Marquette Law Review

Volume 74
Issue 2 *Winter 1991*

Article 1

1991

The Responsible Law School

Peter K. Rofes

MARQUETTE LAW REVIEW

Volume 74 Winter 1991 No. 2

THE RESPONSIBLE LAW SCHOOL

PETER K. ROFES*

In dreams begins responsibility.
William Butler Yeats[1]

A. The Problem

1. Evaluation and Incentive

Evaluation plays a central role in the operation of the law school. Faculty evaluate students. They struggle through bluebooks and papers to arrive at symbols that purport to convey how well students have performed. Students evaluate faculty. They pick up pencils, blacken in circles, and scrawl memorable insights that purport to convey how well faculty have performed. Faculty evaluate prospective colleagues. They slog through resumes and interviews to determine whose talents will most enhance the law school community. Administrators evaluate faculty. They parcel out salary increases and perks on the basis of how well they believe faculty have discharged their duties throughout the year. The list goes on.

Too often missing from the evaluative processes of the law school is the most important evaluation of all, a master evaluation that can only be pursued when the master question is posed. This evaluation concerns the law

* Assistant Professor of Law, Marquette University Law School. B.A. Brandeis, 1978; A.M. Harvard, 1981; J.D. Columbia, 1983.

I am grateful to the editors of the Marquette Law Review, and especially to Stephen Zubiago, Linda Hale, and Stephen Compton, for the opportunity to contribute to this volume honoring the centennial of Marquette University Law School. I am grateful, too, to Michael McChrystal and Ruth Lebed-Rofes, for thoughtful criticisms of earlier drafts; to Wendy Chrest and Ann Lincoln, for research assistance; and to Marquette University Law School, for research support.

To avoid any misunderstanding, let me be clear about one point from the outset: the term "the law school" used throughout this essay is intended to signify American legal education in general and no distinct law school in particular. After all, it is the pervasiveness of the challenges discussed in this essay that make them worth discussing.

1. WILLIAM BUTLER YEATS, RESPONSIBILITIES (1914), *reprinted in* THE COLLECTED POEMS OF W.B. YEATS, at 98 (MacMillan Publishing Co. ed.) (1976).

school's success at achieving the goals that account for its institutional existence. Put starkly, the question is whether the law school is satisfying the promise of its foundational documents — the mission statement that expresses the law school's lofty aspirations, the bulletin that prospective students eagerly peruse, the institutional raison d'être offered up to the ABA and AALS every seven years. Is the law school adequately preparing its students for the professional realities they will confront today? Or is the law school merely *saying* so? Essential to this master evaluation is the distinct yet connected evaluation of whether the goals the law school has set for itself are themselves worthy of achievement. Has the law school set its sail in the appropriate direction? Or is something important missing from its institutional agenda?

In the law school, like other components of the university devoted to the pursuit of truth,[2] the hustle and bustle of day-to-day life often makes it difficult to give these questions the attention they deserve. The institutional incentives that shape how members of the law school community devote their energies work strongly against concerted discussions of the big questions. After all, there are classes to prepare and prepare for, articles to finish, meetings to attend, money to raise, jobs to obtain, consulting to do, examinations to take, flesh to press. With the work day crowded with well-defined tasks that must be done today, it's no surprise that the more elusive questions get put off until tomorrow. Exacerbating the problem is the fact that, more often than not, the members of a particular law school community whose talents and vision would contribute most to this master evaluation tend to be those already carrying a disproportionate share of the institutional load. In the law school, as elsewhere, tasks find their way to those who can handle them. Thus the gifted faculty member, administrator, and student are often the very people whose calendars are most filled. Besides, the familiar refrains run, we have more than enough committees already. Let somebody else do it for a change. Maybe next month. Or next semester.

---

2. *See, e.g.*, KARL JASPERS, THE IDEA OF THE UNIVERSITY 1 (1959) ("The university is a community of scholars and students engaged in the task of seeking truth."). Benno Schmidt, president of Yale University and former Dean at Columbia Law School, reminded us of the point in a June, 1991 speech at the National Press Club. President Schmidt vigorously criticized his colleagues around the nation for, among other things, the explosion of disciplinary codes enacted to discourage demeaning student expression and the politicization of the university curriculum. The central theme of Schmidt's remarks was that the "search for truth" is "the most important mission of a university." Address by Benno Schmidt at the National Press Club (C-SPAN television broadcast, June 4, 1991).

With the big questions safely tucked away in a locked drawer, the law school continues on its merry way. Faculty members attend to their next class and article, confident that rigorous analysis of appellate opinions and scholarship laden with footnotes will accomplish the law school's goals.[3] Administrators gear up for their next budget battle, secure in the knowledge that additional resources will enable the law school to better serve its students and the legal community. Students prepare for their next class, job interview, or examination, comforted by their belief that one day the anxiety will be proven worth it. In short, it is a heartwarming scene straight out of Frank Capra: each member of the institutional family working to accomplish the law school's mission.

2. Discovery and Response

Then one day something happens to turn that scene upside down. Word slips out that substantial numbers of the men and women the law school has been sending out into the profession are, in a word, unhappy.[4]

---

3. Truth to tell, of course, the law school is filled with legal educators who themselves entertain serious doubts about the value of legal scholarship and the number of trees that must be felled each year in its name. *See* Scordato, *The Dualist Model of Legal Teaching and Scholarship*, 40 AM. U. L. REV. 367, 395-98 (1990) (citing and discussing criticisms of legal scholarship).

4. The literature devoted to dissatisfaction in the legal profession, especially dissatisfaction among new lawyers, is voluminous. In fact, the most noteworthy professional development in the past decade may well be the widespread discussion of lawyer dissatisfaction. For a sampling, see Munneke & Bridger-Riley, *Singing Those Law Office Blues*, 8 BARRISTER 10, 50 (Fall 1981) (reporting that 40% of the lawyers in the ABA's Young Lawyers Division ("YLD"), and 47% of women lawyers in the YLD, indicated dissatisfaction with their careers); Tucker, Albright & Busk, *Whatever Happened to the Class of 1983?*, 78 GEO. L.J. 153, 164 (1989) (reporting 33% of new lawyer respondents either "not satisfied" with or "ambivalent" about their current jobs); Hirsch, *Are You On Target?*, 12 BARRISTER 17, 19 (Winter 1985) (reporting that 40% of women lawyers characterized as "junior associates" were dissatisfied with their jobs); Karabin, *Love It Or Leave It*, 6 COMPLEAT LAW. 1, 6 (Fall 1989) (citing YLD and other statistics); D. ARRON, RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION (1989) (exploring reasons that prompted nearly 100 successful lawyers to leave the profession); Cook, *Lawyers Lured By Other Careers, Lifestyles*, NAT'L L.J., Feb. 16, 1987, at 41, col. 3 ("Still, the question remains: Why are so many lawyers unhappy in their work?"); Harper, *The Best and Brightest, Bored and Burned Out*, 73 A.B.A.J. 28, 30 (May 15, 1987) (quoting third-year lawyer: "There's an incredible amount of dissatisfaction out there. . . . They'd come in and shut the door and literally start crying. . . . There's a conspiracy of silence among people who doubt that the law is for them."); Sorenson, *Dropout Lawyers*, 8 WORKING WOMAN 6, 6 (March 1983) ("For many no-longer-brand-new attorneys, the luster of the law has given way to the tedious reality of a glutted job market and a long, hard apprenticeship. . . . The result is a growing exodus from the profession."); Ciotti, *Unhappy Lawyers; They're Highly Trained and Highly Paid, So Why Do Many Feel So Low About Their Jobs?*, L.A. Times, Aug. 25, 1988, Part 5, at 1, col. 2 ("[M]any lawyers wonder if perhaps their choice of career wasn't a major mistake.").

For regional discussions, see Goldberg, *Satisfaction: Poll Reflects Unease*, 75 A.B.A.J 40, 40 (Apr. 1989)(reporting that only 36% of Maryland lawyers surveyed want to practice law for the

To the (dis)interested observer, word of this development would be expected to engender sustained reflection in the law school community for at least two reasons. First, whatever else may be said about dissatisfaction in the legal profession, the sheer fact that it exists casts a shadow over the picture of professional life that the law school sketches. A professional school that romanticizes the work life that its students will encounter might consider refining its picture when many of the profession's members confess that they do not find their work life especially satisfying.[5] Second, the development raises important questions about the goals the law school has set for itself and the extent to which it accomplishes those goals. A professional school that finds many of its former students dissatisfied with their professional lives might begin wondering to what extent the responsibility lay with the school and not merely with the students and the profession.

Rather than being prompted to sustained reflection, however, the law school responds very differently to this development. At first it professes to a mix of denial and astonishment, something like the way comfortable urbanites respond when informed that, every night, people in their city go hungry and homeless. If only we had known, the law school replies. If only we had known. Then, a bit later, these protestations fade, replaced by what can best be described as stunning institutional hypocrisy.[6] Each August, as energetic first-years begin their legal careers, the law school continues to fill them with wondrous tales of opportunities that await them after

---

rest of their professional lives); Walljasper, *'I Quit'*, 63 WIS. LAW. 13 (Mar. 1990) (41% of Wisconsin lawyers surveyed doubted they would choose the legal profession if they could start anew).

5. My complaint against the law school, as will become clear, is precisely the opposite of that lodged by Scott Turow. Turow chides law professors for disparaging legal practice. Turow, *Law School v. Reality*, N.Y. Times, Sept. 18, 1988, § 6, at 69, col. 3. My concern is that the law school does substantial damage to future lawyers, and thus to the profession, by glorifying legal practice and neglecting important professional realities.

6. By using the term "hypocrisy," I mean to suggest what Samuel Huntington had in mind when he posited hypocrisy, moralism, cynicism, and complacency as the four responses Americans have invoked through the years to cope with what Huntington, borrowing from Leon Festinger, described as our national cognitive dissonance: the gap between the *promise* of American political ideals and the *reality* of them. For Professor Huntington, hypocrisy arises when Americans intensely committed to our national ideals deny the very existence of a gap between those ideals and the realities of American political life. Moralism, by contrast, describes the response in which Americans confront the gap and set out to eliminate it by supporting political and social reforms that bring the realities closer to the ideals. For Huntington's incisive interpretation of American political history, see S. HUNTINGTON, AMERICAN POLITICS: THE PROMISE OF DISHARMONY (1981). *See also* L. FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

Professor Huntington's notion of the gap between political ideals and political realities, between institutional promise and institutional performance, nicely fits the law school. My contention is that, today, a substantial gap exists between the law school's promise of preparing its students for the practice of law and the realities of legal education, and that legal educators are well aware of this gap yet choose to deny it. Hence my use of the term "hypocritical."

three years of diligent study. The riches of professional life are yours for the taking, the law school tells them, and you are very fortunate to be here; spend the next three years jumping through our hoops and all will be well. Variations on the theme get hammered home periodically throughout the next six semesters: study hard the hundreds of appellate opinions put in front of you; spot issues and manipulate doctrine sufficiently well on examinations to get good grades; write something — *anything* — for some journal; then pick up your one-way ticket to the good life.

Along the way, the law school may toss in an occasional disclaimer about a hypercompetitive job market, the demise of loyalty to colleagues and firms, the profit motive, the psychological and emotional toll of lawyering, the depersonalization of legal practice, substance abuse among lawyers, and other vicissitudes of professional life.[7] But these are mere commercial breaks in the elaborate dramatic presentation.[8] And the message of that presentation is clear: by sheer dint of having been accepted to law school you are on your way to success and happiness, and we in the law school have planned your three-year visit with us to maximize your prospects of getting there. Several years down the road, as this group of entering law students exits as lawyers and begins to experience a professional reality strikingly different from the one they were prepared for, the law school is busy telling a similar set of tales to a new group of energetic first-years. It will take awhile before this new group learns, as its predecessors learned, that the law school failed to live up to its end of the bargain.

My contention, then, is that the American law school of the late twentieth century perpetrates a fraud of no small magnitude as it goes about its business. Well aware of the professional realities that will confront its students, the law school packages and markets an experience that, from the

---

7. For a thoughtful and balanced discussion of changes in the profession, see Adams, *The Legal Profession: A Critical Evaluation*, 74 JUDICATURE 77 (Aug./Sept. 1990).

8. As will be discussed later, moreover, even when the law school does bring these (and other) facts of professional life to the attention of students, it rarely does so in the context of formal classroom instruction. By choosing not to devote classroom time to such transcendent professional realities, the law school is telling its students either that these realities do not exist or that, if they do exist, they are not sufficiently important to warrant the law school devoting valuable classroom time to them.

My colleague Michael McChrystal reminds me that the aspects of professional life ignored by the law school are by no means uniformly negative. As one example, Professor McChrystal observes that, other than the typical moot court exercise (and even there students often receive separate grades for their respective written and oral work), the law school curriculum puts little if any emphasis on the rewards that lawyers derive from working together as a team in pursuit of a common goal. More fundamentally, Professor McChrystal suggests that the law school experience fails to supply new lawyers with an ethos of satisfaction, a sense of what is truly satisfying about lawyer life.

application for admission to the award of the degree, deliberately sidesteps important aspects of those realities.[9] Instead, the law school premises the experience it provides on a distorted picture of legal practice and the legal profession. By doing so, the law school cultivates in those who matriculate expectations destined to be smashed, like a time bomb sure to detonate sometime down the road. Worse yet, by doing so the law school misses out on an opportunity to transform the profession's reality. It fails to produce lawyers who, above and beyond being competent technicians, truly understand the profession they have chosen to enter.[10]

The disquieting irony of legal education in the late twentieth century is that the law school has yet to acknowledge its share of responsibility for much of the disappointment found in the profession. Until it does so the law school will remain not only part of the problem, but a big part of it. The time has come for the law school to acknowledge its responsibility and become part of the solution.

B. Toward a Solution

1. Expectations and the Law School

In the past few decades, the notion of expectations has assumed an important place in our public discourse. Presidential candidates and other

---

9. Let's be clear about why the law school is "well aware" of the professional realities. The problems this essay addresses simply cannot be rooted in the ignorance of legal educators. After all, approximately 85% of today's law faculty have been practicing lawyers, and many still are. *See* White, *Lawyer Competency and the Law School: An Opportunity for Cooperation*, THE B. EXAMINER 4, 7 (Feb. 1984). Had law professors wanted to remain full-time practicing lawyers they would have done so. The fact that the vast majority of today's law faculty chose to leave the practice of law for jobs as legal educators says a great deal. At the very least it says that they chose legal education over legal practice. That in turn suggests, first, that legal practice may not be all sunshine, lollypops, and rainbows and, second, that a well developed set of legal skills may not be all that is required to achieve success and satisfaction in legal practice.

10. One new lawyer put it this way after a defeat at trial prompted his suicide attempt:

> The one thing I cannot understand is why I was never told in law school . . . why no one ever sat down with me at some point . . . and warned me of the psychological dangers. . . . Could someone have given me some advice on how to keep my client's losses from becoming my personal losses? Could someone have told me ways to deal with the stresses and pressures of losing such a big case?

Curriden, *Worried Warriors: Can Anything Prepare You for the Stress of Litigation?*, 19 STUDENT LAW. 14, 16 (Dec. 1990).

The law school's deception about, and neglect of, important professional realitites is reminiscent of a more famous historical deception: the noble lie of Socrates. *See* THE REPUBLIC OF PLATO, Book III, §§ 412b - 416d (A. Bloom trans. 1968). As Allan Bloom observes, however, Socrates' noble lie is noble precisely because it serves a goal higher than truth: the ideal regime cannot be constructed and preserved without it. *Id.* at 365. The same thing cannot be said about the law school's deception.

politicians have come to be evaluated not on the basis of whether they won or lost a particular primary or election, but on the basis of how well they performed in comparison to how polls revealed they were supposed to perform. Few people remember that, in 1968, Lyndon Johnson in fact "won" the New Hampshire Democratic primary in the conventional sense of the term, receiving several thousand votes more than challenger Eugene McCarthy. The memory is clouded because Senator McCarthy's performance far exceeded, while President Johnson's fell substantially short of, pre-New Hampshire expectations. Thus the reality that emerged out of New Hampshire in early 1968 was not that an incumbent president had just taken his first successful step toward re-election but, quite the contrary, that he had stumbled badly. Throughout the nation the intelligentsia filtered the meaning of that event through the prism of expectations: LBJ was supposed to win big; the margin of victory turned out to be modest; the "victory" was thus quickly transformed into a defeat.[11]

Much the same phenomenon is at work elsewhere in our culture. The San Francisco 49ers powered their way through the NFL playoffs following the 1989 season, devastating three consecutive opponents with the force of a hurricane. For the most part, however, the nation's armchair quarterbacks greeted this display of talent, discipline, and intelligence with yawns and shrugged shoulders. After all, the 49ers were supposed to beat their opponents, and they were supposed to beat them handily. Like the plight of Lyndon Johnson two decades earlier the achievements of the 49ers were measured against the benchmark of expectations, and the expectations served to diminish considerably the achievements.[12]

At first blush, it might not be apparent that the experiences of Lyndon Johnson and Joe Montana contain a lesson for the law school. But they do.

---

11. The March 25, 1968 issue of Newsweek begins its report of the New Hampshire primary by observing that "[McCarthy's] victory in New Hampshire can hardly be disputed. . . . He came within six percentage points . . . of defeating his own party's incumbent President." *The Fight to Dump LBJ*, NEWSWEEK, March 25, 1968, at 21. As William Mayer observes, the comparison of expectations to performance makes or breaks many a presidential candidate. Four years after expectations transformed Senator McCarthy's New Hampshire defeat into victory, Senator Edmund Muskie met the opposite fate, nominally "winning" New Hampshire with 46% of the vote but winning it so narrowly and unimpressively that Senator George McGovern was able to overtake the supposedly invincible Muskie. Jimmy Carter in 1976 and Ronald Reagan in 1980 likewise used better-than-expected performances in New Hampshire to catapult them into their party's nomination and, ultimately, the White House. *See* Mayer, *The New Hampshire Primary: A Historical Overview*, in MEDIA AND MOMENTUM 9, 12, 21-22 (1987).

12. As one sportswriter put it, "[a] victory didn't wear well unless the 49ers, who won four Super Bowls in the last decade, simply overwhelmed their opponent. When they won, it was expected. The Super Bowl was just another game on the schedule." Martinez, *Montana's Still There, but 49ers of Old Are Gone*, N.Y. TIMES, July 13, 1991, § 1, at 27.

That lesson, one the law school would do well to remember, is this: expectation shapes response. The way new lawyers react to their first few years of life with a law degree depends on the professional expectations the law school cultivates in them.[13] Shielding law students and prospective law students from some of the unpleasant realities of lawyer life will thus do nothing to dispel the misapprehensions that many students bring with them to their study of the law. Quite the contrary. Playing fast and loose with professional realities will only exacerbate the unpleasantness when the new lawyer encounters it. And if, as Anthony D'Amato has observed, the law school has been taken over by the forces of consumerism,[14] pulling the wool over students' eyes is bad for the law school as well because, when the wool comes off, these young lawyers will see that the law school has betrayed them.

But the law school's responsibility in the matter of professional expectations runs considerably deeper. For, with all of the differences within American legal education, it seems fair to say that the principal objective of that education is to prepare students for the practice of law.[15] In connection with this objective, every generation or so the law school reworks and refines its notions of what it actually means to prepare students for the practice of law. Despite this generational tinkering, the ongoing discussion essentially revolves around the proposition that there are a host of skills in the arsenal of the good lawyer. The challenge facing the law school, we are

---

13. *See* Janoff-Bulman & Brickman, *Expectations and What People Learn from Failure*, EXPECTATIONS AND ACTIONS: EXPECTANCY-VALUE MODELS IN PSYCHOLOGY (N. Feather ed. 1982), and the other contributions in that text for an examination of the psychological effects of expectations.

14. D'Amato, *The Decline and Fall of Law Teaching in the Age of Student Consumerism*, 37 J. LEGAL EDUC. 461 (Dec. 1987); *see also* First, *The Business of Legal Education*, 32 J. LEGAL EDUC. 201, 201 (June 1982) ("A student purchasing an education is making an investment decision.").

15. To illustrate the point, pick any handful of law school bulletins off the shelf and examine the first few pages of each bulletin. Somewhere in those pages, expressed in a variety of different ways, each law school will assert that it seeks to train students for the practice of law. It seems indisputable, moreover, that this objective becomes more central to the institution's consciousness as we move away from the "elite" schools and into the "not-so-elite" schools. Even the Yale Law School, however, begins its description of the study of law by revealing that "the primary educational purpose" of the school is to train lawyers. It then goes on to quote Dean Swan to the effect that, of the law school's two functions, one is "to train its students so that they may become successful practitioners in their chosen profession." YALE LAW SCHOOL, BULLETIN NO. 84, 13 (1988-89).

For purposes of this article, I do not challenge the law school's view that its principal mission is to prepare students for the practice of law. My claim, instead, is that given this self-professed mission the law school is falling short of the mark. For an argument that the law school should redefine its mission away from law and toward justice, see D'Amato, *Rethinking Legal Education*, 74 MARQ. L. REV. 1 (Fall 1990).

told, is to identify those skills and determine how to impart them most effectively within the economic constraints under which the law school operates. In the old days, the skill of skills tended to be referred to as "thinking like a lawyer."[16] It was fashionable for established members of the bar to blow cigar rings at the ceiling while shocking naive first-years with the revelation that this was all the law school sought to accomplish.[17] These days the law school describes the skills it seeks to develop more ambitiously. It typically expresses its goal through categories such as analysis, communication, advocacy, counseling, negotiation, and the like.

Lest the message be misconstrued, let me happily acknowledge that skills of analysis, communication, advocacy, counseling, and negotiation are indispensable to the lawyer who seeks to excel in her work. To the extent the law school succeeds in developing and refining these skills, therefore, it merits a pat on the back for a difficult job well done. But the point to be made is a different one, and that point is this: the law school is seriously mistaken in its belief that the effective teaching of these skills is the benchmark against which to measure whether it has accomplished its mission, whether it has adequately prepared students for the practice of law. The student who, for three years, develops and refines the most impressive set of legal skills — who reasons impeccably, writes cogently, speaks persuasively, counsels wisely, negotiates brilliantly, and dazzles at the WESTLAW terminal — may well be the student least prepared for the transformation from law student to lawyer. That is because the law school, for all its emphasis on the *skills* of lawyers, for all the energy it devotes to helping students think like lawyers, write like lawyers, and speak like lawyers, fails to do its part to teach students much at all about *being* lawyers, about joining a profession in which success and satisfaction depend on much more than carrying around a well-developed set of legal skills.[18] To be faithful to its

16. *But see* Turow, *Law School v. Reality*, N.Y. TIMES, Sept. 18, 1988, § 6, at 69, col. 3: [L]aw school does *not* teach students to think like lawyers. It teaches them to think like law professors."

17. The opening days of my law school experience have faded too much for me to recall whether the law school itself advised me of this astonishing fact. For some reason, however, I do recall a welcome dinner break amid the shock of first semester, during which a lawyer twenty-five years my senior passed along the tidbit. He was kind enough not to pass along a bill for the insight.

18. As Dr. Andrew Watson told the 1974 graduating class at University of Pittsburgh Law School:

> Law schools have convincingly demonstrated their capacity to hone the minds of their students so that when they graduate they possess excellent intellectual skill to carry out the complex analytical tasks which lawyers perform in our society. [But when it comes to] the complicated emotional reactions which join, as well as interfere, with intellect when one is searching for elusive truth, regrettably law schools do little to facilitate this kind of knowl-

mission of adequately preparing students for the practice of law, the law school will need to confront this fact. It will need to refocus its enterprise to take into account what those who operate the law school know only too well yet have chosen to push out of their collective consciousness.

2. Refocusing

Up to this point it has been my aim to set out, with broad strokes, a kind of syllogism that members of both the law school community and the legal profession acknowledge as reasonably accurate. The argument begins with a premise supplied by the law school itself, taking as a given that the fundamental objective of American legal education in the late twentieth century is to prepare students for the practice of law. The argument then moves to the next level, contending that much of the current dissatisfaction among new lawyers stems from the clash between the expectations the law school either cultivates or fails to dispel in them and the realities new lawyers ultimately encounter in practice. The conclusion that flows from this pair of propositions seems clear: if the law school means what it says — if it truly seeks to prepare students for the practice of law — it needs to refocus its enterprise so as to diminish this gap between expectation and reality.

Accomplishing this feat is, admittedly, no easy task. But one thing is certain: the effort will not be completed unless it is begun. The suggestion here is that the law school can start — and it is only a start — by taking a hard look at three aspects of its enterprise, three moments in the development of would-be lawyers: a) the undergraduate experience and the law school's impact on that experience, b) the initial few days of legal education, and c) the first year classroom.

> edge, and in my opinion they actively inhibit its growth. [Law school leaves students with] a strong tendency to be unaware of and therefore inappropriately responsive to the emotional conflicts which are so common in a lawyer's work situation.

Zemp, *Turned-off Lawyers*, 10 STUDENT LAW. 23, 40 (Nov. 1981). *See also* Benjamin, Kaszniak, Sales, & Shanfield, *The Role of Legal Education in Producing Psychological Distress Among Law Student and Lawyers*, 1986 AM. B. FOUND. RES. J. 225, 226 ("Law school is the very place in which practitioners should learn to cope effectively with the demands of the profession as well as the demands of everyday life. The development and maintenance of the psychological well-being of law students, however, may be stunted by the process of legal education; at best, it is ignored."); Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL EDUC 352, 353 (June 1982) ("Legal education has a three-fold objective. It is an activity undertaken for the sake of future clients, for the sake of society at large, and for the sake of the student himself or herself — by which I do not mean his or her pocketbook but his or her *self*.").

a) Step One: Law School and the Undergraduate Experience

Even as the number of law students who do not proceed directly from college to law school continues to increase, a substantial number of students who matriculate to law school make the decision to pursue legal education prior to the end of their undergraduate experience.[19] In fact, a recent survey of 1983 graduates revealed that more than one in five made the decision to attend law school *before finishing high school.*[20] Given these statistics, it should come as no surprise to legal educators that their mission of preparing students for the practice of law requires them to go beyond the walls of the law school. It requires them to work closely with undergraduates and those who advise undergraduates in order to dispel pervasive misconceptions about lawyer life and to begin to cultivate an understanding of what that life is all about.

In this connection, it is important that the law school identify and address two sets of relationships. One is the relationship between a law school and those undergraduate institutions that guide some of their students to that law school. The other is the relationship between those undergraduate institutions and their students. Each of these relationships contributes to the problem of wildly misplaced expectations, and each needs to be part of the solution.

Seen from the law school's perspective, the relationship between the law school and an undergraduate institution is a relationship with potential for mischief, for what lawyers fondly refer to as a conflict of interests.[21] For

---

19. According to a recent study of the 1983 graduating class at twenty law schools, 41% of those responding to the survey reported that they made the decision to attend law school while undergraduates. Tucker, Albright & Busk, *What Ever Happened to the Class of 1983?*, 78 GEO. L.J. 153, 166 (1989). Perhaps surprisingly, an additional 21% — *more than one in five* — reported to have made the decision while in high school and carried that decision around with them throughout their undergraduate studies. *Id.*

20. *Id.* Without belaboring the obvious, the fact that more than six out of every ten students who left law school with J.D. in hand in 1983 decided to attend law school prior to college graduation underscores how essential it is for the law school to do its part to help undergraduate students understand what the legal profession is all about.

21. Under ethical rules that govern the practice of law, a lawyer is not permitted to represent a client when the representation may be materially limited by the lawyer's own interests, unless the client gives informed consent to the representation. Moreover, the lawyer must withdraw from representation if continued representation would violate this principle. *See* MODEL RULES OF PROFESSIONAL CONDUCT, Rules 1.7(b), 1.16(a) (1991); *see also* C. WOLFRAM, MODERN LEGAL ETHICS 323-24 (1986). When a law school seeks to induce undergraduate students to become lawyers or to enroll in its particular school, the law school usually pretends that it is animated by a concern for the undergraduates themselves, not just its own self-interest. But the law school is severely limited by the fact that its goal (getting students to apply and matriculate so that it can continue to operate) is in tension with the students' goal, or with what would be the

better or worse, the law school needs students to stay in business.[22] Moreover, quality students often become quality lawyers, enhancing the reputation of the law school from which they emerge and thereby attracting other students to the law school. Like the general who needs soldiers or the vacuum-cleaner salesman who needs buyers, therefore, the law school is sorely tempted to pass along only selected bits of professional truth to its feeder schools, to conceal information about the law school or the profession that might lead undergraduates to think twice about either law school in general or a law school in particular. In short, in its dealings with undergraduate institutions the law school often seems more interested in luring students to law school than in ensuring that students make an informed decision.

Such an approach, for all its reprehensible aspects, would be less problematic if undergraduates were able to obtain guidance and information about the profession from sources other than the law school. But the typical college campus gathers more information about law *school* than about the legal *profession*, and features more discussion of grade point averages and LSAT scores than what lawyers do with the forty years left in their careers once they finish law school. Too often even the most dedicated prelaw advisor turns her title into something of a misnomer, viewing her role not as helping undergraduates learn about the legal profession and decide whether it is a good choice for them but, instead, as passing along information concerning how many times a year the LSATs are given and which law schools are hot and which are not.[23]

The matter goes beyond inadequate information and poor advice. The undergraduate curriculum, looked at from the perspective of the typical undergraduate, perpetuates the myth that college courses with the word "law" in their titles will help students decide if law is an appropriate career for them. Like Pavlov's dogs, students who have never heard the phrases "document production," "billable hours," or "rainmaking" dutifully flock

---

students' goal if the law school did its part to educate them properly (deciding whether to apply and matriculate is a wise course of action).

22. Dean Mark Yudof has challenged this assumption with an amusing plea for a law school without students or faculty: "Most of my day-to-day administrative problems arise only because we have faculty and students on the premises. If we were to eliminate one of those groups, my life would be much easier." Yudof, *Townes Hall Notes*, 2 (Fall/Winter 1990).

23. As one law school placement director aptly put it:

> Despite the presence of pre-law counselors on college campuses, many law school applicants never receive adequate career counseling about the profession. Prospective law students who already know they want to be lawyers look to pre-law counselors primarily for information about which schools to apply to and how to fill out application forms, not to verify whether their expectations about practicing law are realistic.

Dart, *Career Satisfaction*, 67 MICH. B.J. 840 (Sept. 1988).

to courses in constitutional law, administrative law, sociology of law, philosophy of law, law and literature, and legal history, confident that these courses will validate their inclination to pursue legal careers. But these courses, whatever their academic value at a particular undergraduate institution, teach college students little if anything about the legal profession and life as a lawyer. At most they provide a glimpse into what a law school classroom or casebook might be like. And that is precisely why, for so many students, such courses serve to perpetuate myths rather than dispel them. Undergraduates contemplating a career in law ought to be encouraged to ask "What is the legal profession like and is it right for me?," *not* "What is law school like and is it right for me?" Little in the undergraduate experience helps the student properly frame the issue, and even less helps her work through to an answer. As a result, law firm libraries are filled with bewildered men and women who wish they would have discovered earlier that they were asking themselves the wrong question.

These circumstances, gloomy though they be, pose an opportunity for the law school to begin doing what it has for too long neglected to do: take the lead in helping undergraduates learn what the legal profession is really about. That way student decisions to pursue or forgo legal careers will be decisions grounded in professional realities and not adolescent fantasies.[24] After all, sooner or later the fantasies will be shattered. If the law school can help shatter them sooner it will render an important service to those who choose to join the profession, those who choose not to join it, and those whom it serves.

The law school can seize this opportunity almost effortlessly. What is needed is a subtle shift in the way it evaluates candidates for admission and a prompt explanation of that shift to undergraduate institutions. To gain admission, applicants should be required to demonstrate not enthusiasm for law school, ecstasy about the prospects of being a lawyer, or membership in the Raymond Burr Fan Club, but *knowledge of the legal profession*. To gain

---

24. According to career counselors, the six most common of these childhood fantasies are as follows:

a) *The Perry Mason Syndrome* (belief that lawyers are "honest, ethical, highly respected, and tirelessly devoted to [their] (always innocent) clients");

b) *The Good Kids* (choosing law will please parents or enable parents to live vicariously through them);

c) *Professional Femme Fatales* (adolescent girls who push themselves into law as a way to pursue traditional male definitions of success);

d) *The Good Samaritans* (being lawyers will help the world);

e) *Lost Souls* (law will bring instant recognition and success);

f) *The Power Brokers* (legal career is "ticket to fame, fortune and power").

Heisler & Hirsch, *Legal Fantasies: Why Lawyers Choose Law*, 4 CBA REC. 24, 25-27 (Mar. 1990).

admission, applicants should be encouraged to demonstrate not grade point averages, LSAT scores, or leadership positions in campus organizations, but *a genuine understanding of what lawyers do for a living, an understanding gained through first-hand experience in some aspect of the legal profession.* Difficult though it might be at first, the law school should make clear that it will discourage (or reject outright) applications from those who have not yet acquired the requisite knowledge and understanding.[25]

This shift in emphasis to an applicant pool compelled to gain an experiential sense of the profession prior to law school would produce a host of desirable consequences. In a flash undergraduate institutions, responding to pressures from both the law school and their own students, would feature courses and information about the legal profession itself. Colleges concerned about their reputations in high schools would begin to devote more energy to helping prospective lawyers learn about the profession rather than about law school. Would-be law students would be prompted to spend their summers learning about the profession and would be compelled to defer law school until they obtained a meaningful pre-professional experience. Lawyers in private practice and government service would begin to play a prominent role in shaping the expectations of young lawyers prior to law school, helping future members of the bar learn what the profession is, and is not, about. All in all, those who choose to matriculate to law school will be better able to cope with the consequences of their decision because they will have a better sense of what those consequences are. Equally important, those whose experiences in the legal profession persuade them that law is not their cup of tea will choose to pursue other endeavors, avoiding considerable expense and despair.

---

25. Like most proposals for a change in the law school, this one is likely to be greeted with the charge that it is outrageously unfair to someone — unfair to minority applicants or women applicants or applicants from families with modest incomes or white male applicants or well-off applicants who enjoy golf and a deep, rich suntan. But it isn't. If anything, the requirement will open up legal institutions to many who traditionally have not had access to the institutions at such early stages of their professional development.

The requirement has another advantage as well. Current admission criteria — grades, the LSAT, and other predictors of legal aptitude and achievement — serve individual law schools, not the profession as a whole. Such criteria do not keep tomorrow's marginal lawyers out of law school or the profession. Instead, such criteria are used to pass the risk of incompetence downward, from the more selective law schools to the less selective law schools. The requirement that applicants demonstrate experience in the profession will benefit all law schools, all prospective applicants, all future clients.

b) Step Two: The First Days of Law School

Let us hope that, with the law school's prodding, undergraduates and the institutions to which they pay tuition begin to grasp that knowledge of the legal profession is essential to the decision of whether to pursue a legal career. Let us hope that, as a result, first-year students begin to show up on the law school's doorstep with a bit more professional savvy than has sometimes been the case. Whether they do or not, it is that time of year again: the time referred to as first-year orientation, when these new law students formally gather to begin their inculcation into the profession. What next?

The first few days of the law school experience is a time of immense importance. These days are important for the new students themselves, busy getting acclimated to an educational and social environment different from any they have been in before. But these few days are important for the law school as well. These moments provide the law school the only opportunity it will ever have to set out for this captive group of lawyers-in-training the law school's conceptions of the profession, the law school enterprise, and the link between the two. Like the initial meeting with a client, these few days set the tone and context for much of what is to come, creating a dynamic that will suffuse the new relationship through and beyond its early stages. In short, from the law school's perspective the initial encounter with the incoming class is an opportunity too important to be squandered.

Too often, however, the law school fails to make the most of this opportunity. This occurs, in part, because legal educators have lost sight of the role the law school and these initial few days in law school can and should play in the development of professional expectations and, in part, because the law school persistently refuses to present a balanced picture of the legal profession. To illustrate the point requires a brief discussion of what the law school should work to avoid in its initial encounter with first-year students.

In a wonderful scene from the television show M*A*S*H*, Father Francis Mulcahy, the unit's chaplain, is tossing around a softball with Corporal Radar O'Reilly, the unit's clerk. Father Mulcahy unleashes a mean fastball, prompting Radar to praise the chaplain's powerful arm. Acknowledging the compliment, Mulcahy replies that men of the cloth develop quite a bit of muscle wrestling with temptation.[26]

Like Father Mulcahy, legal educators wrestle with temptation day in and day out. Unlike the 4077's chaplain, however, the law school often loses the match. With regard to first-year orientation in particular, the law

26. M*A*S*H*: *Operation Noselift* (Twentieth Century Fox 1974).

school seems unable to resist the temptation to play cheerleader for both the legal profession and itself, treating the practice of law as the Munchkins did the land of Oz and law school as a kind of yellow brick road that will get students there.

This first encounter that law students have with the law school is one at which, almost inevitably, the law school glorifies the profession, dramatizes its challenges and rewards, downplays (or completely ignores) contemporary developments that would darken this rose-colored picture of lawyer life, and extols the gifted students who have been chosen from a pool of gifted applicants to one day share in those rewards.[27] Important members of the legal community — deans, judges, bar association presidents, senior partners, alumni who give substantial amounts of money to the law school, and the like — reminisce about their (very long and very successful) careers. These representatives of the law school remind members of the incoming class that they are fortunate indeed to be joining a real profession and not training to be, say, plumbers or construction workers. All in all, if first-year orientation is viewed in part as a state of the profession message, as it should be, the message the law school conveys to entering law students is that the state of the legal profession is good, very good.

And of course it is — at least for the vast majority of deans, judges, bar association presidents, senior partners, and alumni who give substantial amounts of money to the law school. But the anecdotal plights of *those* men and women, fascinating though they may be, have little to do with the profession *these* first-year students will begin to confront a few months down the road, when they send their first batches of resumes off in the mail and receive scores of replies that, by sheer coincidence, all contain the word "regrettably." Perhaps that explains why, as a rule, these orientation talks make little or no mention of recession and its impact on the profession; deteriorating employment prospects; lawyer dissatisfaction, boredom, and burnout; layoffs at large firms; the burdens that tens of thousands of dollars of educational loans impose on young lawyers and their families; persistent and distinctive problems that women lawyers grapple with every day; pressures of billable hour requirements; declining loyalty to colleagues and firms; injustice in the legal system; substance abuse among lawyers; and a host of other professional facts of life. If the law school was truly committed to preparing its students for the practice of law, as it purports to be, these facts of life would appear front and center in the orientation experience, not buried in parenthetical whispers. One explanation for their ab-

27. To any skeptics among you, feel free to test the accuracy of this description by sampling speeches to law school entering classes around the nation.

sence is that perhaps the speakers whom the law school taps to address the new class are unfamiliar with these realities. After all, many of these speakers inhabit a profession different from the one the students will inhabit as new lawyers. Another explanation is that perhaps the law school finds it uncomfortable to trouble new law students with facts that may disturb the sweet naivete they bring to the beginning of their legal careers. Or perhaps the law school keeps these professional realities from incoming students because it senses that the realities reflect on the law school and how well the law school has done the job of preparing students for practice.

Whatever its causes, the misinformation that greets the new law student has serious effects. Over the long haul, of course, the student becomes a lawyer. She learns that lawyer life — at least for her — is something other than the smooth ride the law school suggested it would be. She then seeks to cope with the gap between what she expected and what she encountered. One aspect of that coping mechanism may well be resentment directed at the law school, resentment manifested in a number of predictable ways: by tossing fund-raising requests in the wastebasket before reading them, seeking to dissuade potential lawyers from pursuing law school in general or her alma mater in particular, or other acts of institutional sabotage.

But the immediate effects of the orientation messages sent and not sent, gleaned and not gleaned, are considerable as well. Being assured by the law school that, despite a problem here and a flaw there, the profession is well, her future secure, and opportunities abundant, the beginning law student embarks on her law school experience with a view toward shaping the experience to fit the picture of the profession that the law school has shown her. Hearing little, if anything, about a difficult job market, dissatisfied lawyers, and other troubles in the profession, she begins the law school experience believing that such things do not exist, at least not pervasively or seriously enough to warrant the law school bringing them to her attention. In sum, the law school greets incoming students with a picture of the profession that is missing salient features of the professional landscape. Without realizing it, the law school encourages students to use that inaccurate picture to shape the approach they take to the important questions about their education: how hard to work; what academic goals to strive for; what elective courses to take; what training to seek in law school and what to leave to potential employers; whether specialized knowledge in one area or a broad-based generalism in many areas is the wiser path; how to choose between the clinical experience and more traditional classroom courses; whether the law school is responsible for securing jobs for students or whether students control their own employment destiny; whether to write for a journal. The questions are difficult enough for students to deal with when they have an

accurate sense of what lays ahead. But when the law school fills up their minds with misinformation and conceals information necessary for them to deal properly with their education, the results can only be disastrous.

As with the undergraduate experience, the first few days of law school pose an opportunity that legal educators cannot afford to let pass. Though there are of course other goals for the law school to accomplish — helping students begin to understand the goals of legal education, introducing them to each other and to a new cast of faculty and administrative characters, showing them where the library, restrooms, and coffee machine are located — the transcendent goal of the first few days of law school should be to ensure that entering students grasp the professional context in which their professional education is about to begin. If law school seeks first and foremost to prepare students for the practice of law, as it says, then it needs to organize the first few days with students around that very goal. Telling students all about the workings of the Socratic method, the pros and cons of study groups, and the wonders of *Gilbert's* is well and good. But this information serves no purpose at all if students fail to understand the profession that the law school will dump them into after three years of expensive hospitality. Shielding students from the realities of the profession, in addition to being gutless and irresponsible, hurts the students, the law school itself, and the entire profession.

The education of new law students should begin with an effort to help them understand the legal profession as it is today. More precisely, the law school should help entering students understand the profession *they* are about to enter. A law school that sends one student every five years to Wall Street or Park Avenue would be silly to devote much time and energy to the culture of big-firm New York practice. Yet the point remains that the law school should use this time, at least in part, to acquaint students with the contemporary profession and life as a new lawyer. Only then will students, and perhaps legal educators, understand the law school and legal education.

As this discussion suggests, the law school can take advantage of this opportunity by making two small changes in its approach to entering students. These changes, however, require the law school to relinquish its roles as cheerleader for the profession and salesman-in-chief for the product called law. The first thing the law school must do is swallow a dose of truth serum and force itself to come clean with incoming students about the state of the profession — the downs as well as the ups, the frustrations as well as the joys, the disappointments as well as the rewards. An extensive, open, and probing discussion of lawyer life is precisely what beginning law students need to set the stage for their first day of classes. Such a discussion will help students begin to do immediately what others have done only too

late: it will help them grapple with the relationship between a legal education and a legal career. But, to state the obvious, the law school can only do this by sending to the podium people who actually know what life as a new lawyer is like. Fortunately for the law school, it comes into contact with an almost endless supply of these people. They are called recent graduates.

It is recent law school graduates — not just deans, bar association presidents, and senior partners — who should be sharing their insights with the entering class. It is recent graduates who experience daily the realities of lawyer life that the new student will soon come to know. It is they who can be found at their desks at midnight finishing motions for summary judgment; they who spend hours at the WESTLAW terminal; they who draft and redraft the documents for closings, public offerings, and the like; they who stroll into work only to learn that fifteen of the firm's forty lawyers left the night before; they who recently switched jobs (or tried to); they who know about the tensions of family life prompted by yet another weekend at the office; they who have dealt with all kinds of superiors, adversaries, clients, judges, and support staff; they who have incurred astronomical student loans to buy into a profession they sometimes feel has trapped them; they who have experienced the invigorating rewards unique to the new lawyer.

Of the many resources available to the new law student, recent graduates could prove the most valuable—even more valuable than, yes, *Black's Law Dictionary*. It is recent graduates who should be talking to new law students, they and the professional world they inhabit that should be the organizing principles of these first few days. It is their insights into that professional world that will help guide new students to an appropriate set of expectations, expectations that they are not being guided to today.

c) Step Three: The Classroom — First Year and Beyond

The discussion to this point has maintained that the law school can make significant strides toward preparing students for the practice of law by rethinking its relationship with undergraduate education and the organizing themes of entering students' first few days. A fresh look at the role the law school plays, and should play, during these two moments in the development of a prospective lawyer's career will enable the law school to diminish the gap between expectation and reality that plagues many new lawyers.

To make further strides, however, the law school needs to rethink another aspect of legal education. It needs to look searchingly at how it compels first-year law students to spend their classroom time and why it compels them to spend that time the way it does.

Before we can understand the full scope of the problem we must return to a theme introduced earlier. A central proposition of legal education is that to prepare students for the practice of law the law school needs to develop and refine the students' legal skills. In fact, it seems fair to say that mainstream legal education pretty much equates the two notions: preparing students for the practice of law, from the law school's perspective, means essentially equipping students to be at least minimally competent in the use of legal skills — able to write (pleadings, motions, and briefs to courts, memoranda to superiors, opinion letters to clients, for instance); research (precedent and legislative history, for instance); speak (to clients and colleagues, adversaries and witnesses, judges and juries, for instance); analyze (facts and law, for instance); advocate (policy, for instance); negotiate (deals, settlement agreements, and plea bargains, for instance); and counsel (clients with problems, for instance).

Credible evidence that this is the law school's view of its mission can be found at any faculty meeting or conference among legal educators. When legal educators do find time to debate the big questions of legal education, the debate typically concerns means rather than ends — *how* best to equip students with a predetermined set of lawyerly skills rather than *whether* the law school should be seeking to equip them with these skills; *how* to teach good writing, good analysis, good advocacy, good counseling, and good negotiating better than they are currently taught rather than *whether* the law school should be devoting its resources to teaching such skills. To steal a page from Louis Hartz, the disagreements among American legal educators themselves reveal an extraordinary institutional agreement, the academic wars themselves reveal how deep the consensus runs among the warriors.[28]

No aspect of the law school enterprise underscores the point better than the first-year curriculum and the movement afoot to rethink the wisdom of that curriculum. At present, a host of law schools around the nation — elite "national" schools as well as modest "regional" and "local" schools, big schools as well as small schools, public schools as well as private schools

28. It was Professor Hartz who, picking up where Tocqueville left off, provided the master insight into American political history: that only by looking at American institutions through European categories could the distinctiveness of America be revealed and understood. L. HARTZ, THE LIBERAL TRADITION IN AMERICA (1955). In effect, said Hartz, the absence of feudalism in America produced an absence of class-consciousness, and as a result the ideological fervor of European politics never made it across the Atlantic. Thus, said Hartz, the way to make sense of American politics is to grasp precisely that it lacks the dualism of Europe: neither an aristocracy nor a proletariat, but just a bunch of liberals with the same Lockean values shadowboxing now and then against themselves. For a penetrating discussion of Hartz's consensus theory, *see* S. HUNTINGTON, AMERICAN POLITICS: THE PROMISE OF DISHARMONY (1981).

— are busily reassessing their first-year curriculum.[29] With rare exception, however, the reassessments have been prompted not by a sense that the law school should be doing something other than developing and refining legal skills in the first year, but rather by the sense that perhaps the law school could be doing a better job of developing and refining legal skills in the first year. Can our current research and writing program be improved? Do full-time faculty or adjuncts do a better job of teaching writing? Is this skill important enough to justify the use of scarce full-time faculty resources? Are first-year students gaining adequate facility with statutes or have we preoccupied them with analyzing and synthesizing the common law? How can we effectively teach them the methods of economic analysis? Can counseling or negotiation be woven more extensively into our first-year curriculum? Are we equipping students to deal with the modern regulatory state or do we persist in an emphasis on private law that time has rendered obsolete? These and related questions are questions that the law school struggles to answer today.

Few legal educators deny that these questions are important. Few deny that the search for answers itself serves laudable institutional objectives. At the risk of tossing cold water on the curricular lovefest, however, it seems essential to unmask a problem with the assumptions that animate these questions and the search for their answers.

The current reassessment of the first-year curriculum assumes that the goal of the first year, like the goal of the law school experience in general, is principally and perhaps even exclusively learning the lawyerly skills of writing, researching, speaking, reasoning, analyzing, distinguishing, synthesizing, advocating, negotiating, counseling, and the like. This assumption in turn rests on two other assumptions embedded in the goal of teaching skills. First, the law school takes for granted that, for the lawyer, professional success and satisfaction depend principally, if not exclusively, on a well-developed set of legal skills. Why else focus so heavily on such skills? Second, the law school takes for granted that legal educators can, and do, effectively teach the skills they believe are necessary for the new lawyer to

29. The January 1991 meeting of the Association of American Law Schools underscored the vast number of law schools that have just completed, are in the midst of, or are just beginning curriculum reform, especially first-year reform. A January 5 meeting of the Committee on Curriculum and Research brought together a panel of faculty from a range of schools that have recently finished revising their first-year curricula. The discussion that ensued made clear that a host of other schools are reshaping, or about to reshape, the first-year experience for their students. For one faculty's sensitive view of the goals of legal education and the first-year curriculum that achieves those goals, see COLUMBIA LAW SCHOOL, REPORT OF THE COMMITTEE ON CURRICULUM REFORM (Discussion Draft 1987). Columbia recently revised its first-year curriculum for the first time in a half century.

have before going out into practice — or at least teach them more effectively than they could teach anything else of roughly equivalent value to the would-be lawyer. Why else devote scarce institutional resources to the effort?

To say the least, these assumptions are problematic. To say the most, they fly in the face of widespread professional and institutional realities, realities with which legal educators, of all people, are familiar. The remainder of this essay will confront the assumption that skills make the lawyer. But it would be misleading not to pause and observe that voices in the law school have begun to question how well, or even whether, the law school can teach would-be lawyers how, for instance, to write.[30] Such criticism may be too harsh. Even if the criticism is appropriate, moreover, it does not necessarily lead to the conclusion that the law school should scrap, for instance, its writing courses.[31] But the criticism should make the law school consider whether the first year classroom can be used more wisely, not merely to develop skills but to enhance students' knowledge of what the profession is all about.

One reason the first-year curriculum matters to the law school, its students, and the profession is the embarrassing fact that the law school loses control over students somewhere around the end of the first year.[32] The

---

30. As Douglas Laycock observed after formally evaluating the legal research and writing program at the University of Texas School of Law:

> The first-year legal-writing course cannot do much about bad legal writing. That course does not respond to the recurring complaints that our students graduate without knowing how to write effectively.
>
> Any serious effort to improve our students' writing must go in the second or third year. . . . The obstacles are obvious. . . . A serious legal-writing program in the second or third year would require large infusions of cash, imagination, and student time.
>
> It may be that most schools cannot staff a serious writing program in the second and third year.

Laycock, *Why the First-Year Legal-Writing Course Cannot Do Much About Bad Legal Writing*, 1 SCRIBES J. OF LEGAL WRITING 83, 83-86 (1990).

31. Even if we agreed that law students do not emerge from law school substantially better writers than they were when they came in, we might conclude that marginal improvement in the typical law student justifies the effort. Then again, we might not. The point is that the law school devotes vast energies and resources to many things that either a) are of dubious value in preparing students for the practice of law or b) the law school does poorly. The law school does this, it seems to me, at the expense of important professional realities.

32. This fact continues to give rise to one of the law school's most persistent mysteries. The mystery is that, for years, legal educators have watched law students lose interest in legal education after the first year, yet the law school has neither probed the causes of this development nor modified its enterprise to take account of it. Why?

An undergraduate professor of mine, and a dean to boot, once challenged me to come up with a persuasive explanation as to why the law school insists on keeping students for three years. He believed that, by the end of the second year, the law school had pretty much done what it could do

apprehension, insecurity, and curiosity for learning that accompanied the entering student to law school have long since evaporated by the time the student returns for her second year. Grades mean quite a bit less than they once did. The student who has done well the first year already has been rewarded with a slot on law review as well as the upper hand in obtaining the most desirable jobs. The student who has done poorly believes little will change and is probably right. The mass in the middle will not move considerably higher or lower from their places at the end of the first year.[33] To top it off, the costs of legal education and fears of deteriorating employment prospects combine with these other factors to prompt many upperclass students to take jobs off campus, leaving less time and energy for classwork.[34] If upperclass law students around the nation set out in search of a bumper sticker to capture their collective state of mind, "Let's not let law school

---

to prepare students for practice. Fifteen years after that conversation, with four years as a legal educator behind me, the principal justification that comes to mind is economic: the law school wants one more year of tuition from its students. Mark Kelman of Stanford put it this way: "For most students, nothing that goes on in the law school matters — it's simply a credential. . . . What this place offers is a ritzy degree, and there's a legal requirement that you spend three years here to get it." Margolick, *The Trouble With America's Law Schools*, N.Y. Times, May 22, 1983, § 6, at 21, col. 2 (city ed.). Professor Kelman may have overstated his case, but not by much. Eliminate the word "ritzy" and the statement is one that faithfully captures legal education at many law schools.

33. Roger Crampton has dubbed this "front-end loading" of "goodies." Crampton, *The Current State of the Law School Curriculum*, 32 J. LEGAL EDUC. 321, 329 (June 1982).

34. A decade ago, Roger Crampton observed two other aspects of legal education that help transform the second and third years into little more than "extracurricular activities, poker, [and] part-time employment": the sameness of the educational experience from class to class and year to year and the institutional pressures on professors not to be demanding with upperclass students. Crampton, *supra* note 33, at 328, 332. These criticisms retain their validity today.

As for the first point, most law professors — wrapped up in their own pedagogic and doctrinal worlds — fail to grasp that, from the students' perspective, what goes on in their classrooms is essentially the same as what went on in the classrooms from which the students just came. One would think this fact alone would lead the law school to conclude that it can be accomplishing more in the classroom than it currently accomplishes. This essay represents one set of suggestions for how classroom time can be better used.

Likewise, as to the second point Dean Crampon's words ring every bit as true today:

> Students are allowed, especially in the second and third years, to get away with poor or no preparation, inadequate class participation, terrible examination papers, and shoddy written work. . . . The pressure for high student enrollments and the desire to be popular may sometimes lead to easy grading or relaxed standards of performance and make it more difficult for tough, demanding teachers to make their way.

Id. at 332.

Perhaps I'm engaging in wishful thinking here, but it seems to me that forging a closer connection between the law school classroom and the realities of legal practice might engage upperclass law students more than the current curriculum engages them.

interfere with our legal education" would be a popular one with which to return.[35]

But the attitude upperclass law students bring to their school work reflects something more than all this, even (or perhaps especially) in tough economic times. It reflects an intuitive, unarticulated sense that the activities of the law school classroom, a classroom they spent the prior year in, are far removed from their concerns as would-be lawyers, concerns that assume increasing prominence as students move from the first to the second to the third year of law school.

The student who completes the first year may have admired her professors, been intrigued by her courses, and believed she learned lots of nifty stuff.[36] But the experience has made her skeptical as to how closely the practice of law is tied to reading and briefing cases, reciting facts, mastering doctrine, preparing outlines, and taking examinations. She wonders why the law school, which promised to prepare her for legal practice, has devoted so little of its formal institutional time to helping her understand the profession and her place in it and, instead, so much of it to teaching her contracts, torts, property, civil procedure, criminal law, constitutional law, and the like. She is struck by a paradox. Given a choice between learning about a) the psychological and emotional challenges she will confront in her career; or Cardozo's view of causation, she believes the former more valuable to her development as a lawyer. Given a choice between learning about a) how the law firm operates and why it operates the way it does[37] or b) the rule against perpetuities, she likewise would choose to learn about the former. Given a choice between learning about a) the market for legal talent and how to plan her career or b) a bunch of ancient writs, she would opt for understanding the legal marketplace. Why then, she wonders, does the law school devote its classroom time to Cardozo's views of causation, the rule against perpetuities, and a bunch of ancient writs but not to the challenges of lawyer life, the institutions of legal practice, or the future of the legal marketplace? Why, she wonders, is the law school so reluctant to help us gain a better understanding of the profession we will be joining? Can't the

35. Ten years ago, during my time as a graduate student studying political science, students at the university's law school sported T-shirts imprinted with the declaration "I Fought The Law — And The Law Won." A nifty motto, and representative, too. Still, my sense is that the motto suggested in the text even better captures upperclass legal education, although putting it to music might be more difficult.

36. Or not.

37. Robert Gordon has discerned a powerful irony in legal education: although most graduates of most law schools go off to law firms, the law school curriculum essentially ignores the law firm. Gordon, *Introduction to Symposium on the Corporate Law Firm*, 37 STAN. L. REV. 271, 271-72 (1985).

law school see, she wonders, that to be prepared for professional life we need a sense of what the profession is all about? How about some formal classroom time devoted not to doctrines lawyers work with, skills lawyers use, or strategies lawyers plan, but to concerns we will confront as individuals the moment the law school hands us our diplomas? After all, we can learn much of what the law school teaches us now later on.

Until now, legal educators have responded to these inquisitive pleas with what might be called the institutional demurrer: yup, we admit it; so what?[38] But there is an appropriate reply to the law school's response of "so what?" It is that the law school continues to produce new lawyers who are able to distinguish precedent, draft agreements, write motions, find the law, and shepardize cases yet are unable to plan their own careers, understand the institutions that employ them, deal with colleagues and support staff, identify personal strengths and weaknesses, maximize their employment prospects, grasp law as business, cope with stress, stay sober, balance work and home, be candid with themselves — in short, achieve professional satisfaction. The law school needs to be told that disenchantment with the legal profession or one's place in it rarely springs from an inadequacy of legal skills. Lots of talented but disenchanted lawyers and ex-lawyers — in law firms, government, politics, journalism, publishing, advertising, the clergy, professional sports, entertainment, education, medicine, and elsewhere — provide evidence of that. Instead, the disenchantment is more often rooted in the ignorance of misplaced expectations.[39]

---

38. In her *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589, 618 (1985), Professor Deborah Rhode coins the term "epistemological demurrer."

39. As this essay goes to press, an exceptional article that shares many of my conclusions has just made it to print. *See* Johnson, *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991). Professor Johnson, too, lays some of the responsibility for dissatisfaction among new lawyers at the law school's door. In particular, Professor Johnson observes:

> Legal educators, with our increasing orientation away from law and the practice of law, are failing to adequately prepare students to practice law. . . . Not only do they fail to educate their students in legal doctrine and rigorous analytical thinking beyond the first year, but they also fail to impart the proper state of mind for legal practice. In legal education we encourage students to explore the relationship between law and other academic disciplines, and then we send them out into the real world unable to practice a kind of law that rarely recognizes law's relationship to anything but money. We teach them to think like lawyers while they are students, but as junior associates they are treated like drones who must suppress their individuality and intelligence for the good of the firm's bottom line. The discordant emphasis of legal education and actual practice are the root of the dissatisfaction that new lawyers experience. . . . One immediate possible solution to students' dissonance is to add courses to the law school curriculum about the challenges students will face in the legal profession. . . . I have often thought it odd the law schools offer courses in corporations or business associations but not in legal institutions . . . . A course that

The notion is not that the law school ought to rush out and dramatically restructure its enterprise. Not at all. But a change, modest as it might be, does seem in order. The law school needs to link legal education and the legal profession better and more clearly than it currently does. It needs to help future lawyers understand the profession they will be entering and the role of new lawyers in that profession. It needs to teach them what most legal educators already know, that professional satisfaction requires more than impressive legal skills.

In particular, legal educators would take a few baby steps in the right direction by self-consciously inserting into the curriculum, beginning with the first year, a new set of themes organized around the legal profession and the new lawyer. The matters to be explored would include, among others, a) *what new lawyers do* — the range of tasks new lawyers perform and the range of professional experiences new lawyers confront; b) *the institutions in which they do it* — the law firm, the corporation, the government agency, the prosecutor's office, the public defender's office, the law school, and other institutions in which the new lawyer works and the distinctive nature, function, and operation of each institution; c) *how the new lawyer fits into those institutions* — the responsibilities the new lawyer assumes in the ongoing operation of each such institution; d) *what they think of what they do and where they do it* — the rewards and frustrations of different professional tasks; the psychological and emotional demands of these different tasks; the ways in which the various institutions enhance or undermine the pursuit of professional satisfaction; e) *the legal work place*— issues common to new life in many of these institutions, such as relationships with superiors, colleagues, adversaries, clients, and support staff; developing as a lawyer; career advancement; discrimination and harassment in the work place; reconciling the demands of work life and home life; substance abuse among lawyers; f) *employment prospects in the profession* — the expected shape of the national, regional, and local markets for new lawyers; where the school's recent graduates have obtained employment; the extent and causes of unemployment among recent graduates; salaries for recent graduates; the role of summer jobs in obtaining full-time employment upon graduation; the market for laterals; g) *planning a legal career* — the range of opportunities available to the lawyer; identifying personal strengths and weaknesses; creating and evaluating career options; developing short-term and

---

focuses on the issues raised by the practice of law would be a welcome addition to a law school's curriculum.

Professor Johnson's article is a must read for any student or educator who cares about the law school enterprise.

long-term career goals; the need for periodic reassessment; specialization and the development of expertise.

Thoughtful examination of the issues sketched out above would in no way require a cataclysmic restructuring of the law school experience. But such a development *would* entitle the law school to maintain with greater conviction what it has maintained all along: that it is doing its best to prepare its students for the practice of law.

C. Looking Ahead

The American law school of the late twentieth century openly declares that its mission is to prepare students for the practice of law. Yet the law school's deeds reveal a gap between the promise of this declaration and the realities of legal education.

Many new lawyers are disappointed with the nature of their professional lives. This fact alone should trouble legal educators. What should trouble us even more is the fact that the law school continues to contribute mightily to this disappointment. By failing to introduce tomorrow's lawyers to important aspects of the professional landscape, by failing to confront them with realities they will inevitably confront, the law school makes the transformation from law student to lawyer substantially more difficult.

An institution faces three choices when the performance it delivers fails to measure up to the promise of its mission. One is to deny the gap between the two, to insist in the face of all the evidence that the performance measures up to the promise. The second is to acknowledge the gap's existence but accept it as an inevitable consequence of institutional life. The third is to commit itself to close the gap by working to bring the performance closer to the promise.[40]

The hypocritical institution opts for the first choice. The cynical institution chooses the second. The responsible institution selects the third.

Which will the law school choose?

---

40. *See* S. HUNTINGTON, AMERICAN POLITICS: THE PROMISE OF DISHARMONY 61-84 (1981).