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Hugg: Corporate Models for legal Education in the United States: Improv

COMPARATIVE MODELS FOR LEGAL EDUCATION IN THE UNITED STATES: IMPROVED ADMISSIONS STANDARDS AND PROFESSIONAL TRAINING CENTERS

PATRICK R. HUGG*

I. INTRODUCTION

The legal culture in the United States has been criticized throughout the nation's relatively short history.¹ "Concern about the changes in the culture of the legal profession has prompted judges, scholars and practitioners to devote considerable attention in recent years to the concept of professionalism."² Last year, one noted scholar wrote that "tectonic shifts" in lawyer attitudes have caused a major "reordering" of values over the past thirty years. This reordering has amounted to no less than a "quiet revolution" in the legal culture.³ Statistics show lawyers suffering new levels of disrespect, including

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1. Dissatisfaction with the legal profession is as old as the law. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395, 395 (1906). Dean Pound recounts the American ebb when tavern keepers became pettifogging meddlers in 1759 before any regulation of the legal profession. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 143-44 (1953). The bar has never been without criticism, from "unethical and incompetent" lawyers at the time of the American Revolution, Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L.Q. 597, 600 n.14 (1981), to today's "judicial Caesars, courtroom Rambos, and classroom Rimbauds," MARY A. GLENDON, *A NATION UNDER LAWYERS* 290 (1994). Legal education has received its share as well. One commentator wrote in 1895 that United States law schools were "the weakest and . . . worst to be found in any civilized country." David S. Jordan, *Pettifogging Law Schools and an Untrained Bar*, in *EARLY REFORM IN AMERICAN HIGHER EDUCATION* 111 (David N. Portman ed., 1972). See also Judge Re's discussion of old and new criticisms of lawyers and the profession. Edward Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 ST. JOHN'S L. REV. 85 (1994).

2. William Reece Smith, Jr., *Committee Studies Professionalism, Presents Annual Meeting Program*, 25 SYLLABUS 1 (1994) (William Reece Smith, Jr. is a former ABA president and Chair of the ABA Section of Legal Education and Admission to the Bar's Professionalism Committee.).

3. GLENDON, *supra* note 1, at 7-8.

A major struggle is under way among competing ideas of what constitutes excellence in a judge, a practitioner, a teacher or scholar of law. There has been a quiet revolution in how various types of legal work are valued and rewarded. This reshuffling of values . . . being systemic, . . . has far more serious implications for our law-dependent polity than any number of flagrant instances of misconduct by individual lawyers." *Id.* at 8. See also Judge Richard A. Posner's recent book, *OVERCOMING LAW*, which offers a different layer of criticisms. RICHARD A. POSNER,

low marks in ethics and even simple honesty.⁴ The role of legal education in this culture has occupied much of the discussion.⁵

Current debate about the direction and quality of legal education in the United States,⁶ especially the furor surrounding the MacCrate Report,⁷ has focused on the distinctive deficiencies of the United States system. With law schools "moving toward pure theory . . . [and law] firms moving toward pure commerce,"⁸ the debaters have questioned the legitimate and appropriate purposes of legal education. As an example, they have doubted whether "preparation for public leadership deserving of public trust"⁹ ranks as important as preparation for the practice of law and whether today's teaching and emphasis

OVERCOMING LAW (1995).

4. "Nine of ten parents would not want their child to become a lawyer . . ." Judge Re details a sordid case of disrespect and disbarment. Re, *supra* note 1, at 87.

5. Chief Justice Warren Burger sparked the more recent controversy in the early 1970s by frequently and pointedly criticizing the deficiencies in practical training of legal education. See Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential To Our System of Justice?*, 42 *FORDHAM L. REV.* 227 (1973). See also Dean John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 *J. LEGAL EDUC.* 157, 160 (1993) (offering an entertaining description of the evolution of the modern law school pedagogy). See also Robert A. Stein, *The Future of Legal Education*, 75 *MINN. L. REV.* 945, 947-48 (1991) (describing the evolution of modern law schools and the tensions between academic versus practical training, including preparation for citizenship and public service); James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 *DUKE L.J.* 292 (describing the strengthening of legal education in the evolution of the modern legal community).

6. See, e.g., Symposium, *Legal Education*, 91 *MICH. L. REV.* 1921 (1993). Judge Harry Edwards offers a comprehensive description of the debate, reporting the views of lawyers, law deans, law professors, law students, and judges. Harry T. Edwards, *The Growing Disfunction Between Legal Education and the Legal Profession*, 91 *MICH. L. REV.* 34 (1992). See also Dean M.H. Hoeflich, *Plus Ca Change, Plus C'est La Meme Chose: The Integration of Theory & Practice in Legal Education*, 66 *TEMP. L. REV.* 123, 123 (1993) (addressing the "hot" topic of the current debate about the integration of theory and practice).

7. A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM* (1992) [hereinafter *MACCRATE REPORT*] (known as the MacCrate Report after the chairman of the task force, Robert MacCrate). From conference podiums to legal publications, the dialogue among bar leaders, educators, and judges has been pointed and continuous. See *infra* note 27.

8. Edwards, *supra* note 6, at 34.

9. Paul D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, 41 *DUKE L.J.* 741, 757 (1992). The first U.S. law professor, George Wythe, presented a broader model of legal education than today's more narrow one—teaching courses open to anyone interested and teaching about all three branches of government, not just the judicial. "The objective and structure of the system of law study he offered was to provide training for citizenship and public service as well as for the private practice of law." McManis, *supra* note 1, at 610. In fact, Jefferson, who as Governor of Virginia had appointed Wythe, envisioned that to be the "basic function of academia itself . . ." *Id.*

on theory neglects practical scholarship and lawyering skills.¹⁰ There appears to be general agreement that a majority of today's law graduates enter the profession with inadequate preparation.¹¹ Most legal educators also agree that this deficiency, and the expected reduced enrollments and resources in the future, demand attention as the profession prepares for the next century.¹²

This article suggests that legal educators and bar leaders in the United States should capture a clearer vision of their common purposes¹³ and lead United States legal education in a continuation of its historical evolution¹⁴ to

10. "Legal education in this country began in the law office and then forgot it." Edward A. Dauer and Louis M. Brown, *The Dauer-Brown Letters: Towards a Comprehensive Legal Education*, 36 CLEV. ST. L. REV. 501, 506 (1988). "The problems of law schools are not new. Nor are pleas for a more practical and socially responsible legal education." Stephen Wizner, *What is a Law School?*, 38 EMORY L.J. 701, 709 (1989). See also Leonard D. Pertnoy, *Skills is Not a Dirty Word*, 59 MO. L. REV. 169 (1994) (advocating more practical training in legal education).

11. Empirical studies support the criticisms "familiar in the literature" that the legal community should address the gaps between law school pedagogy and the law practice. Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 469 (1993). "The legal profession increasingly has recognized that American law schools do not adequately educate their students for the practice of law." Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 243 (1993). See also Sandra R. Klein, *Legal Education in the United States and England: A Comparative Analysis*, 13 LOY. L.A. INT'L & COMP. L.J. 601 (1991); Stephan T. Maher, *Clinical Legal Education in the Age of Unreason*, 40 BUFF. L. REV. 809, 832 (1992) (proposing two years of traditional law school and an additional year of practical training); Robert M. Hardaway, *Legal and Medical Education Compared: Is It Time For a Flexner Report on Legal Education?*, 59 WASH. U. L.Q. 687, 688 n.5 (1981) (citing inadequate training for graduates entering the profession).

12. "In the forthcoming period of probably increasing costs and possibly declining demand, it becomes essential for each law school, and for legal education collectively, to strive in every way to maintain and, if possible, improve upon the standards of excellence developed in recent years." A.B.A. SEC. LEGAL EDUC. & ADMISSION TO B., LONG RANGE PLANNING FOR LEGAL EDUCATION IN THE UNITED STATES 27 (1987) (quote attributed to Frank K. Walwer). Declining demand is in progress. Amy Stevens, *Law Schools See Sharp Decline In Applicants*, WALL ST. J., Feb 17, 1995, at B1.

13. The "purpose debate" has gone on throughout the evolution of modern legal education and will continue. See *supra* notes 5, 8, & 9. The author suggests a reasonable accommodation of the various views: Law schools should (1) prepare students to find, understand, and use the law; (2) prepare students for ethical participation in the community; and (3) contribute to scholarly research and reflection on the law. See also Amy Gutmann, *Can Virtue Be Taught to Lawyers?*, 45 STAN. L. REV. 1759 (1993).

14. For evolution it has been. Numerous legal historians have vividly portrayed the anomalous history of legal education in America. From various time frames and perspectives, from Dean Pound to Dean White, the literature presents informative discussions, providing insight into the past and stimulating ideas about the future. See, e.g., White, *supra* note 5, at 292 and the numerous Pound lectures and articles: ROSCOE POUND, *Inaugural Lecture*, in THE EVOLUTION OF LEGAL EDUCATION 7; Roscoe Pound, *The Law School and the Professional Tradition*, 24 MICH. L. REV. 156 (1926-27) (describing the development of legal education and a call in 1921 for a return to professionalism). The history of the emergence of U.S. law schools as the principal preparation for

promote those goals more effectively. "Legal education has continued to evolve and develop throughout the twentieth century,"¹⁵ and the developments in particular over the past twenty years show the adaptability and viability of legal education today.¹⁶

Additionally, this article recommends continued adaptation through the consideration of successful features of the Western European models of legal education in which the academy, bench, bar, and even government work closely together to accomplish this difficult task of preparing and licensing lawyers for private and public service. Though incomplete, the MacCrate Report's description of a lawyer's education as a continuum is compelling.¹⁷ Finally, this article proposes that the lawyer's training should be more carefully shepherded, beginning as early as undergraduate studies and continuing through additional transitional training beyond today's law school curriculum.

In spite of increased research in comparative law,¹⁸ comparisons of American legal education to Western European models are surprisingly rare.¹⁹ However, such comparisons provoke interesting questions about the nature and sensibility of the United States system. Using examples from Germany, Austria,

the bar discloses a primarily reactive, unplanned, and occasionally unseemly course. See Hoeflich, *supra* note 6, at 123; ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1950S TO THE 1980S* (1983). See also McManis, *supra* note 1, at 653; Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 330 (1979).

15. Stein, *supra* note 5, at 952.

16. Dean Robert A. Stein describes the evolution of clinical education, the new course development, and the various "movements" in legal scholarship in his essay. *Id.* at 950-52. See also John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29, 30-32 (1993-94) (providing an extensive recitation of modern developments in law schools).

17. Others have observed that the Report fails to consider some important issues and is not specific regarding many details of the needed lawyering skills. Jonathan Rose, *The MacCrate Report's Restatement of Legal Education: The Need for Reflection and Horse Sense*, 44 J. LEGAL EDUC. 548, 556 (1995). See also note 27.

18. Kurt Schwerin, *Comparative Law Reflections: A Bibliographical Survey*, 79 NW. U. L. REV. 1315, 1315 (1984).

19. Only two articles in the last 40 years have made an in depth comparison to the German legal education system. See Jutta Brunne, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 J. LEGAL EDUC. 399 (1992) (discussing past and present attempts at reform); Juergen R. Ostertag, *Legal Education in Germany and the United States—A Structural Comparison*, 26 VAND. J. TRANSNAT'L L. 301 (1993) (focusing on dichotomy between legal theory and practice; recommending a comprehensive internship program). See also the recent essays by German Professor Eckart Klein, *Legal Education in Germany*, 72 OR. L. REV. 953 (1993) and by Maureen K. Monahan, *Mandatory Internships in the United States: A Comparison to European Legal Education Systems*, B. EXAMINER 54 (November 1994) (comparing English, French, and German systems, recommending mandatory internships in the U.S.).

and France, this analysis recommends a cautious and reasoned²⁰ evolution through two avenues: the adoption of modified forms from the Western European models of a more standardized pre-law school curriculum, and a brief post-law school mentoring program jointly administered by the law schools, the bar, and the bench. Because the benefits to all the participants—the public, the bar, the bench, the educators, and the students—so outweigh the costs, leaders in the legal community should increase the incentives to prompt these improvements.

II. RECENT CRITICISMS OF LEGAL EDUCATION

Though criticisms of legal education have become a tradition,²¹ the recent outpouring suggests an unusual receptiveness to affirmative change. The organized bar and legal educators have called for adaptation and improvement in legal education repeatedly over the past several years.²² In July 1992, the ABA's Section on Legal Education published the report of its newest task force to study and evaluate modern legal education and its relation to the legal profession.²³ The final product, known as "the MacCrate Report," focuses on what lawyers do, and it recommends that legal education ought to do the same.²⁴ It carefully describes the fundamental skills and professional values needed to equip a lawyer today, and urges increased attention in the law

20. "A fundamental question facing American law schools is whether change will occur only as an ad hoc response to external pressures, or whether law schools on their own initiative will undertake systematic processes of examination and planning." Mudd, *supra* note 16, at 33.

21. Criticisms are many but are infrequently read. Arthur Austin, *Trashing and Bashing Legal Education*, 14 MISS. C. L. REV. 97, 97 (1993).

22. Numerous ABA Reports, judicial committees, and legal commentators have called for improvements in legal education throughout the past 70 years. See generally White, *supra* note 5. ("Some members of the bar have proposed that law schools be required to give credit for work experience, offer instruction in the economics of law practice, make clinical experience mandatory, and offer more creative professional responsibility courses.") See also A.B.A. SEC. OF LEGAL EDUC. & ADMISSION TO B., REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979) [hereinafter CRAMTON REPORT] (termed the Cramton Report in recognition of the Task Force Chairman, Roger Cramton); *Report and Tentative Recommendations of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the U.S.*, 79 F.R.D. 187, 192 (1979) (noting that in response to a resolution of the Judicial Conference of the U.S., Chief Justice Burger appointed a committee in 1976 to consider standards for admission to practice in the federal courts); *Final Report of the Advisory Committee on Proposed Rules for Admission to Practice*, 67 F.R.D. 161, 168 (1975) (noting that the Clare Committee proposed that attorneys be required to complete courses in evidence, criminal law and procedure, professional responsibility, trial advocacy, and civil procedure as a prerequisite to practicing law in the Second Circuit).

23. The task force included leaders from all parts of the profession and was chaired by a prominent practicing attorney, Robert MacCrate. MACCRATE REPORT, *supra* note 7.

24. The MacCrate Report strengthened the critique of the previous Cramton Report on lawyer competence in 1979. CRAMTON REPORT, *supra* note 22.

curriculum to such fundamental lawyering functions as legal problem-solving, legal research and analysis, factual investigation, counseling, and negotiation.²⁵ The Report also calls for a more serious treatment of professionalism and ethical sensitivity.²⁶ The Report encourages legal educators and practicing lawyers to engage in a common enterprise to foster the development of improved professionalism.

Responses to the MacCrate Report have poured forth and have been poignant and at times indignant.²⁷ Many traditional scholars resist sacrificing any theoretical instruction to practical training, insisting "that their job is to teach and discuss legal theory and that the practical aspects of legal practice are to be delegated to clerkships and jobs during and after law school."²⁸ Others find the practical application of this model unworkable in today's job market.²⁹

25. MACCRATE REPORT, *supra* note 7 (Chapter 5, *The Statement of Fundamental Lawyering Skills and Professional Values*, lists the recommended skills and values "essential for competent representation"); See generally Garth & Martin, *supra* note 11, at 469 (specifying competencies needed by lawyers and examining how well law schools deliver).

26. CRAMTON REPORT, *supra* note 22, at 327-38 (Part IV, *Recommendations of the Task Force*, summarizes the recommendations of the comprehensive study).

27. See, e.g., Costonis, *supra* note 5, at 176 (criticizing the Report for failing to explain how its recommendations could be functionally and financially accomplished); Rose, *supra* note 17, at 548 ("Report does a better job of raising issues than in offering solutions.") *Id.* at 564; Carrie Menkel-Meadow, *Symposium on the 21st Century Lawyer: Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 594 (1994) (describing the MacCrate Report's approach as a "technocratic problem-solver": . . . resulting in a "too over-determined, too rigid, and . . . too incomplete for me.") See also numerous responses and articles presented at the 1993 "MacCrate Conference" held in Minneapolis-St. Paul, Minnesota, published in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM CONFERENCE PROCEEDINGS (Joan S. Howland & William H. Lindberg eds., 1994). See also Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994) (rebutting Costonis) and Jack Stark, *Dean Costonis on the MacCrate Report*, 44 J. LEGAL EDUC. 126, 126-27 (1994) (disagreeing with Dean Costonis' satisfaction with present legal education: "I found a curriculum that made little sense and professors who had little to say, . . . and were hopelessly confused about their educational goals").

28. Jill J. Ramsfield & J. Christopher Rideout, *Using Legal Writing to Narrow the Gap: Socializing Students Into the Legal Education and Law Practice*, in THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, CONFERENCE PROCEEDINGS 155 (1994). "The role of the legal clinic or practice course continues to be debated by those who remain skeptical of its legitimate role in the law school." Patricia M. Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education*, 36 J. LEGAL EDUC. 35, 35 (1986).

29. See Lucy Isaki, *Symposium on the 21st Century Lawyer: From Sink or Swim to the Apprenticeship: Choices for Lawyer Training*, 69 WASH. L. REV. 587, 588 (1994) (describing the "economics of law practice" new lawyers are expected to be productive at the start of their employment). See also Roger C. Cramton, *Change and Continuity in Legal Education*, 79 MICH. L. REV. 460, 466 (1981) [hereinafter *Change & Continuity*] (citing similar numbers, and drawing the same conclusion).

John J. Costonis, Dean of Vanderbilt School of Law, observed that the MacCrate Report "returns to the themes addressed in the Cramton Report,³⁰ albeit with a more sweeping vision, a greater sense of urgency, and an action program charging law schools and the profession with interlinked missions in the quest for lawyer competence."³¹ But Dean Costonis criticized the Report for failing to explain how this mission could be functionally and financially accomplished.³² Costonis noted that the Report's focus on competency training virtually excludes serious discussion of the traditional missions of the law school.³³

Costonis reminded educators of the many significant improvements that have occurred in legal education over the past twenty years. He emphasized that both training skills and doctrinal instruction have flourished at the same time.³⁴ More law students are being taught practical skills in more clinics by more faculty in almost every law school in the land. At the same time, innovative substantive courses are appearing in most curricula, stimulating fresh scholarship in a wider array of law-related areas.³⁵

Notwithstanding some valid criticism of the Report, most observers insist that the recent influx of practical training in legal education is but a small step in the right direction. They emphasize data which demonstrates that far too few students receive this training.³⁶ This suggests that efforts to address this need should be planned and not left to anecdotal development from unrelated programs. Without an additional impetus to stimulate comprehensive change, legal education is unlikely to prepare tomorrow's graduates for modern law practice.

Commentators have long discussed law schools' failure to provide practical training. The early Carnegie researcher of legal education, Alfred Z. Reed, characterized the absence of practical training from the law curriculum as "a

30. CRAMTON REPORT, *supra* note 22.

31. Costonis, *supra* note 5, at 174.

32. *Id.* at 176, 179.

33. *Id.* at 176-77 n.103.

34. *Id.* at 167-68. Other notable scholars share Costonis' view. "Legal education in the United States today, at least when judged by outward manifestations, is the healthiest it has ever been. There are more schools with more resources, larger and better facilities, and more and better students." *Change and Continuity*, *supra* note 29, at 470; Laser, *supra* note 11, at 274.

35. Costonis, *supra* note 5, at 167-68. Hundreds of new lawyering skills courses combine with new externships and law firm clerkships to offer an increasing amount of practical training to law students, including ethics training.

36. "Notwithstanding the substantial increase in skills and values training in law schools in the past twenty-five years, while they are in law school the majority of law students are not educated in most of the fundamental skills mentioned in the [ABA Task Force Report]." Laser, *supra* note 11, at 277.

remarkable educational anomaly."³⁷ Reed contrasted that with medical and engineering school training programs which provide such training. Another legal scholar tersely observed: "The United States may be the only country claiming to be governed by law that turns an unskilled law graduate loose on some unsuspecting client whose life, liberty or property may be at risk."³⁸ Many commentators complain that too much of law school instruction is ivory tower musings of academics on irrelevant topics.³⁹

Moreover, since Watergate and subsequent high-profile lawyering scandals, the public in general has called for greater ethics training for lawyers.⁴⁰ Today's emphasis in the law practice on fierce advocacy has broadened the widespread criticism. The well-known "hired gun" approach to the practice of law is destructive to both lawyers and their clients' interests.⁴¹ "[D]eception, nastiness, intimidation and general lack of civility among lawyers are permeating the litigation process."⁴²

Because the gap between legal education and the practice of law continues to expand,⁴³ practice and ethics training is needed more than ever in law schools today. The mentoring previously available to many graduates in the

37. ALFRED Z. REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 281 (1921).

38. Jerome F. Kramer, *Scholarship and Skills*, 11 NAT'L L.J. Jan. 9, 1989, at 15. See also Klein, *supra* note 11, at 633. In the U.S., doctors, nurses, teachers and C.P.A.s must complete supervised internships prior to receiving certification or licensing. Ironically, a lawyer often holds not only a client's health, education, and finances at risk but also his very liberty, yet a lawyer is able to practice law merely by passing a series of examinations that largely ignore the practical application of the law to real cases.

39. See Re, *supra* note 1, at 126. Some faculty members today are seen as disdainful of the law practice. See also Richard A. Posner, *The Deprofessionalism of Legal Teaching & Scholarship*, 91 MICH. L. REV. 1921, 1921 (1993). Many law professors would acknowledge that the legal community is not immune from the recurrent contemporary criticism that some intellectual elites disdain middle class culture. For criticism of elitism today, see CHRISTOPHER LASCH, *THE REVOLT OF THE ELITES AND THE BETRAYAL OF DEMOCRACY* (1994).

40. Many critics have faulted legal education for failing to teach professional ethics and moral restraints. E.g., Re, *supra* note 1, at 93 ("[The] important role of lawyers as officers of the court should be stressed from the inception of the law student's legal studies."); Richard C. Baldwin, "Rethinking Professionalism" *And Then Living It!*, 41 EMORY L.J. 433, 444-45 (1992) (stressing that law schools have duty to teach ethics and social responsibility).

41. See Walter H. Bennett, Jr., *Making Moral Lawyers: A Modest Proposal*, 36 CATH. U. L. REV. 45, 60-61 (1986), and Robert F. Drinan, *Moral Architects or Selfish Schemers?*, 79 GEO. L.J. 389, 393 (1990) (quoting RICHARD L. ABEL, *AMERICAN LAWYERS* 247 (1989)).

42. Gideon Kanner, *Welcome Home Rambo: High-Minded Ethics and Low-Down Tactics in the Courts*, 25 LOY. L.A. L. REV. 81, 81 (1991). "It is precisely because of the unique role of law and lawyers in American life that a significant advance of arrogance, unruliness, greed, and cynicism in the legal profession is of more concern than similar developments in, say, banking or dentistry." GLENDON, *supra* note 1, at 12.

43. See Isaki, *supra* note 29, at 588 (providing a laundry list of reasons for the expanding gap—more lawyers, more competition, economics of modern law practice, etc.).

larger law firms and the smaller, collegial bar is not as available today.⁴⁴ Moreover, because of the declining employment market, many graduates today are forced to begin solo practice straight out of law school, bypassing any mentoring relationship at all. Consequently, there is broad consensus favoring some form of additional training for law students.

III. THE DECLINE OF EDUCATION IN GENERAL

Many educators complain that part of the problem with current legal training begins much earlier than law school itself.⁴⁵ They decry the decline in modern education and insist that law schools are not equipped to remedy fundamental deficiencies in the academic preparation for many of today's students.⁴⁶ These critics have expressed particular alarm at the lowering of standards throughout the American education system.⁴⁷ Both high school and college curricula have softened to the point that commentators refer to the "dumbing down" of American education standards so that more students will meet them.⁴⁸ Education experts lament the enormous liberalization of graduation requirements that occurred in the 70s, allowing students to avoid

44. "This system was flawed in the past and it has become virtually outdated. . . . It never worked well for students who were not near the top of the class and consequently were not hired by the big firms who had the time and money to invest in the training of a lawyer." Pertnoy, *supra* note 10, at 173. See also Re, *supra* note 1, at 135 n.223. Some of the nineteenth century mentoring was a sham anyway, offering the neophyte only access to the law firm's library and rarely any mentoring at all. McManis, *supra* note 1, at 604.

45. Law professors complain that many entering law students lack adequate reading, writing, and analytical training for serious law study. Recent studies also show that "students come to law school without having learned enough factual information . . . [and] legal and analytical skills will not help us communicate with one another if we do not share a basic understanding of the culture that has created us." Richard P. Vance & Robert W. Prichard, *Measuring Cultural Knowledge of Law Students*, 42 J. LEGAL EDUC. 233, 238-39 (1992). "[P]rofessional education cannot replace adequate preparation in high schools and colleges." *Id.* at 239.

46. "Many teachers and students . . . [assert] that a significant number of law students are so deficient in ability or preparation that no reasonable amount of effort by the law school can bring them to a level of good performance." Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 897 n.54 (1985) (suggesting that law schools can teach mastery of legal subjects if the schools possess the willingness to teach).

47. Enormous "grade inflation" has diluted much of the rigor in academic standards over the past several years. Alexander W. Astin, *Prelaw Students—A National Profile*, 34 J. LEGAL EDUC. 73, 76 (1984) (more students with A averages than with C+ averages).

48. Sally S. Buzbee, *Simplified Classic Declasse to Some*, TIMES-PICAYUNE, Feb. 20, 1995, at A3. "A 1992 National Assessment of Educational Progress survey indicated students spend very little time reading, either for pleasure or for schoolwork, but they do pass three or more hours a day watching television." *Id.* According to Christopher Cross, president of the Council for Basic Education in Washington, "American children's reading habits and ability continue to be dismal" *Id.*

serious subjects.⁴⁹

Predictably, many current undergraduates arrive on campus unprepared for college level study, and then graduate unprepared for professional schools. A leading business organization recently published a study concluding that a majority of new employees lack adequate writing and problem-solving skills.⁵⁰ A 1995 Department of Education study reported that employers have little confidence in the nation's high schools and colleges to prepare young people for the workplace.⁵¹ The claims that many college graduates cannot adequately read, write, and compute are all too common.⁵² One analysis of the American higher education system asserts that "[e]vidence of decline and devaluation is everywhere,"⁵³ and that "[t]oo many colleges and universities have no clear sense of their educational mission and no conception of what a graduate of their institution ought to know or be."⁵⁴ The fear that today's education leaves many students without the broadening effects of a liberal education—teaching the dignity of the mind and intellectualism, "the grand purpose of liberal education"⁵⁵—is most troublesome of all.

In many instances, a watered-down curriculum is blamed. For the first two centuries of United States history, colleges followed the traditional liberal arts

49. Patricia Owen, *Education: A Long Term Investment in United States International Competitiveness*, 1989 B.Y.U. L. REV. 689, 699 (1989). Only 31% of high school graduates complete intermediate algebra, and only 6% of all students complete calculus. NAT'L COMM'N ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATION REFORM, TECHNICAL REPORT 18-19 (1983). Another study found that 1/3 of U.S. high schools do not offer physics, almost 1/5 offer no chemistry, 1/10 offer no biology, and nearly 3/4 offer no earth science. Finbeiner, *Precollege Education and the Personnel Issue*, in NAT'L SCI. FOUND. ANN. REP. 39 (1986).

50. Catherine S. Manegold, *Study Says Schools Must Stress Academics*, N. Y. TIMES, Sept. 23, 1994, at A22. (by The Committee for Economic Development—"an organization of executives at about 250 large corporations"). For a recent discussion of whether problem-solving can be taught in law schools, see Stephen Nathanson, *Developing Legal Problem-Solving Skills*, 44 J. LEGAL EDUC. 215 (1994).

51. Peter Applebome, *Employers Wary of School System*, N. Y. TIMES, Feb. 20, 1995, at A1 (National Edition).

52. ERNEST L. BOYER, COLLEGE: THE UNDERGRADUATE EXPERIENCE IN AMERICA—THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING 256 (1987). See also KENNETH H. ASHWORTH, AMERICAN HIGHER EDUCATION IN DECLINE 21 (1979).

53. See DEREK BOK, HIGHER LEARNING 38 (1986) (citing ASSOCIATION OF AMERICAN COLLEGES, *Project on Redefining the Meaning and Purpose of Baccalaureate Degrees*, INTEGRITY IN THE COLLEGE CURRICULUM: A REPORT TO THE ACADEMIC COMMUNITY 1 (1985)).

54. See BOK, *supra* note 53, at 38 (citing William Bennett, quoted in Malcolm G. Scully, *Endowment Chief Assails State of Humanities on College Campuses*, CHRON. HIGHER EDUC., Nov. 28, 1984, at 1, 16).

55. Thomas E. Baker, *A Law Student's Responsibility For a Liberal Education*, 20 TEX. TECH. L. REV. 1153, 1157 (1989).

model.⁵⁶ Curricula were designed to prepare graduates for the liberal arts or sciences—such as the clergy, law, or medicine⁵⁷—and, of course, to be generally equipped with basic knowledge of the great teachers.⁵⁸ The typical curriculum was classical and included languages, mathematics, history, literature, and science.⁵⁹ Measuring curricular success was more thorough as well. Upon completing a course of study, the graduate was required to demonstrate competence in a public, final oral examination, “to demonstrate to the *whole academic community* intellectual and verbal skills worthy of an educated person.”⁶⁰

After the Civil War, in a period of exploding industrialization and westward expansion, American lawmakers perceived a need for a more practical education. The Morrill Act,⁶¹ signed by President Lincoln in 1862, established public land grant universities with a mandate to offer instruction in “agriculture and the mechanic[al] arts”⁶² In the decades that followed, most schools began to offer more utilitarian curricula.⁶³ A wide disparity in curricular quality and substance grew from this. As a response to concerns about the quality of higher education, the Association of American Universities (AAU) was formed at the turn of this century. One of its main goals was to certify for European universities which American colleges offered an undergraduate education strong enough to allow graduates to be admitted to European universities to pursue doctoral studies.⁶⁴

Another curricular development in the 1880s broadened the focus of much of the course work. The concept of the elective course surfaced, and the term “credit”—or unit of instruction based on seat time—became popular.⁶⁵ Under the credit system, students could graduate if they accumulated a sufficient number of credits from a wide array of choices, rather than completing a required regimen of courses. This further sapped the rigor of the traditional

56. BOYER, *supra* note 52, at 252.

57. ASHWORTH, *supra* note 52, at 25; *See also* BOYER, *supra* note 52, at 252.

58. Baker, *supra* note 55, at 1158 (quoting L. Strauss on the importance of listening to the voices of the great minds).

59. ASHWORTH, *supra* note 52, at 25.

60. BOYER, *supra* note 52, at 252.

61. Morrill Act of 1862, ch. 130, 12 Stat. 503 (codified as amended at 7 U.S.C. §§ 301-08 (1988)).

62. ASHWORTH, *supra* note 52, at 26.

63. *Id.* at 27. For example, in response to the Smith-Hughes Act of 1917, many institutions added courses in agriculture, home economics, and other vocational fields. *Id.*

64. *Id.* Further steps, including tightening accreditation standards, were taken when professional organizations became concerned at the poor quality of graduates. The AMA revoked accreditation of almost half of the medical schools from 1890 to 1920. *Id.*

65. BOYER, *supra* note 52, at 254.

curricular model.⁶⁶ As curricula became more diverse, the comprehensive final examination became impractical, again diluting academic standards.⁶⁷

Another federal enactment would exert a powerful influence on higher education immediately following World War II: the G.I. Bill.⁶⁸ Colleges and universities expanded almost overnight to accommodate more than two million war veterans, and new educational offerings were developed to suit this widely diverse group of new students.⁶⁹ The broadened offerings ranged from expanded traditional courses to narrow two-year specialized programs. As would be expected, standards for admissions and performance varied.⁷⁰ The unavoidable result was a transformation of the American perception of college and university education. In contrast to the European model, the American democratic concept of a university education included something for everyone.

Today, college curricula have expanded anew as the store of knowledge has grown to include new subjects and perspectives.⁷¹ America's prominent international role has stimulated more courses treating foreign regions. Social developments have spun off courses examining gender, environmental, and ethnic studies.⁷² Despite this expansion of courses, one study has concluded that "for the first time in the history of our country, the educational skills of one generation will not surpass, will not equal, will not even approach, those of their parents."⁷³ Critics allege that the trend in colleges away from a traditional curriculum has resulted in "today's jumble of bizarre courses, that . . . can add

66. ROBERT ULICH, *THE EDUCATION OF NATIONS: A COMPARISON IN HISTORICAL PERSPECTIVE* 247-48 (1961). According to Ulich, "[t]he mechanical reliance on credits, from the high school to the graduate schools of the universities, without due respect for coherence and standard, is the curse of American education." *Id.*

67. BOYER, *supra* note 52, at 254. When A. Lawrence Lowell became president of Harvard in the early twentieth century, he sought unsuccessfully to revive the general examinations, which had by that time disappeared.

68. ASHWORTH, *supra* note 52, at 29. The G.I. Bill was more formally known as the Serviceman's Readjustment Act, ch. 268, 58 Stat. 284 (1944).

69. ASHWORTH, *supra* note 52, at 30.

70. *Id.* at 30-31.

71. BOK, *supra* note 53, at 46.

72. *Id.*

73. NAT'L COMM'N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* 11 (1983). This criticism is not undisputed; Lawrence Cremin has stated that "there is surely no evidence to support the commission's . . . claim that the present generation would be the first in American history whose education skills would not equal or even approach those of its parents." LAWRENCE A. CREMIN, *POPULAR EDUCATION AND ITS DISCONTENTS* 40 (1990).

up to an intellectual junk heap."⁷⁴

In the same vein, some educators have faulted the relaxation of language requirements, the inclusion of narrow technical courses in college curricula, and the freedom of students to design their own programs of study: "[T]he spread of educational opportunity in the United States reflects less a spirit of democratic fairness than a willingness to prolong adolescence."⁷⁵ This weakened educational system now produces graduates unable to write the English language and pitifully ignorant of mathematics, the sciences and modern languages. Consequently, graduate schools are crowded with students of mediocre ability.⁷⁶

As with any complex issue, maintaining a balanced perspective is critical to a reasoned judgment. Arguments about academic standards are "as old as the world itself."⁷⁷ Lawrence Cremin has suggested with humor that "[j]ust about the time Adam first whispered to Eve that they were living through an age of transition, the Serpent doubtless issued the first complaint that academic standards were beginning to decline."⁷⁸ Cremin qualifies the allegations of decline, suggesting that the real crisis in American schooling "is not the crisis of putative mediocrity and decline charged by the recent reports."⁷⁹ Rather, he claims it is the crisis "inherent in balancing this tremendous variety of demands Americans have made on their schools and colleges—of crafting curricula that take account of the needs of a modern society at the same time that they make provision for the extraordinary diversity of America's young

74. Marvin Stone, *Common Sense in College*, U.S. NEWS & WORLD REP., Jan. 23, 1978, at 84. The elective system, the brainchild of Victorian Harvard president Charles Eliot, has been called "the worst idea ever to invade U.S. higher education." Edwin M. Yoder, Jr., *Yes, There's Intelligent Life Outside Harvard*, WASH. POST, Sept. 9, 1986, at A25.

75. CREMIN, *supra* note 73, at 4-5 (citing generally IRVING BABBITT, *LITERATURE AND THE AMERICAN COLLEGE: ESSAYS IN DEFENSE OF THE HUMANITIES* ch. 3 (1908); ABRAHAM FLEXNER, *A MODERN COLLEGE AND A MODERN SCHOOL* (1923); DO AMERICANS REALLY VALUE EDUCATION (1927); UNIVERSITIES: AMERICAN, ENGLISH, GERMAN (1930); ROBERT MAYNARD HUTCHINS, *THE HIGHER LEARNING IN AMERICA* (1936)).

76. NAT'L COMM'N ON EXCELLENCE IN EDUC., *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* 11 (1983). A teachers' union official recently commented publicly that returning to an achievement standard in our schools is "a radical notion that is not radical anywhere else in the world." Catherine S. Manegold, *Study Says Schools Must Stress Academics*, N.Y. TIMES, Sept. 23, 1994, at A22. (quoting Albert Shanker, president of the American Federation of Teachers).

77. CREMIN, *supra* note 73, at 7.

78. *Id.*

79. *Id.* at 43.

Although there may be valid concerns about competing educational goals, some consensus on general recommendations for improvement can be achieved. Today, university catalogs describe an extensive scope of courses which are given relatively equal weight through the credit system, and comprehensive, final examinations have been abandoned. While the academic variety allows today's college students almost infinite intellectual and vocational opportunity, in many cases the diluted curricular requirements detract from the rigor which many students will encounter. Many of today's students do avoid the more difficult courses which were once required as basic to a minimal liberal arts foundation. As a result, many college graduates often reach professional schools lacking the substantive knowledge needed to build on, as well as the writing and critical reasoning skills crucial to their professional goals. Other educational systems offer constructive ideas.

IV. COMPARATIVE MODELS SUGGEST A MORE MEANINGFUL ADMISSIONS PROCESS

Most lawyers and legal educators today would agree with the general premise that the quality of a lawyer in many ways "correlates to his or her general education."⁸¹ The general thesis follows that strengthening the lawyer's basic education, both in law school and in preparation for law school, would improve the overall quality of the lawyering. In fact, both the Western European models and the United States model are constructed upon the belief that a solid liberal arts education is a prerequisite for a successful legal education.⁸²

The gradual erosion of this educational foundation in the United States has led to concern that many students receive inadequate preparation for advanced professional studies. In comparison, the French, German, and Austrian secondary schools expose their university-bound students to far more arduous intellectual training—including hard sciences, the classics, multiple languages, and more.⁸³ In Germany, for example, the rigorous curricula require one more

81. Ostertag, *supra* note 19, at 340.

82. *Id.* at 318.

83. Herbert Hausmaninger, *Legal Education: An Austrian Perspective*, VA. L. WKLY., Oct. 9, 1992, at 2. Austria's secondary schools typify the model, with academic secondary curricula requiring various combinations (depending on level and special focus of each school) of two languages, geography and economics, philosophy and religion, in addition to mathematics, physics, biology, chemistry, art, and music. AUSTRIAN FED. MINISTRY OF EDUC. & THE ARTS, AUSTRIA: DEVELOPMENT OF EDUCATION 1992-94 35-50 (1994) (describing in detail Austrian education). For precise curricula in Germany and France. See, e.g., VAL D. RUST & DIANE RUST, THE UNIFICATION OF GERMAN EDUCATION (1995); Daniel Fallon, THE GERMAN UNIVERSITY: A HEROIC IDEAL IN CONFLICT WITH THE MODERN WORLD (1980); H.D. Lewis, THE FRENCH EDUCATIONAL SYSTEM (1985) [hereinafter FRENCH EDUCATION].

year of study than do American high schools. The academic rigor combined with the extra year produces a "tradition of academic excellence."⁸⁴ The "European educational systems are much more selective and academic than their American counterpart."⁸⁵

While democratic reforms have opened higher education in these countries, this can be deceptive because only the hardier students earn the diplomas necessary for advancement to the university.⁸⁶ Various forms of tracking or screening take place in the early years to guide the brighter and academically inclined students into the advanced preparatory schools. Those who do attend and successfully complete the various university preparatory schools generally receive a strong foundation in the liberal arts and sciences.

In Germany, an undisputed leader in education for over a century, students enjoy one of the world's most prestigious educational systems.⁸⁷ "They remain in school as long as any group in the world, score well on international achievement tests, and enjoy great benefits from success in school."⁸⁸ The German *Gymnasium* requires "one of the longest and most rigorous secondary schooling programs in the world."⁸⁹ In spite of extensive government efforts to transform the classical, rigid university system into a more available, comprehensive system,⁹⁰ only about twenty-five to thirty percent of the

DEVELOPMENT OF EDUCATION 1992-94 35-50 (1994) (describing in detail Austrian education). For precise curricula in Germany and France. See, e.g., VAL D. RUST & DIANE RUST, *THE UNIFICATION OF GERMAN EDUCATION* (1995); Daniel Fallon, *THE GERMAN UNIVERSITY: A HEROIC IDEAL IN CONFLICT WITH THE MODERN WORLD* (1980); H.D. Lewis, *THE FRENCH EDUCATIONAL SYSTEM* (1985) [hereinafter *FRENCH EDUCATION*].

84. Hausmaninger, *supra* note 83, at 2. One commentator described the "obsession" with high academic standards in France. *FRENCH EDUCATION*, *supra* note 83, at 87.

85. Hausmaninger, *supra* note 83, at 2.

86. Burgeoning student enrollments in the 1960s were accompanied by demands for more educational opportunities. While the emphasis on merit and academic excellence continues to be the linchpin of the systems, reforms have opened up new schools, curricular offerings, and admission avenues to the university. See Rosalind M.O. Pritchard, *THE END OF ELITISM? THE DEMOCRATIZATION OF THE WEST GERMAN UNIVERSITY SYSTEM* xv, 12, 58 (presenting an in-depth history of classical and modern German educational system). More students from varied socio-economic backgrounds are gaining acceptance to the universities by avenues other than the *Abitur*. Fallon, *supra* note 83, at 102. In France, "[e]quality of opportunity has been the cry and the motivation for change . . . [but they] have not forgotten high standards." *FRENCH EDUCATION*, *supra* note 83, at 2.

87. RUST & RUST, *supra* note 83, at 22 (offering a brief description of unified German education system).

88. *Id.* at 27.

89. *Id.* at 44.

90. The topic has produced mixed results and much discussion. Pritchard, *supra* note 86, at 58. See Fallon, *supra* note 83, at 103 (arguing that the Humboldtian university is gone).

elementary students attend the *Gymnasium*,⁹¹ Germany's advanced preparatory school, and only eighty percent of those students eventually pass the *Abitur*, the comprehensive final graduation exam.⁹² Further, the State sets admissions limits in some cost intensive areas of study, such as medicine, and occasionally in law, thus causing certain higher levels of achievement to be required on the final exam to gain admission to those university studies.⁹³ Accordingly, only approximately twenty-five percent of the overall student population eventually advances to the university level.

In France, a similarly rigorous, comprehensive examination known as the *Baccalaureat* serves as the "restricting filter"⁹⁴ for admission to university studies.⁹⁵ In 1994, only fifty-eight percent of the candidates for the test achieved a passing grade.⁹⁶ This is especially meaningful considering the strength of the French "academic power house"⁹⁷ prep schools, the *lycees*.⁹⁸

In Austria, about forty percent of all pupils enter the top level secondary schools. Of these, one-half enter the general high schools and one-half the professional level high schools.⁹⁹ As in Germany and France, students who complete secondary schools and pass the comprehensive examination, the *Matura*, are eligible to enter a university.¹⁰⁰ The number of students

91. "Traditionally the *Gymnasium* is the most academic and prestigious branch of the secondary school system." 1 INTERNATIONAL HANDBOOK OF EDUCATION SYSTEMS 239 (Brian Holmes ed., 1983). Twenty-seven percent of the students entered the *Gymnasium* in 1987. RUST & RUST, *supra* note 83, at 40.

92. 4 THE INTERNATIONAL ENCYCLOPEDIA OF EDUCATION 2036 (Torsten Husen & T. Neville Postlethwaite eds., 1985).

93. NIGEL G. FOSTER, GERMAN LAW AND LEGAL SYSTEM. DEUTSCHES RECHT UND DEUTSCHES RECHTSSYSTEM 66. (Blackstone Press Ltd., London 1993). This numerical ceiling, known as the "numerus clausus," has had a "relatively mild" impact on law admissions. RUDOLF SCHLESINGER, COMPARATIVE LAW 162 (5th ed. 1988).

94. EDMUND J. KING, OTHER SCHOOLS AND OURS 163 (4th ed. 1973) ("Notoriously difficult to pass, the baccalauréat for many years had a failure rate of well over 50% . . .").

95. For details on the French school system see: Kommission der Europäischen Gemeinschaften: *Der Aufbau des Bildungswesens in den einzelnen Mitgliedstaaten der Europäischen Gemeinschaft*. Luxemburg 1987, 79 ff [hereinafter Kommission].

96. QUID 1332/Enseignement (Robert Laffont eds., 1995).

97. FRENCH EDUCATION, *supra* note 83, at 71.

98. KING, *supra* note 94, at 163. The French continually modify their school system, striving for improvement. FRENCH EDUCATION *supra* note 83, at 86. Some critics argue that reforms have gone too far. ISABELLE STAL & FRANCOISE THOM, SCHOOLS FOR BARBARIANS (1988).

99. BUNDESMINISTERIUM FÜR UNTERRICHT UND KUNST, GRUNDDATEN DES ÖSTERREICHISCHEN SCHULWESENS (Schuljahr 1993/94).

100. § 7 Abs. 1 Zif. 1 Allgemeines Hochschulstudien-gesetz (AHSTG). For full description of Austrian educational system, from primary school to vocational or university studies, see THE AUSTRIAN EDUCATION SYSTEM, (published by the Federal Press Service, Ballhausplatz 2, 1014 Wien 1994).

of that group enter a university.¹⁰² Adding to the academic rigor in all three countries is the fact that the core curriculum in these preparatory schools far exceeds general United States standards. Many students take two foreign languages, including Latin. They must also enroll in courses dealing with mathematics, physics, biology, chemistry, geography and economics, history, and philosophy/religion.¹⁰³

The result, of course, is a better prepared group of university students, including better prepared law students.¹⁰⁴ Those who enter law studies then devote from four to seven additional years at the university in the first phase of their legal training. They are tested on their theoretical coursework, and after graduation they enter the second stage, their practical training. This lasts for approximately two to five years, depending on the jurisdiction.¹⁰⁵ Their practical knowledge and skills are then measured in multiple, practical tests, and if the test evaluations are acceptable, they are enrolled in the bar. This entire process of more rigorous and lengthy study and comprehensive testing produces a roundly educated and well trained lawyer with "the basic qualifications necessary for entry into any branch of the legal profession."¹⁰⁶

As the basic model for primary and secondary education is different from the United States system, so the legal education structure is fundamentally different. There, the theoretical or substantive education of lawyers occupies its position in the university curricula and is an integral part of the overall educational system. Across the continent, law was considered one of the classic faculties from the rise of the medieval universities. Moreover, the legal scholar played an influential role in the development of the law as commentator and

102. Bundesministerium für Wissenschaft und Forschung, Hochschulbericht 1993, v2, at 143.

103. 1 INTERNATIONAL HANDBOOK OF EDUCATION SYSTEMS, *supra* note 91, at 47 (noting that the differences between various top level secondary schools are defined by curricula). Course focus varies by country and by school focus. In Austria, even philosophy, music, and religion are required courses (§ 39 Zif. 1 Schulorganisationsgesetz).

104. Francis H. Heller & John C. Peck, *American Law Teachers in an Austrian University: Some Observations Gleaned from a Decade of the Kansas-Vienna Exchange Program*, 42 KAN. L. REV. 507, 512 n.16 (1994).

105. For more detailed description of the German two-phase model for legal preparation, see SCHLESINGER, *supra* note 93, at 160-74; the French two-phase model, CHRISTIAN DADOMO & SUSAN FARRAN, THE FRENCH LEGAL SYSTEM 115 (1993); the Austrian training, Peter Mayr, *Neuerliche Änderung der Rechtsanwaltsausbildung*, in 3 JURISTISCHE AUSBILDUNG UND PRAXIS (1992/93), 186 ff.

106. SCHLESINGER, *supra* note 93, at 171. In Germany for example, the First (following university studies) and Second (following internship) State Examinations are comprehensive and very difficult, and the test results on the Second practice oriented test "will strongly affect [the Referendar's] chances of being appointed" to a desired career position. *Id.*

even appellate judge.¹⁰⁷ Other basic differences are important to understand the different systems. Historically, Europeans have demonstrated their belief that education is basic to effective government and have financed all university study, including law studies. Thus, European students are not burdened with the heavy tuition of United States law students.¹⁰⁸ But government control and integration within the university are broader distinctions. In Europe, the state and national governments closely regulate the legal studies through university comprehensive testing and other requirements for admission to the professions, thus controlling and unifying the curriculum of schools, including law schools.

To the contrary, United States legal training functions in a separate, more narrow system. The American law curriculum is not regulated by the state, and considerable diversity among public and private law school offerings encourages experimentation. In what has been described as "the essential weakness of the American law-school,"¹⁰⁹ American law schools operate independently and isolated from the basic educational system of the country. Further, the law schools are more separated from law making and government. A few law professors participate in legislative drafting, and some legal scholarship is read by courts and practicing attorneys, but the legal scholar plays no role comparable to the European one of advisor to courts and governments. Many commentators urge that United States legal educators should emulate the European model by becoming more involved in their profession, as well as their universities.¹¹⁰

Unfortunately, general education in the United States has never included the same serious commitment to a true liberal education as its European counterparts. The history of elementary and secondary education in the United States reflects the realities of an expanding, pioneer development of rural states

107. Ostertag, *supra* note 19, at 307. See also Rheinstein, *Law Faculties and Law Schools: A Comparison of Legal Education in the United States and Germany*, WIS. L. REV., 1938 at 5. (noting that cases were appealed from an appellate court to the law faculty, thus making the professors the "highest judges"). [The importance of this] can hardly be overestimated. It brought the law professors into continuous contact with the facts of life and the actual problems of legal practice; it was a consequence as well as a cause of their enormous influence on the development of the law." *Id.* at 7.

108. Additional basic differences include the European lecture method versus the American case method, the civil law tradition versus the common law tradition, the apprenticeship versus none in the United States, and the judicial focus in the European system versus the emphasis on bar passage in the United States. Ostertag, *supra* note 19, at 305.

109. Jordan, *supra* note 1, at 114.

110. Recommending a "closer integration of the university and the law school, a return, in effect, to the relationship that might have been if, after universities began to absorb the proprietary law schools, Langdell and his troops had not fenced them off as insular, autonomous worlds." Donna E. Arz, "Too Important to Leave to the Lawyers:" *Undergraduate Legal Studies and its Challenge to Professional Legal Education*, 13 NOVA L. REV. 125, 157 (1988).

far different from that on the European continent.¹¹¹ The development of educational systems in the United States was marked by the rapidly expanding growth west, fueled by an exploding population and economy. Education was implemented as a matter of local discretion—county to county, city to city. The educational product was uneven, reflecting each locale's degree of development. Schools in newly settled areas often taught the practical skills of reading, writing, and arithmetic, unsupported by sophisticated, liberal arts curricula.

In France, Germany, and Austria, the centralized educational systems¹¹² have long emphasized intellectualism¹¹³ and competitive recruitment for educational advancement.¹¹⁴ However, such emphasis has been tempered in recent years in the name of broadening opportunity. Even so, the core meritocracy component that has held the system intact as one which affirmatively promotes rigorous elementary and secondary education is the preparation for university study.¹¹⁵ For example, "[c]entralization, uniformity, and intellectualism have been France's main tool through the centuries"¹¹⁶ History casts a different lot for the decentralized and pragmatic United States educational system.

An examination of the three European models is instructive. Their integrated, comprehensive educational schemes guide students through various levels of academic, professional, and vocational education. In grammar school, the systems begin early to evaluate and direct students to different performance

111. The contrast between the emerging American concept of the purpose and system of education and the nineteenth-century European concept is startling. The American system developed as a sprawling, diverse patchwork of institutions of differing quality The European nations developed neat, well-ordered, but restricted systems directly supported and controlled by national governments for the purpose of educating the governing, landholding, and professional classes.

Frank Bowles, *Access to Higher Education*, in 4 THE ENCYCLOPEDIA OF EDUCATION at 381 (Lee C. Deighton ed., 1971).

112. Though education is officially regulated by the regional subdivisions or states of each country, treaties and agreements produce uniform systems among the various states. RUST & RUST, *supra* note 83, at 27-28.

113. Frenchmen are proud to boast that their educational system is "Cartesian." Descartes stressed that the intellect is paramount; for him it was the rational process, not the near-animal propensities of the body, that give man his essence. Instead of encouraging educators to think of personality as a harmony of complementary activities, the French view emphasizes the ascetic cultivation of "the mind." KING, *supra* note 94, at 123-24.

114. 1 INTERNATIONAL HANDBOOK OF EDUCATIONAL SYSTEMS, *supra* note 91, at 46 (describing the selection of gifted students for top secondary schools in Austria).

115. Howard Lewis, *Some Aspects of Education In France Relevant to Current Concerns in the U.K.*, 25 COMP. EDUC. 369, 372 (1989) [hereinafter *Aspects*].

116. KING, *supra* note 94, at 175.

levels. This is both a strength and a weakness of the system. The performance level tracking stimulates academic achievement and is efficient, though in some ways can be undemocratic and occasionally gruelling on the students.

The French system of schooling is typical of most continental systems. Napoleon introduced anti-aristocratic reform, while at the same time sought to train the best students France could offer to his government and military. To ensure uniform methods of selection and education, he granted the state a monopoly to govern secondary and university level instruction and examinations.¹¹⁷ This centralization and integration typify today's continental educational systems.

Compulsory education in France begins at age six and continues through age sixteen. The French system is structured in two tracks, beginning with compulsory primary and middle school for grades one through nine. Then, students are directed either into vocational classes or into lycees, intense academic secondary schools that prepare them for university studies.¹¹⁸ According to performance levels, students are directed into separate schools.¹¹⁹ After completing middle school, about half the students advance to the lycees.¹²⁰ Some lycee students begin studying Latin and Greek immediately;¹²¹ others add a second modern language to their rigorous curriculum.¹²² Students in the general schools may also study Latin or a second modern language if they hope to transfer to a lycee in the future.

Today, the French system of evaluating student progress is more circumspect than other continental systems that rely primarily on test performance.¹²³ Before 1959, a child could only advance from primary to secondary school by excelling on a strict written examination.¹²⁴ Now, the

117. *Id.* at 129.

118. Kathryn M. Anderson-Levitt, *Elementary Education in France*, 92 *ELEMENTARY SCH. J.* 79, 80 (1991). See generally *FRENCH EDUCATION*, *supra* note 83 (describing in detail the French educational system).

119. Regardless of ability, all children attend primary school together with other children their age. French educational reformers have long been troubled by selecting students to attend separate schools at this age because the selection process is still largely affected by a student's family background, and not strictly on the student's academic abilities. George A. Male, *France*, in 4 *THE ENCYCLOPEDIA OF EDUCATION* 87, 89 (Lee C. Deighton ed., 1971).

120. Anderson-Levitt, *supra* note 118, at 79-80.

121. The traditional emphasis on Latin and Greek has been reduced somewhat in the literary lycees, and advanced mathematics has emerged as the key skill in the elite math and physics schools. *FRENCH EDUCATION*, *supra* note 83, at 76-83.

122. KING, *supra* note 94, at 150.

123. *Aspects*, *supra* note 115, at 372.

124. KING, *supra* note 94, at 158. These examinations were similar to the aptitude tests which are popular in Great Britain. *Id.*

teacher's evaluations are the primary indicator of student progress. The French system allows for liberal repeating of classes because progress is tied to ability and not to age.¹²⁵ More opportunity exists today than ever before,¹²⁶ but the path to the university is still arduous. The grouping by performance levels and the comprehensive graduation exams maintain France's high academic standards.

In Germany, the selection process for university admission is more rigid and occurs much earlier in the students' education. The German system has retained the older structure of three parallel levels for secondary education,¹²⁷ but the students actually attend different schools. While both the German system and the United States system aspire to prepare students for the study of law with a liberal arts foundation,¹²⁸ the intense and demanding process that brings a German student to university level legal studies is significantly richer in depth and more thorough in coverage than the American counterpart. Moreover, the students are required to apply themselves in preparatory school to stay on track to the upper level studies.

About eighty percent of all German children begin with voluntary but state supported nursery school, and then all six year olds are required to enter primary school.¹²⁹ At the end of the fourth grade, German students are evaluated to determine on which of the three tracks their education will continue and the results direct them to the *Hauptschule*, the *Realschule*, or the *Gymnasium*.¹³⁰ The *Hauptschule* is the basic school, attracting less academically inclined students.¹³¹ The curriculum has been broadened in recent years, but it offers the basic courses to prepare students for general work and the trades, such as carpentry and mechanics, though some may continue with

125. *Aspects*, *supra* note 115, at 372. Teachers assess whether a student will really benefit from repeating a year, and parents may appeal a teacher's assessment, though this rarely occurs. *Id.* at 373.

126. Impressive "zones d'éducation prioritaire" were created in the 1980s to foster educational opportunity for the socially and economically disadvantaged. These cooperative ventures of multiple government agencies attack the whole social environment of poorer, unsuccessful school districts, offering everything from medical and child care to special teachers. FRENCH EDUCATION, *supra* note 83, at 49.

127. This is the traditional model and there are now new ways to get to the university without following the traditional pattern. The "comprehensive school" (Gesamtschule) and the "evening school" (Abendschule) are more accessible and can lead to the university. Pritchard, *supra* note 86. See also RUST & RUST, *supra* note 83, at 27, 33.

128. Ostertag, *supra* note 19, at 318.

129. RUST & RUST, *supra* note 83, at 35, 37.

130. For further details on the German school system see: KOMMISSION, *supra* note 95. Some students begin *Gymnasium* in the fifth grade. The *Realschule* begins in the sixth grade.

131. RUST & RUST, *supra* note 83, at 41.

with specialized vocational or technical training.¹³² About thirty-five to forty percent of students enter these schools.¹³³ The *Realschule* prepares students mainly for a broad range of white collar jobs, middle-level occupations, from clerical positions to managers.¹³⁴ These students leave school with at least ten years of formal education. The curriculum is more extensive than the *Hauptschule*, and special courses, such as accounting and drafting, are available. In 1987, twenty-seven percent of the students attended this level of schooling.¹³⁵ The "school leaving certificate" is earned by examination.

Students selected for the *Gymnasium* are prepared for lengthy university level studies in professions such as education, law, and medicine.¹³⁶ In 1987, 27% of the students entered the various *Gymnasiums*. *Gymnasium* students get a head start by beginning their liberal arts education with a curriculum that includes a heavy emphasis on the more classical subjects, languages, history, science, and mathematics, as well as philosophy or religion. The early exposure to a thorough grounding in languages (The *Gymnasium* was previously called the Latin School) may significantly enhance their law school preparation.¹³⁷ To graduate and qualify for study at the university level, these students must pass the *Abitur*, an all-encompassing examination of their seven to nine years of study at the *Gymnasium*.

The early academic evaluations and the testing at multiple levels, including the *Abitur*, play a key role in guiding students with high standards of academic achievement to study at the university level. Special efforts are made to include as many students as possible, and subsequently some are encouraged to return to the less advanced schools. This guidance or tracking process is not so much one of elimination as it is an arduous effort at matching students' abilities to appropriate career choices. Students not initially selected to enter the *Gymnasium* may sit for the *Abitur* upon completing their studies at the *Realschule*, but such crossing over is rare.

Austria's educational system is similar to that of Germany and is based on a central federal structure, governed by federal law and implemented by the

132. *Id.* at 41, 42. See also 1 INTERNATIONAL HANDBOOK OF EDUCATIONAL SYSTEMS, *supra* note 91, at 238.

133. RUST & RUST, *supra* note 83, at 40.

134. *Id.* at 41.

135. *Id.* at 40.

136. 1 INTERNATIONAL HANDBOOK OF EDUCATIONAL SYSTEMS, *supra* note 91, at 239.

137. Some educators assert that second language study enhances intellectual development. Wayne P. Thomas et al., *Academic Achievement through Japanese, Spanish, and French: The First Two Years of Partial Immersion*, 77 MODERN LANGUAGE J. 170, 170 (1993); Myriam Met, *Foreign Language: On Starting Early*, 49=1 EDUCATION LEADERSHIP, Sept. 1991, at 88.

states.¹³⁸ Compulsory education runs from age six through fifteen and begins with all children attending primary school together for four years.¹³⁹ After the fourth grade, students can either continue in a general school (*Hauptschule*) for another four years¹⁴⁰ or go to a higher academic school (*Gymnasium*).¹⁴¹ As the traditional institution for preparing students for university entry,¹⁴² the *Gymnasium* provides eight years of study with a strong emphasis on languages¹⁴³ and ends with a rigorous graduation exam, the *Matura*, which enables a student to enter a university.

At the ninth grade level, the structure branches out, offering various types of specialized schools for vocational, technical, and teacher training, while two levels of academic secondary schools focus more on university preparation.¹⁴⁴ Since the reforms of the 1960s,¹⁴⁵ Austrian students have numerous opportunities to transfer between schools.¹⁴⁶ No age requirements limit admission to the advanced secondary schools that prepare students for university entry.¹⁴⁷ The premise is that students be given every opportunity to advance to higher education, unhindered by academic choices made when they were young. While only twenty percent of the students enter *Gymnasium* at age ten,¹⁴⁸ thirty-three percent of all eighteen or nineteen year old students obtain

138. THE AUSTRIAN EDUCATION SYSTEM, *supra* note 100, at 8.

139. *Id.* at 8. See also § 12 Schulorganisationsgesetz.

140. § 15 Schulorganisationsgesetz.

141. Whereas the course load between general school and the first four years of *Gymnasium* is almost the same, in *Gymnasium* either Latin, geometry, or handicrafts is added. § 39 Schulorganisationsgesetz. General school teachers do not hold university degrees. § 118 Schulorganisationsgesetz.

142. § 34 Schulorganisationsgesetz.

143. Depending on the type of school, Latin and/or another language is added to English. § 39 Schulorganisationsgesetz.

144. *Education in Austria*, pamphlet with chart illustrates branching, Bundesministerium für Unterricht und Kunst, 1014 Wien (1994).

145. Sigurd Höllinger, *Issues of Educational Reform*, in TRADITION AND INNOVATION IN CONTEMPORARY AUSTRIA 123, 126 (Kurt Steiner ed., 1982). With increased flexibility of transfers between tracks, the Austrian system strives for its primary goal of comprehensive schooling to keep the students' options open. Elisabeth Budzinski, *Whatever Happened to the Comprehensive School*, 22 COMP. EDUC. 283 (1986).

146. Kurt Steiner, *Education and Educational Policy*, in MODERN AUSTRIA 321, 325, 327 (Kurt Steiner et al. eds., 1981).

147. Helen C. Lahey, *Austria*, 1 THE ENCYCLOPEDIA OF EDUCATION 431, 434 (Lee C. Deighton ed., 1971). There are even special secondary schools for unemployed persons over age eighteen, for the physically handicapped and for talented students from disadvantaged families. *Id.*

148. BUNDESMINISTERIUM FÜR UNTERRICHT UND KUNST, GRUNDDATEN DES ÖSTERREICHISCHEN SCHULWESENS (Schuljahr 1993/94).

a *Matura*.¹⁴⁹ In 1990, sixty percent of the students who passed the *Matura* entered the university within the following five semesters.¹⁵⁰ Significantly, the percentage of students holding the *Matura* from a *Gymnasium* who enter a university is about seventy-five percent, while only forty-three percent of those who obtain it from professional high schools do so.¹⁵¹

While the Austrian educational system has no equivalent to United States undergraduate programs, the demanding curriculum of Austrian secondary schools results in their students entering universities as the equivalent of an American college junior.¹⁵² American educators and students could benefit from the European models in many ways, but especially by encouraging intellectualism and a higher attainment of knowledge through a richer secondary education.

Unlike the rigorous high schools in Western Europe, United States high schools in general¹⁵³ do not furnish the strong foundations needed for further academic achievement. Many United States students complete high school with inadequate basic skills.¹⁵⁴ As discussed above, educational experts lament the increased liberalization of curricular and graduation requirements that occurred in the 1970s, allowing students to bypass hardcore studies.¹⁵⁵

Comparison to the European model is problematic because United States high schools and colleges are so widely divergent. The best American high schools, open frequently only to selected populations, prepare their students for high scores on college entrance exams and subsequent success in the following four years of college and then the remaining years of professional school. At the other end of the spectrum, however, the average high schools and many of

149. BUNDESMINISTERIUM FÜR WISSENSCHAFT UND FORSCHUNG, STATISTISCHES TASCHENBUCH, Wien 1994, at 11. In 1994, almost 60% obtained their *Matura* from professional higher schools and only about 40% by a *Gymnasium*. BUNDESMINISTERIUM FÜR UNTERRICHT UND KUNST, GRUNDDATEN DES ÖSTERREICHISCHEN SCHULWESENS (Schuljahr 1993/94).

150. BUNDESMINISTERIUM FÜR WISSENSCHAFT UND FORSCHUNG, HOCHSCHULBERICHT 1993, v2, at 143.

151. *Id.*

152. Heller & Peck, *supra* note 104, at 512.

153. This article considers the strong college preparatory schools sprinkled through the U.S. as exceptional and not the norm.

154. E.g., Augustus F. Hawkins, *Becoming Preeminent in Education: America's Greatest Challenge*, 14 HARV. J.L. & PUB. POL'Y 367, 367 (1991). "International comparisons of student achievement confirm that the United States is falling behind in virtually all subject areas. American schools lag far behind their European and Asian counterparts in the standards they set for students and the results they achieve." *Id.* at 368. For example, many students graduate high school with an eighth grade reading level. Walter H. White, Jr., *Scandal of Our Schools: How Can We Help*, 16 BARRISTER, Fall 1989, at 2, 34.

155. See sources cited *supra* note 49.

the lesser high schools in the United States offer diluted, poorly taught curricula. Many of these students graduate with inadequate knowledge of the liberal arts and sciences. These poorer-equipped students have little realistic opportunity to advance to the better colleges.

The same unpredictable landscape characterizes the college and university offerings as well. The de-emphasis of rigorous curricula and the wide spectrum of "soft courses" available result in such inconsistent levels of preparation that credentials are meaningless without further inquiry. Students wishing to coast through college are able to manipulate their courses to the point of avoiding many serious subjects traditionally expected of college graduates.

The decline of formal reasoning and writing abilities in both high school and college graduates is the expected result of this popularization of secondary education. Current law school admissions processes in America distinguish poorly between students based on the quality of the undergraduate curricula. Presently, law admissions processes are inadequately equipped to account for this important difference in preparation of incoming students.

This deficiency presents an opportunity for measurable and workable improvement in the United States legal education system. The trouble can be remedied by encouraging a standardized core curriculum for admission to law school. The proposed pre-law school core curriculum would serve a dual purpose: (1) to provide a more uniform standard for admissions evaluations, and (2) to foster a strengthened undergraduate curriculum to broaden the base of knowledge and reasoning ability of entering law students.

V. A MORE MEANINGFUL ADMISSIONS REVIEW

Most law schools in the United States evaluate applicants based on two principal objective indicators: the Law School Admissions Test (LSAT) score and the undergraduate grade point average (GPA).¹⁵⁶ These two numbers are factored by the Law School Data Assembly Service into an "admission index," which is prepared for each law school.¹⁵⁷ The indices can vary among

156. The Law School Admission Services, an operating subsidiary of the Law School Admission Council, administers the Law School Admission Test (LSAT), the Law School Data Assembly Service (LSDAS), and the Candidate Referral Service (CRS). See LAW SCHOOL ADMISSIONS COUNCIL/LAW SCHOOL ADMISSION SERVICE, LAW SCHOOL ADMISSION REFERENCE MANUAL § 2.1 (1993) [hereinafter LAW SCHOOL ADMISSION REFERENCE MANUAL].

157. "Each school choosing to have an index computed decides whether to use the cumulative undergraduate GPA across all undergraduate schools attended or the GPA earned only at the undergraduate school granting the first four-year degree. The index is produced by 1) multiplying the LSAT score by some constant (A), 2) multiplying the undergraduate GPA by some other constant (B), and 3) adding the sum of these two quantities to a third constant (C)." *Id.* § 3.15.

schools, but are primarily a product of the two objective scores. Work experience, graduate studies records, letters of recommendation, and other achievements are included in the application files, but are uniformly considered less significant than, or merely incidental to, the objective index.¹⁵⁸

Both of the objective numbers that form the basis for the index are inadequate and flawed indicators for law school admission purposes.¹⁵⁹ Today's GPAs can be so divergent as to be meaningless measures, and the LSAT scores are not, nor were they intended to be, complete measures of academic potential.¹⁶⁰ More importantly, these indicators fail to measure, except in the remotest manner, how good a lawyer the applicant is likely to become. Broader and more meaningful review is needed and is feasible. This article suggests that additional factors be considered in the admissions evaluation, including examination of the applicant's past performance in a core of essential undergraduate studies, as well as a serious evaluation of graduate study, work achievements, and other accomplishments that reflect on the applicant's potential for success as a lawyer.

A student's overall undergraduate GPA offers only a vague and limited indication of potential for success in law school and as a lawyer. Widely different curricula at widely different colleges and universities blunt the significance of many seemingly impressive grades. The LSDAS acknowledges that "[g]rading systems used by undergraduate colleges vary widely in style, format, and clarity . . ." and it cautions that the transcript summary numbers are "not a substitute for the reasoned judgment of admissions committees and officers."¹⁶¹ In an effort to bring some uniformity to the process, LSDAS uses set conversion procedures, but these procedures do not achieve the goal of conforming widely divergent grading systems, schools, and curricula.

For example, the LSDAS includes nonacademic course grades with highly academic ones in its computation of the overall GPA. Thus, grades in courses such as Band and Physical Education are valued at the same level as more rigorous courses in the liberal arts and sciences, such as Literature and Physics.

158. Arzi, *supra* note 110, at 151.

159. "Correlations between LSAT score and student performance over the course of a J.D. program indicate that the test is a particularly inaccurate predictor of academic success for various subgroups including men, younger students, and members of racial minorities." James C. Hathaway, *The Mythical Meritocracy of Law School Admissions*, 34 J. LEGAL EDUC. 86, 86 (1984). "Unfortunately, the predictive worth of an equation including the optimal combination of LSAT and UGPA is not substantially greater than that of the LSAT alone." *Id.* at 94.

160. Law Services explains: "The LSAT provides a standard measure of acquired reading and verbal reasoning skills that law schools can use as one of several factors in assessing applicants." LAW SCHOOL ADMISSION REFERENCE MANUAL, *supra* note 156, § 3.1.

161. *Id.* § 3.11.

The 1994-95 LSAT/LSDAS Registration and Information Book explains: "Physical Education, Practical Art, Practical Music [Band], and ROTC courses that are assigned credit [by the college or university] will be included in the LSDAS summary even if the granting institution does not include these courses in its calculation of a GPA."¹⁶² It is no surprise that many GPAs are substantially raised by high grades in these nonacademic courses. The anomalous result is that this system hardly differentiates between a student with a 3.2 GPA from the University of Michigan majoring in Cellular and Molecular Biology and a student with a 3.2 in Physical Education from a college with negligible academic standards. This measuring system fails to predict effectively, and even worse, the process devalues other important factors, such as accumulated knowledge and past performance in serious academic courses. Thus, the LSDAS' best efforts in its present system are insufficient to clarify the enormous vagueness inherent in the comparisons of undergraduate GPAs in the United States.

The second index component, the LSAT, is also insufficient for its true task. Because of this insufficiency, it has been widely criticized.¹⁶³ While the test does have some predicting ability,¹⁶⁴ for admissions purposes it does too little and too much. Importantly, it ignores past academic performance or accumulated knowledge, factors that can evidence qualities helpful to lawyers. On the other hand, some law school admissions evaluators base their decisions primarily on the LSAT scores without seriously considering these and other factors, such as graduate studies, work experience, public service, quality of the undergraduate school, and program difficulty.¹⁶⁵ As a consequence, many law school applicants are excluded principally because they perform poorly on standardized tests.¹⁶⁶ Furthermore, some underqualified students are admitted

162. LSAT/LSDAS REGISTRATION AND INFORMATION BOOK 1994-95 at 25 (1994).

163. The test is designed to serve as a valid predictor of students' first year success in law school. However, the test has been criticized by many in the legal profession—primarily because of claims that minorities, women, and the economically disadvantaged perform poorly on the test. Russell L. Jones, *The Legal Profession: Can Minorities Succeed?*, 12 J. MARSHALL L. REV. 347 (1987).

164. Hathaway, *supra* note 159, at 95 (stating that data "suggests that persons likely to fail or withdraw from law school for academic reasons have significantly lower LSAT scores than do those students who successfully complete the program").

165. In an effort to avoid the misuse of the LSAT scores, the LSAC promulgates "Cautionary Policies" which contain warnings about improper test score use. The policies were issued in response to growing concerns about overreliance and other possible abuses of the test scores. LAW SCHOOL ADMISSION REFERENCE MANUAL, *supra* note 156, at app. A. These policies warn against, among other things, using the LSAT score as the sole criterion for admission, placing excessive significance on score differences, and establishing a "cut-off" test score. *Id.* at A1.

166. Stephen Yandle, Associate Dean of Yale Law School, notes that "[s]tatistics show that students from affluent backgrounds have an advantage in producing higher numerical credentials and are thus favored in a supposedly neutral numerical selection process." Stephen Yandle, *The New*

even though they lack many desirable qualities for the practice of law.¹⁶⁷ The objective indicators fail to consider many tangible measurements and intangible traits that can contribute to the most important overall prediction desired: success as a lawyer and public servant.

Still another criticism leveled against the LSAT, the widespread use of special preparatory courses to improve test scores, calls the LSAT's validity into further question. The LSAT is intended to measure intellectual capabilities and analytical skills. If some applicants can be taught better "test-taking" skills for the LSAT in brief, preparatory courses, then the validity of comparisons based on the test is compromised.¹⁶⁸ According to one experienced admissions observer, the LSAT fairly predicts how well the average group of test-takers will perform in law school.¹⁶⁹ However, he points out, it cannot be used without additional data to predict individual performance.

Erwin Griswold, former Dean of the Harvard Law School, concurred that it would be "thoroughly unsound, and a great mistake" to use LSAT scores alone to determine law school admission.¹⁷⁰ He notes that statistics reveal a large margin of error in LSAT scores as well as a lack of correlation between such scores and success in law school.¹⁷¹ Charles Daye, University of North Carolina School of Law Professor and President of the Law School Admission Council,¹⁷² observes that the LSAT has never been premised as anything more

LSAT: Fundamental Selection Issues Still Remain, LAW. HIRING & TRAINING REP., Aug. 1990, at 2 (finding a strong positive correlation between family income and performance on the LSAT due to factors such as access to better educational institutions and lower employment loads while in school by more affluent students). See also Edward J. Littlejohn & Leonard S. Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past?*, 12 J. MARSHALL L. REV. 415, 427 (1987) (noting that "[t]he evolution of the LSAT from a threshold to a relative measure led to law schools' disproportionate rejection of Black applicants").

167. "[T]he process of screening . . . does not take into account any of the fine character traits which lawyers so proudly associate with their profession. Traits such as honesty, diligence, and concern for public interest are not taken into consideration unless the applicant falls within the gray area. Nor does the admission process take into account important skills for lawyers—speaking skills, writing skills, and interpersonal skills." Talbot D'Alemberte, Keynote Address, in *THE MACCRATE REPORT [BUILDING THE EDUCATIONAL CONTINUUM CONFERENCE PROCEEDINGS]* 4, 10 (Joan S. Howland & William H. Lindberg eds., 1994).

168. Steve Demitro, *Putting the LSAT to the Test: Does It Really Predict Success?*, CHI. DAILY L. BULL., Dec. 27, 1991, at 2.

169. See *id.* (discussing the views of U.S. Bankruptcy Judge Robert E. Ginsberg, Chairman of DePaul Law School's Admission Committee).

170. Erwin N. Griswold, *Some Observations on the DeFunis Case*, 75 COLUM. L. REV. 512, 514 (1975).

171. *Id.*; Hathaway, *supra* note 159, at 86.

172. The LSAC is the association of law schools that strives "to coordinate, facilitate, and enhance the process by which law schools select their entering classes . . ." The Council's subsidiary, the Law School Admissions Services, administers the LSAT and the related data

than being one factor in making the determination as to an applicant's admission into law school.¹⁷³

Unfortunately, in spite of these caveats, overreliance on LSAT scores still occurs.¹⁷⁴ Harried, overworked admissions officers can hardly help but rely on the quicker reference to objective data, as opposed to the slower, painstaking individual evaluation of each applicant's file. These reasons recommend the need for a more meaningful objective indicator, as well as the addition of other more meaningful considerations to the process of determining admittance to law school. As emphasized above, the different curricula, grading systems, and academic quality of the many colleges and universities make it difficult for present law school admissions mechanisms to screen prospective law students effectively.

Comparisons to the European models are instructive. The Western European admissions process considers two valuable learning measures: accumulated knowledge and demonstrated work ethic (diligent work in preparatory school). In Austria, Germany, and France, the uniform state examinations provide comparative measurements of these attributes for all preparatory school graduates—an entirely different measure from the analytical reasoning and reading skills measured by the LSAT. The United States education system offers no such universal measurement of learning for law school admissions purposes, and when considered with the uneven quality of preparatory schools, the overall measuring process predicts poorly. As an indicator of future lawyering, past diligence and success in learning academic subjects surely suggest future good work. Thus, such factors ought to be included in the evaluation. Further, the European emphasis on liberal arts and sciences establishes a stronger and broader foundation for the prospective lawyer's interactions with law and society.

A more focused admissions process could provide more information relevant to law school success, and relevant to the more important goal: success as a lawyer. The recommended process could also provide an indirect stimulus by encouraging undergraduate students to select a stronger regimen of course work. Minor reshaping of the admissions mechanism could be accomplished in three ways: first, place more weight on past performance in a core of recommended academic subject areas, thus measuring past performance in serious academic work; second, de-emphasize the LSAT; and third, emphasize

assembly service. LAW SCHOOL ADMISSION REFERENCE MANUAL, *supra* note 156, § 2.1.

173. Susan Skiles, *Debate Over Value of LSAT Continues*, CHI. DAILY L. BULL., Feb. 7, 1992, at 3.

174. Jim Vaseleck, *Stop Working and Put Down Your Pencils: The Use and Misuse of Standardized Admissions Tests*, 20 J.C. & U.L. 405 (1994).

other admissions data that provide additional relevant, qualifying information regarding the applicants.

For example, the admissions process could include a core curriculum GPA, which would reveal more relevant information about the applicant's academic achievement and preparation in a more uniform set of academic courses. Including these core courses in the admissions equation would also strongly encourage undergraduates to elect a more serious liberal arts and science preparation. While the students would have considerable flexibility within the spectrum of acceptable academic options, the base requirement of performance in serious academic subjects would be a key indicator. The weight of the LSAT score and the general GPA would be reduced proportionately, so that the core curriculum GPA could be elevated to an equal factor in the admissions index equation.

A hypothetical model might require that a core GPA be factored from selected course criteria in addition to the composite GPA. All applicants would be asked for scores in selected courses, and any lack of grades in these courses would be noted or perhaps even negatively factored in evaluating the resultant core GPA. The proposed core curriculum could include six hours in each of the following academic areas: English,¹⁷⁵ history, mathematics, foreign languages, science, and philosophy. As stated, students would enjoy discretion in selecting from a broad array of specific courses within these disciplines. The resulting GPA derived from this core of thirty-six academic hours would yield a more meaningful and uniform basis on which to evaluate the applicant's ability—especially when considered in conjunction with the LSAT and the general GPA. The additional core curriculum GPA would import the two valuable attributes of the European model: the student's work ethic and accumulated knowledge.

The flexibility permitted in the core subjects described above would prevent this attempt to enrich education from becoming a rigid tool for excluding diverse or economically disadvantaged applicants, or for cloning a stereotypical, outdated image of well-educated students or lawyers.¹⁷⁶ To the contrary, the minimal requirement of 36 credit hours out of the usual 120 required for graduation would not even affect one's choice of a major.¹⁷⁷ It would, however, function as an objective, foundational measuring device for admissions

175. Courses would include at least one upper level composition course. Remedial or other non-college level courses would be excluded.

176. The Germans have a vivid, historical term describing strict state control of people's lives in the Third Reich, *Gleichshaltung*.

177. Many colleges already require core curricular subjects for graduation, though this is not reflected in the LSDAS indicators.

evaluators, and would motivate many students to expose themselves to a core of serious academic courses.

Finally, the fourth category of criteria should be considered more formally. Admissions officers should be encouraged to evaluate more carefully performance in graduate studies, public service, significant professional or work achievements, and similar indicia of promise. This improvement of the admissions process fits neatly into and compliments the legal education continuum concept emphasized by current commentators and practiced in the European models.¹⁷⁸ The admissions proposal encourages the law schools and the preparatory schools to recognize their common purposes and to work in closer cooperation in promoting those goals. Similarly, in the mentoring program advocated below, the bar associations and the judiciary are urged to help advance the graduate's education after completion of the Juris Doctorate requirements. The central theme is that all the participants in the educational process should contribute to coherent planning and delivery of the needed training for tomorrow's lawyers.

VI. EUROPEAN MENTORING MODELS SUGGEST IMPROVEMENTS FOR LAW STUDENT TRAINING AND THE TRANSITION TO LAWYERING

Is it reasonable to grant people unfamiliar with the practice of law a license to practice law? This rhetorical question emphasizes the well-known contradiction inherent in the United States legal training apparatus. The fifty States do, in fact, license thousands of inexperienced law graduates each year. This licensing occurs in spite of almost universal agreement among lawyers, legal educators, and even lay critics that the failure to provide some level of practical training is American legal education's most obvious shortcoming.¹⁷⁹

The pertinent question centers on the most effective and fair method for addressing this deficiency. The question becomes compelling in today's job market for new graduates as one considers the swelling numbers of neophyte lawyers who will not receive any mentoring in large firms. Scores of them will

178. The pragmatic evolution of U.S. legal education led to the professional school model, and ultimately to the law school's separation from the rest of the university. In Europe, legal studies have always been integrated with the overall educational plan (continuum) in a two-phase complementary scheme which subjects the student to more lengthy and comprehensive legal training. See McManis, *supra* note 1, at 599; see also Ostertag, *supra* note 19, at 323 (noting that European universities' separation from bar examinations allows greater academic richness).

179. Hoeflich, *supra* note 6, at 123 (citing growing dissatisfaction among law professors and practitioners about the products of today's legal education, observing that most law graduates are unprepared to practice, but rather are only "ready to begin to learn to practice law through the apprenticeship they will experience as associates").

hang out their shingles and begin to learn by doing. Additional unsettling questions arise: What will be the quality of that experimental, learn-by-doing practice? What practice habits will be acquired? What price will the profession pay for this lowering of quality of professional services to the public?¹⁸⁰ These issues deserve study.

Comparison to the European models offers constructive recommendations. To require law graduates to train with experienced lawyers is not a novel suggestion.¹⁸¹ For many years, understudy with a practitioner provided the principal means of admission to the bar in the United States.¹⁸² Subsequently, many scholars and lawyers have urged its return as a complement to the law school experience.¹⁸³ West European legal training mechanisms distinguish clearly between the academic or theoretical parts of legal education (about four years) and the subsequent practical training (two to five years). In the United States, this important functional distinction is hardly acknowledged in the formal educational regimen. Some practical training has been introduced to the curriculum at most law schools, but usually with some reluctance. In general, the practical training composes only a small part of the curriculum, and it is

180. "The American Rule . . . is: 'Client, beware! Your new lawyer is smart, facile, inexperienced, ambitious, and eager for the higher standard of living that has been postponed during the long period of academic preparation. Engage him or her at your own risk.'" Roger C. Cramton, *Preparation of Lawyers in England and the United States: A Comparative Glimpse*, 10 NOVA L.J. 445, 447 (1986).

181. See, e.g., Hardaway, *supra* note 11, at 688 n.5 (offering an extensive list of articles recommending internships).

182. Apprenticeship was the norm from the Colonial period until the university affiliated law schools began to attract more students in the mid 19th century. Hoeflich, *supra* note 6, at 123-26. See also Stein, *supra* note 5, at 946.

183. Ruggero J. Aldisert, *Rambling Through Continental Legal Systems*, 43 U. PITT. L. REV. 935, 942 (1982).

When I began practicing law in Pennsylvania, all law school graduates had to complete a six month preceptorship with a lawyer before admission to the bar. For some ill-advised reason this requirement was dropped . . . , and now, upon passing the bar examination, lawyers can be admitted to the Supreme Court of Pennsylvania, all Pennsylvania appellate and trial courts, the United States District Court and the United States Court of Appeals for the Third Circuit. With all due respect, the new graduate simply is not ready to practice in all these courts.

See also Ostertag, *supra* note 19, at 340; Monahan, *supra* note 19, at 54: Monahan fears that immediate admission to the bar sends the vivid and harmful misconception to the new graduate that law practice is so straightforward and easy that one may jump right in. Most lawyering, all but the basic form-following and filing, is layered in nuance and technical sophistication. Novice lawyers should be informed candidly that they should study further and enter the practice gradually to gain real competence, not to mention excellence—the ultimate goal.

generally de-emphasized.¹⁸⁴

In contrast, the reality of law is that theory and practice share essential importance and interrelation. Analysis is as necessary a practical skill for a lawyer in trial as it is for an academic in scholarship.¹⁸⁵ Years ago, Joseph Story observed how practical and theoretical training should complement one another. Practical training "is indispensable after the student shall have laid the foundation in elementary principles, under the guidance of a learned and discreet lecturer. He will then be prepared to reap the full benefits of the practice of an attorney's office."¹⁸⁶ This model served for decades, but today's legal market has rendered it largely obsolete. Leaving the practical training to the law office has proven ineffective for the thousands of law graduates who do not obtain associate positions in law firms in the 1990s.

In addition to lack of practical training, market pressures have reduced the mentoring that accompanies fewer associate positions, as new and veteran lawyers must bill out higher levels of time to justify their higher salaries. The transition for today's new lawyers from academia to the work place with less mentoring has been in many ways detrimental to the positive development of professional skills and attitudes. Entry into the practice is characterized by heavier case loads, less instruction, and premature pressure to appear to understand the subtleties of practice, when in fact the new lawyers know little about the realities of the legal world. On the contrary, review of the German, French, and Austrian models for practical training illustrates the benefits that can be produced from a comprehensive system integrating both theory and practice. In these three models, the theoretical university education is followed by a carefully designed and regulated apprenticeship that insures effective lawyering skills training.

In Germany, all law graduates are required to complete a uniform preparatory two-year training, known as the *Referendarzeit*, whether they plan to practice as private attorneys or serve as judges or civil servants.¹⁸⁷ The preparatory service is designed to rotate law graduates through multiple training

184. Ostertag, *supra* note 19, at 333. ("The gap [between theoretical and practical] is rooted in the successful start of the Harvard model when Langdell created the 'Ames' professor. Professors do not need practical experience to teach the science of law, only the experience of having traveled the road of legal education.").

185. *Id.* at 334.

186. Hoeflich, *supra* note 6, at 128; Joseph Story, *Course of Legal Study*, in N. AM. REV. (1817), reprinted in W.W. STORY, THE MISCELLANEOUS WRITINGS OF JOSEPH STORY 91-92 (William W. Story, 2d ed. 1972).

187. Aldisert, *supra* note 183, at 944. JOHN HENRY MERRYMAN, THE CIVIL LAW TRADITION 102 (2d ed. 1993). See also GERHARD ROBBERS, *Einführung in das deutsche recht*, in RECHTSORDNUNGEN DER EUROPÄISCHEN STAATEN 34 (Gerhard Robbers ed., 1994).

experiences to expose these neophytes, or *Referendare*, to different areas of legal service. The emphasis, however, is placed on public service and especially on the judicial role.¹⁸⁸ Consequently, all German attorneys share from their period of apprenticeship some degree of a judicial outlook and orientation toward the law.¹⁸⁹ But in theory, the German preparatory system seeks to prepare the *Volljurist*, or full jurist, qualified for all legal careers.¹⁹⁰

Before German law school graduates may participate in the "preparatory service,"¹⁹¹ they must successfully complete the First State Examination, a comprehensive written examination that covers in detail all compulsory law school subjects which is followed by an oral examination.¹⁹² After completion of this comprehensive examination process, the candidate may proceed to the second stage of his legal education to work as a *Referendar*.¹⁹³

This second stage of legal education is intended to familiarize the *Referendar* with the practical side of the legal profession. During this time of training, the *Referendar* has the status of temporary civil servant and receives a support allowance.¹⁹⁴ After completing a one-month introduction, the *Referendar* must participate in four phases of training. One important feature of the German preparatory service system is that every *Referendar* receives virtually the same training, regardless of whether the career to which he aspires is that of a judge, a prosecutor, a public official, or an attorney.¹⁹⁵ In the first

188. Brunne, *supra* note 19, at 403.

189. David S. Clark, *The Selection and Accountability of Judges in West Germany: Implementation of a Rechtsstaat*, 61 S. CAL. L. REV. 1795, 1804 (1988). Clark notes that this system can contribute to a "syndrome fostering civil service orientations and loyalty toward the state." *Id.*

190. FOSTER, *supra* note 93, at 70; see also Wilhelm K. Geck, *The Reform of Legal Education in the Federal Republic of Germany*, 25 AM. J. COMP. L. 86, 94 (1977).

191. Deutsches Richtergesetz §5b DRiG (Vorbereitungsdienst = preparatory service; this section of the law defines all the requirements of the preparatory service.).

192. These are actually eight five-hour essays (four on civil law, one on criminal law, two on public law, and one from an elective) and one four-hour oral exam on the same four areas. Four to five students test simultaneously before a panel of four—two practitioners and two professors. NIGEL FOSTER, GERMAN LAW AND LEGAL SYSTEM. DEUTSCHES RECHT UND DEUTSCHES RECHTSSYSTEM. 68 (1993).

193. The law also requires that the law student complete a three month internship during the university studies: one month in a civil court or civil law office, one month in a criminal court or law office, and one month in a public law office. § 5a III DRiG i.V.m. the matching state-statute ("JAPO"). For further details on the *Referendarzeit*, see FOSTER, *supra* note 93, at 68 et seq., and ROBBERS, *supra* note 187, at 34.

194. In 1995, the amount was \$19,400 per annum, with contributions for retirement and health insurance. Bundesbesoldungsgesetz Appendix (Anlage) VII.

195. This is unlike the French apprenticeship programs which vary depending on the branch of the legal profession the candidate pursues. SCHLESINGER, *supra* note 93, at 168. The German system also allows the student to wait longer than a French student before choosing a preferred type

phase of compulsory training,¹⁹⁶ the *Referendar* is assigned to a civil court, either of first instance or court of appeal. The second place of training is either a criminal court or the State Attorney's office. Here, the *Referendar* gains a practical perspective of the criminal law by sitting in on trials, preparing reports and decisions, participating in case preparation, and appearing as counsel for the prosecution. During the third compulsory phase of preparatory training, the *Referendar* becomes familiar with the theoretical and practical problems of administrative law. Responsibilities may include drafting opinions and appearing in court on behalf of the administrative authority.¹⁹⁷ The fourth period of compulsory training takes place with a private practitioner. During this period, the work of the *Referendar* is similar to that of an American associate.¹⁹⁸

After completing the four compulsory phases of training, the *Referendar* must choose to train at an elective office from a designated list, including a federal or state legislative body, administrative court, tax court, labor court or court dealing with social insurance matters, a notary,¹⁹⁹ a trade union, an international or foreign authority, or any other location which appears to provide a proper training. The period of time which the *Referendare* spend in each of the four compulsory stages may vary from four to six months, and they usually spend about six months in the elective experience.²⁰⁰

The state ministers of justice, who are mainly responsible for the implementation of this training period, take pains to make the system effective.²⁰¹ In some states, the practical training starts with a four-week intensive introductory course held by judges.²⁰² During the subsequent

of legal work. *Id.* at 171.

196. The federal law prescribes the stages of training (§5b DRiG), but state law details how these should be implemented. (§5b V. DRiG). Thus, minor variations occur from state to state.

197. Typical administrative offices include the local (village, city, state) administrative offices, which handle such matters as building licenses, zoning matters, and enforcement of health and other state regulations.

198. The *Referendar* may argue private law cases in court for the attorney under whom he is working or act as *pro bono* counsel in criminal cases. § 59 Bundesrechtsanwaltsordnung (BRAO) authorizes the *Referendar* to serve under the supervision of an attorney in civil cases. §139 Strafprozessordnung (StPO) provides authority for the *Referendar* to represent parties in criminal cases after fifteen months of service. §142 II StPO authorizes the court to appoint the *Referendar* as counsel in criminal cases.

199. The civil law notary's role is functionally different from the U.S. Notary's role. The civil law notary is a legal practitioner who drafts important legal instruments, authenticates documents, and maintains a public records office. MERRYMAN, *supra* note 187, at 105-06.

200. §5b DRiG i.V. m. state statute; *see also* Clark, *supra* note 189, at 1803.

201. Geck, *supra* note 190, at 94.

202. The federal law provides the overall framework, such as the various stages. DRiG § 5a, b (1971). However, the implementation and practices can be discretionary, varying from state to state, and even court to court. Reference to the state law is necessary to obtain detailed provisions. For example in Bavaria, reference should be to the Juristen Ausbildungs- und Prüfungsordnung

training with a court, public prosecutor, or administrative agency, the trainees spend at least a few hours weekly in workshops conducted by experienced lawyers. Work groups of ten to twenty *Referendare* meet twice a week for two hours to discuss questions of theory and practice. Trainers write reports on individuals to evaluate the quality of each *Referendar's* work. Upon completion of the two years of practical training, the *Referendare* receive a grade averaged from all the reports of the trainers, both those of the practical stations and the work groups.

After this extensive practical experience and training, the law graduate is permitted to sit for the Second State Examination.²⁰³ This exam is so difficult that many students return to the universities for special tutorials to prepare for it.²⁰⁴

This long and thorough course to bar admission in Germany has advantages. The post-law school training period gives students the opportunity to develop their practical skills under careful supervision. This stands in sharp contrast to many new lawyers in the United States. For many American lawyers, the first time they step into court to represent a client may be the first time they have ever been in a courtroom. The German lawyer enters the courtroom with expertise and practical training that not only allows him to be confident, but also competent.

Austrian law establishes a similar sequence of academic study and practical training. Students studying law in Austria gain admission to the university after the successful completion of the rigorous secondary schools and comprehensive final examination, as described above. The law curriculum is set by national law and separates course work into two parts.²⁰⁵ The law students begin their studies by focusing on introductory subjects for two semesters. They are then required to pass a "first diploma examination" before advancing to further courses. At this first level, courses include Introduction to Law and Legal Method, Roman Private Law, Austrian and European Legal History, and

(JAPO). See Geck, *supra* note 190, at 94; Adalbert E. Griess, *Legal Education in the Federal Republic of Germany*, 14 J. SOC'Y PUB. TCHRS. L. 166 (1978).

203. FOSTER, *supra* note 93, at 69.

204. *Id.* Critics of the German system argue that the training period is too long because the average age of candidates for second examination is twenty-nine years old, though it has been shortened to two years and additional recent reforms are encouraging students to complete their exams more quickly. Clark, *supra* note 189, at 1805. See also FOSTER, *supra* note 93, at 70.

205. Heller & Peck, *supra* note 104, at 524. See also Peter Mayr, *Die Österreichische Juristenausbildung*. Wien 1992, 45 ff. Rechberger-Fuchs: *Das neue Rechtsstudium*. Wien 1986, 64 ff.

Introduction to Economics and Economic Policy.²⁰⁶ The examinations in these courses are rigorous, and between fifty to seventy percent of the students fail the Roman Law and Introduction to Legal Science exams on their first attempt.²⁰⁷

In the second level of law studies, private and public law are studied, with eight required areas and two electives. The "core" courses include Constitutional Law, Administrative Law, Criminal Law and Procedure, and Private Law (Property, Contract, Inheritance, Family Law, Unjust Enrichment). These courses require difficult written and oral exams. The remaining courses require only oral exams: Civil Procedure, Commercial Law (including Corporations, Securities, Antitrust and Competition Law), Labor Law, and International Law. Two additional elective subjects must be selected from a list of legal and nonlegal subjects and completed with examinations as well.²⁰⁸ Six or more semesters are usually needed to complete the course work. The "second diploma examination" encompasses these written and oral examinations which must be passed to earn the basic law degree. Upon completion of course work and the examinations, the student earns the "*Magister*" or Master's degree.²⁰⁹

For those seeking to enter the practice of law, a five year apprenticeship and examination constitute the practical phase of training.²¹⁰ Austrian law mandates that the apprentice serve in various types of law offices. An internship at various courts for a period of nine months (comparable to the first and second period of the German "*Referendarzeit*"), and a minimum of three years of training with an Austrian lawyer are compulsory. The remaining time may be served in other law related offices, with a foreign lawyer, or as an assistant at a university. Upon completion of that training, the aspiring lawyer is permitted to practice only upon passing the bar examination (including both written and oral exams) administered by the Bar Association.²¹¹

As in Germany and Austria, legal education in France is a two-phase program, with extensive practical training building upon university study, and

206. Heller & Peck, *supra* note 104, at 525. The examinations are partially oral, and are held in small groups in classrooms open to the public. Professors Heller and Peck offer interesting details of the differences in the U.S. examination practices. See also Hausmaninger, *supra* note 83, at 2.

207. Hausmaninger, *supra* note 83, at 2.

208. *Id.* at 2-3.

209. The graduate may engage in up to two additional years of study by writing a dissertation and passing further exams to qualify for the doctorate degree. For details see Mayr, *supra* note 205.

210. Holders of the doctorate must serve four and a half years.

211. Heller & Peck, *supra* note 104, at 513. For details, see Mayr, *supra* note 105.

rigorous comprehensive examinations at each level.²¹² The legal profession²¹³ in France is organized differently from the United States and the training is specialized for each principal division. The two primary legal roles in France are the *avocat* and the *notaire*. The French *avocat* is most similar to a trial lawyer in the United States, who gives advice and represents clients in many courts. The *notaire*, as in most European countries including Germany and Austria, is an important and prestigious functionary, who drafts authentic and enforceable instruments and also gives legal advice.²¹⁴

To gain admission to either profession, the basic university law degree is the first step. The student must pursue the general study of law at the university, culminating in the award of the *maitrise en droit*. Then, the training becomes more specialized. For the *avocat-to-be*, a one year course of study at the *centres de formation professionnelle*, integrating legal theory and practice is required. "Practical courses in oral expression, interviewing clients, preparing opinions, drafting procedural documents and pleadings . . ." are complemented by an eighteen week period of training in a law or professional office of some type.²¹⁵ Then, the intending *avocat* must pass the difficult French bar exam²¹⁶ (*certificat d'aptitude à la profession d'avocat* or *CAPA*). Following the *CAPA*, the aspiring lawyers apply for the required apprenticeships in the area where they hope to practice. The Center for Professional Training of a regional court of appeal supervises the training at this stage. Academics, judges, and practicing lawyers work together on behalf of the Center to provide this supervision.²¹⁷ The Centers also offer numerous instructional courses to enrich the apprenticeship.²¹⁸ The Centers, "financed in part by the government, are operated jointly by the universities, the bar associations, and the judiciary."²¹⁹

212. DADOMO & FARRAN, *supra* note 105, at 115; and MARTIN WESTON, AN ENGLISH READER'S GUIDE TO THE FRENCH LEGAL SYSTEM 102 (1991) (discussing two full descriptions of the structures and roles in the French legal system). See also Monahan, *supra* note 19, at 57-58.

213. The French concept of legal profession is much broader than the American one. Many people in France have some university or other training in legal subjects, and they are permitted to give advice or provide other legal services as long as that work is not within the monopoly given to a certain category of lawyers by statute, such as appearing in court or drafting mortgages, and as long as they do not represent themselves as holding a title they do not hold, such as an *avocat* or *notaire*. DADOMO & FARRAN, *supra* note 105, at 110-11.

214. *Id.* at 123. The *notaire* profession is a lucrative monopoly, employing the second highest number of lawyers in France. *Id.*

215. *Id.* at 115.

216. Aldisert, *supra* note 183, at 943.

217. DADOMO & FARRAN, *supra* note 105, at 115-16.

218. Aldisert, *supra* note 183, at 943.

219. *Id.*

The practical training may take place at the law firm of an *avocat*, or the apprentice may select the office of an *avocat* practicing in one of several courts (the Cour de cassation or in the Conseil d'Etat, or others), or the office of a notaire, a prosecutor, or some other *avocat* office.²²⁰ During this training period, the apprentice can perform any of the functions of the regular lawyers, with the only stipulation that the work be supervised by an *avocat*. Upon completion of this period, the trainee is certified for full participation at the bar.²²¹

The *notaire*, following completion of the basic university law degree, must also pass an exam to gain entrance to the *notaire's* specialized training program. This one year specialized training also integrates theoretical and practical instruction and is offered at the university or the Centers for Professional Development described above for *avocats*.²²² After this year of training, another exam permits admission to the *notaire* apprenticeship. As with the *avocat* process, the *notaire* serves up to two years in this training, which also includes seminars presented by the Centers for Professional Development.²²³ Upon completion of this stage and receipt of a satisfactory assessment, the lawyer is certified to become a *notaire assistant*. Then, the *notaire* must wait for an opening in the limited notary posts through retirement or death, and then pay for the opportunity to function in this profitable and important monopoly.

These three European systems of legal training share common attributes that produce lawyers reasonably equipped for practice, informed career choices, and full participation in the bar. Their educational experiences squarely address the continuum of learning, including theoretical and practical training. The program's average duration of seven to eight years allows sufficient time for maturing in the profession. The early emphasis on university education, followed by multiphase internships and authentic testing along the way, highlight, this effective system for quality preparation in the legal profession.

VII. A BLEND FOR THE UNITED STATES

Drawing from the strengths of these three European systems of comprehensive legal training, this article proposes a mentoring concept which offers a workable blend of the three systems and adapts them to the special needs of the United States system. Recognizing that an effective system must

220. DADOMO & FARRAN, *supra* note 105, at 116.

221. *Id.*

222. *Id.* at 122.

223. *Id.*

emphasize both theoretical education and practical training,²²⁴ this hybrid mentoring program would be jointly administered by a council of bar, judicial, and law school representatives, perhaps best typified by the French training centers.

A practical system could be structured similar to the European model. Upon completing the customary three years of law school, the law graduate would be awarded the J.D. degree. For those who intend to pursue one of many nonlegal occupations, this would end their formal legal training. On the other hand, those graduates who seek admission to the bar would be required to participate in a mentoring and internship program for six to nine months, combining supervised work experience in a law firm or other legal office with academic instruction and workshops. As in France,²²⁵ the academic and practical regimen would be a concerted project of the council of law professors, lawyers representing the practicing bar, and judges.²²⁶ Such a regimen would help to bridge the cultural gap between these parts of the legal profession. The mentoring programs would be administered at professional training centers²²⁷ located at law schools. The programs would be specifically constructed to foster a multidimensional transition²²⁸ to bridge the notorious gap, or, as the MacCrate Report more accurately terms it, to promote the continuum of learning between law school and practice. This concept would combine real law practice with advanced law school seminars and workshops to accomplish this goal.

The interns would enroll in two postgraduate semesters in the professional training program. They would receive most of their mentoring in the law office, but this practice experience would be supervised and enriched by the

224. Recognizing that the two interrelate in important ways, many commentators have recommended dual programs to meet both types of training needs. *E.g.*, E. Gordon Gee & Donald W. Jackson, *Bridging The Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 850 (giving a comprehensive review of United States legal education history and future directions). *See also* Mudd, *supra* note 16, at 31-32 (citing numerous sources recommending that legal education be broadened to integrate practical instruction).

225. Aldisert, *supra* note 183, at 942.

226. These leaders in the legal community could participate for the most part on a *pro bono* basis, thus demonstrating the values of community and bar service. Those who devote extraordinary amounts of time for planning and direction would be compensated. The apprentices would pay minimal tuition for the "graduate" hours undertaken, based on the actual cost required. This would be considered as the academy's contribution to and demonstration of public and bar service.

227. United States educators have recommended the training center concept. *See* Hardaway, *supra* note 11, at 712; E.B. Stason, *Postgraduate Internship and Legal Education*, 39 A.B.A. J. 463, 520 (1953).

228. Reform in legal training ought to focus on the transition period from law school to practice. Rose, *supra* note 17, at 560.

further mentoring and instruction at the centers.²²⁹ Collaboration with successful programs, such as those produced by the National Institute for Trial Advocacy, would be encouraged. A principal goal would be to construct a supportive environment or incubator for healthy growth in skills, understanding, and attitudes, with special focus on ethical and professional issues.

Following the European model, a blend of academic and practical workshops and seminars would amplify the "learning-through-practice experience." As in the European model, the novices would be required to rotate through at least two categories of supervised work settings, ranging from judicial and legislative offices, prosecutorial agencies, criminal and civil law offices, governmental agencies, and public service organizations. Two to four month training periods in two or three different legal fields would enable the developing lawyer to evaluate more fully the broader issues at work in the different facets of the legal profession. This broadened practical experience would be illuminated by the academic offerings presented at the training center, and in the meetings with mentors during this experience. During the mentoring program, the novices would take six "graduate" credit hours of law school workshops and colloquia each semester. Depending on which semesters were selected, the combined practical training and advanced academic study could occupy as little as six months if the summer term were chosen, or up to nine months if the regular fall and spring terms were selected. In a synthesized curriculum, leaders from the bar, bench, and academy could generate a stimulating learning experience.

Practically speaking, the workshops and seminars could take as little time as two morning sessions each week. Substantial and genuine mentoring for all newcomers would be a key goal, with small group and individual contact with mentors essential.²³⁰ The on-the-job practical training for the internships could require as little as 600 hours of supervised work, reflecting the traditional academic semester routine with fifteen weeks of twenty hours per week during the two semesters. Further, this model would envision the beginner submitting written summaries of the practical case work performed each week. These submissions would include special references to legal and ethical issues raised in the course of that work. Formal articulation of pertinent issues and case progress reports would strengthen the interaction among the participants. As in Germany, written evaluations or grades would stimulate participation in the developmental work. These measurements could serve as valuable indicators to

229. Modern computer and audio-visual links from the centers would provide access to the programming for lawyers and apprentices in rural areas.

230. Costonis, *supra* note 5, at 159 (as in medical school).

prospective employers.²³¹

As opposed to abstract or simulated learning programs, the “real life” issues and instruction implicit in this training program would be vividly relevant to everyone involved. Facing the choices and dilemmas presented by real cases and clients adds “new and pressing dimensions” that could never be produced in the abstract.²³² In this context, more in-depth theoretical and practical instruction could be offered. The lectures, discussions, and readings would expose the newcomer to the principal fields of practical lawyering: judicial process, criminal prosecution and defense, civil plaintiff and defendant representation, administrative and government service, civil rights, and public service/pro bono service.

To avoid the heavy debts incurred by most law students to finance today’s tuition, the interns would be paid a stipend. The interns could be compensated at wages similar to medical interns in the United States. This is the practice in Germany where the legal interns earn an average wage of approximately \$19,000 per year during their two-year apprenticeship.²³³ The amount varies in the European models, and it could vary here depending on many factors. The reduced wages should be sufficient to provide a modest living and eliminate reliance on loans. Payments on student loans would be deferred through the mentoring period. Based on hourly work, the wage may be as little as fifteen dollars to twenty dollars per hour. The money to pay these wages could come from several sources. The law firm, agency, or office receiving the apprentice’s service could pay half of the wage. Ten dollars an hour could be justified easily as less than law clerk or paralegal wages. The bar associations and bar foundations could contribute from slightly increased dues²³⁴ and from other bar resources, such as IOLTA participation. Grants from state legislatures to support public service agencies and programs could also supplement the funds.

E.B. Stason, former dean of the University of Michigan Law School, urged such financial participation years ago. He explained that the state and the public could benefit widely from the public service work performed by the apprentices, including bill drafting and research service for state legislatures and local

231. Maureen K. Monahan recommends a practical exam, such as the Second State Exam in Germany, but the expense of operating such an exam, in addition to the present bar examinations, may be too high and otherwise cumbersome. Monahan, *supra* note 19, at 61. This model suggests that the job market and personal pride would motivate the participants.

232. Hardaway, *supra* note 11, at 710-11. “It can no longer be accepted that it is impossible for law schools to provide students with clinical experience comparable to that provided by medical schools.” *Id.*

233. BBesG (Bundesbesoldungsgesetz) Anlage (Appendix) VIII 2099,—DM per month, 13 months paid per year.

234. Ostertag, *supra* note 19, at 337.

governments. Benefits from this widespread work would also inure to public interest offices typically in need of legal assistance such as hospitals, public defender offices, prisons, and legal aid foundations.²³⁵ Dean Stason emphasized that the bar would benefit in many ways: first, the program would significantly promote the development of the profession; second, it would advance its community service goals; and third, the positive public relations gained by the bar in return for the investment would be enormous.²³⁶

The bar and the public would be well served by another benefit from the addition of mentoring to the lawyer's professional development. It would be difficult to overstate the significance of the cultural and attitudinal change the mentoring program could create for beginning lawyers. In place of the often pressure-packed, uncertain and fearful learn-by-doing first year of practice, imagine the beginner carrying a light case load, with close supervision and encouragement from an experienced lawyer. Adequate time to learn and prepare the cases, a luxury for most in today's market, would be standard in this period. Twice-a-week seminars with professors, judges, and practitioners highlighting the issues, opportunities, and traps posed in the cases, with required personal conferences with mentors would be added. The crowning touch of the training and mentoring program would be the additional focus on ethics and professionalism. Instead of bringing lawyers into the practice amid an anxious and sometimes cynical first-year culture of heavy, required billing, fierce competition for clients, or the uneasy pretense to more knowledge and skill than one has yet really acquired, this more open and supportive environment would stimulate a positive perspective in the newest members of the legal profession.

Theorists would urge that, if thought controls form, the mental context in which today's lawyers are birthed surely helps define them. Their early training contributes mightily to the formation of their values and perspectives about the legal community. In view of the clamor raised today about the fierce competition, the deterioration of professionalism, and a spreading cynicism in declining legal markets, as described at length above,²³⁷ this impetus for change should be compelling. Empirical standards become normative for better or worse. The benefits to the legal community of such a sensible introduction to the profession would have enormous positive impacts on the entire legal culture.

235. Stason, *supra* note 227, at 520; Klein, *supra* note 11, at 633. Others agree: "Those of poor to moderate means could provide a supply of legal matters that recent law school graduates could resolve." Monahan, *supra* note 19, at 61.

236. Stason, *supra* note 227, at 520.

237. See *supra* notes 2-4 and accompanying text.

VIII. INCENTIVES FOR CHANGE

Because the benefits to all the participants—the public, the practicing bar, the scholars, the judiciary, and the students—so outweigh the costs, leaders in the legal community should increase the incentives to stimulate improvements, such as the admissions and mentoring proposals of this article.

The benefits to the public of a legal community better trained in ethics and professional skills should be clear to even the skeptical. Increased sensitivity to community service would naturally benefit the public, as well as the practitioners themselves. The apprenticeship program's substantial enlargement of access to legal services for the community would be the most palpable benefit to the public. The broadened liberal education that the admissions proposal would encourage for future lawyers would deepen the lawyers' and judges' educational and cultural base, enabling them to serve better in leadership positions at the bar and in government.²³⁸

The bar associations would benefit directly and indirectly by adopting some form of the proposed improvements. Professional development, advancement toward public service goals, and improved public relations would flow directly from the improvements. And indirectly, bar groups would gain influence and effectiveness through their leadership in the mentoring program. Bar leaders would help design the program, joining with professors and judges teaching classes, leading seminars, and developing personal mentoring relationships with the new lawyers. This increased interaction with the new lawyers and the leadership quality of the mentors' roles would foster better understanding of bar goals and the needs of the professional community. Likewise, the bar would come to understand better the needs of the new lawyers, thus promoting a more responsive bar association. Improved participation in bar activities would also result. Collectively, all of this would help make the bar a more unified and a more active organization, ultimately better able to communicate and achieve its service goals. Of course, the bar benefits when its members are better educated and trained, better informed, and more sensitive to community needs.

The judiciary may well benefit in the most direct and obvious ways: better trained lawyers will perform more efficiently in the court system. For years, vocal judges have been heard to complain about the need for better trial skills, knowledge of procedural rules, and professional decorum. Increased education may also encourage resort to alternative dispute resolution, resulting in fewer

238. Strong core education should fortify law graduates with "substantial preparation to steer, sustain, and adapt the legal system . . . in the interest of a democracy." R.E. McGarvie, *The Function of a Degree: Core Subjects*, 9 J. PROF. LEGAL EDUC. 11, 24-25 (1991). It would also foster appreciation of changing cultural issues. Vance & Prichard, *supra* note 45, at 238.

trials. Everyone would be served by reduced litigation. Indirectly, the enhanced education and training would enrich the preparation of the newer lawyers to serve later as judges.

The academy would welcome better prepared students, and in the face of declining enrollments, legal educators should welcome the recommended increased role of the law school in teaching and supervising the mentoring program. The law school would, with support from the entire legal community, house the Professional Training Center and serve as the focal point for the interaction. The professors would lead in the design of the theoretical aspects of the mentoring, and would draft much of the teaching materials, illuminating and blending the theoretical basis into the practical discussion. This blending of the practical and theoretical aspects of law should provide an ideal learning environment for a well-rounded introduction and transition to the practice of law. Experienced practitioners especially can appreciate the beauty of an introductory mentoring period with light case loads, careful supervision by competent and committed lawyers, enriched by seminars to explore all aspects of the cases—theoretical, practical, and ethical—complemented with personal meetings with teachers, judges, and bar leaders.

This nurturing approach would provide information, training, and encouragement to the newcomers to the legal profession. The result would be a dramatic improvement in the quality of the students' experiences and attitudes about the practice of law—a major shift from today's cynical legal culture. Further, these proposed improvements would flow to all students regardless of race or gender because the improved undergraduate academic preparation would necessarily strengthen all students for the law school experience.²³⁹ The decreased emphasis on the LSAT which this article recommends would reduce the discriminatory impact that test has had on minority admissions for years.

Learning from comparative models can be an effective and efficient way to improve quality and remedy deficiencies in any system. As one German law professor recently wrote: "[A]n improvement of teaching methods in both the United States and Germany could be achieved relatively cheaply simply by including elements of each other's method."²⁴⁰ Applying that concept threefold to Germany, Austria, and France magnifies the effect. These proposals offer relatively inexpensive ways to reverse today's declining

239. See Carrington, *supra* note 9, at 781-84 (Carrington raises issues of legitimacy, questions past admissions standards in American legal education, and he expresses concern that raising standards not be used to exclude minority groups.).

240. Klein, *supra* note 19, at 956. Compare with Symposium, *Winds of Change—A Global Look at Legal Education*, 72 OR. L. REV. 941 (1993) (examining legal education systems in other countries).

professionalism and deterioration of the legal culture. Yet, improvements will come only when the controlling groups act affirmatively to create change.

This article recommends specifically that incentives—financial and status rewards—be implemented to stimulate the change. The admissions enhancement would cost little, and the need for the mentoring system is so compelling that the entire legal community should be willing to pool resources to contribute the funds for this advancement. The funds would be available for realistic training for new lawyers and a more constructive transition into an improved legal culture.²⁴¹ The shortened duration of the mentoring period would make it far less costly than its European counterparts. Building upon existing institutions and *pro bono* participation from all groups, both proposals offer efficient and effective opportunities for constructive adaptation.

Recent cooperative efforts of bar associations, judges, and scholars show that the need is recognized. "Conclaves" in several states have produced working plans to encourage mentoring and closer relationships among all groups in the legal profession.²⁴² This article calls on these same groups, emphasizing the same themes and suggesting concrete alternatives for implementing the improvements. It also suggests that the academy should exert active leadership in this development. Law schools can implement the first change proposed here, the enhanced admissions review, without significant cost by working through the LSDAS. Then, building upon this initiative, the law schools are well situated to issue the invitations to the rest of the community to join together in designing and implementing the desperately needed mentoring programs. The law schools can provide both the occasion and the situs for the initial dialogue and planning that should begin the structural adaptations. Competence in lawyering is "not static, and . . . law schools are important partly because they help change notions of competence."²⁴³ Legal educators should meet this challenge and resolve to encourage improvements.

241. The frequency of complaints that lawyers need more practical training demonstrates how compelling this common sense notion is. See *supra* notes 38-39. See also Monahan, *supra* note 19, at 56-63.

242. The legal communities in Louisiana, Virginia, Ohio, Illinois and other states, under the leadership of Bar Associations and Bar Foundations have already devoted countless *pro bono* hours of study into ways to better train lawyers, enhance professionalism, and bring the profession together. Various types of mentoring and practical training are widely recommended. See, e.g., REPORT OF THE LOUISIANA BAR FOUNDATION CONCLAVE ON LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 119-20, March 18-20, 1994, Alexandria, La. (Copy on file, Louisiana Bar Foundation, New Orleans, La.).

243. Garth & Martin, *supra* note 11, at 470.

Leading theorists of legal education, from Story to Langdell to prominent law school deans today,²⁴⁴ have consistently accepted that both theory and practice must be blended in a lawyer's education.²⁴⁵ Only in this decade, however, has the system's failure to deliver practical and ethical training become so acutely obvious. Law professors and bar leaders must recognize the need to fortify both types of training, and seize the momentum generated by the MacCrate Report and the continuing, frank discussions about the future of legal education and the legal community. "There is even beginning to be the gleanings of a realization by both law professors and practicing lawyers that learning the law is a process that joins law schools and the bar and that law teaching must straddle the two worlds of academia and practice."²⁴⁶

The rational appeal of these recommended improvements can be readily appreciated when they are described systematically:

"The Austrian approach to legal education, similar to the German and that of many other European systems, emphasizes the notion that every future lawyer should receive a broad and uniform legal education in law school; that law should be studied in the context of history and social sciences; that method should be taught on a firm foundation of substance; that law school is too early a time for genuine specialization through electives; that theory should precede practice, and that practice should be taught by those who know best: the practitioners."²⁴⁷

This comprehensive and cohesive educational approach reflects the theme of the MacCrate Report that all learning is a continual process, with the progressive building of foundations and developing instruction and expanding experiences. This article proposes that the better equipped participants in the legal community should teach better prepared students in a sensible process that realistically fosters learning and an appreciation of professional values.

In conclusion, the legal academy is called upon to lead the legal community into a common venture of reasonable adaptation to modern needs. From the reforms of Justinian and Napoleon, to the modern impact of Holmes and Griswold, the legal scholar has traditionally provided valuable leadership.²⁴⁸

244. See *supra* references to Deans Costonis, Hoeflich, and Stein scholarship regarding the development of legal education.

245. Hoeflich, *supra* note 6, at 140.

246. *Id.* at 141.

247. Hausmaninger, *supra* note 83.

248. A recent tribute to Dean Griswold "testif[ies] to the remarkable breadth of Erwin Griswold's influence on the law and the legal profession." See *In Memoriam: Erwin Nathaniel Griswold*, 108 HARV. L. REV. 979, 979 (1995). There has been a recent surge in commentary regarding Holmes, "the most illustrious figure in the history of American Law." RICHARD A.

With historical and current precedent from other jurisdictions, the recommended adjustments are as much practical as conceptual. Bringing the bar, the bench, and the academy into a closer working relationship to better educate aspiring lawyers is a compelling notion, with benefits flowing as much to the legal profession as to society at large.

ESSENTIAL HOLMES ix (1992). *See also* Liva Baker, THE JUSTICE FROM BEACON HILL (1991); and see MERRYMAN, *supra* note 187, at 57-59 (noting that the law professor has long been the protagonist in the civil law tradition).