

University of Missouri School of Law Scholarship Repository

Faculty Publications

Winter 1997

Preparing the New Law Graduate to Practice Law: A View from the Trenches

Rodney J. Uphoff

University of Missouri School of Law, UphoffR@missouri.edu

James J. Clark

University of Cincinnati, james.clark@uc.edu

Edward C. Monahan

Kentucky Department of Public Advocacy

Follow this and additional works at: <http://scholarship.law.missouri.edu/facpubs>

 Part of the [Legal Education Commons](#)

Recommended Citation

Rodney J. Uphoff, et. al., Preparing the New Law Graduate to Practice Law: A View from the Trenches, 65 U. Cin. L. Rev. 381 (1997)

This Article is brought to you for free and open access by University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Faculty Publications by an authorized administrator of University of Missouri School of Law Scholarship Repository.

PREPARING THE NEW LAW GRADUATE TO PRACTICE LAW: A VIEW FROM THE TRENCHES

Rodney J. Uphoff,* James J. Clark,** & Edward C. Monahan***

Most legal educators reject the premise that the primary mission of the law school is to train law students to practice law. Rather, most law professors claim that their primary function is to teach students to think like lawyers.¹ In the view of many in the legal academy, law students should and will learn to practice law when they actually enter practice through self-study, advice from other practitioners, a mentor, a law firm training program, or their own failures.² To many commentators, however, the academic community's antipractice attitude has spawned an unhealthy dichotomy between theory and practice, a division within the academic community, and a chasm between law schools and the practicing bar.³ Moreover, this dissonance or gap between law school and practice significantly contributes to the fact that most law graduates are substantially unprepared to function as lawyers when they enter the profession.⁴ In addition, critics

* Professor of Law and Associate Director of Clinical Legal Education, University of Oklahoma College of Law. We would like to thank Lori Ketner for her assistance in the preparation of this Article.

** Assistant Professor, University of Kentucky College of Social Work. PhD, University of Chicago.

*** Deputy Public Advocate and Director of Education and Development, Kentucky Department of Public Advocacy.

1. See ABA TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 4-5 (1992) [hereinafter MACCRATE REPORT].

2. For an assessment of the manner in which new law graduates gain skills needed to be competent and of the extent to which legal education contributes to the development of competent professionals, see Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469, 479 (1993).

3. Among the many articles describing the legal academy's antipractice attitude and legal education's failure to teach law students how to practice law, see, for example, Alex M. Johnson, Jr., *Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231 (1991); Carrie Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?*, 41 J. LEGAL EDUC. 3 (1991); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57 (1992). Law schools have not always exhibited an antipractice attitude. Indeed, earlier in this century, law schools viewed their predominant mission to be the training of future lawyers. For an interesting account of the changing focus of legal education, see ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S* (1983).

4. See MACCRATE REPORT, *supra* note 1, at 266; Schultz, *supra* note 3, at 62-64; John-

within and outside the legal profession blame the rise of malpractice actions, disciplinary cases, and professionalism problems, at least in part, on law schools and their failure to prepare their graduates adequately for law practice.⁵

The 1992 MacCrate Report reflects a serious effort by some concerned members of the legal community to grapple with the problems of the legal profession and to narrow the gap between law schools and the profession. The MacCrate Report insists that the significant problems confronting the legal profession will only be successfully addressed if legal educators and practicing lawyers "stop viewing themselves as separated by a 'gap' and recognize that they are engaged in a common enterprise—the education and professional development of the members of a great profession."⁶ The authors of the MacCrate Report contend that law schools cannot be expected to turn out fully competent practicing lawyers.⁷ Nevertheless, the MacCrate Report stresses the importance of legal education in beginning the process of professional development, insists that law schools affirm that education in lawyering skill and professional values is central to their mission, and offers a series of recommendations aimed at substantially enhancing the teaching of those skills and values.⁸ Specifically, law schools are challenged not simply to provide an educational program "designed to qualify its graduates for admission to the bar," but also "to prepare them to participate effectively in the legal profession."⁹

son, *supra* note 3, at 1245-59. For an earlier report recognizing the lack of preparedness of law school graduates and challenging law schools to assume more responsibility for preparing students to practice law, see ABA TASK FORCE ON LAWYER COMPETENCY, *THE ROLE OF THE LAW SCHOOLS* (1979) [hereinafter *CRAMTON REPORT*].

5. See generally ABA REP. OF THE PROFESSIONALISM COMM., *TEACHING AND LEARNING PROFESSIONALISM* (1996) [hereinafter *ABA PROFESSIONALISM COMM.*]; ABA COMM'N ON PROFESSIONALISM, ". . . IN THE SPIRIT OF PUBLIC SERVICE." *A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM* (1986) [hereinafter *ABA PROFESSIONALISM REPORT*]; ABA SPECIAL COMM. FOR A STUDY OF LEGAL EDUC., *LAW SCHOOLS AND PROFESSIONAL EDUCATION* (1980); Harry T. Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285 (1988).

6. *MACCRATE REPORT*, *supra* note 1, at 3.

7. See *id.* at 4. But see *infra* notes 69-78, 107-13 and accompanying text; William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and A Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 203 (1996) (contending that "law schools should prepare students to practice law competently upon graduation and that cost-effective means are available to achieve this objective").

8. See *MACCRATE REPORT*, *supra* note 1, at 260-68, 330-34.

9. *Id.* at 261-62. In view of their concern that unsupervised, licensed lawyers would be fully responsible for clients, the Task Force recommended that ABA Accreditation Standard 301(a) be amended to add the words "and to prepare them to participate ef-

The response to the MacCrate Report has been mixed. Many bar associations have reacted positively and have held forums designed to encourage lawyers, judges, and legal academics to talk about the problems that bedevil the profession.¹⁰ Some law professors have responded favorably to the MacCrate Report and urged that it be given serious consideration.¹¹ For the most part, however, the MacCrate Report's message has been less enthusiastically embraced by the legal academy. Some in the academy have defended the failure of our law schools to produce graduates competent to handle basic legal matters by claiming that a lack of resources or a misunderstanding of the true mission of legal education explains or justifies the inability of our law schools to turn out students ready to begin functioning as competent professionals.¹² Others contend that the esoteric interests of law professors, their lack of practical experience, and the incentive and tenure mechanisms firmly in place in legal academia explain the academy's resistance to the MacCrate Report's call for change.¹³

In a thoughtful essay on the decline of professionalism, David Barnhizer correctly observed that too many law teachers and deans "feel threatened by the Report's implications or are oblivious to its implicit plea for help. For that reason, the dialogue

fectively in the legal profession," and that Standard 302(a)(iii) expressly recognize that students entering practice in a "relatively unsupervised practice setting have a special need for opportunities to obtain skills instruction." *Id.* at 330.

10. For example, John Skilton, Wisconsin Bar President, appointed a commission to report on the content and process of legal education in Wisconsin. Drawing heavily from the MacCrate Report, the Legal Education Commission Report concluded that today's lawyers, especially new lawyers, may not possess the skills and values needed to ensure that the public receives competent services. The Commission recommended that Wisconsin law schools not only explicitly identify fundamental skills and values to their students, but also give students basic proficiency in, and knowledge of, those skills and values. See John S. Skilton, *The Two Commissions Report: Heart and Soul*, 60 WIS. LAW. 5 (1996); see also 1994 ABA SUMMARY OF ACTION 19-21 (spelling out an ABA House of Delegates' resolution that supports most of the MacCrate Report recommendations).

11. See, e.g., *Symposium on the MacCrate Report: Papers from the Midwest Clinical Teachers Conference*, 1 CLINICAL L. REV. 349 (1994); THE MACCRATE REPORT: BUILDING THE EDUCATIONAL CONTINUUM, CONFERENCE PROCEEDINGS (Joan S. Howland & Williams H. Lindberg eds., 1994).

12. See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of the American Legal Education*, 43 J. LEGAL EDUC. 157-97 (1993); Letter from Owen M. Fiss to Paul D. Carrington, in Peter W. Martin, "Of Law and the River," and of Nihilism and Academic Freedom, 35 J. LEGAL EDUC. 1, 26 (1985); Linz Audain, *Critical Legal Studies, Feminism, Law and Economics, and the Veil of Intellectual Tolerance: A Tentative Case for Cross-Jurisprudential Dialogue*, 20 HOFSTRA L. REV. 1017, 1069-76 (1992).

13. See, e.g., Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457, 460-87 (1994); Garth & Martin, *supra* note 2, at 505-09.

never quite becomes fully joined, and the legal profession and the law schools are missing the opportunity to deal with the critical problems identified by the MacCrate Report."¹⁴ In Barnhizer's view, law schools and the profession are afraid to undertake meaningful reform that is needed to tackle the serious problems confronting the legal profession. He challenges those in legal education and the legal profession to engage in a "honest dialogue" about issues of competence, discipline, and professionalism.¹⁵ To address these problems, Barnhizer proposes a series of dramatic changes in legal education and in post law school training, changes designed to halt the decline in professionalism and improve the delivery of competent, affordable legal services.

This Article furthers the dialogue Barnhizer called for by examining his recommendations in light of our professional experiences and an exploratory study we conducted involving new lawyers participating in professional training programs offered by the Commonwealth of Kentucky Department of Public Advocacy (DPA).¹⁶ Through surveys, interviews, and group discussions, we asked newly hired public defenders, most of whom were recent graduates, to comment on their preparedness to practice law. By exploring the extent to which their law school experiences did—or in most cases did not—prepare them to practice in a particular practice setting, as a public defender, our goal was to better understand the difficulties these new professionals face in learning their craft. In turn, we compared our observations with those of other commentators who have studied the competence of new lawyers, thereby enabling us to react to various proposals aimed at enhancing the professional development of new law graduates.

14. See David Barnhizer, *Of Rat Time and Terminators*, 45 J. LEGAL EDUC. 49, 50 (1995).

15. See *id.* at 59.

16. This research program was initially designed by James J. Clark, PhD, and Edward C. Monahan. Dr. Clark is an assistant professor at the University of Kentucky College of Social Work and serves as a consultant with the Kentucky Department of Public Advocacy. Mr. Monahan has been an Assistant Public Advocate with the Kentucky Department of Public Advocacy since 1976. For the past 15 years, he has directed the Department of Public Advocacy's statewide training program. Rodney Uphoff, a professor and associate director of clinical legal education at the University of Oklahoma College of Law, was added to the project to assist in the analysis of the data. Professor Uphoff was the chief staff attorney for the Milwaukee Office of the State Public Defender and was involved in training and hiring for that program. In addition, he has been involved for 11 years in directing criminal defense clinical programs at the University of Wisconsin Law School and at the University of Oklahoma.

The Article begins by briefly exploring the reality of this perceived gap between law school and practice. To what extent are new law graduates actually prepared to represent clients? Is it true that law graduates are poorly prepared, or are they really better prepared than in the past? Are these new lawyers, in fact, beginning law practice without a sufficient understanding, or with a warped understanding, of what it means to be a professional? If, indeed, law graduates are ill-equipped to represent clients, then to what extent are legal educators accountable for the inadequacies of their graduates?

Next, the Article describes our study of the DPA's New Attorney Training Program and discusses what we have learned from listening to and observing these new graduates struggle to gain competency. The Article also compares the preparedness of new graduates in the Kentucky public defender program with that of new graduates who participated in a live-client clinic at the University of Wisconsin Law School or the University of Oklahoma College of Law. In addition, the Article focuses on the extent to which the practical skills and fundamental values identified in the MacCrate Report can be readily acquired in a training program such as that offered by the DPA or in a law school clinical program. Based upon the DPA study and our professional experiences, the Article concludes that law students and new graduates, if provided a quality, intensive, educational experience, can achieve minimal competence in a reasonable time frame.

Finally, the Article examines Barnhizer's proposed changes to legal education and his suggested new institutional approaches. Are his proposals really viable solutions given the difficulties new lawyers face upon entering the profession? Do his recommendations make sense in view of what we have learned in observing new graduates make the difficult transition from law school to practicing lawyer? The DPA study and professional experiences convince us that Barnhizer's recommendations are sound and do, in fact, merit serious consideration.

I. THE GAP BETWEEN LAW SCHOOL AND PRACTICE

A. *Are These New Law Graduates Really Unprepared?*

Unquestionably, law school and law practice are very different. Although critics have railed for years against the artificial separa-

tion of theory from practice,¹⁷ only recently have law schools made a significant effort to bring law practice into legal education through clinical courses, externships, and professional skills training.¹⁸ In addition, some schools have added Legal Practice or Lawyering courses in the first year of law school, and more professors are making a concerted effort to integrate practice into their substantive law courses. Nonetheless, widespread agreement exists that law schools do not adequately prepare their graduates to practice law. Simply stated, few law graduates are competent to begin representing clients when they pass the bar.¹⁹ Yet, as soon as they receive their law license, a significant number of new graduates immediately assume full responsibility for clients.

Commentators disagree, however, as to whether law schools are improving the preparedness of their graduates. Some contend that "current law graduates are at least as well trained, if not better trained, than law graduates in the 1970s."²⁰ Pointing to the fact that law schools now offer more skills courses and clinical programs, some observers argue that our law schools actually are doing a better job of preparing graduates than in the past.²¹ Indeed, David Barnhizer concluded that "legal education is considerably better today in teaching a range of technical legal skills (in such areas as negotiation, interviewing, trial advocacy) and exposing law students to considerations of professional responsibility, along with traditional doctrinal analysis, than it was fifteen or twenty years ago."²²

Other critics, such as Professor Alex Johnson and Judge Harry Edwards, argue that law schools must do far more than just add some skills and clinical courses to the curriculum. They claim that law schools have failed to respond to the changing needs of the legal profession. Johnson blames law professors and the cul-

17. See, e.g., Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933); Jerome Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20 (1951).

18. For a look at the extent to which law schools in the past two decades have expanded the number and variety of professional skills courses, see MACCRATE REPORT, *supra* note 1, at 233-60.

19. See *id.* at 266-67, 330; see also Steven C. Bahls, *Preparing General Practice Attorneys: Context-Based Lawyer Competencies*, 16 J. LEGAL PROF. 63, 64 (1991).

20. Peter A. Joy, *Clinical Scholarship: Improving the Practice of Law*, 2 CLINICAL L. REV. 385, 389 (1996).

21. See, e.g., Graham C. Lilly, *Law Schools Without Lawyers? Winds of Change in Legal Education*, 81 VA. L. REV. 1421, 1424 (1995); Louis H. Pollak, *The Disjunction Between Judge Edwards and Professor Priest*, 91 MICH. L. REV. 2113, 2119 (1993).

22. See Barnhizer, *supra* note 14, at 51.

ture of the academic legal community for law schools' repudiation of their training function and their corresponding failure to prepare graduates for the actual practice of law.²³ Similarly, Judge Edwards criticizes the academic community for its overemphasis on impractical scholarship and its unwillingness to teach students about the reality of law practice.²⁴ Both suggest that law graduates are less prepared today than graduates in the past.²⁵

Bryant Garth and Joanne Martin gathered survey data from Chicago law-firm partners and junior practitioners to assess the competence of recent law graduates and the gap between law school and practice.²⁶ They also compared the data they gathered with an earlier study conducted by Frances K. Zemans and Victor G. Rosenblum,²⁷ as well as two surveys of Missouri lawyers conducted by Professor Donald Landon. Garth and Martin concluded that there is "widespread agreement among recent graduates that they could have been trained better in law schools, particularly in many of the practical skills that they deem so important in the practice of law."²⁸ Garth and Martin also acknowledged that there has been "selective progress" as a result of the clinical education movement in the preparedness of law graduates for the practice of law.²⁹

It is difficult, however, to utilize their findings to support a overall generalization that law graduates of today are better prepared to represent clients.³⁰ Indeed, a careful reading of their study emphasizes the extent to which law graduates generally are

23. See Johnson, *supra* note 3, at 1251-54. For similar criticisms, see, for example, DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983); Richard A. Posner, *The Present Situation in Legal Scholarship*, 90 *YALE L. J.* 1113 (1981).

24. See Edwards, *supra* note 3, at 34-78.

25. See Edwards, *supra* note 5, at 288; Johnson, *supra* note 3, at 1245-49, 1256.

26. See Garth & Martin, *supra* note 2.

27. See FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* (1981).

28. Garth & Martin, *supra* note 2, at 476.

29. *Id.* at 501.

30. In fact, it is highly questionable whether law schools are even preparing students to write or to conduct basic legal research adequately. Joan Howland and Nancy Lewis concluded that "[t]here is a growing awareness among law librarians and practicing attorneys that the research skills of law students and recent law graduates are painfully inadequate and are perhaps becoming increasingly so." Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 *J. LEGAL EDUC.* 381, 389 (1990). Among the many articles attacking the adequacy of the legal writing and research instruction afforded most law students, see, for example, Edwards, *supra* note 3, at 63-65; Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 *J. LEGAL EDUC.* 96, 104-05 (1994).

dissatisfied with their legal education and their preparedness for law practice. Certainly, the participants we surveyed in the DPA's New Attorney Training Program were, for the most part, quite dissatisfied with the manner in which law school prepared them for practice as public defenders. This was especially true for students who were not in a clinical course or did not participate in an externship while in law school. Before exploring the different attitudes and competency levels of the participants that we studied, it is important to describe this DPA study in more detail.

B. Training The New Kentucky Public Defenders: An Exploratory Study

Perhaps more immediately than in any other area of the American legal system, novice public defenders are thrust into the formalized warfare of the American courtroom. Public defenders are lawyers hired by the local, state, or federal government for the express purpose of providing criminal defense representation to defendants who are unable to pay for private counsel. While many colleagues from law school are clerking for judges, researching legal questions, or otherwise learning to fight the discovery battles that are very much a part of the civil legal system, new public defenders—almost as soon as they set foot in the office—are negotiating and litigating misdemeanor and felony cases. Unlike the associate in a private law firm who must spend months in a form of apprenticeship working under the supervision of an experienced lawyer before tasting courtroom action,³¹ many public defenders go to work in an office struggling to cope with high caseloads.³² Unlike larger private firms, few public defender agencies have the staff or financial resources to ease new graduates into practice. Rather, these new lawyers are thrown directly into the fray, either taking over existing cases, picking up new cases, or both.

Although some public defender programs provide training to

31. See ZEMANS & ROSENBLUM, *supra* note 27, at 173-76 (discussing "apprentice-like" training that is traditionally provided by law firms whereby new associates assist and work with more experienced firm members until the new associates are ready for more responsibility). *But see infra* notes 100-03 and accompanying text.

32. For a look at the various pressures, including high caseloads, with which most public defenders must contend, see Rodney J. Uphoff, *The Criminal Defense Lawyer as Effective Negotiator: A Systemic Approach*, 2 CLINICAL L. REV. 73, 78-80 (1995); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239 (1993).

new lawyers before they start handling cases, most do not.³³ Again, financial limitations and caseload pressures dictate that these program managers and supervisors assume that their newly hired public defenders are competent. As one observer has noted, "the presumption of competency appears to apply to public defenders from the moment they are appointed to the office—even if they have never before set foot in a courtroom."³⁴ Thus, many of these new defenders must rely largely on whatever skills and knowledge they acquired in law school as they struggle to find their professional identity, while at the same time, affording their clients zealous representation. A look at this group of practitioners highlights, therefore, the problems facing the new law graduate because there may be no other group of new attorneys who more desperately need to leave law school ready to provide competent representation.

In Kentucky, most indigent defendants are represented by the DPA, a statewide, independent agency that provides lawyers to approximately eighty thousand citizens a year charged with crimes ranging from drunk driving to capital murder.³⁵ Unquestionably, the vast majority of new law graduates hired by the DPA come to the agency ill-equipped to provide competent representation to a criminal defendant. Accordingly, since 1980, the

33. Nationally, the delivery of legal services for indigent, criminal defendants accused or convicted of a crime is predominantly provided by private lawyers appointed on an individual case or part-time contract basis. Representation by full-time, salaried public defenders remains the minority delivery system in this country. See generally BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIMINAL DEFENSE FOR THE POOR (1988); STEVEN K. SMITH & CAROL J. DE FRANCES, U.S. DEP'T OF JUSTICE, INDIGENT DEFENSE (1996). Those attorneys who represent indigents pursuant to an individual appointment or on a contract basis generally receive little or no training. Some full-time public defender programs provide formal, new-attorney training that lasts from one week to five weeks and includes lectures, practice exercises, and demonstrations of practical knowledge and the skills needed to represent clients. Although there are a number of full-time defender programs that provide staff lawyers substantial training, most full-time defender systems provide very little training. Instead of a developed training program, new attorneys generally watch court proceedings for a brief period, then they are handed some cases by a manager, who has close to a full caseload, and are told to feel free to ask for help as needed. This "training by fire" method is a manifestation of the underfunding of the vast majority of indigent criminal defense systems. Nonetheless, the National Legal Aid and Defender Association Trainer's Section, which consists of defenders with substantial training responsibilities, is working to improve the delivery and effectiveness of intensive, new-attorney training.

34. LISA J. MACINTYRE, *THE PUBLIC DEFENDER: THE PRACTICE OF LAW IN THE SHADOW OF REPUTE* 102 (1987).

35. The DPA, which is headed by the Public Advocate, presently has over 150 full-time public defenders who serve 47 counties from 17 offices across the state. Another 250 attorneys work as part-time public defenders in 73 of Kentucky's 120 counties.

agency has provided basic training to all newly hired public defenders. DPA's New Attorney Training Program is the product of a planning team of DPA practitioners facilitated by DPA's Director of Education and Development. Presently, DPA provides its newly hired public defender attorneys twenty days of training in nine sessions that are spread out over a nine month period. Most of these sessions are taught by experienced DPA defender practitioners. This training is designed to orient and train newly hired attorneys in substantive criminal law, criminal procedure, and various aspects of the Kentucky criminal justice system. In addition, students are taught basic litigation skills, including plea bargaining, drafting, oral advocacy, interviewing, counseling, and trial techniques. Students perform in small groups and receive extensive feedback. Sessions also are held on such matters as developing a theory of a case, managing a caseload, working with experts, and presenting effective sentencing arguments. Finally, new lawyers are forced to discuss and analyze ethical aspects of their work throughout this training.

A study was designed to evaluate the effectiveness of DPA's New Attorney Training Program. Focus group, interview, and survey methodologies were employed to identify, to analyze, and to understand the problems and experiences of novice public defenders, their supervisors, and their clients.³⁶ The study also engaged the participants in the DPA's New Attorney Training Program in a continuing dialogue on questions related to their preparedness to work as a public defender, their thoughts regarding an appropriate law school curriculum, the identity of the person who had impacted their development as a lawyer most since leaving law school, and the nature of the most powerful experience in which they had participated since working as a public defender. Although the total number of lawyers participating in our focus groups was small,³⁷ the attitudes and concerns of

36. Copies of our survey instruments and of transcripts of our April 26, 1995 and April 23, 1996 DPA focus group sessions are on file with the *University of Cincinnati Law Review*.

37. Focus group methodology is popular among social science researchers because it allows them to collect data quickly and to incur less expense than required by individual interview or survey methods. However, it is important to note that focus group methodology was chosen for this study for additional reasons: (1) the group setting stimulated reflection and response through the interaction with, and reinforcement by, other participants; (2) the focus group emphasized the importance of the participants' subjective experiences and other biographical data germane to the research questions; (3) the group dynamic discouraged extremist or exaggerated responses and favored common elements of the participants' law school and professional experiences. For an

these participants mirror those of other new graduates who we have trained. Moreover, the views of these novice public defenders are consistent with those reported by Garth and Martin,³⁸ as well as Judge Edwards,³⁹ and reflect the concerns expressed in the MacCrate Report.

Almost all of the new law graduates in the DPA study indicated that they felt largely unprepared to begin representing criminal clients. They sharply criticized their law schools for giving them too much theory and too little actual training in the practice of law. As one participant noted:

I think the issue is less whether the Socratic method works, I think the issue is more whether they need to teach people something about how to walk into a courtroom, where to stand, what to say, and how to make objections, things like that. In law school there was only one course that they had there at the time that taught you like how to prepare an opening statement, how to prepare a closing argument. I didn't get into that course, so when I got out of law school, I knew how to write a brief but I had no idea where to stand. I didn't know how to properly make an objection or anything like that. And the only way I learned it was standing around watching other lawyers do it and the thing is, if they were doing it wrong, then I learned it wrong.⁴⁰

Echoing a refrain common to most law students and new graduates, this lawyer decried the fact that law school offered him very little practical instruction. Yet, his criticisms are not wholly on the mark. Law school need not train law students "how to walk into a courtroom" or "where to stand." These mechanics, along with local practice matters, such as how many copies of a motion need to be filed, can be quickly acquired once in practice. He undoubtedly is correct, however, that learning to make proper objections or to craft an effective opening statement are not skills easily learned by watching others or by simply teaching one's self. Yet, to function as a competent professional, at least as a competent litigator, a lawyer must be able to perform these tasks. Despite the improvements in legal education described in

excellent discussion of strengths and weaknesses of this methodology, see BRUCE L. BERG, *QUALITATIVE RESEARCH METHODS FOR THE SOCIAL SCIENCES* (1995).

38. See Garth & Martin, *supra* note 2, at 472-88.

39. See Edwards, *supra* note 3, at 41-42 (reporting the results of a survey that Judge Edwards circulated to his former law clerks).

40. Participant #3, April 26, 1995 DPA focus group at 4 (transcript on file with the *University of Cincinnati Law Review*).

the MacCrate Report,⁴¹ too few graduates come to the DPA minimally competent to give a satisfactory opening statement, make adequate evidentiary objections, or conduct an effective client interview.

Although our experience and observations confirm that students who have experienced the benefits of a well-designed, intensive clinical course can step right in and effectively perform as a public defender,⁴² few such students found their way to the DPA. Rather, most new graduates came to the DPA without any clinical training or with only limited exposure to professional skills instruction. For these graduates, law school was primarily a series of courses focusing on legal theory divorced from practice and from reality. As one participant described:

Evidence, when it's a theory and abstract, is so cold and it's hard to ever pick up the situations where you would apply those rules. If you had some hands on experience with that it would make so much more sense and it would be so much easier to learn, and understand the law., But no, the professors say "It's theory, you know, it's law school, we're not teaching you to be a lawyer here. . . ." ⁴³

Almost all of the participants in the DPA study echoed this participant's lament that he was not taught how to apply the rules of evidence to concrete situations. Sadly, not only new graduates, but also many trial lawyers and judges are woefully inept in applying evidentiary principles. New lawyers—as well as many experienced lawyers—routinely fumble through trials with little understanding of why certain evidence was or was not admissible or why particularly worded questions were or were not objectionable. Lawyers who attempt to learn evidence on the job often mimic the evidentiary objections of other lawyers without understanding the principles involved or blindly follow the evidentiary lessons of a trial judge who has a misguided notion of the evidence code. The frequent criticisms of the trial bar in this country, in large part, reflect the fact that many trial lawyers simply do not grasp what the rules of evidence permit or exclude.⁴⁴

41. MACCRATE REPORT, *supra* note 1, at 233-60 (describing the expansion of, and improvements in, skills instruction over the past 15 years).

42. See *infra* notes 69-73 and accompanying text.

43. Participant #9, April 26, 1995 DPA focus group at 3 (transcript on file with the *University of Cincinnati Law Review*).

44. For an article harshly critical of law schools that blames poor legal education for the inadequacies of the American trial bar, see Warren E. Burger, *Some Further Reflections On The Problem of Adequacy of Trial Counsel*, 49 *FORDHAM L. REV.* 1 (1980).

Much of the blame must rest on law schools and the unsound, unrealistic attitude of many academics that, somehow, most graduates will be able to learn to apply evidentiary principles once in practice.⁴⁵ The demands and pressures of law practice, however, make it extremely difficult for those who enter the profession without a working knowledge of evidence ever to obtain a good grasp of evidence.

Similarly, most new graduates are clearly frustrated with the antipractice attitude so common in most law schools today.⁴⁶ As one participant observed:

I don't want to, I'm dogging the law school process, I know I sound like it, but it's so abstract, it's theory. I heard for three years, "It's not a trade school, we don't teach you to be lawyers, we teach you theory, how to think logically, you want to be an attorney you do that when you clerk, you do that when you get out."⁴⁷

Too many law professors evince a hostile attitude toward practitioners and appear disdainful of the actual practice of law.⁴⁸ Most of the participants in the DPA study felt that the majority of their law professors were not interested in teaching, much less in teaching them about the practice of law. In fact, a common refrain was that most law professors acted as if law practice was beneath them.

The participants in the DPA study not only criticized law professors generally for their antipractice attitude, they also felt that many of their law professors had little understanding of the practice of law.

I had fellows teaching me at the law school that I know hadn't walked in a courtroom in five or ten years and so they were

45. This is not to say that all law students receive poor instruction in evidence. There are excellent evidence courses that are designed not only to teach the theory of evidence, but also to enable students to apply the rules of evidence in specific situations. Some law professors effectively use trial transcripts or Computer Aided Legal Instruction (CALI) simulations to enhance the students' ability to apply evidentiary principles. For a look at an innovative and effective way to teach evidence, see Samuel R. Gross, *Clinical Realism: Simulated Hearings Based on Actual Events in Student's Lives*, 40 J. LEGAL EDUC. 321 (1990).

46. See Johnson, *supra* note 3, at 1235-39, 1254; Garth & Martin, *supra* note 2, at 503-09.

47. Participant #9, April 26, 1995 DPA focus group at 3 (transcript on file with the *University of Cincinnati Law Review*).

48. For a similar observation, see Edwards, *supra* note 5, at 293; Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561, 565-66 (1994); Trail & Underwood, *supra* note 7, at 210-11, 221-22; Menkel-Meadow, *supra* note 3, at 6-8.

brilliant with regard to particular narrow categories that they were dealing with but as far as preparing us to come out and go into the courtroom, they could use a little bit of time . . . [in court]. I think they would have been better for us because they'd have an idea what it is like to go in the courtroom, address a jury, address the court. Because I think most of them didn't, they didn't want to admit it, so they just avoid the subject.⁴⁹

This widespread belief that most law professors do not understand practice is reinforced by the clerking experiences many students have in their second and third years of law school. Many practitioners, dissatisfied with their own legal education, have a resentful, negative attitude about "ivory-towered law professors," who frequently are denounced as out of touch with reality.⁵⁰ Law clerks are told that they need not pay attention to their professors because they are intellectuals who do not understand what it really means to practice law. Practitioner's "trashing" of law professors contributes to the negative view that many second and third year law students have about law school.⁵¹ Many students, in turn, disengage from law school, claiming they need not bother to prepare for class because they are not really learning anything about the practice of law.⁵²

Both the practicing bar and legal educators share blame for this unhealthy situation.⁵³ Some practitioners are unaware of the

49. Participant #10, April 26, 1995 DPA focus group at 5 (transcript on file with the *University of Cincinnati Law Review*). As Judge Harry Edwards observed, "too many members of the law school community are either indifferent to or hopelessly naive about the problems of legal practice." Edwards, *supra* note 5, at 285.

50. Although the criticism is not always warranted, Judge Edward's claim that "too many law professors are ivory tower dilettantes" reflects the view of the vast majority of judges and practitioners we have encountered. Edwards, *supra* note 3, at 36.

51. Many commentators have documented that students' interest in, and satisfaction with, their legal education declines as they move from their first year to their third year in law school. See, e.g., Ronald M. Pipken, *Legal Education: The Consumers' Perspective*, 1976 AM. B. FOUND. RES. J. 1161. Unlike Pipken, however, our work with law students and new graduates indicates that practitioners' negative attitudes about law professors do adversely influence the attitudes of their law clerks toward law school.

52. Unquestionably, "[b]oth temporal and attitudinal disengagement from law school [are] found to be commonplace among upper-class students in all school settings." Ronald M. Pipkin, *Moonlighting in Law School: A Multischool Study of Part-Time Employment of Full-Time Students*, 1982 AM. B. FOUND. RES. J. 1109. This is not to say that part-time employment outside of law school is the primary cause for students' disengagement from law school; only that it contributes to the disengagement process. It is worth noting, however, that most professional schools experience the problem of appearing irrelevant to their students. Cf. Martin Rein & Sheldon H. White, *Knowledge for Practice*, 55 SOC. SERV. REV. 1 (1981).

53. See MACCRATE REPORT, *supra* note 1, at 4-6.

positive developments in legal education that are occurring at many law schools. Others lack an appreciation for the importance of legal theory or for good scholarship. On the other hand, although there are numerous law professors grounded in, interested about, and respectful of law practice, many others are ignorant of or uninterested in lawyers or the practice of law. It is not surprising, then, that so many law students do disengage during their last two years of law school.

The disengagement problem also is fueled by the perception of many law students and law graduates that their law professors either do not care about them as students or primarily are concerned with students at the top of the class. As one participant in the DPA study commented:

I think they need to try to move their curriculum more to help the students who are in the bulk or the middle of the class and who are going to be out there working with the public. They need to emphasize less their motivating or pushing the very top of the class so that they can get students placed in these big law firms. A lot of professors get a lot of personal satisfaction from bragging how they got a student to go to work for some "big ten firm," and this young person got this huge salary. This is not serving the public as well as trying to do the best job possible for all these students that are going out dealing with the client that needs a public defender, or the person that's getting a divorce and is middle-class and needs help, or the poor person that needs to file something. I mean, that's what eighty percent of us are working with. But sometimes the law schools tend to emphasize too much that 5-10 percent of the "A students" that are getting those big jobs because that's what sort of gives the professors the "at-a-boy."⁵⁴

There are, of course, law professors at every school who care deeply about their students and who labor tirelessly on behalf of all their students, regardless of class rank. Nonetheless, the perception of the graduates in the DPA study—that law professors are concerned primarily with their own scholarship interests and with students at the top of the class, not with preparing the bulk of their students to practice law—tracks the criticisms leveled by numerous other commentators.⁵⁵ It is not surprising, therefore, that disengaged, unmotivated, confused law students become

54. Participant #3, April 26, 1995 DPA focus group at 10 (transcript on file with the *University of Cincinnati Law Review*).

55. See, e.g., Trail & Underwood, *supra* note 7, at 212-15; Johnson, *supra* note 3, at 1251-52.

cynical about their professors and their education and, in turn, become cynical new graduates who enter the profession without adequate skills and without an adequate understanding of what it means to be a professional.

Part of the process of developing as a competent, caring professional means learning to cope with different clients and a variety of problems. Even the best prepared new graduates certainly will stumble as they confront new situations and attempt to use their skills to develop and to implement a strategy to address their clients' problems. Yet, law schools' failure to make students aware of the types of problems they will encounter and to provide them some training in the skills and concepts to employ in order to help clients solve their problems is particularly frustrating to new graduates.⁵⁶ Although the authors of the MacCrate Report identified problem solving as a critical skill to be taught in law school,⁵⁷ few new graduates come to the DPA with the ability to generate alternate solutions and strategies for resolving a client's problem and, then, to develop and to implement a coherent plan of attack. Three years of spotting issues on law school exams does not provide graduates a sufficient background to move beyond the stage of identifying and of diagnosing a problem to the level of competency to work with clients in order to solve their problems. In addition, the failure to prepare students for professional problem solving also increases the disillusionment that many new graduates experience as they struggle to find their professional identity.⁵⁸

Similarly, the participants in the DPA study complained that they were provided little in law school that prepared them to deal with clients. Again, despite the progress noted in the MacCrate Report,⁵⁹ many law students still graduate from law school without a basic course in interviewing and counseling. At the University of Oklahoma in 1995, for example, only eleven stu-

56. See Johnson, *supra* note 3, at 1249-53, 1260.

57. See MACCRATE REPORT, *supra* note 1, at 141-51.

58. See Johnson, *supra* note 3, at 1249-53, 1260; Schultz, *supra* note 3, at 61-62. *But see* Symposium, *Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 1, 1-389 (Summer/Autumn 1995) (series of articles describing recent innovations in the teaching of legal ethics that are aimed at improving students' preparedness to practice as ethically responsible professionals).

59. See MACCRATE REPORT, *supra* note 1, at 239-60. Noting that few students were exposed to the full range of professional-skills offerings, the MacCrate Report found that once first years' Introduction to Lawyering, first year and advanced legal writing and research, trial advocacy, and moot court courses were counted, a majority of students had only one or no additional professional-skills classes. *See id.* at 240.

dents out of a graduating class of 205 were able to take the one, offered course in interviewing and counseling.⁶⁰ As a result, many new graduates feel unprepared to cope with the personal and emotional problems that a professional commonly must deal with when working with clients in trouble. As another of the DPA participants observed:

My law school was geared to private practice business law. Only one criminal course was required and you didn't have time to take other ones if you had to meet the requirements of the school. I just don't think they're geared toward any type of public interest law at all. They don't address the interest of the student body at all and they don't teach you how to deal with clients. You know, I knew people in law school who wanted to be public defenders who had never ever, I mean they couldn't believe that their clients used the word "ain't." They'd get upset and correct the client's grammar! And I talked to these people now who are doing this type of work who can't communicate with their client and who say they don't even like being in the same room with their clients, they are afraid to be alone with their client. Law school just doesn't prepare them for what they're going to be dealing with. Even people who went into private practice get divorce clients who come in with problems and they respond by thinking that "I didn't think my clients were going to come in to cry and you know, why do they do this?" These attorneys just don't know how to deal with clients.⁶¹

Given the backgrounds of most law professors, it also is no surprise that so little attention is paid either to public interest law or to the interpersonal aspects of attorney-client relationships. Because a significant number of law professors never practiced law, or did so briefly in a large firm with minimal client contact, few law professors are familiar with or interested in the interpersonal aspects of lawyering.⁶² Unable to draw upon their own ex-

60. An additional 60 students received some instruction on interviewing and counseling as part of their clinical work.

61. Participant #10, April 26, 1995 DPA focus group at 5 (transcript on file with the *University of Cincinnati Law Review*); see also Schultz, *supra* note 3, at 61 (stressing the importance of teaching students about interactive skills and about the human aspects of lawyering).

62. See Trail & Underwood, *supra* note 7, at 210-11 (noting that a significant percentage of law professors lack significant practice experience). For a more detailed examination of the relatively limited practice backgrounds of most law professors, see Robert J. Borthwick & Jordan Schau, Note, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM 191 (1991). Interestingly enough, the participant in the focus group who did feel that law school did a "pretty good job" of

periences to engage their students in dialogue about aspects of lawyering—for example, the difficulties and tension involved in assisting a client to make an informed decision regarding a proposed settlement offer in a personal injury case—many law professors choose to avoid talking about lawyering issues. The absence of such dialogues in too many of our law school courses means many law students are deprived of the opportunity to learn more about lawyering and professionalism at a time in which they ought to be engrossed in issues of justice and of their professional responsibilities.⁶³

Few of the new graduates in the DPA study reported that they had spent any significant time in law school discussing client relationships, counseling, or attorney-client decisionmaking. Although we agree with the authors of the MacCrate Report that the “skill of counseling is generally perceived to be one of the fundamental skills required for competent legal practice,”⁶⁴ that perception is not shared by most new graduates. Rather, it has been our experience—borne out by the DPA study—that most new graduates do not appreciate the value of this critical skill, nor are novice lawyers terribly receptive to training involving interpersonal skills and techniques for improving or developing client relationships. A review of the evaluations of the DPA’s numerous training programs reveals that courses focusing on the attorney-client relationship and interviewing skills are the least popular of the training programs.⁶⁵

preparing her for law practice touted the fact that she had “a lot of professors that [sic] also practiced law” and that one of the goals of her school was to be “more practice-oriented.” Participant #8, April 26, 1995 DPA focus group at 6-7 (transcript on file with the *University of Cincinnati Law Review*).

63. See, e.g., ABA PROFESSIONALISM COMM., *supra* note 5, at 13-25 (proposing a series of recommendations to improve the teaching and learning of professionalism); Warren E. Burger, *The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility*, 29 CLEV. ST. L. REV. 377 (1981) (calling for an increased emphasis on professionalism and ethical lawyering in law schools); Edwards, *supra* note 3, at 38-39, 66-74 (decriing lack of ethical, professional training in law schools); Anthony D’Amato, *Rethinking Legal Education*, 74 MARQ. L. REV. 1 (1990-91) (arguing that too little attention is paid in law schools to the study of justice and that normative concepts of morality and justice should be the focus of legal education).

64. MACCRATE REPORT, *supra* note 1, at 184.

65. In our experience, most new lawyers see interviewing as a routine undertaking requiring little preparation, understanding, or reflection and see counseling primarily as the task of convincing the client to follow the lawyer’s advice. Few new graduates seem to value the ability to cultivate and nurture a meaningful relationship with a client. Yet, almost all of the participants in the DPA study indicated that their most powerful experience as a lawyer involved helping a client in great need.

Above all, new graduates want sessions focused on particular trial skills, like cross-examination, or aimed at improving their ability to use the rules of evidence. Most novice attorneys, as well as many experienced public defenders, see interviewing and counseling as “soft” training and as far less valuable than “hard” sessions emphasizing evidence or litigation skills. Maybe this is to be expected because most new graduates feel so incompetent to carry out basic lawyering tasks. Nonetheless, the intensely felt urgency to acquire and to master basic lawyering skills drives new graduates to minimize or to ignore other aspects of their professional development.

Indeed, our experience in working with focus groups of clients and of prison inmates indicates that clients frequently are dissatisfied with the way new public defenders relate to them. Worried more about mastering technique and developing minimum competency, these novice public defenders spend little time creating—or reflecting about the importance of establishing—a meaningful attorney-client relationship. Thus, although the novice public defenders and even the experienced supervisors in the DPA study saw technique as the key to competence, the client and inmate participants, on the other hand, focused on the attorney’s relationship with the client, empathetic listening, and respect for client involvement in decisionmaking as essential attributes of a caring, competent professional.⁶⁶ Moreover, these clients identified the lack of courage, of personal integrity, or of the willingness to vigorously defend one’s client, not lack of technique, as the major failings of these new public defenders.⁶⁷ Unfortunately, few new graduates appear to appreciate the importance of those attributes or bring to their first job an appropriate understanding of the values of the profession.

66. For an interesting study documenting that, despite obtaining similar sentences, public defenders were viewed as less effective than private defense attorneys by their clients primarily because public defenders spent significantly less time interviewing and consulting with their clients, see JONATHAN D. CASPER, *CRIMINAL COURTS: THE DEFENDANT’S PERSPECTIVE* (1978).

67. Our findings not only are consistent with Casper’s, *see id.* at 30-38, but also with more recent survey results. *See, e.g.*, Gary A. Hengstler, *Vox Populi: The Public Perception of Lawyers: ABA Poll*, 79 ABA J., Sept. 1993, at 60, 62 (finding that the general public’s perception is that lawyers are not caring and compassionate professionals who place their client’s interests first, but are, “at worst, contemptuous, and at best, indifferent,” to the clients they seek to serve). As Nancy Schultz suggested, law school should devote more time to matters of “heart” and “courage” and not just to the “brains” needed to be a good lawyer. *See* Schultz, *supra* note 3, at 59-62.

C. *Implications of the DPA Study*

This study of new Kentucky public defenders confirms the findings of other observers: most new law graduates feel poorly prepared to begin to function as competent professionals.⁶⁸ They feel unprepared because, for the most part, they truly are unprepared to practice law. Most new graduates not only lack the skills and values identified in the MacCrate Report as fundamental to competent lawyering, but many have not made any significant progress in law school in acquiring these skills or in developing an appropriate professional awareness.

The authors of the MacCrate Report claim it is unrealistic to expect that law schools will convert “even very able students into full-fledged lawyers licensed to handle legal matters.”⁶⁹ It is not unrealistic, however, to assume that a law graduate should be competent to perform basic tasks such as drafting a simple will or contract, preparing a divorce petition, or handling a routine misdemeanor trial. Sadly, our experiences and observations from working with and training new graduates are wholly consistent with the feelings of inadequacy expressed by most new graduates. That is, many law graduates are virtually “clueless” when it comes to handling a basic legal task such as drafting an adequate suppression motion.

Nevertheless, our experience indicates that law students can be taught professional skills and values in the law school setting so that they come to a public defender position with an adequate foundation and the requisite ability to provide competent representation. For example, since the early 1980s, the Wisconsin State Public Defender program has hired a number of students every year from the University of Wisconsin Law School’s Legal Defense Project (LDP). The LDP is a two semester, live client clinic giving students eight credits each semester to represent misdemeanor clients. The students handle a significant misdemeanor caseload and are exposed to a wide variety of professional problems under the direct supervision of experienced criminal defense lawyer-supervisors. Finally, all the students fully prepare a number of cases for trial, and each year, a number of students

68. See, e.g., Bahls, *supra* note 19, at 72-78; Joanne Martin & Bryant G. Garth, *Clinical Education As A Bridge Between Law School and Practice: Mitigating the Misery*, 1 CLINICAL L. REV. 443, 449, 452 (1994-1995).

69. MACCRATE REPORT, *supra* note 1, at 4. Based on the DPA study and our professional experiences, we disagree with this conclusion. See *infra* notes 107-13 and accompanying text.

conduct a jury trial.⁷⁰ Thus, students who have completed this program generally possess a working understanding of the skills and values necessary to be successful professionals and are consistently able to step into public defender or assistant district attorney positions upon graduation and competently handle misdemeanor caseloads.⁷¹

Graduates who have benefited from a quality, intensive clinical experience do have, therefore, the capacity to move directly into a public defender position and to provide competent representation. This assumes, however, that the graduate was exposed to a clinical course that offered considerably more than just professional skills instruction. A good clinical program enables students to develop the basic skills needed to practice effectively, or at least provides them a solid foundation upon which to build. Yet, to be able to step into a public defender position and to assume the responsibility of providing competent representation, the new graduate also must have grappled with issues of time management, resource allocation, and the proper handling of attorney-client relationships.⁷² Furthermore, this graduate must have been involved in a clinic or an externship that sensitized its students to the resolution of ethical issues and forced them to explore and to confront the conflicting demands placed on a lawyer who assumes the awesome responsibility of representing a

70. In addition, each LDP student receives extensive trial advocacy training. From 1984 to 1988, each student was required to conduct two simulated jury trials, most of which were tried before circuit court judges.

71. Pursuant to the diploma privilege, graduates of the University of Wisconsin Law School and the Marquette University Law School are immediately eligible to obtain a license to practice law in Wisconsin without having to take a bar examination. See *infra* note 119.

72. Although simulation courses are an excellent vehicle for professional skills training, they cannot replicate the pressure and tension involved in a live-client setting in which the students must grapple with real decisions that affect their clients and simultaneously struggle to meet their other school and work responsibilities. A full discussion of the pedagogical merits of a live-client clinic and its advantages over simulation courses in helping a student achieve minimal competency is beyond the scope of this Article. Nevertheless, in our experience, the graduates of a well-designed, live-client clinic are considerably more advanced professionally than those who only have had simulation courses. For a sampling of the many articles discussing the superiority of the well-structured, live-client clinical course for promoting professional growth, for teaching skills and values, and for preparing students for law practice, see Patricia M. Wald, *Teaching the Trade: An Appellate Judge's View of Practice-Oriented Legal Education*, 36 J. LEGAL EDUC. 35 (1986); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981); Gary Laser, *Significant Curricular Developments: The MacCrate Report and Beyond*, 1 CLINICAL L. REV. 425, 432-37 (1994-95).

person accused of a crime. In short, before new graduates really are able to begin defending clients, they should have been engaged in an intensive dialogue about the values of their profession so that they appreciate their professional responsibilities and understand the importance of functioning as reflective practitioners.⁷³

This is not to say that every graduate who has had a good clinical experience will be able to start competently representing clients the first day on the job or that providing access to a clinical course or to other skills instruction in law school necessarily ensures that new graduates will be more effective professionals over the life of their careers. Some new graduates will perform poorly when starting out in practice despite being the product of a good clinic, just as others will have benefited little from a marginal clinical experience.⁷⁴ It is unlikely that every clinical course requires students to think about the challenges they will face in law practice or forces them to critically evaluate the professional demands they will encounter. As Alex Johnson correctly observed, clinical courses that just provide skills instruction, but nothing more, only have limited value in preparing students for the rigors of the actual practice of law.⁷⁵

Nonetheless, Johnson missed the mark with his claim that clinical programs do not inform students about the nature of practice and are too narrowly focused because they stress skills, but do not prepare students for the time demands and pressures of law practice.⁷⁶ It is Johnson's view of most clinical courses,

73. For an extended look at the manner in which a student acquires professional knowledge and learns the art of practice by reflecting upon one's performance under the artistry of a good mentor or coach, see DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987) [hereinafter SCHÖN, *EDUCATING*]; DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER* (1983).

74. It is likely that there is a significant variance in the quality of clinical experiences students have at different law schools, especially given the differing levels and quality of supervision as well as the varying amount of instruction students receive. At the University of Oklahoma College of Law, for example, students receive eight credits for two semesters of work in the clinic that Professor Uphoff directs. The Oklahoma students spend, on average, half as much time in the clinic as Uphoff's students did at the University of Wisconsin. Although most of the LDP students were ready to perform competently as public defenders or as assistant district attorneys immediately upon graduation, few of the Oklahoma students have had enough clinical experience to be competent in handling caseloads upon graduation. According to public defender supervisors in Oklahoma, however, these graduates are still significantly ahead of other graduates without any clinical experience.

75. See Johnson, *supra* note 3, at 1256.

76. See *id.*

however, that is too narrow and badly outdated. Rather, clinical scholarship and discussions at conferences of clinical educators suggest that most clinicians greatly value the importance of a host of goals beyond just skills training in the design of their clinical courses.⁷⁷ Indeed, a major pedagogical goal recognized by most clinicians is to require clinic students to reflect upon their lawyering experiences and to discuss the extent to which various legal, personal, and systemic pressures affect the cases that the students handle.⁷⁸ In our experience, most students who have had a quality clinical experience are, in fact, better prepared for the time demands and other pressures of law practice because they have had a significant taste of actual practice in a structured setting under the tutelage of an experienced lawyer-educator who provided them the opportunity to discuss and to reflect about the positive and negative aspects of that experience.

Despite the hopeful trends noted in the MacCrate Report,⁷⁹ however, few law graduates come to the DPA having received the type of quality clinical experience just described. Most of the DPA's new graduates report that they only had limited exposure to any professional skills training in law school. There are schools such as the University of New Mexico Law School and the University of Maryland School of Law that offer a clinical experience for all third year students. In most schools, however, only a limited number of students are provided access to a clinical course. Moreover, absent a radical change in the funding of most law schools, clinical education is unlikely to increase significantly in the near future.⁸⁰

Although law schools have significantly improved their skills-training curriculum in the past twenty-five years, the MacCrate

77. See, e.g., *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992).

78. See, e.g., Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 615-16 (1984) (emphasizing the importance of teaching students effective techniques of learning from experience); Laser, *supra* note 72, at 433-37 (emphasizing the extent to which the in-house clinic staffed by master practitioners affords students the opportunity to learn the art of lawyering through a reflective practicum).

79. See MACCRATE REPORT, *supra* note 1, at 236-60.

80. See Costonis, *supra* note 12, at 197; Martin & Garth, *supra* note 68, at 453. This is particularly true in light of the budget difficulties confronting most law schools and the elimination of federal funding for clinical education that had been available through Title IX of the Higher Education Act, 20 U.S.C. § 1134s (1986) (Law School Clinical Experience Program), omitted by Act of July 23, 1992, Pub. L. No. 102-325, tit. IX, § 901, 106 Stat. 760 (withdrawing authorization for law school clinical experience programs).

Report's conclusion that there is "no gap" between law school and the practicing bar is fanciful.⁸¹ Additional resources and curricular changes have meant that some students now leave some law schools with a solid to excellent foundation for law practice. True, some progress has been made, but it is highly selective.⁸² Unhappily, most of the new graduates in the DPA study came to the program with only minimal exposure to the skills and values identified by the MacCrate Report as necessary in order for a lawyer to assume the professional responsibility of handling a legal matter. The MacCrate Report's trumpeting of law schools' "major commitment of resources" to skills training and its chiding of the practicing bar for failing to recognize and to applaud this development seems unwarranted given the uneven strides law schools have made in preparing its graduates for practice.⁸³

Perhaps many in the practicing bar are unaware of the extent to which law schools have improved their professional skills instruction and clinical programs.⁸⁴ Both law schools and the practicing bar are to blame for this lack of communication. It is not accurate to conclude, however, that the entire practicing bar has taken "little notice" or exhibited "inexcusable indifference" to improved skills training.⁸⁵ Employers in public defenders offices are quite interested in the extent to which there have been positive developments in improving skills training in law school. The Wisconsin State Public Defender and the DPA actively look for students with clinical experience and have noted that they are considerably better prepared than students without such experience.⁸⁶

81. See MACCRATE REPORT, *supra* note 1, at 8.

82. See Garth & Martin, *supra* note 2, at 501; Martin & Garth, *supra* note 68, at 449, 452.

83. See MACCRATE REPORT, *supra* note 1, at 6-7. What constitutes a major commitment is a question of degree. A hard look at the budget at most law schools would show that comparatively little money is being spent on clinics and professional skills courses relative to the total law school budget.

84. See MACCRATE REPORT, *supra* note 1, at 6-7 (criticizing the practicing bar for failing to recognize developments in legal education and noting that "few employers appear interested in whether students have enrolled in such courses or how they perform in them"); Garth and Martin, *supra* note 2. Garth and Martin's survey was based on the opinions of hiring partners in private firms consisting of at least five partners. It does not reflect the opinions of smaller firms or government agencies, employers who arguably have the greatest need for competent new graduates and, therefore, are most inclined to value students with clinical experience.

85. See MACCRATE REPORT, *supra* note 1, 6-7.

86. Our hiring experiences in Wisconsin and Kentucky are corroborated by discussions we have had with other members of the ABA's Criminal Justice Section Defense

As already noted, one of the disturbing findings in the DPA study was the importance that these new graduates placed on technical mastery over client relationships and interpersonal skills. Correspondingly, many of these new graduates not only were very aware that a sharp dichotomy between theory and practice existed in their law school, but they also devalued the importance of legal theory.⁸⁷ The graduates in the DPA study tended to blame the haughty, antipractice attitude of most law professors for the fact that so many law students in their second and third years develop a negative attitude toward legal theory. Rather than learning to integrate theory and practice and to value both, these law students lost interest in theory and in law school.⁸⁸ Desperate for more practice and real world experience, they increasingly turned to their clerking experiences and practitioners as their guides to law practice.⁸⁹

The best lawyers, of course, are those who combine excellence in theory and in practice. For the law student who clerks with an excellent lawyer or the new graduate who has such a lawyer as a supervisor, this type of mentor can have a powerful effect on that student's or graduate's professional development. As evidenced by the experiences of the participants in the DPA study, powerful professional experiences early in a career seem to influ-

Services Committee, many of whom are responsible for the hiring decisions for a number of the largest public defender programs across the country. See also John S. Elson, *The Regulation of Legal Education: The Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 381 n.38 (1994-95) (stating "my own clinic students' experiences and anecdotal evidence from other clinicians indicate that hiring partners are increasingly taking students' clinical experiences into account").

87. Among the many commentators who have urged legal educators to eradicate the false and harmful dichotomies between theory and practice and between doctrine and skills, see Schultz, *supra* note 3, at 57, 62-67; see also Elizabeth M. Schneider, *Integration of Professional Skills into the Law School Curriculum: Where We've Been and Where We're Going*, 19 N.M. L. REV. 111, 112 (1989).

88. See Trail & Underwood, *supra* note 7, at 220-21 (noting similar student dissatisfaction with legal education and the disdainful attitude of law professors); Edwards, *supra* note 3, at 61, 69 (impractical scholars communicate disdain for legal doctrine, and in turn, practitioners are contemptuous of scholars and theory).

89. For an interesting study of the harmful effects on the professional development of licensed legal interns working in law offices, see Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students' Professional Values: Observation, Exploration, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1990-91). On the other hand, there are those who assert that positive learning and skills training does occur in field placement programs and externships. See, e.g., Daniel J. Givelber et al., *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995); Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLINICAL L. REV. 413 (1996).

ence the development of cognitive and effective processes through which young attorneys filter their future professional experiences.⁹⁰ Thus, if mentors value legal theory, model ethical practice, and use this to guide novice lawyers to examine their lawyering experiences and learn from them, these mentors can influence greatly the quality of attorneys' future work with clients, colleagues, and opponents. Our professional experience and the observations of the participants in this study also demonstrate the power of the students' and new graduates' early experiences in shaping their professional attitudes.⁹¹ Law students and new graduates who go to work in a district attorney office, for example, often take on the attitudes and practices of the lawyers with whom and for whom they work. Real lawyering—acceptable lawyering for these law students and new graduates—frequently is a function of what they see around them. Thus, the progress and professional development of these law students and novice lawyers is heavily influenced both by the nature of their early professional experiences and by the quality and attributes of the lawyers from whom they initially learn about the practice of law.⁹²

Some students and new graduates have the good fortune of observing and of learning about law practice from mentors who handle their professional responsibilities with thoughtfulness and skill. Indeed, as philosopher Michael Oakeshott argued, guidance by a good mentor may be the most effective way for a novice to learn to be an ethical and effective person:

We acquire habits of conduct, not by constructing a way of living upon rules or precepts learned by heart and subsequently practiced, but by living with people who habitually behave in a certain manner: we acquire habits of conduct in the same way as we acquire our native language.⁹³

Oakeshott's psychological insight has been empirically corroborated by numerous studies that found that significant learning and personal change in adulthood occurs most frequently in the shadow of a powerful, emotional experience.⁹⁴ Studies also con-

90. See ZEMANS & ROSENBLUM, *supra* note 27, at 171-76; Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 39 J. Legal Educ. 93, 103 (1968); Mardi Horowitz, *Person Schemas*, in PERSON SCHEMAS AND MALADAPTIVE INTERPERSONAL PATTERNS 13 (Mardi J. Horowitz ed., 1991) (explaining person schemas and how individual experiences affect their formation).

91. See Hellman, *supra* note 89, at 541.

92. See ZEMANS & ROSENBLUM, *supra* note 27, at 171-73.

93. MICHAEL OAKESHOTT, *RATIONALISM IN POLITICS* 62 (1962).

94. See, e.g., MICHAEL J. MAHONEY, *HUMAN CHANGE PROCESSES: THE SCIENTIFIC FOUNDA-*

firm that the presence of a "role model" is critical to adult learning because that person not only provides emotional support, but also offers the guidance and structure needed when the novice ventures into unknown professional territory.⁹⁵

A mentor, therefore, is a critical figure for the law student or the novice lawyer. Simply having a mentor, however, does not mean that this mentoring lawyer will necessarily model ethically responsible behavior. Learning to practice from someone who ridicules theory, minimizes preparation, or ignores ethical standards teaches the law clerk or the new graduate the wrong lessons. The DPA study supports the MacCrate Report's conclusion that mentors play a pivotal role in shaping new graduates' attitudes about appropriate practices:

Although law schools have taken seriously the responsibilities with regard to the teaching of ethical standards and professional values, a young lawyer's ethical standards are likely to be shaped far more by his or her mentors in the early years of practice than by the experiences one acquires in the limited practice setting available in law school. Too often, practicing lawyers fail to appreciate their own responsibilities in this area.⁹⁶

As Lawrence Hellman's study of the experiences of licensed legal interns working in field placement programs dramatically demonstrates, law students may be exposed to horrific lessons by their first mentors.⁹⁷ It is critical, therefore, that both legal educators and the practicing bar recognize that bridging the gap between law school and practice involves considerably more than just assigning every law student and new graduate a mentor.⁹⁸

TIONS OF PSYCHOTHERAPY 190-92 (1991).

95. See, e.g., *LEARNING, REMEMBERING, BELIEVING: ENHANCING HUMAN PERFORMANCE 198-99* (Daniel Druckman & Robert A. Bjork eds., 1994). For a discussion of the role of the "coach" or the senior practitioner in teaching the artistry of practice, see SCHÖN, *EDUCATING*, *supra* note 73, at 16-17, 38.

96. *MACCRATE REPORT*, *supra* note 1, at 235. A similar conclusion was drawn by the American Bar Association Commission on Professionalism when it noted:

Of course, the sensitizing of law students about ethical issues is not only the responsibility of law schools. Often, law students' first exposure to the world of practicing lawyers comes when they clerk for law firms at the end of their first year in law school and thereafter. If what they see in these firms is inconsistent with the ideals taught in law school, the best academic effort may be for naught.

ABA PROFESSIONALISM REPORT, *supra* note 5, at 19.

97. See Hellman, *supra* note 89, at 570-617 (detailing the frequency and severity of professional misconduct observed by student interns working with practicing lawyers).

98. After noting that sensitizing law students to ethical issues was not simply the re-

The real crisis for many first year professionals is that, in the rush for technical mastery, the time and the ability to reflect on the philosophical and ethical context of practice is too readily forsaken. Although law schools are not wholly responsible for this lack of reflection, the blanket devaluation of practical skills and of the practice of law in most law schools creates an unintended "backlash" effect. Instead of actively and thoughtfully integrating principle-centered reflection into their daily practice, new law graduates tend to reject reflection in favor of the "real" and the "pragmatic." In other words, new law graduates are more concerned with learning ways to master, to succeed, to stand out, and to win the next case than in responding to the ethical tensions that are inherent in a professional practice. For many new graduates, reflection and ethical considerations seem to be abstract distractions that are better-suited for the life of the academic. Frequently under considerable pressure, new practitioners generally have little time to consider the conflicting values and tension inherent in the role of the good professional because they are in "the real world, not law school." Unfortunately, too many new graduates have missed the dialogue that should have gone on in law school about what it means to be a true professional.⁹⁹ The absence of this dialogue explains, at least in part, the problems that plague the legal profession.

sponsibility of law schools, the ABA Commission on Professionalism concluded that "the educational process is an 'ongoing' one for which all segments of the profession, not just the law schools, must take responsibility." ABA PROFESSIONALISM REPORT, *supra* note 5, at 19. As Hellman's article makes painfully clear, however, not all practitioners value their professional responsibilities, nor would all make appropriate mentors. Good mentors not only must be ethical, but also must have the time and inclination to communicate effectively with the novice under their supervision. See Andrew S. Watson, *On the Low Status of the Criminal Bar: Psychological Contributions of the Law School*, 43 TEX. L. REV. 289, 309-10 (1964) ("[P]rofessional skill can be gained only through direct guided experience with one who is already practicing in the image of this desired goal It must not be entrusted to chance or to the casual teaching which comes from practitioners whose major interest lies elsewhere."). Most clinical educators appreciate the importance of mentoring or role-modeling as an important component of a well-structured clinical experience. But see Robert J. Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 53-63 (1986) (criticizing clinical programs that emphasize skills training over critique of lawyering practices and arguing that the design of most clinics, along with resource limitations and the experience level of most clinical teachers, preclude in-house clinics from reaching their pedagogical potential). Indeed, it is highly questionable whether law schools should be hiring clinicians or any professional skills educators unless they are well-grounded in practice, possess excellent skills, and are capable of modeling good lawyering.

99. For a partial list of the many commentators who insist that this dialogue about professionalism must occur in law school, see *supra* note 63.

Particularly frightening to those of us working to train new graduates is that increasingly more new graduates are going into law practice without the benefit of any training program or direct supervision.¹⁰⁰ The majority of lawyers in private practice are solo practitioners or in small firms.¹⁰¹ Many of these lawyers do not have access to a qualified mentor or an affordable training program, nor do they have "the time, resources or expertise to engage in a comprehensive independent study of basic lawyer competencies."¹⁰² For the bulk of these new graduates, most of whom have not had the advantage of a well-structured clinical experience, their first exposure to the real world of practice is likely to be very disillusioning.¹⁰³

The realities of the increasingly competitive legal marketplace impose tremendous economic and psychological pressure on these new lawyers. Despite the support of colleagues, supervisors, and intensive training programs, new graduates in the DPA endure considerable stress as they struggle to gain competency. Without the safety net of experienced supervising attorneys, unsupervised, new practitioners face even more pressure as they attempt to provide competent representation to their clients while at the same time repaying hefty student loans and feeding their families.¹⁰⁴ It comes as no surprise that these new graduates often decry the inadequacies of their legal education or that their view of professionalism may be very different from that expounded by

100. The Task Force that produced the Cramton Report in the late 1970s expressed serious concerns for the clients of lawyers learning competency on the job because many new lawyers did not receive effective internship or residency training at the beginning of their careers. See CRAMTON REPORT, *supra* note 4, at 14; see also Anthony D'Amato, *The Decline and Fall of Law Teaching in the Age of Student Consumerism*, 37 J. LEGAL EDUC. 461, 492 & n.60 (1987) (noting that even large law firms are decreasing the training of new associates). Unfortunately, in today's job market, even more clients are at risk because even more graduates are now going into unsupervised practice settings.

101. Approximately half of the nation's lawyers in private practice are solo practitioners, and as of 1988, 71% of all lawyers in private practice were in a firm of 10 persons or less. See MACCRATE REPORT, *supra* note 1, at 35-40. Nationally, the trend for an increasing number of law graduates is to join a very small firm or enter solo practice. See Trail & Underwood, *supra* note 7, at 224.

102. Bahls, *supra* note 19, at 65.

103. They may have become disillusioned and cynical already, however, as a result of negative clerking or internship experiences. See Hellman, *supra* note 89, at 606-07, 612-13.

104. In light of the huge debts many students are accumulating to attend law school, Robert MacCrate is correct that law schools should not continue to slight the needs of their students by sending them into practice without preparing them to participate effectively in the profession. See Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89, 92-93 (1994).

senior members of the practicing bar or members of the legal academy.¹⁰⁵ What is somewhat surprising is that, despite the clamor for change, the gap between law schools and practice remains substantial.

II. BRIDGING THE GAP

A. *Changing The Face Of Legal Education*

Many in the legal profession and the academy share the vision of the MacCrate Report that a prospective lawyer's professional development is an ongoing process that starts even before law school and continues throughout that lawyer's career. Moreover, most in the profession would agree wholeheartedly that legal educators and practicing lawyers should stop viewing themselves as separated by a gap. Nonetheless, it will take considerably more than just attitudinal shifts and improved communication for legal educators and the practicing bar to attain the lofty goals set out in the MacCrate Report. As others have noted, significant financial resources are needed to implement the MacCrate Report's vision.¹⁰⁶

105. Unquestionably, the debate over professionalism suffers from a lack of consensus about what the concept of professionalism really means. See Peter Joy, *What We talk About When We Talk About Professionalism: A Review of Lawyers "Ideals/Lawyers" Practices: Transformations in the American Legal Profession*, 7 GEO. J. LEGAL ETHICS 987 (1994) (book review). A lawyer's view of professionalism is often shaped by that lawyer's life experiences, economic status, and present stature or standing in the bar. Not surprisingly then, bar leaders frequently invoke professionalism for self-serving purposes, such as to oppose government regulation of lawyers, to enhance social status and collective upward mobility, to justify restrictive practices of the profession, and to respond to criticism of lawyers' conduct. See Richard L. Abel, *Taking Professionalism Seriously*, 1 ANN. SURV. AM. L. 41 (1989). For many prominent bar members and judges, the "good old days" were a time of collegiality and an absence of crass commercialism. For some, the "good old days" ended with *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), which struck down Arizona's disciplinary rule prohibiting lawyer advertising. Indeed, the ABA Commission on Professionalism, which authored the 1986 report entitled, . . . *In the Spirit of Public Service: A Blueprint for Rekindling Lawyer Professionalism*, started from the assumption that the decline of professionalism was caused by lawyer advertising and increased competition. See ABA PROFESSIONALISM REPORT, *supra* note 5; Joy, *supra*, at 991. On the other hand, many new lawyers struggling to survive do not see lawyer advertising as a significant evil and often have very different attitudes about commercialism, the delivery of affordable legal services, and the bar's pro bono obligations.

106. Dean Costonis chided the authors of the MacCrate Report for ignoring the "fiscal and programmatic tradeoffs its recommendations will inevitably force." Costonis, *supra* note 12, at 176. In contrast, Costonis praised the Cramton Report for emphasizing the need to secure additional financial resources if law schools are to be expected to fund increased skills instruction. See *id.* Costonis concluded that, absent a willingness by society and the legal profession to pump new money into legal education, the MacCrate

Before turning to David Barnhizer's proposals for generating the resources to achieve the MacCrate Report's goals, it is critical to note that, at least in one significant respect, the MacCrate Report's vision is blurred. The MacCrate Report concludes that it is not unrealistic to expect law schools to produce graduates who are minimally competent to begin representing clients.¹⁰⁷ Certainly, a new law graduate cannot reasonably be expected to handle any legal matter that presents itself. Some legal problems are simply too complex for new graduates or for nonspecialists regardless of their years of experience. Moreover, an able lawyer with experience should be able to provide better representation than a new graduate. Nevertheless, if law schools do not produce graduates minimally competent to handle basic legal matters, then at what point are these licensed graduates ready to assume responsibility for a client's problems? Surely, no one can claim that, during the two or three months between graduation and the bar examination, the new graduate will have attained competency merely by studying for the bar examination. Yet, upon passing that examination, the graduate is now licensed to handle any legal matter. Few lawyers would hesitate to file a malpractice suit against a doctor who just graduated from medical school and who failed to perform routine tests or misdiagnosed an obvious problem because of "inexperience." Why is it that the legal profession is so willing to license—and turn loose on the unsuspecting public—lawyers who lack minimal competency?¹⁰⁸

Not only is it unrealistic for the legal profession to continue to turn a blind eye to the fact that most law school graduates are incompetent to practice upon graduation, it is unjustified given that no other mechanism presently exists to address the prob-

vision cannot be achieved. *See id.* at 190-97. Although Barnhizer also decried the failure of the MacCrate Report to discuss the hard choices and tradeoffs involved in reforming legal education in order to achieve lawyer competence, he offered some concrete proposals for raising the funds to reach that goal. *See* Barnhizer, *supra* note 14, at 56-58.

107. *See* MACCRATE REPORT, *supra* note 1, at 4.

108. Although full exploration of this question is beyond the scope of this Article, the difference between new lawyer competence and that of the new physician is explained, at least in part, by the bar's failure to acknowledge the inadequacies of legal education and by the corresponding lack of public support for legal education. *See generally* William P. Creger & Robert J. Glaser, *Clinical Teaching in Medicine: Its Relevance for Legal Education*, in *CLINICAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE* 77 (Edmund W. Kitch ed., 1970); Roger C. Cramton, *Professional Education in Medicine and Law: Structural Differences, Common Failures, Possible Opportunities*, 34 *CLEV. ST. L. REV.* 349 (1986); Bayless Manning, *Financial Anemia in Legal Education: Everybody's Business*, 55 *ABA J.* 1123 (1969). For a historical look at the problem, see STEVENS, *supra* note 3, 92-130.

lem. Law schools simply cannot continue to insist that the bar train new graduates when legal educators know, or should know, that fewer law firms are able to, or chose to, provide in-house training programs or the traditional close mentoring that marked the apprentice-style method of training the new associate.¹⁰⁹ It is particularly troubling that law schools continue to ignore their training mission when it is evident that so many new lawyers are being forced into solo practice in which they will have immediate responsibility for their clients.¹¹⁰ These new graduates, many of whom are already heavily in debt, are not well-positioned to finance—or to pass on to their clients—the cost of preparing themselves to function as competent professionals. Neither the legal profession nor legal educators should be permitted to continue to escape responsibility for the inadequacies of new lawyers.

Despite cries to the contrary, law schools are capable of preparing students to practice law.¹¹¹ Indeed, our work with clinic students and new graduates demonstrates that, if law students are provided quality instruction, they can, within a reasonable time frame, attain a sufficient level of competency that enables them to provide good representation to their clients. We disagree, however, that the curriculum proposed by Trail and Underwood—a curriculum that relies on simulation courses for professional skills training—will achieve the desired preparedness. Simulation courses are a good vehicle for providing skills training and for enabling students to develop competency in performing various lawyering tasks. Those courses are not as effective, however, as live-client clinics in transmitting professional values or in preparing students for the interpersonal aspects of lawyering.¹¹² In addition, simulation courses are not as effective in giving students what the DPA participants desperately sought—experience in dealing with clients. If students truly are to be ready to assume immediate responsibility for clients, they must have some supervised experience working with actual clients. If they are to begin functioning as true professionals, they should have been exposed to and should have spent considerable time discussing

109. See *supra* notes 100-03 and accompanying text.

110. For an article reporting the serious concerns of the ABA's General Practice Section about the competency of new lawyers, especially those who go into solo practice or a small firm, see Bahls, *supra* note 19, at 64-65.

111. See Trail & Underwood, *supra* note 7, at 203.

112. See *supra* note 72 and accompanying text.

with their supervisor or mentor the pressures, demands, and difficulties they are likely to encounter in practice.¹¹³

Preparing students to practice law, however, will cost money; money that most law schools and law students do not have readily available. It is not simply a question of re-allocating existing law school budgets. Professional skills training, especially if provided in a live-client clinic setting, requires a small faculty-student ratio. This labor intensive instruction is very expensive. New resources are needed if law schools truly are to prepare students for law practice. Accordingly, David Barnhizer's recommendations for generating new funds merit close examination.

B. *Barnhizer's Recommendations*

In his first two recommendations, Barnhizer proposed that the traditional bar examination be reduced or even eliminated and that the time and money spent by students in preparing for the bar examination be devoted to fund professional training academies.¹¹⁴ Law professors, practicing lawyers, and judges would provide the new graduates intensive skills instructions for up to three months during the summer after graduation. He estimated that at least \$40 million every year could be generated for these academies instead of being spent on relatively useless bar review courses.¹¹⁵ Moreover, these training academies not only would help bridge the gap between law school and practice, but also would enable law schools to avoid structuring their curriculum based on what is to be tested on the bar examination.

Although we enthusiastically support Barnhizer's first two recommendations, we would go even farther. First, the present licensing system that is based on passing a bar examination should be eliminated. Instead, a law graduate wishing to practice law would have to become certified by passing a test designed to ascertain whether the graduate was minimally competent to prac-

113. See Kreiling, *supra* note 72, at 300-306. As already noted, a full discussion of the relative merits of live-client clinics and externship programs compared with simulation courses is beyond the scope of this Article. It is important to note, however, that the success of the DPA training depends heavily on the context provided to new lawyers based on their work on past and present cases. For a useful discussion of the importance of context in learning, especially in learning about lawyering, see Givelber et al., *supra* note 89, at 9-15.

114. See Barnhizer, *supra* note 14, at 56-57.

115. See *id.* at 57.

tice in a particular area of the law.¹¹⁶ The bar examination presently does very little to ensure that newly licensed lawyers are competent to practice.¹¹⁷ It is largely a rite of passage that only serves to screen out a small percentage of graduates who are unwilling or unable to memorize enough law—most of which is promptly forgotten—to pass written examinations that bear little witness to the students' aptitude to practice law. A few states are attempting to add a performance test to their bar examination in order to make it more meaningful.¹¹⁸ For the most part, however, bar examinations and the bar review courses that proceed them are a waste of graduates' time, energy, and resources.¹¹⁹

Second, we would propose that any law school graduates and all presently licensed lawyers would immediately be eligible to sit for this competency examination and receive a certification or several certifications if the lawyer wanted to practice in several areas. Because the test is designed only to ensure minimal competency, most practicing lawyers easily would be able to secure one or more certificates.¹²⁰ Those lawyers unable to pass a com-

116. This proposal is similar to that of former Chief Justice Warren Burger, who promoted the concept of certification as the best solution to the problem of incompetent trial representation. 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, 240-41 (1973-74).

117. See Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?*, 2 *CLINICAL L. REV.* 349, 362-65 (1996); see also DEBORAH RHODE, *PROFESSIONAL RESPONSIBILITY—ETHICS BY THE PERVASIVE METHOD* 65 (1994) (reporting from an ABA survey that 70% of lawyers agreed that bar exams do not adequately measure the ability to practice law).

118. California, Alaska, and Colorado include a performance test on their bar examination, and in February 1997, the National Conference of Bar Examiners will offer a Multistate Performance Test. For a discussion of the validity and reliability of performance testing, see Grosberg, *supra* note 117, at 369-74.

119. The Supreme Court of Wisconsin permits any graduate of an ABA approved Wisconsin law school to gain automatic admission to the Wisconsin bar upon law school certification that the graduate has satisfactorily completed not less than 84 semester credits with at least 60 credit hours within very broad curricular areas. See *WIS. SUP. CT. R.* 40.03 (1995). There is no evidence that demonstrates that these Wisconsin lawyers are any less able, knowledgeable, or competent than lawyers from outside of Wisconsin who had to prepare for and pass the Wisconsin bar examination. For an account of the history and of the merits of the diploma privilege in Wisconsin, see Richard A. Stack, Jr., *Commentary, Admission Upon Diploma to the Wisconsin Bar*, 58 *MARQ. L. REV.* 109 (1975).

120. This assumes, of course, that performance-based tests can be designed to fairly and accurately measure the examinees' ability to perform as lawyers and to demonstrate minimal competence. The studies done on performance testing certainly indicate that such competency testing is viable. See *AMERICAN COLLEGE TESTING, RESULTS OF RESEARCH ON THE NCBE PERFORMANCE TEST PILOT ADMINISTRATION* (1994) (report submitted to National Conference of Bar Examiners, Research & Development Committee, April 1994). For a further description of the feasibility of performance testing, see Grosberg, *supra*

petency test and most new graduates would be required to attend summer training academies in order to attain a sufficient foundation to enable them to pass the test—and in turn, demonstrate that they are minimally competent to represent clients in a given area of the law.¹²¹

We envision these training academies as intensive workshops of several months duration in which students are provided expert instruction by law professors, practicing lawyers, and judges on how to practice in a particular area of law. Through lectures, demonstrations, discussion groups, and critical feedback of the students' written work and their simulated performances, the supervising instructors would provide basic skills instruction, work with the students to problem solve, and do case analysis, as well as hone the students' ability to implement and execute a strategic plan.¹²² In short, the instructors would help the students learn to perform the basic lawyering tasks they would be called upon to perform as soon as they were certified to practice.

In addition to our own experiences working with law students and new graduates, several law schools have developed general-practice skills programs that demonstrate the feasibility of these

note 117, at 365-74.

121. In discussing the need to improve legal education to ensure more competent lawyers, commentators often look to the licensing process of medical doctors as the standard of comparison. Because of the expense and protracted time frame required before medical students can obtain their medical license, the medical model has been rejected as inappropriate for the profession of law. See, e.g., Costonis, *supra* note 12, at 157-60, 174-77. Nonetheless, there are alternatives to the medical model that should be examined. For example, the profession of social work requires a two-year graduate degree (the Master of Social Work) after which the new graduate sits for a certification examination. However, the Master of Social Work graduate is not deemed ready to practice independently by virtue of graduation and successfully passing a single test. Rather, the social work board of examiners, in most states, only will grant a license for independent (non-supervised) clinical practice to those who have passed this first examination, submitted a contract specifying a plan for subsequent employment and training, completed the equivalent of two years of full-time paid employment in board-approved settings, completed 200 hours of supervision by an experienced licensed clinical social worker, and passed a national standardized test for advanced practice. The supervision process and the national test examine the new practitioner's ability to address clinical, theoretical, ethical, legal, and administrative problems routinely encountered in the independent practice of clinical social work. It is interesting to note that, among the mental health professions, this process is the "quickest" route to independent clinical practice. In many jurisdictions, clinical social work shares the same general level of responsibilities and privileges as enjoyed by psychiatry and clinical psychology. The marketplace—insurance companies and other third-party payers—reimburse only those professionals with this highest level of licensure.

122. See, e.g., Burger, *supra* note 44, at 17-19 (describing success of observation-participation courses taught by practicing lawyers, judges, and law professors).

training academies.¹²³ The University of Wisconsin's General Practice Skills Course is a semester long program "designed to give students a hands-on opportunity to learn essential lawyering skills under the close supervision of experienced practicing attorneys."¹²⁴ Utilizing seventy practicing lawyers as faculty, this ten credit course requires students to complete about thirty written and participatory assignments in various substantive law areas: criminal law, family law, estate planning and probate, business law, and debtor and creditor proceedings. The course also forces students on a daily basis to confront common ethical questions that arise in practice and to discuss the appropriate resolution of those questions with expert professionals.

We propose that any new graduate or lawyer wishing to be certified as a general practitioner would need to enroll in a General Practice Training Academy. Although other training academies would be more specialized, each would share the same structure—group and individualized professional skills and professional values instruction offered by experts in their respective fields.¹²⁵ The training academies and corresponding certifications would reflect the major areas of law practice.¹²⁶ Nonetheless, once law graduates obtained any certificate, they would be eligible to represent any client even though that client's case may involve legal matters outside of their certified area. To restrict lawyers only to cases within a specific field fails to recognize the overlapping nature of many legal problems and may force lawyers to obtain too many certificates. On the other hand, fear of

123. For example, the University of Wisconsin Law School, Vermont Law School, and a number of Commonwealth jurisdictions have developed very effective programs for instructing new lawyers in professional skills and values. Those programs also demonstrate the viability of well-designed, intensive courses of relatively short length for transmitting lawyering skills and values and for promoting competency. For a summary of some of the Commonwealth skills training programs, see MACCRATE REPORT, *supra* note 1, app. E at 405-11 (Practical Skills Training in Commonwealth Jurisdictions).

124. RALPH M. CAGLE, ABA, PROJECT INFORMATION FORM FOR E. SMYTHE GAMBRELL FUND FOR PROFESSIONALISM 1993-94 AWARDS 1 (on file with the *University of Cincinnati Law Review*). For a further description of this course, see Eleonora Di Liscia, *Sharing the Experience of Law Practice: The UW's General Practice Course*, in GARGOYLE (Univ. of Wisconsin), Winter 1991-92, at 12-13.

125. Just as not all law professors are good teachers, not all excellent lawyers are capable of being good trainers or supervising instructors. A critical feature of these training academies is that the instructors are taught to be effective supervisors.

126. In addition to the general practice certificate, certifications would be available, at a minimum, for corporate and securities law, tax, commercial litigation, employment law, family law, criminal law, estate planning and probate, business planning, administrative practice, patent law, environmental law, international business law, real estate, and general civil litigation.

malpractice actions and heightened consumer awareness of the importance of selecting a certified lawyer—spurred by lawyers' advertising their certifications—should limit the extent to which lawyers take on cases outside of their areas of certification.

Lawyers interested in the re-tooling of their practice or in switching into a new area of practice would be able, of course, to attend another training academy. In addition, the existence of basic courses in each legal field offered by training academies frees up the Continuing Legal Education (CLE) programs in each state to concentrate on more advanced training in each substantive law area. Undoubtedly, this would help improve many CLE offerings that presently suffer because they are too complicated for the beginning lawyer struggling to gain competency and often too simple for the experienced practitioner looking for more advanced techniques and stratagems.

The creation of these training academies and the change in the bar licensing system also should have a positive impact on legal education. No longer would law schools find it necessary to focus undue attention on providing students with courses covered by the bar.¹²⁷ Instead, legal educators could focus on teaching their students legal analysis,¹²⁸ legal research, and legal writing together with the other professional skills and values needed to practice law effectively and ethically. The training academies should be viewed as a bridge to practice, however, not as an excuse or justification that allows law schools to shirk their training mission. Law schools' curriculums need to be modified to teach students to integrate theory and practice and to arm them to learn from experience.¹²⁹ Although teaching about lawyering

127. Although elite law schools may structure their curriculums without regard for the bar examination, see Johnson, *supra* note 3, at 1245 n.59, many law schools, especially state-supported schools, are concerned about bar passage rates and do take bar exams into consideration in making curricular decisions. See, e.g., Stack, *supra* note 119, at 126 (noting that the faculties at Wisconsin and Marquette Law Schools, in arguing in favor of the continuation of the diploma privilege, claimed that the creation of a bar examination would unduly emphasize bar courses, would cause the elimination of some electives, and ultimately, would impair legal education in Wisconsin).

128. See Edwards, *supra* note 3, at 57-59 (urging schools to concentrate on "doctrinal education . . . a capacity to use cases, statutes and other legal texts.").

129. For an excellent summary of the importance of offering an integrated approach to theory and practice in law school and of teaching law students the ability to learn from experience, see Schultz, *supra* note 3, at 59-66. A number of law schools, including "elite" schools like New York University, have taken significant steps to offer more integrated skills instruction. See *infra* note 136 and accompanying text. For a description of one school's efforts to create an integrative curriculum, see John B. Mitchell et al., *And Then Suddenly Seattle University was on its Way to a Parallel, Integrative*

across the curriculum is essential,¹³⁰ law schools still would need to offer more live-client clinics and externships in order to expose students to the interpersonal aspects of lawyering and to give them the opportunity to integrate their theory and skills training as they apply their knowledge to solve their clients real legal problems. Finally, schools also would need to emphasize professional values instruction and would need to improve the students' ability to recognize and to respond to concrete ethical problems, in part because professionalism questions will be a significant part of the competency testing, but primarily because such instruction is fundamental to the education of a professional.

Moreover, schools would have a market incentive to restructure their curriculums to ensure that students are provided a sound foundation that would allow them to demonstrate their competency in the certification testing. A student who has had a quality, intense clinical experience—for example, in the University of Wisconsin Legal Defense Project— would be able to pass the competency test and go directly to a job in the criminal law field without having to attend a summer academy. Schools that provide little professional skills training should feel pressure from students, alumni, and prospective students because their students will not be able to move directly into a job or will have to repeat segments in the training academy based on their inadequate law school training. In a world of competency-based testing, it is more likely that legal educators would respond seriously to the recommendations of both the Cramton and the MacCrate Reports and become more significantly involved in preparing their students for law practice.

Barnhizer's third, fourth, and fifth recommendations all involve generating the money to fund these training academies and to expand the law schools' live-client clinical programs.¹³¹ In addition to the money students now pay as tuition for bar review courses, Barnhizer suggested charging all law students a skills-

Curriculum, 2 CLINICAL L. REV. 1 (1995).

130. See, e.g., Elson, *supra* note 86, at 383-87; Martin & Garth, *supra* note 68, at 454-56. Unquestionably, law professors can teach about lawyering and integrate skills instruction even when teaching substantive law courses. It does, however, take additional time and energy to design and to teach such classes. For an article describing the successful design of an upper-level course on franchise law to prepare students' for practice, see Danaya Wright, *The Golden Arches Meet the Hallowed Halls: Franchise Law and the Law School Curriculum*, 45 J. LEGAL EDUC. 119 (1995).

131. See Barnhizer, *supra* note 14, at 57.

training fee earmarked for the law schools' skills curriculum, especially for the clinics. He also suggested that publicly supported law schools would be in a position to secure increased state funds to reflect the cost of expanded skills education. Finally, Barnhizer proposed raising bar association dues one hundred dollars to two hundred dollars a year and using the revenues to fund the training academies and clinical programs.¹³²

These recommendations are feasible, sensible approaches for generating significant resources. Not only would these measures fund the training academies, but they would provide the resources to support the expansion of clinical education. Although getting more money from tight-fisted, financially strapped state legislatures may be the most difficult piece of this financial package, those legislators may be more inclined to respond favorably if they see lawyers, judges, and students willing to ante up financially and make a real commitment to improving competency and professionalism. Similarly, students and lawyers should be willing to pay modest increases in tuition and bar dues if they see a serious proposal to improve competency and the image of the profession.¹³³

C. *Impediments To Change*

Despite the widespread recognition that law schools fail to adequately prepare students for practice and the almost incessant clamor for change,¹³⁴ most law schools remain resistant to change. To achieve significant institutional change, a committed interest group must be able to overcome institutional inertia, bureaucracy, and tradition and persuade those in control of the in-

132. *See id.* at 57. Because there are approximately 800,000 lawyers in the United States, this dues increase would generate \$80 to \$160 million per year.

133. Barnhizer also proposed establishing superlibraries to reduce law school library budgets, an independent, non-profit institution to administer the funds generated by his proposals, and the creation of live-client clinics that operate as the legal equivalent of teaching hospitals. *See* Barnhizer, *supra* note 14, at 57-58. This Article does not address the merits of these recommendations. It would not be necessary, however, to establish a national central administration or institution to disperse the funds collected if our proposals are adopted. Rather, a state board made up of representatives from the bar, the judiciary, bar examiners, and the state's law school or schools could oversee the operation of the training academies and the distribution of funds to the law schools for their clinical programs.

134. The 1979 Cramton Report and the 1992 MacCrate Report represent only two of a host of reports and articles critical of legal education and the incompetency of most new graduates.

stitution to alter the status quo. Student consumers, the larger university community, and society as a whole lack the sustained interest and, ultimately, the will to reform legal education. The organized bar represents the only group with a continuing interest and the clout to accomplish needed change. Focusing the bar's attention on the right changes and achieving a meaningful consensus, however, remains a challenge.¹³⁵

Thus, even though Barnhizer's recommendations and our modifications are sound and relatively easy to implement, there are some serious obstacles to the adoption of these proposals. If law schools really are going to take seriously their mission to prepare students for law practice, most schools will have to drastically alter their curriculums, not just offer a few skills courses. Baylor University represents an example of a law school that is, in fact, taking up the challenge by restructuring its curriculum to further its stated mission of preparing students to be outstanding practitioners.¹³⁶

Few schools are likely to respond, however, as dramatically as Baylor has. Dramatic change requires schools to re-think and re-evaluate hiring patterns, tenure decisions, and appointments to named professorships.¹³⁷ Law schools will have to do more than just pay lip service to the importance of teaching. Scholarship, not quality teaching, is now the primary factor in the awarding of tenure.¹³⁸ The law professor who produces "practical scholarship" or devotes significant time to teaching students the art of practice is seldom valued or respected.¹³⁹ Indeed, few schools presently reward quality teaching, but in fact, create various disincentives to spending time improving one's teaching and teaching materials by awarding chairs and named professorships primarily to those producing scholarship regardless of the quality of

135. For a more detailed look at the politics and forces at work in the legal education arena and the struggle over various interest groups as to the future of legal education, see Elson, *supra* note 86.

136. For a description of Baylor's revised curriculum, see Trail & Underwood, *supra* note 7, at 203 n.6; see also Gregory S. Munro, *Integrating Theory And Practice In A Competency-Based Curriculum: Academic Planning at the University of Montana School of Law*, 52 MONT. L. REV. 345 (1991) (describing the rationale for and implementation of the University of Montana's competency-based curriculum); H. Russell Cort & Jack L. Sammons, *The Search for "Good Lawyering": A Concept and Model of Lawyering Competencies*, 29 CLEV. ST. L. REV. 397 (1980) (describing the Antioch School of Law's model curriculum).

137. See ABA PROFESSIONALISM COMM., *supra* note 5, at 13-18; Trail & Underwood, *supra* note 7, at 213.

138. See Trail & Underwood, *supra* note 7, at 213.

139. See Edwards, *supra* note 3, at 34-66.

their teaching.¹⁴⁰

Some commentators have argued that significant change in legal education can occur even without a substantial infusion of new resources if only law faculties would seriously consider incorporating skills training and other alternative teaching approaches into their courses and would work to inject the "real world of law practice" into their instruction.¹⁴¹ Few in academia really believe that there is a sufficient consensus on most law faculties of the merits of revamping a school's reward structure or a willingness to devote the time and energy to restructure the school's curriculum so that it enhances the students' preparedness for law practice. The impetus for dramatic change in legal education is unlikely to come from within the academy. Most law professors are totally removed from the practice of law and are not inclined to re-tool. Why should they want to change legal education? From their vantage point, the system certainly is working for them. As Richard Matasar, Dean of Chicago-Kent College of Law, pointed out:

[Law professors] believe that *they* own the institution. Tenure gives them a permanent status that insures academic freedom, but may make irresponsible, selfish behavior possible. Faculty members can become a permanent barrier to changing anything that disrupts the comfort of life within the institution.¹⁴²

Absent increased pressure from alumni, the judiciary, and the profession as a whole and a general consensus about the need for change, most law schools are likely to continue to muddle along as is.

In addition, the legal profession is not likely to leap to embrace the changes suggested in this Article. To implement these proposals, the practicing bar would have to do significantly more than just blame law schools for the profession's ills or assign a mentor to each new graduate. The legal profession also would

140. For a more extended look at the manner in which law schools set up institutional disincentives to improve one's teaching, see Barbara B. Woodhouse, *Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life*, 91 MICH. L. REV. 1977 (1993).

141. See Schultz, *supra* note 3, at 69-73. For another voice arguing that legal education should and can be reformed within present budgetary constraints, but taking a very different view of possible solutions, such as increasing law professors' teaching loads, see Jack Stark, *Dean Costonis on the MacCrate Report*, 44 J. LEGAL EDUC. 126 (1994) (attacking Dean Costonis's critique of the MacCrate Report and blaming the unwillingness of law professors to take their teaching responsibilities seriously, not fiscal constraints, for the lack of needed improvement in legal education).

142. Matasar, *supra* note 13, at 460. Indeed, it is not just law professors, but law school deans who are likely to fight to defend the status quo in legal education. See, e.g., Elson, *supra* note 86, at 372-74.

have to agree to competency testing and the certification system. This change means some added expense, re-tooling for some, and a step toward formal specialization. Some lawyers, especially those who resent the lack of training they received in law school, may be difficult to persuade—now that they are in the club—that the membership rules should be changed.¹⁴³ This may be particularly true because the practicing bar also is being asked to assume part of the financial responsibility for training new lawyers.

Yet, part of the hallmark of a true professional is the willingness to give back to the profession and to the public. Just as the members of the Wisconsin bar have unselfishly given time and talent to serve as adjunct faculty in the General Practice Skills Course, we believe that the vast majority of practicing lawyers and judges would be willing to contribute their services and their resources to make these training academies and clinical programs a reality.¹⁴⁴ Providing law graduates a sound foundation so that they may enter the practice prepared to represent their clients competently and ethically involves some cost and a commitment to change. Ultimately, that change, however, will enhance the image and performance of the legal profession. It is not only time for both legal educators and the practicing bar to stop just talking about professionalism, but also time for significant, realistic change.

143. Some disaffected groups—the bar review industry and state bar examiners—are likely to lead the fight against changing the status quo. Others may argue that the bar is too fragmented to achieve such significant change. See, e.g., Robert L. Nelson & David M. Trubek, *New Problems and New Paradigms in Studies of the Legal Profession*, in *LAWYERS' IDEALS/ LAWYERS' PRACTICES—TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* (Robert L. Nelson & David M. Trubek eds., 1992).

144. As Warren Burger stressed, preparing students for the profession should be a “joint enterprise” between law schools and the profession, and the practicing bar and judges must be willing to contribute their services and to spearhead the drive to obtain adequate funding for legal education. Burger, *supra* note 44, at 21-22.