with the Clinical Conference, will concentrate first on core values, and then on particular responses to the forces pressing for curricular change, such as greater incorporation of experiential and multi-disciplinary learning and a more “globalized” curriculum. Surveys of law school practices as well as exemplary law school programs and experiences will be included in these sessions. Challenges of achieving institutional change given the dynamics of law school governance and

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<sup>54</sup> The website for the conference program is <http://www.aals.org/clinical2011/Clinical&CurriculumWorkbooklet.pdf>

decision-making will also be addressed, both by experts in organizational behavior and thoughtful veterans of the process.<sup>55</sup>

The curriculum conference presented a series of plenary sessions using the conceit of a faculty curriculum committee in which panelists articulated different visions of curricular reform from a variety of perspectives usually found within law school faculties. For law faculty attendees who had not previously focused on the process and content of curricular reform, the overlapping conferences provided an important setting for exchanging views among groups that do not always interact on these issues.

More recently, in connection with the 2012 AALS Annual Meeting Workshop on the Future of the Legal Profession and Legal Education: Changes in Law Practice: Implications for Legal Education, held on January 5, 2012, the Planning Committee issued a Request for Proposals on innovations in teaching, scholarship and service within legal education. The submissions are on an AALS webpage, and reflect an impressive range of courses and proposals, many of which touch upon Carnegie Report issues.<sup>56</sup> For example, one proposal, submitted by Professors Bilek and Bryant of CUNY Law School, was on “Creating an Integral Connection Between the Academy and the Profession: Developing Professionals and Increasing Justice,” while another, from Professor Laura Cooper of the University of Minnesota, was on “The Capstone Course in Labor and Employment Law: A National Collaboration of Professors and Practitioners in Response to the Carnegie Report.”<sup>57</sup>

Although it is not possible to list every conference on legal education that has occurred since the publication of the Carnegie Report, a series of conferences that New York Law School and Harvard Law School have sponsored, “Future Ed: New Business Models for U.S. and Global Legal Education,” is worth mentioning because of the combined focus on Carnegie Report criticisms of legal education and the challenges that law schools face based on increasing cost, globalization, and changes in the legal market.<sup>58</sup> More recently, on October 19, 2012, the University of Missouri School of Law’s Center for the Study of Dispute Resolution sponsored a one-day symposium on “Overcoming Barriers in Preparing Law Students for Real-World Practice,” which included presentations by Professors Judith Welch Wegner, Lisa Kloppenberg, Barbara Glesner Fines and others who have spent a great deal of time thinking about law schools’ relationship to law practice.<sup>59</sup>

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<sup>55</sup> The Why Attend? can be found at [https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=2011curhome&Reg\\_evt\\_key=4b89b4a7-b213-4fc1-b4f7-a06c87840cbd&RegPath=EventRegFees](https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=2011curhome&Reg_evt_key=4b89b4a7-b213-4fc1-b4f7-a06c87840cbd&RegPath=EventRegFees)

<sup>56</sup> The web page can be found at [https://memberaccess.aals.org/eweb/DynamicPage.aspx?Site=AALS&WebKey=d4e619d2-efec-44df-99fd-83203c70f5f0&RegPath=EventRegFees&REg\\_evt\\_key=d4a06b1f-994e-4ffe-b5ea-548f57898594](https://memberaccess.aals.org/eweb/DynamicPage.aspx?Site=AALS&WebKey=d4e619d2-efec-44df-99fd-83203c70f5f0&RegPath=EventRegFees&REg_evt_key=d4a06b1f-994e-4ffe-b5ea-548f57898594)

<sup>57</sup> *Id.*

<sup>58</sup> The website for the April 2011 conference, with links to previous conferences in April and October 2010, can be found at [http://www.nyls.edu/centers/harlan\\_scholar\\_centers/institute\\_for\\_information\\_law\\_and\\_policy/events/future\\_ed](http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed)

<sup>59</sup> The website for the symposium is <http://law.missouri.edu/csdr/symposium/2012/>

#### E. *Other Resources*

Historically, the benefits of conferences or workshops such as those listed above could only be obtained by those who attended these events, unless someone wrote an article in connection with them. As noted above, the availability of websites on which materials can be posted, as well as the conference or workshop program, has made this information much more accessible to the legal education and professional communities.

In addition, there are other websites or entities that serve as useful clearinghouses for information on legal education, which increasingly means information that relates to the Carnegie Report. For example, Albany Law School's Center on Teaching and Learning (CELT), which also hosts the Best Practices log mentioned above, is a useful site for learning about initiatives in student learning outcomes, teaching and learning resources, and related material.<sup>60</sup> The Institute for Law Teaching and Learning, jointly sponsored by Gonzaga University and Washburn University Schools of Law, serves as a clearinghouse for improving legal education and fostering what it calls "student-centered curriculum reform."<sup>61</sup> Its page on Curriculum Design provides helpful links to materials on curricular reform, including the results of a post-Carnegie and Best Practices survey on curricular innovations<sup>62</sup> and its semi-annual newsletter, *The Law Teacher*, contains short articles on teaching, pedagogy and curricular issues.

#### F. *ABA Curriculum Survey*

In July 2012, the ABA published "A Survey of Law School Curricula: 2002-2010," edited by Professor Catherine Carpenter, which updated its previous publication, "A Survey of Law School Curricula: 1992-2001." The survey provides a rich source of data on changes in law school curricula, including increased emphasis on clinical education courses, professional skills courses, first-year electives, legal writing, certificate programs and enhanced upper-level offerings. In Section Seven, Law School Narratives on Curricular Changes, 2002-2010, the Survey notes:

The results of the 2010 narrative responses reveal accounts of an energized commitment on the part of faculties to review and revise their curriculum to produce practice ready professionals. And law schools reported that from these processes emerged experimentation and change at all levels of the curriculum, including new programs and courses, new and enhanced experiential learning, and greater emphasis on various kinds of writing across the curriculum.

In addition to responding to the changing job market and faculty initiatives, two-thirds of the law schools cited the Carnegie Report as an impetus for curricular reform at their schools. (One-third mentioned the MacCrate and Best Practices Reports.)

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<sup>60</sup> The website for CELT is <http://www.albanylaw.edu/celt/Pages/default.aspx>

<sup>61</sup> The website for the Institute is <http://lawteaching.org/>

<sup>62</sup> The curriculum design and reform webpage is at <http://lawteaching.org/curriculum/index.php>; the chart on curricular reform is available at <http://lawteaching.org/publications/ILTLchartoflegaleducationreform200905.pdf>

## G. *School-Specific Initiatives*

The above conferences, websites, and surveys reflect, of course, the post-Carnegie curricular developments that specific law schools have undertaken.<sup>63</sup> In addition, many law schools have publicized in their own media recent curricular reforms that they have initiated. Any listing of these law schools would necessarily be partial but it is noteworthy that law schools across the spectrum (public and private; new and established; national and regional; elite and others) have taken up the curriculum reform banner. Washington and Lee University School of Law has transformed its third year curriculum to “mov[e] students out of the classroom and into the real world of legal practice.” The curriculum emphasizes professional skills and identity formation, in both transactional and conflict resolution contexts, through a mix of skills immersion, clinics, externships and sophisticated simulation courses.<sup>64</sup> Harvard now requires all first-year law students to take a problem-solving workshop in its winter term so as to “bridge the gap between academic study and practical lawyering.”<sup>65</sup> Stanford has adapted its curriculum to emphasize inter-disciplinary study (with increased access to joint degree programs) in a team-oriented, problem-solving context.<sup>66</sup> NYU Law School has revised its curriculum to provide students with a series of “professional pathways” to the various areas of legal practice and to focus the third year of law school on capstone experiences, including clinics and semester-long programs abroad.<sup>67</sup>

## H. *Literature*

Finally, various law schools have held law review symposia, and published articles in their law reviews, addressing the Carnegie Report and its recommendations.<sup>68</sup>

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<sup>63</sup> In addition to the compilations of curricular reforms discussed above, Michigan State University College of Law has gathered information on selected law schools:

<http://www.law.msu.edu/library/reform/schools.html>

<sup>64</sup> For a description of Washington & Lee’s third year curricular reform, see <http://law.wlu.edu/thirdyear/>

<sup>65</sup> For a description of the Problem Solving Workshop, see

<http://www.law.harvard.edu/academics/registrar/winter-term/problem-solving-workshop.html>

<sup>66</sup> See Judith Romero, *Stanford Law School Advances New Model for Legal Education*, STANFORD LAW SCHOOL NEWS (Feb. 13, 2012), available at <http://blogs.law.stanford.edu/newsfeed/2012/02/13/stanford-law-school-advances-new-model-for-legal-education/>

<sup>67</sup> See Peter Lattman, *N.Y.U. Law Plans Overhaul of Students’ Third Year*, N.Y. TIMES (Dealbook), Oct. 16, 2012. See also Victor Fleischer, *The Shift Toward Law School Specialization*, N.Y. TIMES (Dealbook), Oct. 25, 2012.

<sup>68</sup> Without in any way attempting to be exhaustive or representative, see, e.g., *Legal Writing: The Journal of the Legal Writing Institute* (including article by Bryant G. Garth, ‘Yes We Carnegie!’), Conference: *From MacCrate to Carnegie: Very Different Movements for Curricular Reform*, 17 LEGAL WRITING 261 (2011); *Rutgers Law Review Symposium 2009, A Legal Education Prospectus: Law Schools and Emerging Frontiers* (including article by Judith Welch Wegner, *Reframing Legal Education’s ‘Wicked Problems,’* 61 RUTGERS L. REV. 867, 867 n.3 (2009) (citing Carnegie symposia and articles sponsored by journals at Vanderbilt, Harvard and Mercer); Boston College Journal of Law & Social Justice Symposium, *The Way to Carnegie: Practice, Practice, Practice*, Oct. 28, 2011, available at [http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie\\_symp\\_twlj.html](http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj.html) (including article

## Conclusion

Now more than ever, viewing law school as only part of the professional continuum of legal education is critically important if curricular reform efforts are to bear fruit and if law schools are to continue to be a value proposition for their various constituents. The combination of two comprehensive assessments of legal education, the changing nature of the legal profession, the call for a greater focus on students' practice-readiness, the high cost of legal education and the concomitant debt load that students carry, and other influences make this an especially propitious time to examine carefully what law schools do best and how they can do it better. The insight of the MacCrate Report that criticisms of legal education that do not take into account the different roles that pre-legal education, law schools and the practice of law play in the education of today's lawyers are bound to be incomplete and misleading is as true today as it was twenty years ago.

Whether or not there is a crisis in legal education, there is undeniably an opportunity for legal educators to look critically at law school curricula and consider the pedagogical choices they have made. Though, outwardly, law schools, especially in the titles of their first-year courses, may look a lot like they did in Langdell's time, the truth is that there is an impressive amount of innovation, re-thinking, and experimentation occurring at the moment. Individual faculty members, individual law schools, law school consortia, and other national organizations<sup>69</sup> all have a role to play in seeing this process through to a positive conclusion. In this report, the Committee has attempted to sketch out some of the challenges facing law schools and some of the approaches that legal educators are taking to ensure that law schools hold up their portion of the professional educational continuum. Committee members hope that this snapshot of current activity will be helpful as the Section and other opinion-leaders in the profession address the issues that are critical to law schools and the legal profession.

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by Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. THIRD WORLD L. J. 279 (2012)).

<sup>69</sup> The ABA itself has entered into this discussion through its creation in summer 2012 of the Task Force on the Future of Legal Education, chaired by former Indiana Chief Justice Randall Shepard.