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## The Juris Doctor Is In: Making Room at Law School for Paraprofessional Partners

Stephen A. Rosenbaum

Golden Gate University School of Law, srosenbaum@ggu.edu

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# THE JURIS DOCTOR IS *IN*: MAKING ROOM AT LAW SCHOOL FOR PARAPROFESSIONAL PARTNERS

STEPHEN A. ROSENBAUM\*

## I. FROM GOLD TO DIAMONDS

*The day was much too lovely to spend inside. I ate my bagged lunch on the steps of the law school, facing Cumberland Avenue, yellow jackets, holly bushes and the sun.*<sup>1</sup>

Ten years ago, at a celebration for the golden anniversary of clinical legal education at the University of Tennessee, Dean Richard Wirtz and Advocacy Center Director Jerry Black presented a comprehensive scheme for training future advocates. This scheme emphasized teaching practical skills to law students early in their education.<sup>2</sup> Wirtz and Black based some of their observations on recommendations from a commission reporting on the future of Tennessee's judicial system.<sup>3</sup> This commission recommended that future lawyers be "both disposed and trained: to attend conscientiously to their client's interests . . . with sensitivity to all of the human factors<sup>4</sup> [and] to resolve every dispute by the least combative and expensive means available . . ."<sup>5</sup> Wirtz and Black drew other ideas from a faculty task force's recommendations for law schools' advocacy curriculum.<sup>6</sup> Together with their faculty colleagues, they

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\* Lecturer, University of California, Berkeley School of Law and Stanford Law School; Staff Attorney, Disability Rights California (DRC), a member of the federal network of protection and advocacy agencies. The views here are those of the author and not necessarily those of DRC, its staff or board of directors. The author thanks Wendy Shane for her research assistance and *Tennessee Law Review* editors Brittain Sexton and David Goodman, as well as Ms. Shane, for their editorial suggestions.

1. Personal Journal Entry of Stephen Rosenbaum (Feb. 24, 1973) [hereinafter Personal Journal Entry] (on file with author). This personal journal entry followed my visit to a University of Tennessee College of Law conference at the time of my first (undergraduate) legal services field placement with the Appalachian Research & Defense Fund.

2. Jerry P. Black & Richard S. Wirtz, *Training Advocates for the Future: The Clinic as the Capstone*, 64 TENN. L. REV. 1011, 1013-14 (1997).

3. *Id.* at 1011 (citing COMM'N ON THE FUTURE OF THE TENN. JUDICIAL SYS., TO SERVE ALL PEOPLE (1996) [hereinafter TO SERVE ALL PEOPLE]).

4. See *infra* text accompanying notes 82-90.

5. Black & Wirtz, *supra* note 2, at 1011 (quoting TO SERVE ALL PEOPLE, *supra* note 3, at 69 app. A). Dean Wirtz had served with his fellow Tennessee law school deans and board of law examiners on the Commission's eight-member working group on lawyer education and bar admission. *Id.*

6. *Id.* at 1012-13 (citing SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM.

urged law schools to take a page from the influential MacCrate Report<sup>7</sup> and “convey to the students a sense of what being a professional means, not only in terms of skills and knowledge, but also in terms of ethics, attitudes, and other dimensions of lawyering.”<sup>8</sup>

We now mark the diamond anniversary of continuous clinical legal education at the University of Tennessee with new sources of guidance available. These include the Carnegie study on professionalism and a legal education road map charted by Professor Roy Stuckey and others. The latest report endorsed by the Carnegie foundation addresses the *formation*<sup>9</sup> of students in professional schools, or in the authors’ words, the “apprenticeship” of professionalism and purpose.<sup>10</sup> Among other educational best practices, Professor Stuckey promotes instruction that nurtures cross-professional collaboration, teamwork, and effective communication with colleagues and other professionals.<sup>11</sup>

BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 236-45 (1992) [hereinafter MACCRATE REPORT]].

7. MACCRATE REPORT, *supra* note 6.

8. Black & Wirtz, *supra* note 2, at 1014; *see, e.g.*, MACCRATE REPORT, *supra* note 6, at 135-41, 233-68 (describing the “educational continuum” through which law school students acquire professional skills and values); TO SERVE ALL PEOPLE, *supra* note 3 (making recommendations for new directions in continuing legal education). Some of the fundamental lawyering skills identified by the Tennessee Commission’s Working Group echo those detailed by the ABA Task Force, including the following: an understanding of alternative dispute resolution (Skill 8.4); familiarity with systems and procedures to ensure efficient allocation of time, resources, and effort (Skill 9.2); and development of systems and procedures for effectively working with others (Skill 9.4). MACCRATE REPORT, *supra* note 6, at 196-98, 200-01. The author of the ABA report was also one of the speakers at the Legal Clinic’s 50th anniversary symposium. While reiterating the statement of skills and values contained in the report, Mr. MacCrate observed that many law schools were moving beyond traditional teaching in the development of new “coherent agendas of skills instruction” and were introducing new teaching methodologies into core courses. Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1132 (1997). For a look at the status of the MacCrate Report’s recommendations almost a decade later, with an eye on the need for new skills acquisition, *see* Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 135-54 (2001) (stating that since the release of the MacCrate Report, “change in legal education has accelerated, not declined”).

9. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, 84, 128-29 (Carnegie Found. for the Advancement of Teaching 2007). The authors, who embrace the French approach to education capsulated in the term *formation*, actually view the intensive socialization, professionalization, and values-shaping inherent in traditional law school pedagogy as one of its few positive features. *Id.* at 185-86.

10. *Id.* at 97.

11. ROY STUCKEY ET AL., *BEST PRACTICES IN LEGAL EDUCATION: A VISION AND A ROAD MAP*, 77-79, 119 (2007) (setting instructional goals relating to professional skills and professionalism, including techniques to “communicate effectively” with colleagues and other

Anniversaries present an opportunity to retool the pedagogical machinery, reexamine and reshape the curriculum, reflect on advice not taken, and reignite what Professor Dean Rivkin calls the “insurgent movement for change”<sup>12</sup> in (clinical) legal education. Specifically, I challenge law schools to take the concept of *formation* one step further by extending educational opportunities to other members in the legal field, namely the paralegal community. Paraprofessionals can help lawyers accomplish their tasks with the efficiency, affordability, professional collaboration, and responsiveness to clients that is promoted by the leading legal educators. Thus, the inclusion of paralegals in the law school classrooms and corridors may not qualify as an act of insurgency, but as a valuable opportunity to generate dialogue, reflection, and criticism. The presence and engagement of nonlawyer peers would further open law schools to the public they seek to serve.

This Article promotes a modest pedagogical retooling: Law schools should offer a degree program for nonlawyer advocates.<sup>13</sup> This would capitalize on the many attributes that paralegals bring to the profession. In my argument, I focus on how teaching paralegals or lay advocates in law schools advances non-costly and non-adversarial dispute resolution, sensitivity to human and cultural aspects of client rapport, and co-education between members of the legal profession. I

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professionals and the capacity to deal sensitively and effectively with colleagues and others from various backgrounds). While Professor Stuckey and the Carnegie Foundation bring a nuanced and renewed attention to longstanding concerns, “the same critiques and responses have been repeated” for seventy-five years in the vast literature on preparation of law students for practice. John S. Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1135 (1997).

12. Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 340–41 (1987) (remarks of Professor Dean Hill Rivkin) [hereinafter Rivkin, *Clinical Education: Reflections*]. I have dubbed Rivkin the “James Dean of Clinical Education” for his desire to rekindle the early passion and rebelliousness of the legal clinical movement in which “[c]linicians claimed to be sensitive, egalitarian, nonhierarchical, mutual[ly] trusting, caring, open, etc.—offering a sharply contrasting profession[al] model to their nonclinical colleagues.” *Id.* The term “insurgent” has since taken on a sinister meaning, but the original sentiment is still *à propos*. On the insurgency theme and the need to re-focus on accessing justice for underserved clients, see also Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 998, 1006 (2004) (stating that “[t]hirty years ago a hardy band of public defenders and legal services attorneys stormed the academy” and it is time to consider a “return to our roots”).

13. Apologies are extended to those offended by defining this person in terms of what she is *not*—a lawyer. For purposes of this Article, I use the terms *paralegal*, *lay advocate*, *legal assistant*, *lay practitioner*, and *paraprofessional* interchangeably, although I recognize there are perceived and real distinctions. See, e.g., Alan W. Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 UDC/DCSL L. REV. 35, 64 (2000) (listing both *paralegals* and *lay advocates* in a legal services veteran’s categorization of legal aid providers); see also Debra J. Monke, *What to Know Before Your Firm Hires a Legal Assistant: Why Paralegal Certification Counts*, 41 TENN. B.J. 22, 36 (2005) (using *legal assistant* and *paralegal* as synonymous terms).

use the specific situation of special education advocacy to show how trained paraprofessionals can be particularly effective in real-world scenarios. While my chief example is a lay advocate working on behalf of disabled<sup>14</sup> students in a public school setting, the value added by paralegals is by no means limited to that venue. Finally, I suggest what educators should emphasize in a new law school curriculum and how they might design a paraprofessional program.

## II. NEW CLIENTELE AT THE ACADEMY

*Law school sometimes gives law students the impression that they are solitary warriors [but] [l]awyers practice law as part of a team . . . .*<sup>15</sup>

The legal educational establishment—law schools and the ABA accreditation overseers—should undertake a broader approach in preparing tomorrow’s advocates. They should create opportunities for paralegals to study, train, and work side-by-side with future lawyers within the law school facilities.<sup>16</sup>

This reform is not explicitly recommended in any of the reports on improving the professionalization, skills development, and ethical components in the curriculum, nor is this proposal limited to *clinical* education. The concept of law-school-administered paralegal programs, however, is not entirely new. In the early 1970s, the avant-garde Antioch School of Law trained paralegals for the public sector, primarily through clinical experiences.<sup>17</sup>

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14. I am obliged to make a disclaimer about use of the term “disabled clients” in contrast to “clients with a disability.” For many of the disability cognoscenti, it is important always to use “people first” language to emphasize their humanity, not their disability. This linguistic predilection is somewhat analogous to that of favoring “people of color” over “colored people,” although “disabled” lacks the pejorative connotation of “colored.” The debate is really much more nuanced. Some disability activists actually prefer to accentuate the disability as a matter of identity and pride. See Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 CLINICAL L. REV. 271, 272 n.3, 286 n.78 (2005) (explaining reclaimed epithets and “disability first” language).

15. Munneke, *supra* note 8, at 146.

16. This program would certainly involve different admissions and graduation criteria. Presumably, applicants would not take the LSAT examination and might not have obtained a four-year undergraduate degree. See *infra* text accompanying notes 122–23. The name of this degree could be as hard to fathom as an adequate title for the paralegal candidate who earns it. Most likely, it would include the word “juris,” if not “doctor.”

17. See Brief for National Paralegal Institute as Amicus Curiae Supporting Respondents, *Procunier v. Martinez*, 414 U.S. 973 (1973) (No. 72-1465), 1973 WL 171721 (providing a history of paralegal training). Antioch Law School has since closed its doors. The University of West Los Angeles School of Law, accredited by the State Bar of California Committee of Bar Examiners, ostensibly offered a paralegal program with a basic curriculum structure similar to that of the law school. *Id.* Its website does not contain information about paralegal studies, but

A number of other law schools have piloted paralegal studies in specialized public law subjects, such as fair housing, consumer claims, landlord-tenant, welfare, domestic relations, Social Security, and human rights.<sup>18</sup>

Paralegal programs would deliver tangible benefits to traditional law students. Opening law schools to a new class of advocates would strengthen future lawyers' abilities to deliver legal services more efficiently and to communicate more effectively with clients and co-workers. With exposure to paralegal students, the traditional law students would obtain some of the fundamental paralegal legal research and drafting skills.<sup>19</sup> Also, the law students could observe the instinctual and experiential know-how that a

it does note that the school's mission is the "democratization of the legal community." Univ. of West L.A. Sch. of Law, Mission & History, <http://www.uwla.edu/Welcome/MissionHistory.aspx> (last visited Feb. 18, 2008). Capital University Law School is an ABA-accredited school with a paralegal training program. See Capital Univ. Law Sch., Paralegal Programs, <http://www.law.capital.edu/Paralegal> (last visited Feb. 18, 2008).

18. Brief for National Paralegal Institute, *supra* note 17, at \*6-7. These pilot schools included Boston College Law School, Columbia Law School, and the Denver College of Law. *Id.* It does not appear that any of these schools offers a paralegal studies program at the present time. See Columbia Law Sch., Centers and Programs, [http://www.law.columbia.edu/center\\_program](http://www.law.columbia.edu/center_program) (last visited Feb. 18, 2008); Boston Coll. Law Sch., Curriculum, <http://www.bc.edu/schools/law/home.html> (follow "Curriculum & Course" hyperlink) (last visited Feb. 18, 2008); Univ. of Denver Coll. of Law, Degree Programs, <http://www.law.du.edu/degrees/> (last visited Feb. 18, 2008). The University of Denver College of Law, however, offers a Master of Science in Legal Administration to "train[] students in the legal culture; the process of lawyering; and principles of business management unique to the legal environment." See Univ. of Denver Coll. of Law, M.S. in Legal Administration Program, <http://www.law.du.edu/msla/index.cfm> (last visited Feb. 18, 2008). While the program's express purpose is not the training of paralegals, it could easily be a model for students seeking that kind of training and is indicative of the kind of nonlawyer degrees that law faculties may opt to offer. Boston College offers a Professional Studies Certificate in Criminal and Social Justice, but the program is not directly affiliated with the law school. See Boston Coll., Professional Studies Certificate, <http://www.bc.edu/schools/advstudies/certificate.html> (last visited Feb. 18, 2008).

19. In a brief filed with the Supreme Court more than three decades ago, arguing that paralegals can and should be used to help meet the serious need for more adequate legal services for prisoners, the National Paralegal Institute wrote:

The duties of paralegals vary according to the setting in which they work. In private law firms, for example, paralegals draft and file corporate documents, maintain clients' tax records, and collect data relevant to estate planning. In the public sector, among other things, paralegals interview clients, investigate facts, and conduct negotiations. Paralegals are being trained to perform a variety of functions in many different areas of the law.

Brief for National Paralegal Institute, *supra* note 17, at \*2-3 (footnote and citation omitted). For typical skills and courses, see, for example, *id.* at \*8-9; Monke, *supra* note 13, at 23-24; and All Criminal Justice Schs., Paralegal School Accreditation, [http://www.allcriminaljusticeschools.com/faqs/paralegal\\_accreditation.php](http://www.allcriminaljusticeschools.com/faqs/paralegal_accreditation.php) (last visited Feb. 18, 2008) [hereinafter Justice Schools].

paralegal brings to a task. These benefits support the notion that the legal academy should reach out to a wider audience.

Among these programs, the curricular and faculty infrastructure might vary from institution to institution, but the emphasis should remain focused on the ethics of practice, clinical education, skills training, and other forms of experiential education. At the same time, law schools should continue to assure that candidates for J.D. degrees are “disposed and trained” in these same values and skills. To achieve this, the faculty must provide a more diverse curriculum that focuses as much on *formation* as it does on technical skills. The prerequisites for a paralegal degree would be less comprehensive than that for lawyers.<sup>20</sup> The goal would be to offer a rigorous curriculum, teach shared skills with traditional law students, and use the clinical model and interdisciplinary teaching to foster a common knowledge base that would aid postgraduate collaboration.

Activist and academic Ed Sparer and his colleagues called for the creation of “lay advocate” centers to complement the work of legal services attorneys more than forty years ago.<sup>21</sup> Sparer’s contemporary, the practitioner and scholar Gary Bellow, also touted a system using paralegals, noting that they are “long-term service providers capable of providing first class legal representation.”<sup>22</sup> He argued that, aside from lowering the cost of advocacy,

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20. Presumably, students enrolled in this program would pay less in fees than traditional law students. Their earning potential also would be lower than that of J.D. candidates. This could conceivably lead to tension within the law school student body. See *infra* text accompanying notes 123–25.

21. Edward V. Sparer, Howard Thorkelson & Jonathan Weiss, *The Lay Advocate*, 43 U. DET. L.J. 493, 494 (1966).

22. Gary Bellow, *Legal Services in Comparative Perspective*, 5 MD. J. CONTEMP. LEGAL ISSUES 371, 376 (1994). For similar and distinct reasons, the independent paralegal movement has taken hold in the United Kingdom and in post-colonial developing countries. See generally, e.g., Thomas F. Geraghty et al., *Access to Justice: Challenges, Models, and the Participation of Non-Lawyers in Justice Delivery*, in ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY 53 (2007) [hereinafter ACCESS TO JUSTICE] (offering guidance for confronting difficulties in providing legal aid within Africa’s criminal justice system). In South Africa, there has even been a proposal to redefine “legal practitioner” in that country’s constitution to include paralegals, which would permit them to represent clients in court. *Id.* at 66. In the United Kingdom, “legal executives,” as they are called, attend police interviews aside suspects, take statements from imprisoned defendants, and follow up with witness declarations. Adam Stapleton, *Introduction and Overview of Legal Aid in Africa*, in ACCESS TO JUSTICE, *supra*, at 3, 20; see also DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 136, 138, 141 (2000). If not an all-out endorsement of a paralegal degree, Professor Rhode makes an appeal for law schools to offer a differentiated instruction. In her view, “[t]he diversity in America’s legal needs demands corresponding diversity in its legal education.” *Id.* at 190. She notes that, in other nations, nonlawyers with legal training provide routine services in areas such as bankruptcy, immigration, uncontested divorces, and landlord-tenant matters “without demonstrable adverse effects.” *Id.* By contrast, the American law school three-year program is “neither necessary nor sufficient” to train students to be competent

“we have been able to teach paralegals to do large amounts of legal services work as well as, and sometimes better than, their lawyer counterparts.”<sup>23</sup> He suggested altering the two-to-one lawyer to paralegal ratio, in addition to “developing a form of ‘free-standing’ paralegalism not unlike nurse practitioners in medicine.”<sup>24</sup> Ethicist Deborah Rhode concurred, suggesting that law schools take a cue from other nations. That is, offer training to paralegal specialists in areas of unmet legal need, and help design appropriate licensing structures for paralegals.<sup>25</sup>

Nonlawyer advocates have different names and functions. Sometimes they are paralegal technicians or researchers. At other times, they may play the roles of lay advisors or community organizers.<sup>26</sup> Sparer and his associates described the role of “lay advocates” in a sort of primer:

The lay advocate teaches his clients to protest when he has been deprived of his most elementary rights, rather than suffer inwardly [and] sink further into despair . . . .

The lay advocate teaches his clients to protest in such situations by going to an attorney—if there is an attorney available.

Frequently, the lay advocate’s protest can be effectively and properly made directly to the sources which have the authority to remedy the grievance.

. . . .  
The lay advocate is a source of education as to fundamental legal rights.<sup>27</sup>

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in these areas of unmet legal needs. *Id.*

23. Bellow, *supra* note 22, at 376. Professor Louise Trubek also acknowledged the role that lay advocates can play in issues of importance to poor clients. In writing about health care advocacy, she suggested that “law school education should be modified and lay advocates encouraged and trained.” Louise G. Trubek, *Making Managed Competition a Social Arena: Strategies for Action*, 60 BROOK. L. REV. 275, 299 (1994). It is not clear whether she envisioned a full-fledged professional degree granting program for advocates, as her focus was on more involvement generally of law school clinics (and legal services organizations) in tackling health care issues. *Id.*; see also Jane R. Wettach, *The Law School Clinic as a Partner in a Medical-Legal Partnership*, 75 TENN. L. REV. 305, 306–10 (2008) (describing the role of law school clinics in pediatric medical-legal partnerships that serve needy clients).

24. Bellow, *supra* note 22, at 376.

25. RHODE, *supra* note 22, at 190.

26. In an attempt to define the role of the nonlawyer advocate, Sparer and colleagues observed that it “involve[s] legal rights and relationships . . .” and more than administrative hearings representation. Sparer et al., *supra* note 21, at 505, 512.

27. *Id.* at 513. The authors characterize the role of the lay advocate as “at once more independent of the attorney’s and at the same time closely related to that of the attorney who represents the poor.” *Id.* It should go without saying that the exclusive use of the masculine pronoun should be read in its historical context, for most of us have evolved in language and mindset since the 1960s.



Lay practice can be as nondescript as the “practice of law,” which has been defined simply as “what lawyers do.”<sup>28</sup> Whatever the definition, paraprofessionals can render competent, vigorous, and commonsense legal assistance in a range of legal or quasi-legal<sup>29</sup> situations.<sup>30</sup> These include problems concerning education, housing, foster care, public benefits, immigration status, health care, consumer affairs, or employment. In some instances, paralegals cut costs for clients and law offices, as well as preserve attorney resources. Moreover, paralegals are sometimes better equipped than lawyers when communicating with, informing, advising, and generally assisting clients.

Despite these benefits, concerns about the unauthorized practice of law and the quality of advice will persist, some more legitimate than others. Professor Sparer referred to “the incantation of the dark phrases—‘solicitation,’ ‘unauthorized practice,’ ‘stirring up of litigation,’ ‘lay intermediaries’—murmured in the lobbies and men’s rooms, but rarely debated in open fashion.”<sup>31</sup> Of course, some of these “concerns” are due to the fact that lawyers have a vested economic interest in retaining a professional monopoly over the privilege to advocate in court. Some critics argue that lawyers’ selfish economic desires partially explain unauthorized practice of law statutes, which ban direct advocacy by paralegals.<sup>32</sup>

Professor Rhode offers sanguine advice on the subject. She counsels against a prohibition on paralegal practitioners, instead suggesting regulation.<sup>33</sup>

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28. Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions*, 34 STAN. L. REV. 1, 45 (1981).

29. Sparer and his associates referred to these as “low-level” legal problems.” Sparer et al., *supra* note 21, at 493.

30. *Id.* at 510, 514–15; see also Thais E. Mootz, Comment, *Independent Paralegals Can Fill the Gap in Unmet Legal Services for the Low-Income Community*, 5 UDC/DCSL L. REV. 189, 199–202 (2000) (arguing that paralegal practitioners can provide affordable services in areas of social security, immigration, veterans benefits, unemployment compensation, workers’ compensation and family law matters including domestic violence restraining orders).

31. Sparer et al., *supra* note 21, at 494. Presumably, the *sotto voce* discussions also take place in ladies’ rooms nowadays. Sparer and his co-authors remind us that the canons of legal ethics and statutory restrictions on lawyering “were not conceived in the context of an overriding concern with equal justice . . . .” *Id.* The subject is far from buried. See, e.g., William C. Bovender, *Treating the UPL Epidemic*, 42 TENN. B.J. 26, 27 (2006) (arguing lawyers have a duty to combat unauthorized practice of laws, notwithstanding charges of protectionism). But see generally AM. BAR ASS’N COMM’N ON NONLAWYER PRACTICE, NON-LAWYER ACTIVITY IN LAW-RELATED SITUATIONS (1995), available at <http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=338#One> (explaining the utility of paralegals when public protections are in place).

32. M. Brendhan Flynn, *In Defense of Maroni: Why Parents Should be Allowed to Proceed Pro Se in IDEA Cases*, 80 IND. L.J. 881, 901–02 (2005). Judges more naturally empathize with lawyers’ complaints about the damage done by the unauthorized practice of law than with consumer complaints about being denied a chance to use the legal system. *Id.* at 902.

33. RHODE, *supra* note 22, at 137–39; see also Mootz, *supra* note 30, at 203–04

Training and guidance from law schools could help answer legitimate concerns from the bar and the public at large.

The legal academy and the bar<sup>34</sup> should be involved in the education, training, and certification of paralegals, rather than adopting a position of indifference or opposition.<sup>35</sup> Lawyers of tomorrow should have a co-educational experience with future colleagues in a collaborative, nonhierarchical, and reciprocal setting. This is preferable to operating in separate spheres, establishing impromptu relationships, or fretting over the quality of service provided by paralegals. Even skeptics of lay advocacy programs must acknowledge that law schools presently do not prepare future attorneys for collaboration with colleagues and subordinates, who are necessary in the practice of law.<sup>36</sup> This proposal would make the curriculum more comprehensive and increase the quality of the development of paralegals, who will be important assets in the professional partnership for providing legal services.

### III. SPECIAL EDUCATION ADVOCACY: THE IDEAL SETTING

*Lawyers . . . sometimes labor under the fiction that we provide technical assistance when in fact our clients are really not equipped to advocate on their own.*<sup>37</sup>

Lay advocates can operate successfully in many forums. I will use my specialized practice area, special education law, to exemplify the benefits of paraprofessional partnership.<sup>38</sup> Parents of students with disabilities, for example, must negotiate the labyrinth of education law at Individualized

(suggesting other remedies to protect consumers against paralegal malpractice).

34. At least one state bar association actually allows for paralegal membership. Since 2002, the Indiana State Bar has offered an associate membership to paralegals who qualify on the basis of education through a degree program, continuing legal education, or through work experience. Edna M. Wallace, *Who's On First? Paralegals with an ISBA Membership*, 49 RES GESTAE 26, 26 (Feb. 2006).

35. Professor Sparer and his co-authors put the fundamental challenge to the legal profession this way: "whether it is prepared to assist lay advocates in equipping themselves with knowledge of such basic rights and in openly offering . . . to assist in the realization of such basic rights." Sparer et al., *supra* note 21, at 512.

36. Munneke, *supra* note 8, at 146 (discussing how students are given the impression that they are "solitary warriors, doing battle for their clients" without reference to associate lawyers, legal assistants, secretaries, and non-legal professionals).

37. Stephen A. Rosenbaum, *Aligning or Maligning? Getting Inside a New IDEA, Getting Behind No Child Left Behind and Getting Outside of It All*, 15 HASTINGS WOMEN'S L.J. 1, 12 n.59 (2004) [hereinafter Rosenbaum, *Aligning or Maligning?*].

38. For the past twelve years, I have advised or represented parents and students in special education matters ranging from workshops, consultations and IEP meetings to mediation, due process hearings and litigation.

Education Program (IEP)<sup>39</sup> conference tables, in mediation rooms, or at parent organizing meetings. These would all be appropriate settings for paralegals to engage in individualized or group advocacy on behalf of youths and their families.

The primary role of enforcing the Individuals with Disabilities Education Act (IDEA)<sup>40</sup> falls on parents and their advocates, where available.<sup>41</sup> In a major decision interpreting the IDEA, the Supreme Court declared that parents “will not lack ardor” in making sure their children gain access to all the educational benefits entitled to them under the Act.<sup>42</sup> While the Court reemphasized the central role of parental decision-making in its last term,<sup>43</sup> it overestimated the ability of parents to act on their own. This is particularly true when families are limited by poverty, disability, language barriers, immigration status,<sup>44</sup> or lack of formal education.

39. The hallmark of special education, the IEP is a written statement of a child’s educational levels of academic achievement and functional performance and measurable goals, as well as placement, instructional methodologies and services developed by a team of educators and parents for meeting these goals. See 20 U.S.C. §§ 1401(14), 1414(d) (2000 & Supp. 2007); 34 C.F.R. §§ 300.22, 300.320–324 (2006). I have previously commented that “the ritual of writing lengthy IEPs . . . seems to follow less from the law than from district or parent culture” and that “[p]arents and school staff are too busy to assemble around a table on under-sized chairs for [these] marathon session[s] . . .” Stephen A. Rosenbaum, *When It’s Not Apparent: Some Modest Advice to Parent Advocates for Students with Disabilities*, 5 U.C. DAVIS J. JUV. L. & POL’Y 159, 173 (2001) [hereinafter Rosenbaum, *When It’s Not Apparent*].

40. 20 U.S.C. §§ 1400–82 (Supp. 2007) (originally enacted as Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (1975)).

41. NAT’L COUNCIL ON DISABILITY, BACK TO SCHOOL ON CIVIL RIGHTS: ADVANCING THE FEDERAL COMMITMENT TO LEAVE NO CHILD BEHIND 7, 70 (2000) [hereinafter NCD, BACK TO SCHOOL]. For an overview of special education law and procedure, see, for example, LINDA D. HEADLEY (revised and updated by STEPHEN A. ROSENBAUM), *Schools and Educational Programs*, §§ 5.01–5.02, in AIDS AND THE LAW (David W. Webber ed., 4th ed. 2007); COMMUNITY ALLIANCE FOR SPECIAL EDUC. & PROTECTION AND ADVOCACY, INC., SPECIAL EDUCATION RIGHTS & RESPONSIBILITIES (9th ed. 2005), available at <http://www.pai-ca.org/pubs/504001SpecEdIndex.htm>; Wendy F. Hensel, *Sharing the Short Bus: Eligibility and Identity Under the IDEA*, 58 HASTINGS L.J. 1147, 1152–79 (2007); Mark C. Weber, *Reflections on the New Individuals with Disabilities Improvement Act*, 58 FLA. L. REV. 7 (2006).

42. Bd. of Educ. v. Rowley, 458 U.S. 176, 178, 209 (1982). I have previously argued that “ardor may not be enough” to achieve success in light of some of the jurisprudential and legislative setbacks in the IDEA. Stephen A. Rosenbaum, *A Renewed IDEA and the Need for More Ardent Advocacy*, 32 HUM. RTS. 3, 3 (2005).

43. Winkelman v. Parma City Sch. Dist., 127 S. Ct. 1994, 2000 (2007) (noting that the statute lays out “general procedural safeguards that protect the informed involvement of parents in the development of an education for their child”). Although the courthouse door has been opened for non-attorney parents, the undertaking of an administrative hearing, not to mention a federal court appeal, is still a daunting task and not to be assumed lightly. On the other hand, the potential for attorney-advocate collaboration on a hearing or appeal is great.

44. We know anecdotally that undocumented immigrant parents have children enrolled in the nation’s schools. See, e.g., Dean Hill Rivkin, *Legal Advocacy and Education Reform:*

Under IDEA, parents are equal members of the IEP planning team, along with school personnel.<sup>45</sup> To be successful, parents must understand both their children and their children's disabilities. They also must be able to follow the proceedings of the IEP meetings, voice disagreement, seek clarification, and be willing to use the available procedures to resolve conflicts.<sup>46</sup> Successful decision-making and implementation under IDEA require skills and knowledge beyond the reach of many.<sup>47</sup> This is precisely where advocates—with or without a J.D.—can provide assistance.

The skills required for special education counseling and advocacy are not necessarily conventional legal skills.<sup>48</sup> Advocates versed in instructional methodology, behavior intervention, nursing, medicine, child development, or other therapies can provide great support to parents and legal practitioners.<sup>49</sup> Even skills in community organizing and policy analysis are relevant and useful. Private sector practitioners and law students alike have observed that what lawyers do “isn't law, it's social work.”<sup>50</sup> This truism has particular resonance when working with disabled clients seeking education or other services.<sup>51</sup>

Successful advocates working on behalf of a special-needs child must have an understanding of education rights, as well as awareness of protections

*Litigating School Exclusion*, 75 TENN. L. REV. 265, 265–66 (2008) [hereinafter *Legal Advocacy and Education Reform*] (discussing *Plyler v. Doe*, 451 U.S. 968 (1981)).

45. There are extensive procedural protections for parents as the educational representatives of their children. 20 U.S.C. § 1415 (Supp. 2006); 34 C.F.R. §§ 300.500–.505 (2006).

46. See Rosenbaum, *When It's Not Apparent*, *supra* note 39, at 166–67, 172–86 (describing the trials and frustrations inherent in the IEP design and implementation).

47. See GAIL IMOBERSTEG, EVALUATION STUDY OF SPECIAL EDUCATION DISPUTE RESOLUTION ISSUES IN CALIFORNIA, FINAL REPORT 24, 26 (2000), available at <http://www.cde.ca.gov/sp/se/ds/documents/duprevalrpt.pdf> (discussing the perceived need for lawyers in the decision-making process). Sometimes the parent needs more support than actual advocacy. See, e.g., Louise G. Trubek & Jennifer J. Farnham, *Social Justice Collaboratives: Multidisciplinary Practices for People*, 7 CLINICAL L. REV. 227, 243 (2000) (describing collaborative relationship with counselors, victim advocates and other service providers prevalent in the domestic violence context).

48. Sparer et al., *supra* note 21, at 506 (stating that an important skill is the ability to “add[] hope and a sense of human dignity”).

49. Massey & Rosenbaum, *supra* note 14, at 306–07.

50. Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 WASH. U. J.L. & POL'Y 63, 63 (2003).

51. *Id.* at 74–77 (describing lawyer *qua* social worker who serves her clients holistically and seeks to understand nature of all social diversity and oppression, including those related to mental or physical disability). Professor Sparer and colleagues recognized the value that social workers bring to resolving disputes in schools many years ago. In one vignette, their article recounts that “[w]hile the lawyer prepares a court action, the social worker seeks out the acting school superintendent and argues the [suspended] boy's cause. Before the lawyer files his papers, the suspension is lifted and the boy graduates.” Sparer et al., *supra* note 21, at 502.

against discrimination. This unique form of advocacy also requires an understanding of the child's disability,<sup>52</sup> how schools and other bureaucracies function, and how to articulate a client's objectives and objections effectively. With the proper training, a paralegal can be well suited for this task.<sup>53</sup>

Parents may not have negotiation skills or familiarity with legal terminology. This contributes to the power imbalance, as does their lack of training in evaluating and marshalling evidence. IEP meetings have been described as "highly formal, non-interactive, and replete with educational jargon."<sup>54</sup> The stress, frustration, and anger that many parents experience also may interfere with their ability to present concerns in due process administrative hearings or mediation.<sup>55</sup> Advocates can provide the necessary distance and composure, along with knowledge and empathy.

A disproportionate burden falls on parents from marginalized groups to deal with these systemic obstacles. Those who do manage to avail themselves of procedural due process are predominately white, upper-to-middle class, English speaking, and well educated. In situations where this parental subgroup has difficulty with special education advocacy, non-English speakers with little formal education fare far worse. Marginalized parents are also likely to have greater difficulties using compliance complaints, alternative dispute

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52. See, e.g., Stephen A. Rosenbaum, *Representing David: When Best Practices Aren't and Natural Supports Really Are*, 11 U.C. DAVIS J. JUV. L. & POL'Y 161, 166-67 (2007) (describing a "dis-awareness" spectrum that spans from ignorant to hyper-aware).

53. In 2005, the Council of Parent Attorneys and Advocates (COPAA) received funding from the U.S. Department of Education, under a joint application with the University of Southern California University Center for Excellence in Developmental Disabilities, to create a standardized training curriculum and materials, and to develop guidelines and protocols for class instruction for lay advocate trainees. COPAA, Training Calendar, <http://www.copaa.org/seat/index.html> (last visited Feb. 18, 2008). The Special Education Advocacy Training (SEAT) Project trainees are required to complete approximately 115 hours of coursework, as well as a six-month practicum with an experienced special education attorney or advocate. See *id.* I served as an expert reviewer to the Project's curriculum advisory committee.

54. Martin A. Kotler, *The Individuals with Disabilities Education Act: A Parent's Perspective and Proposal for Change*, 27 U. MICH. J. L. REFORM 331, 364 (1994) (internal punctuation and citation omitted); see also Steven Marchese, *Putting Square Pegs into Round Holes: Mediation and the Rights of Children with Disabilities Under the IDEA*, 53 RUTGERS L. REV. 333, 351 (2001) (remarking that parents must face school officials "often speaking to each other in technical terms").

55. David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166, 189 (1991). The IDEA provides an elaborate scheme of non-compliance complaints, mediation, "resolution sessions," and due process administrative hearing procedures. 20 U.S.C. § 1415(e)-(j) (Supp. 2006); 34 C.F.R. §§ 300.506-.518 (2006). Other characteristics that may interfere with parents' ability to advocate for an appropriate education for their children include the following: fear of retaliation against the student, a desire to maintain good relations with the school, cultural norms that place educators in positions of unquestioned authority, feelings of shame about having a child with a disability, and a sense of powerlessness. Rosenbaum, *When It's Not Apparent*, *supra* note 39, at 166, 176-81.

resolution (ADR), mediation, and due process hearings.<sup>56</sup> These parents also are far less likely to have sufficient resources to pay a traditional attorney to guide them through these mechanisms to secure an appropriate education for their children, but a lay advocate may be more within their means.

In each state, Parent Training and Information Centers and Community Parent Resource Centers train parents of disabled children and professionals who work with children. These centers often employ paralegal advocates who are themselves parents of children with disabilities. This assistance helps parents participate more effectively with professionals to meet the educational needs of children with disabilities.<sup>57</sup> However, this assistance is usually limited to *group* training or *individualized* information and referral, as opposed to direct representation.

Unfortunately, free legal service providers,<sup>58</sup> who are usually lawyers, are limited by staff capacity, case priority, and service guidelines. As the result of understaffing, most low-income and middle-income families cannot realistically secure representation under the current system. Therefore, cost is an obvious plus factor for paralegal participation at the IEP meeting or other pre-administrative hearing stages.<sup>59</sup> Lawyers' time should be preserved for more complex due process hearings<sup>60</sup> and for litigation, while paralegals can provide assistance throughout the process.<sup>61</sup>

56. See Massey & Rosenbaum, *supra* note 14, at 281–82; Rosenbaum, *Aligning or Maligning?*, *supra* note 37, at 11–12.

57. See Technical Assistance Alliance for Parent Centers, <http://www.taalliance.org>. These parent centers are funded by the U.S. Department of Education through discretionary grants authorized under IDEA. 20 U.S.C. §§ 1472–73 (2006).

58. The protection and advocacy systems throughout the states receive federal funding to represent individuals with disabilities, including special education students, to obtain their service, legal and human rights. 29 U.S.C. § 794e (2000); 42 U.S.C. §§ 10803 et seq., 15041 et seq. (2000). *But see infra* note 60 (describing possible limits on representation).

59. One commentator on special education representation writes, “On a more global level, people of low or moderate means often do not have access to the judicial system. Attorney fees are so extravagant that most of the populace cannot afford an attorney’s hourly rates.” Flynn, *supra* note 32, at 901–02 (citations omitted).

60. The special education legal community does not uniformly support advocacy by paralegals outside of IEP consultation and informal negotiations, notwithstanding the broad language of IDEA. See 20 U.S.C. § 1415(h)(1) (Supp. 2006) (stating that a party has the “right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to problems of children with disabilities”). At least one non-attorney parent has been prosecuted for unauthorized practice. See *In re Arons*, 756 A.2d 867 (Del. 2000) (upholding disciplinary counsel’s ruling that IDEA does not authorize due process representation by nonlawyer advocates, and parent information centers can constitute unauthorized practice of law). This interpretation is not uniform in all states. See, e.g., Mootz, *supra* note 30, at 196 (stating that District of Columbia permits a “representative of person’s choosing” to appear at hearing).

61. See Rosenbaum, *When It’s Not Apparent*, *supra* note 39, at 167–71 (explaining the “upsides and downsides” of litigation under the IDEA); see also Dean Hill Rivkin, *Legal*

Recognizing impediments to enforcement, the National Council on Disability made a number of recommendations to increase the availability of attorneys, technical assistance, and self-advocacy services.<sup>62</sup> The Council called on the Department of Education to fund a greater number of lawyers to counsel clients and to set up a national back-up center, along with self-advocacy training programs, for students with disabilities and their parents.<sup>63</sup>

Because Congress failed to authorize sufficient funds for more lawyers, this presents an opportunity to enlarge and train a corps of specialized paralegals as a less costly alternative. Also, in many instances, lay advocates better relate to their clients with respect to class, ethnicity, language, and parental status. They can assist parents at earlier stages in advising, negotiating, or informal decision-making. The contributions of these paraprofessionals would facilitate the entry of lawyers for more complex transactions, such as due process hearings or appeals.

Beyond their role in individualized educational planning, lay advocates can help instigate systemic change for disabled students. Organized parents have played a significant role in the enactment and reauthorization of special education laws. They have served as catalysts initiating change in the way that schools address the needs of students with disabilities.<sup>64</sup> Group advocacy can include anything from serving on an advisory committee or a consultative council<sup>65</sup> to joining statewide coalitions and *ad hoc* mass actions to forming

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*Advocacy and Education Reform*, *supra* note 44, at 277–82 (discussing the mix of litigation and extrajudicial advocacy strategies necessary to enforce educational rights).

62. NCD, *BACK TO SCHOOL*, *supra* note 41, at 217–18; *see also* IMOBERSTEG, *supra* note 47, at 8–9 (reporting stakeholders agreement on recommendations for the special education mediation and hearing systems in California).

63. NCD, *BACK TO SCHOOL*, *supra* note 41, at 217–18 (Recommendation VII.7). Given the particular need of poor and underserved families, the Council specifically recommended that a lawyer be available at each parent center. *Id.* at 217. The community resource centers were specifically created to give training and information to the underserved parents of children with disabilities, including those who are low-income, have limited English proficiency, or are themselves disabled. 20 U.S.C. §§ 1472–73 (Supp. 2006). One member of the presidentially-appointed Council had recommended that public funds be used to train more lay advocates to help youngsters and their parents navigate the special education system, and that law schools give students more exposure to education disability law. *See* Lilliam Rangel-Díaz, *Ensuring Access to the Legal System for Children and Youth with Disabilities in Special Education Disputes*, 27 HUM. RTS. 17, 21 (2000); *see also supra* note 53 (describing the SEAT Project, a non-degree program for lay advocates jointly administered by a non-profit legal services organization and a university applied-research center).

64. Kotler, *supra* note 54, at 361–62; Rosenbaum, *Aligning or Maligning?*, *supra* note 37, at 30–37 (describing the need for “macro-advocacy” on behalf of classes of (disabled) students, as well as “micro-advocacy” in individualized IEP process). Lay advocates may support parents successfully at advisory committee sessions, parent strategy meetings, and at *tête-à-têtes* with school authorities.

65. Such councils are set up under the No Child Left Behind Act. 20 U.S.C. §§ 6316–7941 (2003).

parent-led organizations.<sup>66</sup> While working with the Harvard Family Research Project, Dr. M. Elena López observed that “[t]hrough one-on-one conversations, group dialogue, and reflection, parents and other residents develop a strong sense of community, and learn how to use their collective power to advocate for school change.”<sup>67</sup>

Special education attorneys sometimes teach classes for parents or distribute self-help literature.<sup>68</sup> Some even have information links on their web sites that encourage parents to contact support groups during or after representation.<sup>69</sup> This partly acknowledges that parents continue advocating long after a single dispute had been resolved. These parents need not hire an attorney every time a disagreement with a school district arises. Client training has increased the number of parents and other nonlawyers who can serve as effective advocates at IEP meetings, mediation, or other ADR venues.<sup>70</sup> Paralegals can often substitute for or assist attorneys in supporting these parents, which would result in a great social benefit.

#### IV. A BLUEPRINT FOR EXPANSION

*There's a sense of elitism and entitlement in law schools. . . . We are so self-contained in our own buildings and social activities . . . .*<sup>71</sup>

Regardless of whether this new paraprofessional program is housed completely within the law school, the curriculum should not simply mirror a

66. ERIC ZACHARY & SHOLA OLATOYE, N.Y. INST'T. FOR EDUC. & SOC. POL'Y, A CASE STUDY: COMMUNITY ORGANIZING FOR SCHOOL IMPROVEMENT IN THE SOUTH BRONX 6 (2001); see also M. ELENA LÓPEZ, HARVARD FAMILY RESEARCH PROJECT, TRANSFORMING SCHOOLS THROUGH COMMUNITY ORGANIZING: A RESEARCH REVIEW 6–8 (2003), available at <http://www.gse.harvard.edu/hfrp/content/projects/fine/resources/research/lopez.pdf> (discussing various forms of schools-based organizing).

67. LÓPEZ, *supra* note 66, at 1; see also Lyn Slater et al., *Report of the Parent Self-Advocacy Working Group*, 70 FORDHAM L. REV. 405, 408–09 (2001) [hereinafter *Self-Advocacy Working Group*] (stating that through value-based and skills-based training, professionals learn ways to empower parents to be strong and effective self-advocates); Rosenbaum, *When It's Not Apparent*, *supra* note 39, at 193–94 (giving examples of alliance building in special education context).

68. Massey & Rosenbaum, *supra* note 14, at 315 (citing informal conversation with attorneys at national conference of student-parent bar and distribution of popular informational DVD).

69. See, e.g., Wrights Law, <http://www.wrightslaw.com> (providing informational resources regarding special education law and advocacy).

70. In anticipation of the 2004 IDEA amendments, a Bay Area group of lawyers and self-help providers, BASE-A, recommended the distribution to parents of “advo-kits” as part of a grassroots campaign to increase self-advocacy. Rosenbaum, *Aligning or Maligning?*, *supra* note 37, at 10.

71. SULLIVAN ET AL., *supra* note 9, at 150 (comments from law student focus group).



conventional paralegal certification program.<sup>72</sup> In addition to standard doctrinal courses, educational programs should focus on skills and traits such as those discussed above. Educators can also look to demand in the private sector for one good indicator of what these skills might be. Moreover, a paraprofessional program should foster “integrated” education by requiring joint classroom and clinical participation with traditional law students. While the paraprofessional graduates will probably have a shorter tenure at law school than would-be attorneys—and will generally command less pay for their work—they must nonetheless be viewed by J.D. candidates as colleagues with courses and resources in common. Paralegal education should not be merely a training program for junior lawyers or a fancy trade school for legal technicians and administrative assistants. This Article now turns to further discuss some of the core components of a paralegal program under the auspices of the law school faculty.

### A. Professionalization

As already noted, law schools teach students professional values. Carnegie Foundation evaluators praised this part of the current *formation* effort.<sup>73</sup> The academy has a similar duty to instill these values in paralegals. Also, the professional benefits of a paralegal program are just as great for conventional law students as for the paralegals themselves. Lawyers-in-training build better relationships with paralegals, who are a type of worker that likely will be a daily part of their future career. Educators should continually challenge law students about their perceptions of co-workers, clients, and the communities in which they live.<sup>74</sup> Thus, integrating paralegal programs into law schools would further universities’ goals of becoming public and democratizing institutions.

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72. See, e.g., Monke, *supra* note 13, at 23–24 (describing curriculum topics required for standard and advanced certification by a national paralegal association). One paralegal institute coordinator observes: “Even among paralegal educators, there’s a great deal of debate about just exactly what we should be teaching paralegal students . . .” Lori Tripoli, *How To Find and Groom the Practiced—and Practical—Paralegal*, 3 OF COUNSEL 12, 12 (2007) (quoting Pam Bailey, program coordinator of the Duquesne University Paralegal Institute).

73. SULLIVAN ET AL., *supra* note 9, at 185–86 (noting that socialization, professionalism, and career forming functions are among the few positive attributes of contemporary law school education). *But see* STUCKEY ET AL., *supra* note 11, at 100 (“Law schools do not currently foster professional conduct; just the opposite”). Professor Stuckey urges that professionalism be taught “pervasively and continuously” throughout a student’s law school tenure, in both doctrinal and experiential courses and in the conduct of faculty and administrators. *Id.* at 100–04, 129, 170. He credits Professor Rhode for promoting the pervasive teaching of professional responsibility. *Id.* at 102. Under the rubric of “professionalism” Stuckey includes “appropriate behaviors and integrity in a range of situations . . .” *Id.* at 79.

74. Opening the academy’s doors to this class of students, and the accompanying curriculum, can help instill some of the insurgency that may be fading in the clinics. See Rivkin, *Clinical Education: Reflections*, *supra* note 12, at 340–41; Wizner & Aiken, *supra* note 12, at 998.

Law schools can build on the successes of existing programs that rely on advocacy without a law degree. One of the most prominent of these is the Court Appointed Special Advocate (CASA) program, which currently operates in every state in some form. Through CASA, volunteer participants represent children in the juvenile and family court system.<sup>75</sup> These advocates typically handle only one case at a time, and they are often motivated and well trained. CASA representatives have proven effective, especially in the tasks of investigation and monitoring.<sup>76</sup>

A paralegal program built upon a model code of professional conduct would serve clients well. It would stress adequate investigation, development of relationships with clients, monitoring of caseloads, and generally performing professional responsibilities in an ethical manner. Upon graduation, these advocates will need clear guidance on their roles and abilities to deliver quality representation.<sup>77</sup> Preparation for the workforce may require that faculty and students look beyond the law school walls to obtain necessary experience and knowledge.<sup>78</sup>

### B. Legal Commodification

Law schools that admit students on a paralegal track would acknowledge the changing nature of legal practice and the changing role of lawyers

75. Randi Mandelbaum, *Revisiting the Question of Whether Young Children in Child Protection Proceedings Should Be Represented by Lawyers*, 32 LOY. U. CHI. L.J. 1, 23–24 (2000). CASAs are authorized by juvenile courts to advocate for the best interests of dependent and delinquent youth. 42 U.S.C. §§ 13011–13 (2005 & Supp. 2007).

76. Mandelbaum, *supra* note 75, at 24; *see also* Sparer et al., *supra* note 21, at 498–99 (discussing longstanding experience of non-attorney advocates in workers' compensation and unemployment benefits proceedings).

77. Mandelbaum, *supra* note 75, at 26. With reference to child dependency proceedings, Professor Mandelbaum writes:

In those states where a representative is appointed, the qualifications, training, and support of the representatives vary greatly from state to state . . . [O]nly about half of the states mandate that all children receive representation by attorneys. Where representation is not required to be by attorneys, it may be provided by paid or volunteer lay advocates . . .

*Id.* at 23 (citations omitted).

78. Melissa Breger, Suelyn Scarnecchia, Frank Vandervort & Naomi Woloshin, *Building Pediatric Law Careers: The University Of Michigan Law School Experience*, 34 FAM. L.Q. 531, 532 (2000). Increasingly, lawyers in all practice settings are working with professionals across disciplines to resolve problems “in a more holistic, efficient, comprehensive and cost-effective fashion.” V. Pualani Enos & Lois H. Kanter, *Who's Listening? Introducing Students to Client-Centered, Client-Empowering, and Multidisciplinary Problem-Solving in a Clinical Setting*, 9 CLINICAL L. REV. 83, 88 (2002) (citation omitted); *see also* Wettach, *supra* note 23, at 305–06 (discussing the growing trend of collaboration between legal and medical specialists); *infra* text accompanying notes 82–90 (arguing for interdisciplinary instruction and training).

themselves. The trend toward “unbundled services”<sup>79</sup> shows that certain legal cases can be disassembled and simplified. With proper training, lay practitioners can play a key role in this unbundling. After all, skilled paralegals specialize in routinizing legal output, and law schools can train them to perform these tasks even better by introducing fundamental legal concepts into their studies. Therefore, paralegal education must include some of the traditional courses in black letter law, basic research, and procedures. It should also include simulated exercises and clinical experience in tasks like drafting documents.

Both paralegals and lawyers would benefit from reform in the curriculum. Critics fault the legal academy for disjoining the teaching of substantive law and practical application of the law to standard legal instruments.<sup>80</sup> Supplementing the law school curriculum with more worldly experience in drafting and procedure will benefit *all* students.<sup>81</sup>

### C. Sensitivity to Human Factors

The curriculum for paralegals should include courses that emphasize the development of intrinsic values, motivations, and problem-solving skills. A number of commentators have written about the lack of humanity in the typical law school diet. The widely acclaimed MacCrate Report encouraged legal educators to teach overlooked skills and values, but it was criticized for failing to address students’ sensitivity to human factors.<sup>82</sup>

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79. See Rochelle Klempner, *Unbundled Legal Services in New York State Litigated Matters: A Proposal to Test the Efficacy Through Law School Clinics*, 30 N.Y.U. REV. L. & SOC. CHANGE 653 (2006). Ms. Klempner states that unbundled legal services, also described as “discrete task representation” or “limited scope legal assistance,” is a practice in which the lawyer and client agree that the lawyer will provide some, but not all, of the work involved in traditional full-service representation. *Id.* at 654. Simply put, the lawyers perform only the agreed-upon tasks, rather than the whole “bundle,” and the clients perform the remaining tasks on their own. *Id.* Unbundled services can take countless forms, including providing advice and information, “coaching,” drafting court papers, and making limited court appearances. *Id.*

80. In a recent reiteration of this criticism, the Carnegie Foundation team wrote that law school reinforces “the habits of thinking like a student rather than an apprentice practitioner, thus conveying the impression that lawyers are more like competitive scholars than attorneys engaged with problems of clients.” SULLIVAN ET AL., *supra* note 9, at 188.

81. Law firm consultant and professor James Fanto writes:

A common task of beginning lawyers is to add value quickly by doing something that is relatively routine: generating a first draft of a transaction agreement. Law schools . . . generally have not prepared their students to undertake this task. Students have not been trained to see the connection between the transaction agreements and the business law that they have learned . . . .

James A. Fanto, *When Those Who Do Teach: The Consequences of Law Firm Education for Business Law Education*, 34 GA. L. REV. 839, 844 (2000). The same critique can be applicable to other substantive law fields.

82. Professor Carrie Menkel-Meadow was among those who took the task force to task for

This concept dates back to pioneer clinician John Bradway, who wrote that “the clinical student has the opportunity to study the client as a whole in relation to [society] as a whole.”<sup>85</sup> This feature distinguishes clinical education from older practices like apprenticeship. Familiarity with the client’s human side requires exposure to other disciplines “such as medicine, social work, or religion, or . . . a combination of several of the social or physical sciences.”<sup>84</sup> Bradway’s protégé, Professor Charles Miller, also tried to integrate other disciplines into the legal clinic he founded at the University of Tennessee. He did this by establishing a relationship between the clinic and the College of Social Work.<sup>85</sup>

According to contemporary clinical dogma, “interdisciplinary, collaborative and real world experiences within a clinical setting” encourage sensitivity to human factors.<sup>86</sup> Clinical courses allow law students to develop “their subjective well-being, life satisfaction, and self esteem.”<sup>87</sup> Just as the lawyer of tomorrow must “have a broader, more multi-dimensional and more

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its failure to address the human sensitivity factor in law school training. See Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What’s Missing From the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 595–96 (1994); see also Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 346–47 (1999) (arguing that the MacCrate Report relied on a narrow, common-law approach to problem solving and did not pay enough attention to “the more humanistic roles of values, interests, problem prevention, interdisciplinary analysis, creative thinking and self-reflection”). One of Professor Stuckey’s principles for best educational practices is that law schools help students “deal sensitively and effectively with diverse clients and colleagues,” STUCKEY ET AL., *supra* note 11, at 77, 79, particularly in the area of cross-cultural competence. *Id.* at 88–89 (crediting the lawyering model developed by Professors Susan Bryant and Jean Koh Peters). For a thorough exploration of this model, see generally Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

83. John S. Bradway, *Some Distinctive Features of a Legal Aid Clinic Course*, 1 U. CHI. L. REV. 469, 470 (1934). Professor Bradway explained that “viewing the law as one of the social sciences . . . introduces a distinctly new element—the human equation. Not only the *legal* problems of the client but all his problems—social, economic and otherwise—should pass in review.” *Id.*

84. *Id.* at 471.

85. Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 955 (1997). Ultimately, the clinic had “a social worker on staff and serv[ed] as a field placement for masters-level social work students.” *Id.* Professor Sparer and associates also commented on the value of social workers operating as advisors and informal representatives in legal and quasi-legal contexts. Sparer et al., *supra* note 21, at 499–500; see also *infra* text accompanying notes 108–111 (arguing that law faculty should look to their colleagues in social work as a resource).

86. Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Courses as a Context for Nurturing Intrinsic Values*, 13 CLINICAL L. REV. 839, 848 (2007) (describing courses at California Western School of Law).

87. *Id.* at 842.

interdisciplinary outlook on issues, as well as a more balanced life,”<sup>88</sup> the same applies to her paraprofessional peer. To that end, lawyers and paralegals should train together, study in the same institutions, and collaborate in clinics.

Cultural competency<sup>89</sup> also has been accepted as a core component of legal education. It should certainly be part of the paralegal studies curriculum. Many applicants to paraprofessional programs will be members of cultural minorities<sup>90</sup> and will further develop their cultural identities during their law school tenure.

#### D. Collaboration

The art and value of teaching collaboration may be more elusive than other topics. Increasing emphasis on teamwork and the growing diversity in the legal profession highlight the importance of collaboration.<sup>91</sup> Currently, relationships between attorneys and other legal staffers are frequently less than collegial.<sup>92</sup>

88. *Id.* at 840–43.

89. Among the classics on cultural competence, see Bryant, *supra* note 82, at 38 n.11 (2001); and Angela McCaffrey, *Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years*, 24 *HAMLIN J. PUB. L. & POL’Y* 1, 57–59 (2002) (teaching cultural competence and identifying bias in the judicial system); and for other excellent sources discussing cultural competence, see also Stacy L. Brustin, *Bias in the Legal Profession*, in J. P. OGLIVY, LEAH WORTHAM & LISA G. LERMAN, *LEARNING FROM PRACTICE* 346–53 (2d ed. 2007) [hereinafter *LEARNING FROM PRACTICE*] (helping students recognize cultural lenses and develop multicultural competence); Carolyn Cops Hartley & Carrie J. Petrucci, *Practicing Culturally Competent Therapeutic Jurisprudence: A Collaboration Between Social Work and Law*, 14 *WASH. U. J. L. & POL’Y* 133, 170–80 (2004) (asserting that educational models for developing cultural competence should be infused throughout law school curriculum, with attention to issues of power and oppression).

90. Cultural competence embraces disability as well as ethnicity, race, and language. See, e.g., Massey & Rosenbaum, *supra* note 14, at 285–94 (discussing dis-awareness); STUCKEY ET AL., *supra* note 11, at 79 (discussing the capacity to “relate appropriately” to issues of culture and disability as well as “deal[ing] sensitively and effectively” with those from a range of social, economic and ethnic backgrounds).

91. Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 *VT. L. REV.* 459, 459–60 (1993). Fostering professional peer relationships while in law school is a core concept in clinical education. University of Tennessee Clinic Founder Charles Miller used his clinic, in part, “to help students establish professional relationships with lawyers in the community in which they intended to practice.” Blaze, *supra* note 85, at 954; see also Munneke, *supra* note 8, at 146 (stating human relations are fundamental part of practice and lawyers “need to possess skills the necessary to work with others”). This Article proposes extending this concept to attorney-paralegal relationships.

92. T. Michael Mather, *Twelve Most Common Mistakes by Beginning Attorneys*, 26 *TEMP. J. SCI., TECH. & ENVTL. L.* 43, 47–48 (2007) (asking “[w]hat makes people think, that because they graduated from law school, they have a license to be abusive to secretaries, paralegals, mailroom personnel, information technology people, and so on?”). In contrast, one large firm, O’Melveny & Myers, “reminds its professionals to, well, behave professionally” through a specific firm-wide initiative, which includes joint attorney-paralegal training. Tripoli, *supra*

The typical law school agenda does not include a course about collaboration with paralegals.<sup>93</sup> Indeed, the legal education community has only recently recognized that teamwork and collaboration between fellow attorneys are skills worth cultivating.<sup>94</sup>

To the extent that scholars and teachers have addressed the subject of hierarchical relationships, such studies mainly have focused on the relationships between senior lawyers and new associates<sup>95</sup> or lawyers working in teams with other lawyers.<sup>96</sup> Scholars also should examine the relationships between lawyers and paraprofessionals. One challenge for new paralegals, as well as for new attorneys, “is to maintain a sense of professional identity and some autonomous control over professional development, while working successfully within the realities of law practice collaborations.”<sup>97</sup>

Ideally, future lawyers and future paralegals will collaborate as peers in law school. Lawyers and “para-lawyers” labor differently, however, and their jobs demand different skills, attributes, and preparation. Thus, expecting their ultimate relationship to be nonhierarchical may be unrealistic. Even among J.D. candidates working in a clinical setting, “student collaborations may reflect subtle hierarchies.”<sup>98</sup> This does not invalidate the need to instill collaborative, egalitarian values and habits. However, as Professor Catherine Gage O’Grady observes, the “subtle power differentials” should be accounted for and utilized

note 72, at 14. The firm’s paralegal director notes, “That’s a nice and unusual partnership [that] doesn’t typically happen at other firms.” *Id.*

93. One paralegal coordinator for a firm in San Francisco acknowledged that “[a]ttorneys don’t learn how to use paralegals in law school” and are ill-equipped to know “how best to use them to their advantage.” Tripoli, *supra* note 72, at 14.

94. See, e.g., Bryant, *supra* note 91, at 459–61; David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199 (1994); Catherine Gage O’Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLINICAL L. REV. 485 (1998); Lucia Ann Silecchia, *Management Skills*, in LEARNING FROM PRACTICE, *supra* note 89, at 319–23 (explaining how to work collaboratively with colleagues and professionals). Professor Stuckey endorses the principle of “collaborative learning” in part to help prepare students for their future roles in being accountable to law firm partners, supervisors, and other third parties. STUCKEY ET AL., *supra* note 11, at 120 (citing David Dominguez, *Principle 2: Good Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386, 387 (1999)).

95. See, e.g., O’Grady, *supra* note 94, at 505–12 (discussing demands on new lawyer in working relationship with senior partner).

96. See, e.g., Bryant, *supra* note 91, at 467–68 (examining hierarchy and bureaucracy in law firm culture).

97. O’Grady, *supra* note 94, at 512; see also Bryant, *supra* note 91, at 460 (noting importance of “structuring joint decision making in a non-hierarchical fashion”); Sparer et al., *supra* note 21, at 514 (discussing ways that lawyers relate to lay advocates).

98. O’Grady, *supra* note 94, at 521. Professor O’Grady cautions that “if one student is perceived as an ‘expert’ in an area, or is a year ahead in law school, or is a clinic ‘veteran’ returning for a second semester in the clinic, the other team member(s) may feel intimidated by such apparent expertise.” *Id.* at 521–22.

“to teach practical lessons on maintaining autonomy while working within a collaboration.”<sup>99</sup>

### *E. Alternative Dispute Resolution*

The resolution of legal disputes through alternative forms and forums has significantly changed modern legal practice.<sup>100</sup> Its impact, as Professor Okianer Dark has pointed out, “can be seen in the law school curriculum, . . . in the publication of casebooks and other materials[,] . . . and in the development of [Alternative Dispute Resolution] centers or institutes at law schools.”<sup>101</sup> The alternative dispute approaches are more amenable to long-term, non-adversarial relations than are adjudication and investigation. Some of the creative work in ADR is occurring in the field of special education.<sup>102</sup>

Lay advocates are well suited to engage in an ADR practice and have done so successfully.<sup>103</sup> The cost and time savings that come with mediation, conciliation, and other forms of informal dispute resolution are accomplished in large part by nonlawyers. A paralegal concentration should give high priority to this subject, and traditional law students should be encouraged to enroll in

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99. *Id.* at 522. Clinicians are faced with a choice of eliminating “all hierarchy from student work teams and then guid[ing] the students in their efforts to engage in true collaborative decision-making” or accepting some degree of student-on-student hierarchy, as is inherent in supervisor-student collaborations, and use it as a teaching tool. *Id.* In recounting the early approach to supervision adopted by pioneer clinician John Bradway, Professor Blaze points out that there are “rich educational opportunities” to be found in working collaboratively on a matter with a supervisor by modeling, as well as experiential learning, and that one should not sacrifice the former. Blaze, *supra* note 85, at 956.

100. Okianer Christian Dark, *Transitioning from Law Teaching to Practice and Back Again: Proposals for Developing Lawyers within the Law School Program*, 28 J. LEGAL PROF. 17, 23–24 (2004) (citations omitted).

101. *Id.*; see also Black & Wirtz, *supra* note 2, at 1012–15 (describing field of concentration in advocacy and dispute resolution); Weinstein, *supra* note 82, at 324 (noting growing trend toward ADR, such as mediation, not only in practice but also in law school training). Pepperdine University School of Law, for example, offers a certificate in dispute resolution for those who hold a bachelor’s degree, with a wide range of theoretical and practice courses in mediation, arbitration, negotiation, and conflict resolution. See Pepperdine Univ. Sch. of Law, Certificate Program, <http://www.law.pepperdine.edu/strauss/opportunities/certificate.html> (last visited Feb. 18, 2008). But see RHODE, *supra* note 22, at 132–35 (advocating for a broader range of procedural choices and more information about ADR effectiveness).

102. For example, the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) issues publications, sponsors symposia, and maintains a comprehensive website on alternative dispute resolution in the special education context. See CADRE, <http://www.directionservice.org/cadre>; see also Massey & Rosenbaum, *supra* note 14, at 308 (noting that other commentators have said that a mediation clinic can encourage “party empowerment and self-help” even more than a litigation clinic).

103. See Sparer et al., *supra* note 21, at 502.

doctrinal and clinical classes in this field as well. This would provide an appropriate area for law students and paralegals to collaborate.

### F. Organizing

Commentators have explored the ambiguous and overused meaning of “organizing” in the legal context.<sup>104</sup> While the role of fostering client autonomy and empowerment, as well as working with established or loosely organized groups, has been urged upon community-based lawyers,<sup>105</sup> it is also well within the competency of lay advocates. Law schools can enhance the natural organizer traits that many paralegals bring to this movement. Prospective lawyers would benefit from the training as well.<sup>106</sup> However, teaching organizational skills demands a disciplinary perspective absent from most law faculties.<sup>107</sup> To fill the holes, we must turn to social workers<sup>108</sup> and professional organizers to teach “organization building, mobilization, education, consciousness raising, and legislative advocacy.”<sup>109</sup> This will require law schools to call on colleagues in social work, urban or regional planning, education, or other departments to augment the curricular offerings through co-teaching, co-managed clinics,<sup>110</sup> joint appointments, and

104. See, e.g., Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 460–69 (2001).

105. See, e.g., *id.* at 493–95, 500–01; Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 123–26 (2000).

106. See Massey & Rosenbaum, *supra* note 14, at 311–15.

107. Professor Shin Imai is one of the exceptions. By undergoing a series of core communication and collaboration skills, Professor Shin’s students are trained for work mainly in indigenous communities and other Canadian communities of color. Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195, 201–25 (2002) (stating that skills include practicing “plain English” and emotional engagement). Professor Katherine Kruse writes about teaching skills for problem-solving for a client community, not just for individual clients. Katherine R. Kruse, *Biting Off What They Can Chew: Strategies for Involving Students in Problem-Solving Beyond Individual Client Representation*, 8 CLINICAL L. REV. 405, 408–09 (2002).

108. Professor Paula Galowitz catalogues the possible roles played by social workers, including teaching lawyers about working with community groups and community analysis. Paula Galowitz, *Collaboration between Lawyers and Social Workers: Re-Examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2131–32 (1999) (citing Heather B. Craig & William G. Saur, *The Contribution of Social Workers to Legal Services Programs*, 14 CLEARINGHOUSE REV. 1267, 1268–71 (1981)); see also Aiken & Wizner, *supra* note 50, at 65–66 (arguing that empowerment of groups and communities, pursuit of social and economic justice, and reform are central to social workers’ professional obligations).

109. Cummings & Eagly, *supra* note 104, at 481–84.

110. See Enos & Kanter, *supra* note 78, at 100 (pointing out that an increasing number of legal programs use multidisciplinary approach to service delivery by forming partnerships with other professionals).



interdisciplinary workshops or courses. This also may give law students and paralegals the opportunity to work in culturally diverse communities.<sup>111</sup>

### G. Self-Advocacy

In addition to educating legal paraprofessionals, law schools should open their doors to members of the general public for workshops, abbreviated courses, and seminars. These programs should be aimed at improving the advocacy skills and legal literacy of persons who constantly encounter the same bureaucratic and quasi-legal procedures as lawyers and paralegals. This audience would comprise people from the community who pursue knowledge for its own sake, generally with the aim of helping themselves or a family member. Rather than a formal degree, these short-term adult learners might take home a hand-lettered certificate of attendance. The skills that these non-traditional students would gain could be transferred to numerous informal and administrative forums.

In the education context, legal training for former clients and community members can enhance parental skills and the capacity of school-based constituencies. Special education legal clinics, in particular, have embraced this approach as a way to serve the client community and provide unique learning opportunities for law students. One law school offers in-depth parent training through a lay advocate certification program that enables former client parents to help other parents become more effective advocates for their children.<sup>112</sup> Another school offers training as a component of its services.<sup>113</sup> Yet another law school runs advice clinics within a larger live-client framework. These special education legal clinics provide training, information, and self-help strategies to those whose cases are not selected for direct representation.<sup>114</sup>

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111. See Rosenbaum, *Aligning or Maligning?*, *supra* note 37, at 10 (discussing the need for more intensive and nontraditional outreach); see also Aiken & Wizner, *supra* note 50, at 65–66 (stating that social workers learn skills, including participation in decision-making, cross-cultural awareness, and consideration of “the ‘system’ within which the client exists”).

112. Massey & Rosenbaum, *supra* note 14, at 316–17 (stating that law school at State University of New York at Buffalo offers lay advocacy training and certification); see also *Self-Advocacy Working Group*, *supra* note 67, at 408 (stating that law schools and other institutions of professional education should be “targets of parents’ advocacy efforts”).

113. Massey & Rosenbaum, *supra* note 14, at 316 (referring to the Disability Rights Legal Center, located at Loyola of Los Angeles Law School). Clinics may also want to conduct periodic training in designated advocacy skills for case workers, educators, therapists, probation officers, and other professionals.

114. *Id.* at 317 (noting the practice of the University of San Diego’s law school special education clinic). Interestingly, the drive for, and desire to improve, legal literacy seems to be at the same level in developing countries. See, e.g., Stapleton, *supra* note 22, at 22 (African regional conference calls for lay advocate training and legal literacy programs); AFRICAN COMM’N ON HUMAN AND PEOPLES’ RIGHTS, THE LILONGWE DECLARATION ON ACCESSING LEGAL AID IN THE CRIMINAL JUSTICE SYSTEM IN AFRICA para. 10 (adopted at

### *H. Program Structure*

The most obvious mechanism for overseeing paraprofessional education would be establishment of a degree-granting program at the law school. This would mean offering doctrinal and skills courses, clinical experience, and field placements. Presumably, law schools would offer joint black-letter-law classes for law students and paralegal candidates, as well as specialized legal curriculum for the latter. When it comes to designing specific courses for paralegal students, law schools should review course descriptions and syllabi available from those schools and other public institutions that offer, or offered, paralegal studies programs.<sup>115</sup>

In addition, these students could take courses in other disciplines, such as social work, public policy, or planning. These “non-legal” courses might be offered by other departments on campus, sister schools, or by jointly appointed faculty. Hopefully, there will be some interdisciplinary courses, which would meet at the law school and also be available to traditional law students.<sup>116</sup>

In most instances, accreditation will not be an obstacle. Creating a new program should not jeopardize a school’s standing with the American Bar Association (ABA) or American Association of Law Schools (AALS). For ABA certification—in the form of “acquiescence”—the additional degree program must not detract from the school’s ability to maintain a J.D. degree program that satisfies the ABA Standards.<sup>117</sup> At the very least, ABA rules are not preclusive because some accredited law schools already offer paralegal programs.<sup>118</sup> Accreditation is also provided by regional agencies not affiliated with the ABA.<sup>119</sup>

ACHPR/Res.100(XXXX)(06) (Nov. 15–29, 2006)), *reprinted in* ACCESS TO JUSTICE, *supra* note 22, at 39, 44 (encouraging legal literacy).

115. See *supra* text accompanying notes 17–18.

116. See *supra* text accompanying notes 84–85.

117. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 308 (2007), available at <http://www.abanet.org/legaled/standards/standards.html> (follow “Chapter 3” hyperlink). Acquiescence may be withheld for “lack of sufficient full-time faculty,” for “lack of adequate physical facilities,” or for “lack of an adequate law library to support both a J.D. and an advanced degree program . . .” *Id.* at Interpretation 308-1. A Juris Doctor degree curriculum “lacking sufficient diversity and richness in course offerings” is also grounds for withholding acquiescence. *Id.* Regrettably, this is not an endorsement of multiple degree offerings: “Acquiescence in a degree program other than the first degree in law is not an approval of the program itself, and, therefore, a school may not announce that the program is approved by the [ABA].” *Id.* at Interpretation 308-2.

118. At least one ABA-accredited law school offers a paralegal training program: Capital University Law School. See Capital Univ. Law Sch., Paralegal Programs, [www.law.capital.edu/Paralegal](http://www.law.capital.edu/Paralegal) (last visited Feb. 18, 2008). This certified Legal Assistant Program, endorsed by the Columbus, Ohio Bar Association, was inaugurated in 1972 as the “first of-its-kind in the nation to offer paralegal studies for post-baccalaureate students.” See Capital Univ. Law Sch., Our History, [www.law.capital.edu/About/OurHistory](http://www.law.capital.edu/About/OurHistory) (last visited Feb.

For AALS membership, so long as the J.D. program is not “impaired,” a school may create a second educational program.<sup>120</sup> However, the association takes a more active approach than the ABA in its review of significant changes in operation. A major programmatic change must be reported to the AALS Executive Committee and reviewed by the committee before it is implemented.<sup>121</sup>

In-house and community-based clinics and practice settings also must be an integral part of the paralegal curriculum. These clinics would involve candidates for the J.D. and the paralegal degree working in teams on litigation, policy, negotiation, or organizing campaigns. Clinics would provide opportunities for conscious collaboration, mindful mentoring, and serious supervision. Also, law students and future lay advocates could share responsibilities in training members of the general public in short-term classes and occasional workshops.<sup>122</sup>

Some challenges will be determining the criteria for student admissions, academic standing, and costs. These will not necessarily mirror those already in place for traditional law students. Paralegal degree applicants may not be required to have a bachelor of arts or sciences, but perhaps an associate of arts or some other certificate of postsecondary study might suffice. The examination, grading, or other evaluative processes also will need to be

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18, 2008); see also Theodore P. Seto, *Understanding the U.S. News Law School Rankings*, 60 SMU L. REV. 493, 535 (2007) (using a definition of “student” that includes LL.M.s, S.J.D.s, MBTs and *paralegals*). The ABA has approved over 250 paralegal and legal assistant training programs that meet their voluntary guidelines, almost all of which are situated outside of law schools. See Justice Schools, *supra* note 19. Online programs in paralegal studies have also been accredited by the ABA. Nick Dranias, *Past the Pall of Orthodoxy: Why the First Amendment Virtually Guarantees Online Law School Graduates Will Breach the ABA Accreditation Barrier*, 111 PENN. ST. L. REV. 863, 868 & n.24 (2007). On the benefits of distance learning for law students and ABA endorsement of same, see Michael L. Perlin, *An Internet-Based Mental Disability Law Program: Implications For Social Change in Nations With Developing Economies*, 30 FORDHAM INT’L L.J. 435, 439–42 (2007).

119. See Justice Schools, *supra* note 19. In 1976, the National Association of Legal Assistants initiated a certification, which includes a paralegal specialty credential. Monke, *supra* note 13, at 22, 24.

120. ASS’N OF AM. LAW SCHS. HANDBOOK, EXECUTIVE COMMITTEE REGULATIONS, § 6-7.6 (May 2005), available at [http://www.aals.org/about\\_handbook\\_regulations.php](http://www.aals.org/about_handbook_regulations.php).

121. *Id.* at § 8.2. After a member school “report[s] fully” its proposed change, the Executive Committee makes a determination of membership compliance, with an inspection if necessary. The Committee may consider such elements as changes in student recruitment and enrollment patterns, faculty hiring, teaching assignments and participation in governance, as well as relationships between the dean, faculty, administrators, staff and students. *Id.* at § 8.2(d).

122. The various special education or child advocacy clinic prototypes are ideal for this kind of lawyer or lay advocate training. See Massey & Rosenbaum, *supra* note 14, at 294–330, 333–34 app. 2 (reviewing skills, structure, and client caseload, as well as showing a chart of law school clinics).

reviewed. Finally, law schools should implement procedures that allow paralegal students to transfer into the J.D. program and vice-versa.

The tenure of lay paraprofessional students undoubtedly will be less than three years—perhaps one or two.<sup>123</sup> This should result in lower tuition or fees. The additional revenues that law schools will receive from tuition paid by paralegal students likely will be offset by additional costs of personnel and infrastructure. Also, because even reduced fees are likely to be a burden for many paralegal applicants, law schools should consider providing scholarships, financial aid, and loan forgiveness programs. Targeted recruitment of non-traditional law students also will be necessary.

Still, distinct criteria for a *para* doctoral and *juris* doctoral degree may pose less of a problem administratively than philosophically or fiscally. The main reasons for co-educating lawyers and paralegals in one building are fostering future collaboration and de-emphasizing hierarchical relationships among lawyers and paralegals. Separate standards in admissions and graduation could undermine these goals.

Faculty and staff must encourage an environment where a diverse law student body can navigate its way through the curriculum with equitable learning opportunities and mutual appreciation. Tensions inevitably will arise due to differences in students' academic or intellectual orientation, socio-economic status, and diverging career paths. Temptations to track students and segregate more than integrate may arise. Administrators and faculty also may oppose the co-educational scheme.<sup>124</sup> However, the latest Carnegie study reminds us that "in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized."<sup>125</sup>

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123. The most recent Carnegie Foundation study recommended that the third year of law school be a year of specialization for the J.D. candidate. SULLIVAN ET AL., *supra* note 9, at 195. By implication, the first two years are adequate for a basic foundation in the law. See RHODE, *supra* note 22, at 190 (questioning the necessity and adequacy of the three-year program).

124. There will likely be "[r]esistance to change in a largely successful and comfortable academic enterprise . . ." SULLIVAN ET AL., *supra* note 9, at 202; see also STUCKEY ET AL., *supra* note 11, at 283–85 (commenting on the many reasons for the legal academy's "well-entrenched" resistance to change). The faculty divisions may not necessarily be along doctrinal or clinical lines. My dinner partner at the banquet culminating the September 15, 2007 University of Tennessee symposium on clinical legal education speculated that many law professors would have a hard time embracing my paraprofessional degree proposal. I fear their opposition may be founded more on elitism than principle, otherwise known as the "I Don't Do Paralegal Teaching Syndrome."

125. SULLIVAN ET AL., *supra* note 9, at 202.

## V. FROM GOLD TO DIAMONDS TO GOLD—AGAIN

*There seemed to be more green leaves down here.  
The sun helped to make the place beautiful.*<sup>126</sup>

To heed Professors Wirtz and Black, the desired outcome of a paraprofessional degree program should be conscientious advocacy with heightened sensitivity, at less cost, and with less contentiousness. For many paralegals, like their J.D. peers, their education will be enhanced by their own cultural backgrounds and workplace experiences. Ultimately, these students will enter the world of practice with rigorous training under their belts and professional principles on their minds. Adopting a paralegal program also presents an opportunity to demystify the law, democratize the law school, and deemphasize professional elitism. The legal community often aspires to these goals but only occasionally attains them.<sup>127</sup>

At the last decadal celebration of the nation's oldest continuous law school clinic, University of Tennessee Clinical Programs Director Doug Blaze reminded golden anniversary attendees of the need for ongoing discussion about the mission and methodology of clinical programs.<sup>128</sup> Professor John Elson urged them not to accept the status quo in American legal education nor to expect voluntary reform from law school administrators or the American Bar Association.<sup>129</sup> This advice is still relevant today: Neither be complacent about change nor build only on what has gone on before, lest it be "*déjà vu* all over again."<sup>130</sup> Now should be a time to reflect on ways to open the door to previously overlooked students in the legal academy, but reflection alone is insufficient. We also must move to restructure campus classrooms and law offices to prepare practitioners to meet the changing needs of the future.

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126. Personal Journal Entry, *supra* note 1 (Feb. 23, 1973).

127. Bellow, *supra* note 22 at 376; Rivkin, *Clinical Education: Reflections*, *supra* note 12, at 340-41; Sparer et al., *supra* note 21, at 494; Wizner & Aiken, *supra* note 12, at 998.

128. Blaze, *supra* note 85, at 962.

129. Elson, *supra* note 11, at 1135.

130. Blaze, *supra* note 85, at 939.