

WHY CAN'T LAW STUDENTS BE MORE LIKE LAWYERS?

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No one expects a doctor to “think” like a doctor when she leaves medical school. We expect her to *be* a doctor.¹

AS a dean new to both academia and to academic administration when I began a year ago, my transition was a fascinating one. I brought with me a good deal of experience in law practice, government and corporate life. Other than about ten years teaching as an adjunct at another law school, my views of legal education were fixed in the early 1960's, when I graduated from law school. I was surprised by two things: first, the MacCrate Report² and the growth of skills training notwithstanding, there were remarkable similarities between the educational experiences of today's students and my own³; and second, that legal education has not accommodated the enormous changes that the legal profession has undergone. The gap between legal education and the needs of both new lawyers and the law firms that employ them seems to be widening. This gap is largely a function of changes in the legal profession during my professional lifetime, changes that have accelerated vastly in the past 20 years.

My thesis is straightforward: law schools need to align legal education more closely with the realities of law practice or the gap will be closed by other

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1. Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRECTORS 91, 92 (2002).

2. The MacCrate Report was the result of a review conducted by the Committee appointed by the American Bar Association and led by Robert MacCrate of Sullivan & Cromwell; it was addressed to the respects in which legal education was not adequately preparing law students for law practice. A.B.A., AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (hereinafter MACCRATE REPORT). See also Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004).

3. The first-year curriculum is substantially unchanged, although the number of credit hours devoted to foundation courses has diminished, and upper level courses offer a greater variety and opportunity to explore certain areas of the law in more depth. See A.B.A., A SURVEY OF LAW SCHOOL CURRICULA 7 (2004).

institutions, such as the growing number of CLE providers. Those law schools that are able to take this step, particularly those other than the elite schools, will gain a competitive edge in attracting students and placing them in good jobs. Moreover, we owe it to our students and the legal profession to prepare them better if we can do so. We should be candid with our students about the structure of the legal profession they are about to enter, including the pressures for early specialization, and about the advantages of beginning with significant knowledge of some broad area of the law.

My focus in this essay is not on the precise curricular changes that should be made in response to this gap, but on the standard that should be used in evaluating the curriculum and how it should be organized and on the implications of adopting the standard suggested. I have taken this approach in part because curricular changes must grow from faculty discussion and consensus, and in part because different law schools will have different answers to the questions I pose below. Even for those who agree with this analysis, it is only the beginning of the dialogue.

Why should we be concerned about the gap between legal education and the practice of law? It has always been there.⁴ I believe that for most students and most law schools, the *raison d'être* of legal education is to educate and train students to be *effective new lawyers*, not to teach them how to “think like a lawyer” or to give them substantive expertise or skills training. Thinking like a lawyer, substantive expertise and skills training are tools in achieving the goal of educating and training effective new lawyers, but they do not define the goal. Acceptance of a standard of creating effective new lawyers would be significant because it provides a basis for measuring the success of strategies for achieving that goal.⁵ It seems plain, however, the legal academy has not accepted this standard. If it had, there would be an ongoing dialogue between law schools and practicing lawyers about how to create more effective new lawyers—a dialogue that would benefit both parties.⁶ I have no illusions about the universal acceptability of this goal as a standard among law professors and deans, but consider the likely response from students if American law schools *denied* in their recruiting materials that their principal educational objective is to educate and train students to become effective new lawyers. Without agreeing that student desires should define the purpose and scope of legal education, there is little doubt about what most students would say on the subject. “Despite the availability of several clinics, ... [t]he students claimed to learn virtually nothing

4. MACCRATE REPORT, *supra* note 2, at 4-5.

5. Clarity of mission is a precondition to effective assessment. See Gregory S. Munroe, *How Do We Know If We Are Achieving Our Goals?: Strategies for Assessing the Outcome of Curricular Innovation*, 1 J. ASS'N LEGAL WRITING DIRECTORS 229, 230 (2002).

6. Some would argue that such a dialogue would make law schools handmaidens of the bar, adjusting the curriculum to the practical needs of the moment. There is no compelling reason why a stream of continuing information about the usefulness of legal education to students and the firms that hire them should have that result. Curricular change takes place slowly in higher education and that pace of change will protect law schools from the whims of the moment. The objective is to achieve an iterative process that benefits both legal education and the bar.

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about being a lawyer.... All felt that that law school education should be much more geared towards ... training for the practice of law.”⁷

There is also little doubt that the bar has similar views. Lawyers complain constantly about the lack of preparation for practice of law school graduates.⁸ They express major concerns about the poor writing skills of new lawyers, but I suspect that lawyers do not understand how much more law schools could do in preparing students for law practice.

Note that the educational goal of creating effective new lawyers says nothing about the purpose of faculty scholarship, which is and should be directed at explicating and improving the content and functioning of the legal system. There is a useful, but not a necessary, relationship between curriculum and scholarship. If a law school’s educational program is geared to creating effective new lawyers, it does not follow that faculty scholarship should be focused on the same end. Indeed, most of us would not wish it to be so.⁹ At the same time, I wonder whether a law professor who describes his or her scholarly function in the following terms is able to teach adequately a course that will be a serious step in preparing students for law practice:

I view my task as a legal academic as similar more to the member of a university department of religion, somewhat detached from the practices he/she is studying One need not be a devotee of a particular religion in order to find its practices or doctrines fascinating¹⁰

Application of this standard in no way detracts from the value of a deeper, broader and more interdisciplinary approach to doctrinal courses. I have no doubt that the deeper and broader a lawyer’s understanding of the history, antecedents and social and economic function of a legal regime, the more effective he or she will be in counseling clients, predicting outcomes, litigating cases and arguing appeals.

This standard also does not address the post-*MacCrate* tension between proponents of skills training and clinical education on the one hand, and of doctrinal courses in the tradition of Langdell on the other. It merely requires us to ask a different question—*are we creating effective new lawyers?*—in thinking about the design of legal education and in appraising its success.

7. Alan Watson, *Legal Education Reform: Modest Suggestions*, 51 J. Legal Educ. 91, 92 (2001). See also Stefanie M. Benson, *It is Time for Legal Education to Prepare Law Students for Law Practice*, 74 J. KAN. B. ASS’N 12 (2005).

8. For an interesting discussion of the views of the practicing bar and the reaction of the legal academy, see Rena I. Steinzor & Alan D. Hornstein, *The Unplanned Obsolescence of American Education*, 75 TEMP. L. REV. 447, 457-59 (2002).

9. But see Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 41 (1992). Judge Edwards believes that the academy had strayed too far from the profession in its scholarship as well as its teaching.

10. *Id.* at 36 (anonymous letter to Judge Edwards).

The Classical Training Paradigm

The classical paradigmatic relationship between legal education and training to be a lawyer is simple: the most important function of law school education is to teach its students to think like lawyers,¹¹ and law firms will do the rest. I do not gainsay the importance of learning to think like a lawyer. At the same time, what is ordinarily meant by “thinking like a lawyer” is a mode of analytical thinking that does not include a host of other purely intellectual skills that are important parts of the armament of a successful lawyer.¹² Let me name just a few of those important intellectual attributes: the special kind of integrative thinking that makes for a good draftsman of agreements, statutes and rules; the judgment to understand which results of analytical effort are logically accurate but unacceptable to most judges and other decision-makers; and the ability to perceive areas of potential common ground between adversaries, both in intellectual constructs (an important strength for judges on multi-judge panels and lawyers who practice before them) and in emotional and intellectual approaches to problems (a critically important skill for negotiations of all kinds). Similarly, many law schools view drafting contracts as a subset of legal writing. It is more properly viewed as a special kind of legal thinking; absolute clarity about the result sought to be achieved from a given clause, thinking through the widest range of possible intentional and accidental modes of evasion and providing for them in the broadest possible way without unduly hamstringing the other party in the conduct of its business (or his or her life) and then, and only then, expressing the rule and its exceptions with great precision. Not many students graduate from law school with sustained practice of that kind, but a broad swath of the legal profession is called upon to exercise those skills.

Putting those and other forms of thinking like a lawyer aside, however, the classical paradigm initiated a law student into the mysteries of legal analytical technique and gave the student a basic grounding in substantive law. The new lawyer proceeded from law school to the elbow of an experienced lawyer, there to learn the basic skills of law practice and deepen his or her substantive knowledge to the point where it began to be useful. It was, essentially, an apprenticeship system and it worked pretty well—in part because young lawyers were seriously underpaid, even at large law firms, and their “time” was heavily discounted or written off at the beginning of their careers.¹³ Firms were not particularly large; based on my personal recollection, in the early 1960’s the large firms had 125–150 lawyers. There was some broad specialization—

11. After the *MacCrate Report*, most would include the need to teach legal skills and writing as well.

12. For an interesting discussion of the shortcomings of traditional legal education in teaching students to truly think like a lawyer, see generally Rapoport, *supra* note 1.

13. A few years before I graduated from law school in 1962, the starting salary at large New York firms was \$5,000, which is \$24,570 in 2003 dollars on the basis of the GDP deflator. NASA, GDP Deflator Inflation Calculator, <http://www.jsc.nasa.gov/bu2/inflateGDP.html> (last visited Nov. 8, 2005). Before I joined my firm in early 1963, Cravath, Swain & Moore had raised its starting salary, and thereby the starting salaries paid by all large New York firms, to \$7,200 (\$35,381 in 2003 dollars on the same basis), and the legal profession has not looked back since then.

litigation, corporate, tax, trust and estates—but many lawyers routinely crossed those lines and more specific sub-specialties, especially for associates, were rare. This system was more or less the same at law firms of all sizes. At small firms there was more of a sink or swim attitude, in which young lawyers taught themselves or failed, but there was little or no formal training at firms of any size.

Changes in the Legal Profession

At least three deep-running structural and economic trends in the legal profession have profoundly changed the landscape.¹⁴

- The most important change has been in the cost of legal services. This trend has been driven by both the cost of associates and the realization that law practice can be extremely lucrative for partners at a wide range of kinds of firms.¹⁵ The most sought-after young lawyers and lateral partners are very expensive, and that compensation structure has cascaded down through the legal profession.¹⁶
- The second major change is complexity in the law and the heightened need for real expertise. The legal and regulatory systems have become increasingly complex and clients in the coils of a regulatory regime seek out lawyers who have a demonstrated mastery of that system.
- The number of lawyers in medium and large firms has increased radically.¹⁷

These trends have conspired to produce important changes that have made the traditional paradigm of legal education and training increasingly unrealistic. First, high associate salaries and complexity mean that there is great pressure to make young lawyers productive as quickly as possible and to have them specialize earlier and more narrowly.¹⁸ Second, on-the-job training is neither economically feasible nor efficient enough to bridge the gap between the state of knowledge and skills of a new lawyer and the needs of the firm. At current high hourly rates, clients refuse to pay for the training of new lawyers, and they resent

14. Globalization is another factor that has worked major changes in law practice at many levels. It is less of a factor than the others listed in the growing gap between legal education and law practice.

15. In May of 2001, *Forbes Magazine* profiled 40 lawyers with estimated pretax incomes in 2000 from their legal practices ranging from \$1.5 million to \$40 million. See *Killer Lawyers*, *FORBES*, May 14, 2001, at 128. The American Lawyer's 2005 edition of the *AM Law 100* lists 37 law firms (which together have 5,930 equity partners) whose profits per partner were \$1 million or higher in 2004. See *The Profits Picture Remain Rosy*, *AM. LAW.*, July 2005, at 141.

16. The current starting salary at New York law firms is \$125,000. At many firms, associates are also eligible for bonuses each year. *Id.*

17. According to the Lawyer Statistical Report, in 1980 there were 917 U.S. law firms employing 21–100 lawyers, and 87 firms employed more than 100. In 2000, by contrast, 1,758 firms employed 21–100 lawyers, and 356 firms employed more than 100. CLARA N. CARSON, *THE 2000 LAWYER STATISTICAL REPORT* 15 (2004).

18. MACCRATE REPORT, *supra* note 2, at 40. See also John Sexton, "Out of the Box" Thinking About the Training of Lawyers in the Next Millennium, 33 *U. TOL. L. REV.* 189, 191 (2001); Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 *PACE L. REV.* 105, 119 (2001).

being asked to. Third, the level of substantive sophistication and market practice knowledge required to be almost any kind of specialist—even in as broad a specialty as real estate or employee benefits or malpractice litigation—necessitates that the young lawyer have a broad exposure with substantial responsibility to a lot of transactions or lawsuits, and the earlier they reach the point where they can function in those environments the faster they progress as lawyers.

The result of these changes has been to increase the mismatch between what we do as law professors and deans and what our students and the law firms who employ them need. The needs of firms for better, or perhaps more usefully, trained effective new lawyers has grown and continues to grow. The resulting gap can only be filled with formal training. In some sectors of the law firm world, that gap will be filled by the firms themselves. In others it is the law schools that must do so unless they are prepared to cede the field.¹⁹

The Implications for Legal Education

Firms of different sizes have reacted differently to these pressures for early expertise and early productivity. As recently as fifteen years ago, law firms were almost unique among personal service firms in their lack of extensive formal training programs. Consulting firms, accounting firms, and investment and commercial banks all had formal training programs lasting six months or more. Even the largest law firms in 1990 seldom had more than a week of introductory boot camp for new lawyers. Formal training is expensive, and at that time most of the largest firms did not compare in size with other kinds of personal service firms. Today, for the largest firms the amount of formal training has changed dramatically. The boot camp period has lengthened and there are a growing number of formal training programs that stretch through the associate years. That approach has fit well with those firms' historical hiring approach of "give us the most capable law school graduates and we will teach them to become lawyers."²⁰ Today, rather than using on-the-job training, they rely increasingly on more formal group training, including extensive skills training. At the other end of the size spectrum, in firms of just a few lawyers, the training regime probably has not changed much.

Of the national law school class of 2003, 58% reported that they were working in private practice. Of those, more than 75% were in firms with fewer than 250 lawyers—21.5% in firms between 25 and 250 lawyers.²¹ It is this group of

19. The enormous growth of continuing legal education providers in response to mandatory CLE has created a highly competitive group of actors that are constantly in search of new services to provide to law firms.

20. The Practising Law Institute provided continuing legal education to approximately 50,000 lawyers in 2004. PRACTISING LAW INSTITUTE, 2004 ANNUAL REPORT 1 (2005), available at http://www.pli.edu/public/presentations/Annual_Report_2004.pdf

21. Of those in private practice, about 24.8% went to firms with more than 250 lawyers, and 21.5% to firms between 25 and 250 lawyers. Of those not in private practice, 26.9% were in government and public interest jobs, and 11.6% in business and industry. NALP, JOBS & J.D.'S: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES—CLASS OF 2003, at 29 (2004).

medium-sized firms (25–250 lawyers) that is faced with a growing problem. Many of them face the same economic pressures, the same need for early productivity and the same need for earlier specialization as large firms. While many mid-sized firms have the same degree of specialization as larger firms (but with fewer specialties), even the others feel strong pressure to make associates productive as early as possible—which in turn generates significant pressures for early specialization in at least broad categories of the law: litigation, criminal law, corporate law, financing, real estate, tax, estate planning and personal counseling, benefits and human resources law, etc. They are also subject to the same limitations as larger firms on their ability to fill the education gap with on-the-job training. But they have neither the human nor the financial resources for extensive internal formal training. If law schools are to do a better job in aligning legal education with the needs of the legal profession, the first step is to recognize that the primary mission of legal education is to transform college graduates into effective new lawyers, and to review both the curriculum and the manner in which it is taught with that goal in mind.

Practice-Oriented Legal Education

This approach requires that we think about the design of legal education by asking ourselves the question “what does it take to educate and train effective new lawyers?” A moment’s reflection suggests that the mindset, analytical framework, substantive underpinning and skills of different broad practice areas are so different from one another—at the most basic level, the difference between a litigator and a business lawyer or family lawyer—that the correct question is actually “what does it take to educate and train an effective new _____ lawyer (e.g., a litigator, business lawyer, real estate lawyer, adviser of individuals and families, nonprofit lawyer)?” If you ask practitioners what skills and substantive knowledge they would like a new associate working in one of those areas to have, you will receive meaningful answers—answers that generally do not correspond to current curriculum design. Looking at the curriculum through the prism of law practice provides a different and useful perspective. It is more than a way to organize the courses offered in a logical and useful way. It also asks whether the curriculum has the right mix of courses, both doctrinal and skills, and whether they are offered as a coherent and integrated series of educational experiences designed to create an effective new litigator or corporate lawyer, or whatever.

Consider the course of a new lawyer’s growth. Most lawyers can remember the point at which he or she first started feeling comfortable functioning as a lawyer. It was not a question of having all of the substantive knowledge or skills required—it was rather that the knowledge and skills that had been acquired seemed suddenly to coalesce to the point that they overbalanced the things that he or she did not yet know. It is the point at which one feels capable of practicing law without embarrassment. This is a multi-stage learning process. The first step is to master the building blocks of a particular area of practice. For a corporate lawyer, what are the essential elements of a financing, an acquisition and a joint venture? For a litigator, how does the discovery process really work,

how do you plan for a trial, what does it take to present a case-in-chief and to cross-examine, and what are the dynamics and range of options available in the negotiation of a settlement? And in both cases, what are the substantive law systems that underlie the work? It is only after this first stage that we begin to function as real lawyers and start acquiring enough experience to be directly useful to clients. Law schools can help students begin with enough of the skills, knowledge and substantive law necessary to get through this first stage much faster.

If we are able to make our students more effective beginning lawyers, we owe it to them to do so. It is true, I think, that this approach is not required to prepare the most capable students. I say “most capable” rather than “smartest” because the people who are best at practicing law have a collection of intellectual and personal strengths that are well-adapted to the challenges that law practice presents. They have, among other things, the ability to learn a great deal from a relatively small base of experience. In effect, they “get it” quickly. In addition, those students who work at the largest elite firms will have the benefit of extensive formal training programs. But for everyone else, which is most of the legal profession,²² law school has a critical role to play in giving them an appropriate range of knowledge and skills to bring to the start of law practice.

Is This the Old Debate About Concentrations and Specialization?

This proposal raises two initial questions: first, how does it differ from the concentrations that virtually every law school curriculum offers? And second, is specialization in law school a big mistake for a student?

Most law schools today offer “concentrations” representing groupings of courses with common elements. Some schools have gone further and have experimented with more rigorous tracks. I believe that the make-up of most concentrations flows from the answer to the question “what courses that we offer have allied conceptual systems or relate to common areas of the law?” Thus, “business” courses usually include corporations, securities, business planning, etc. A practice-oriented grouping would flow from the answer to a different question: “what courses and skills does a student need in order to be (for example) an effective beginning corporate lawyer?” Note one immediately apparent difference in the two questions. The first question tends to focus on organizing what a law school offers; the second focuses on what it should offer—and the two are likely to be somewhat different.

Corporate law and financial transactions are two areas where there is a large gap between law school and practice. A high percentage of what corporate and financial lawyers must know about is neither law nor skills; it is the vast amount of material that is the evolving practice for the terms of agreements in the business legal world. For example, virtually every financing document from a home mortgage to a corporate bond indenture has common elements in both structure and content: representations, closing conditions, opinions, covenants,

22. *See id.*

financial tests, events of default, remedies and the like. Those provisions are not just “boilerplate,” except in the same sense that much of the common law is boilerplate; they represent the ground rules for borrowing money, and are, in effect, a widely accepted system of private law. Knowing the underlying rules about negotiable instruments and secured debt helps explain why they are drafted as they are, but does not put a new associate in a position to take the first step in working on a financing. Yet a high percentage of American law students graduate without the slightest understanding of the purposes of those provisions and the thinking that underlies them.²³ Moreover, most students graduate without any appreciation of the difference in legal objectives that push lenders and borrowers, buyers and sellers, and other traditional parties in different directions in the course of negotiations about contractual rights on legal issues. Without this background, a new associate is simply not an effective new lawyer. He or she cannot begin to think about the content and structure of an agreement between two parties.²⁴ The same could be said of the typical consensual divorce agreement or the conduct of either the plaintiff’s side or the defendant’s side of a class action.

Think about the way law schools offer courses about litigation. This is an area in which, for many law schools, practice-oriented education has advanced far beyond the courses related to transactional law practice. There are many courses and relevant experiences offered by most law schools that deal with litigation. They begin with civil procedure in the first year, include evidence, trial practice and other simulations, negotiation, arbitration and mediation, and often end with rich opportunities for externships and clinical experience. Many professors and deans would point to that group of courses and say that they provide ample opportunity for students to learn about litigation. But is that the array of courses that we would put together if we offered an integrated program designed to produce effective new litigators? Have we considered how those courses dovetail with each other? What part of evidence is better taught in the doctrinal setting and what part is better taught in simulations? Where do moot court experiences fit into this integrated litigation curriculum? What non-legal skills training is an important part of this curriculum? Presentation skills? The special challenges of presenting to a jury? Or an appellate court? The psychology of dealing with a criminal defendant?

23. See James A. Fanto, “When Those Who Do Teach: The Consequences of Law Firm Education for Business Law Education,” 34 GA. L. REV. 839, 844-45 (2000) (“Students have not been trained to see the connection between the transaction agreements and the law that they have learned Indeed, they often learn little about the structure of transaction agreements in law school.”).

24. To be fair, a number of law schools have introduced courses with significant transactional components. See, e.g., Victor Fleischer, *Deals: Bringing Corporate Transactions Into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475 (2002); Edith R. Warkentine, *Kingsfield Doesn’t Teach My Contracts Class: Using Contracts to Teach Contracts*, 50 J. LEGAL EDUC. 112 (2000). For a fascinating discussion of integrating doctrine, skills and theory, see Karen Gross, *Process Reengineering and Legal Education: An Essay on Daring to Think Differently*, 49 N.Y.L. SCH. L. REV. 435 (2004-2005).

Is This Specialization? Is It a Mistake?

The linkage of this kind of education with notions of law school specialization raises alarms, particularly the danger of training students in narrow areas of the law that many of them may end up never practicing. Are those alarms a serious cause of concern with this proposal? First, as critics of law school specialization have pointed out at great length, it is ridiculous to think that we can make law students real experts in the limited amount of time available at law school. But we are not trying to make them experts. To paraphrase Winston Churchill, what we seek is not the end (specialization). It is not even the beginning of the end, but it is perhaps the end of the beginning: an effective new lawyer prepared to begin practice in a broad area of the law.

Second, specialization in law practice is, in general, far more specialized than I am suggesting for law schools.²⁵ True legal specialists, even on the plaintiff's side of the bar, do things like airline crash or product liability or automobile accident or medical malpractice litigation. On the corporate side, specialists focus on areas (often industry-specific) like public or private mergers and acquisitions, project financings, IPO's and the like. I am not suggesting anything remotely like that. Areas of specialization would be designed to combine substantive law and skills in a meaningful way. This approach would mean offering carefully thought-through groups of courses in the third and fourth years in areas like the following:

- Litigation
- Advising business in a globalized world
- Advising individuals and families
- Non-profit organizations and activities
- Criminal law and practice
- Public International Law and Human Rights
- Real Estate
- Environmental Law and Policy
- Taxation
- Labor and employee benefits (human resources law)

A number of schools, George Mason prominent among them, have had impressive experiences with more specialized curricula.²⁶ Although different schools adopting an approach of this kind would undoubtedly choose different areas and curricular structures, my own view is that the first-year curriculum would be largely unaffected.

25. It is important to distinguish between individual courses that offer an in-depth exploration of a narrow area of the law and a course of study that offers a rounded and coherent view of a broad area of the law. For concerns about the effect of the former, see generally Deborah Jones Merritt & Jennifer Cihon, *New Course Offerings in the Upper Level Curriculum: Report of an AALS Survey*, 47 J. LEGAL EDUC. 524, 568-69 (1997).

26. See Peter V. Letsou, *The Future of Legal Education: Some Reflections on Law School Specialty Tracks*, 50 CASE W. RES. L. REV. 457, 457 (1999). See also Jeffrey E. Lewis, "Advanced" *Legal Education in the Twenty-First Century: A Prediction of Change*, 31 U. TOLEDO L. REV. 655, 655 (2000).

There are two common objections to any form of specialization in law school. Since students do not know in advance what kind of a job they will secure (or even desire) after three years of law school, are we leading them astray by suggesting that they focus their efforts on a broad area of law practice? And second, in view of the fact that there is substantial evidence that law firms do not take law school specialization seriously, will it really increase the marketability of students and give a competitive edge to law schools that adopt this kind of a curriculum?

One argument against specialized curricula is that it makes no sense to educate students for a specialty in which they may never find a job and that they are better prepared by having a wide range of substantive experience in law school. Evaluating that claim requires considering what it takes to become a functioning lawyer in a particular area of the law. The ability to know or find through research enough substantive law to analyze legal rights in a complex factual setting is only part of the skill set required. An essential skill that should be, but often is not, taught in law school is the mastery of a legal conceptual regime. A student who takes one semester of federal income taxation, or securities law, or family law or trade law, or virtually anything else, comes away with no more than an understanding of some of the basic concepts of those complex intellectual constructs. Some years ago, I taught a seminar in advanced securities law at one of our nation's best law schools; every student had been through the basic course in securities law. I was struck constantly by how little background my students brought to this course, in terms of knowledge of securities law and the securities regulatory system, of the markets, of financial instruments and of corporate finance. In order for them to have a meaningful understanding of the issues in my seminar, they needed to understand the conceptual and regulatory system as broadly and fundamentally as possible, including the way the regulatory system works as a practical matter.

A lawyer cannot be successful or of real use to clients if his or her understanding extends only to basic concepts, even if it is those concepts that are at stake in a case on which he or she is working. It is only when a young lawyer has a broad understanding of the way the individual or corporate tax system works, or of the regulation of the issuance of securities, or of international trade, that he or she *really* begins to think like a lawyer. Based upon my own experience as a lawyer, understanding the relationship between a legal regime and individual cases—learning to navigate a legal regime—is an intellectual skill that is transferable to mastering other legal regimes.²⁷ It is not uncommon for a practicing lawyer who has mastered a specialty to switch to another specialty when the former becomes stale or no longer important to clients.²⁸

27. For a strong articulation of this position, see Henry G. Manne, *The Intellectual History of George Mason University School of Law 21-22* (1993), available at <http://www.law.gmu.edu/econ/history.html>.

28. There appears, at least anecdotally, to be less transferability of skills and knowledge between litigation and corporate work. That does not mean, of course, that a law student who has just reached “the end of the beginning” of a course of education as a litigator cannot begin law practice in a firm that is willing to train him or her as a corporate lawyer. It simply means that

Providing curricular focus to help students reach the start of real understanding is a better way to educate effective new lawyers than a smorgasbord of courses that produce no understanding in depth of any area of the law, even if the lawyer ends up working in an area other than the one focused on in law school. The problem with our current approach is twofold: students take courses in the upper level curriculum, to use John Sexton's elegant phrase, "untethered by content,"²⁹ and law schools offer courses grouped by subject matter but not necessarily designed to achieve, as a group, a coherent pedagogical objective

Substantial anecdotal and market survey evidence suggests that law firms, particularly large firms, do not give serious weight to law school certificates and other evidence of substantive focus in law school.³⁰ That result is not surprising in the case of the largest firms, which continue to maintain that their objective is to hire the most capable law students and that they will handle the training. Here is one Dean's frustrating experience:

They [law firms] acknowledged the leadership of Chicago-Kent in training students in legal writing and research.... They lauded the specialty programs and graduate degrees But [when asked] why they did not hire more of our students ... the answer was always the same, "We can always train smart people to get better, but we cannot train intelligence."³¹

I would not expect a different attitude on the part of mid-sized firms. At the same time, it seems likely that firms will continue to hire graduates of all but the elite law schools only if they have good experiences with students from those law schools. And if they have good experiences, those firms will gradually experiment with going deeper into the classes of those law schools. If practice-oriented education is successful in producing students who can start functioning as lawyers earlier in their careers, and can climb the learning curve more quickly during the first three years of practice, then graduates of the law schools providing this extra boost will find better acceptance in the job market over time.

lawyer will not have the advantage of the running start conferred by a course of study aimed at corporate work—in effect, the position he or she would be in with conventional legal education today.

29. Sexton, *supra* note 18, at 190.

30. For the results of a survey of 120 law firms, 62% of which had between 100 and more than 500 lawyers, see Kevin E. Houchin, *Specialization in Law School Curricula: A National Study* (2003), available at <http://www.woodenpencil.com/research/JDspec041403.pdf>. The hiring professionals at the firms surveyed reported that specialized programs do not give students who participate in them a competitive advantage in the job market. *Id.* at 60. For an interesting exploration of the market factors that push elite firms into hiring largely on the basis of first-year grades, see Tom Ginsburg & Jeffrey A. Wolf, *The Market for Elite Law Firm Associates*, 31 FLA. ST. U. L. REV. 190 (2004).

31. Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 485-86 (2004/2005).

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MORE LIKE LAWYERS

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Does Practice-Oriented Education Mean Law School is a Trade School?

The legal academy has strongly resisted innovations that seem to reject the notion of legal education as a scholarly pursuit and to transform it into something called a “trade school.” Statements of what is meant by “trade school” are often so cartoon-like and distasteful that they provide no basis for useful discussion of educational alternatives. For example:

If legal education is designed wholly to prepare the student to pass the bar examination, to know the rules (whatever that means) and to learn the tricks of the trade, then law school does not belong in the modern university. These things can be handled outside the academy with far less of an expenditure of time, money and energy. Such a design would also result in an unlearned bar and in lawyers ill-equipped to serve the needs of a complex, democratic society.³²

We can reject that model as bad for both law students and law schools without concluding that law school should leave students generally unprepared for law practice. Law schools are *professional* schools, and their educational mandate is to prepare students for entering that profession. If that is correct, the only arguments should be about means and relative success. As noted above, I also believe that the broader a lawyer’s understanding of a legal conceptual regime, the more effective he or she will be in advising clients and in defending or prosecuting cases arising out of it. Training lawyers to “serve the needs of a complex, democratic society” is exactly what American legal education should be aiming for. The question is how well are we doing it?

32. Patricia Mell, *Law Schools and Their Disciples*, 79 MICH. B.J. 1392, 1393 (2000) (quoting John E. Cribbet, *The Changeless, Ever-Changing University: The Role of the Law School*, 26 ARIZ. L. REV. 241, 256 (1984)).