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Christopher T. Matthews

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## *Essay*

# Sketches for a New Law School

*by*

CHRISTOPHER T. MATTHEWS\*

I entered law school two and one-half years ago, looking forward to a legal education. I was excited, yet afraid that I might not measure up to such a demanding study. My fears were misplaced, however; the school itself has not measured up. "Legal education" is neither sufficiently legal nor sufficiently educational. The traditional law school is a monolith with a virtual stranglehold on the educational process, Hastings is merely the site of my encounter with this process. The problems discussed here are endemic to all law schools, with some slight variation. This student's "worm's-eye" view of legal education today is offered to counter the unreflective arrogance of the view from on high.

The school's failure to deliver a legal education does not prevent individuals from enjoying and benefiting from the experience; one can, and hopefully does, make the most of any situation. But while personal success stories may transcend the institutional bias, they do not refute criticism of that bias. Legal education is predicated upon unexamined assumptions that survive only through the loving conservatorship of the institution that depends upon those assumptions for its survival.

Law school prides itself on teaching students to "think like lawyers." Thus defined, the school rejects two significant aspects of its self. Law school deems its critical and analytical processes unique to the law, denying that "thinking like a lawyer" is just thinking. And by teaching only how to *think*, and not how to *do*, it denigrates the profession it serves. These basic rejections leave the school in a vacuum of its own devise.

How the school teaches is affected profoundly by these fundamental denials. Alone with its traditions and myths, the school honors its dead by teaching its living in a manner that is ultimately unfair. The school

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\* Member, Third Year Class.

and the profession remain closed systems, blind to the possibilities of change, locked in congratulatory and exclusive self-perpetuation.

This essay envisions a very different law school. After examining, in Part One, some of the deficiencies in what, and how, the traditional law school teaches, Part Two provides an alternative model of a law school, designed to both respond to the perceived problems and to instigate discussion of the assumptions on which the current edifice so comfortably rests. Drawing on the many lessons and inspirations that the school currently avoids, from the practical to the philosophical, it will define itself—and hence the law—inclusively rather than exclusively. A two year interdisciplinary survey of thought and practice provides the instructional core, supplemented by the students' own experience in governing themselves. Grades would be non-existent, but all students would be required to meet threshold levels of competence set higher than current passing standards. In the third year students would do advanced projects of their own design, allowing them to choose their area of practice by specific expertise rather than class caste. This program will be more difficult than the current curriculum, but it will provide students with the opportunity to actually get a "legal education."

## I. Law School Confidential

Many articles have been written on problems within legal education, from differing academic points of view. A symposium on *The Law Curriculum in the 1980s* was published in the Journal of Legal Education in 1982. Surprisingly, all four contributors agreed that "there must be greater emphasis upon *both* the broader theoretical underpinning of law and legal systems *and* the practical role and tasks of the lawyer . . ."<sup>1</sup> But while educators share my concerns about the state of the art today, many of their proposals reveal unstated political agendas.<sup>2</sup> This essay

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1. As noted in the Introduction, Gorman, *Legal Education at the End of the Century: An Introduction*, 32 J. LEGAL EDUC. 315, 319 (1982) (emphasis in original) (referring to the following series of articles); Brest, *A First-Year Course in the "Lawyering Process"*, 32 J. LEGAL EDUC. 344 (1982); Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321 (1982); Klare, *The Law-School Curriculum in the 1980s: What's Left?*, 32 J. LEGAL EDUC. 336 (1982); Michelman, *The Parts and the Whole: Non-Euclidean Curricular Geometry*, 32 J. LEGAL EDUC. 352 (1982).

2. Critical legal scholars, for example, suggest that the new school inevitably must be politically correct, substituting their subjective truth for the current version. They believe that, somehow, the exposure of doctrine as oppressive can transform law into a tool for social change. I wish they were right, but suspect that they will only manufacture new doctrine. Programming would continue at CLSU, only the catch-phrases would be different.

Duncan Kennedy, however, deserves credit for two contributions to the discourse, his student essay *How the Law School Fails: A Polemic*, 1 YALE REV. L. & SOC. ACTION 71

proposes a relatively neutral alternative, intended to be a positive change from any perspective.

#### A. All Dressed Up and Nowhere to Go

Contrary to the opinion of legal educators, "thinking like a lawyer" is not a phenomenon unique to the profession. It is just critical thinking dressed up in a dark gray suit, a white shirt, and a red "power" tie. The outfit is decidedly male. Although in the past women were denied the opportunity to wear it, today they are welcome to mentally cross-dress.

A new vocabulary and a few garden variety skills buy the wardrobe; it is kept pressed and starched by careful separation from any potentially wrinkling context. But the clothes make the mind; critical thinking cops an attitude. The uniform gives the appearance of objectivity, when in reality legal reasoning is as subjective as everything else in this world. Students are attracted to that air of authority a well-dressed mind possesses; they forget their own hard-earned subjectivity—their personal values—in the face of such a convincing fashion statement. Putting on the intellectual uniform becomes a short cut to gaining mental stature from wisdom.

The uniform protects the student from embracing the true complexity of legal questions. One can quantify blithely the value of death, or ascertain legislative intent as if an answer exists. The limited range of accepted perspectives prevents the sparking of new and inventive responses to legal problems. "Thinking like a lawyer" denies the value of other ways of looking at things in our universe, including intuition, differing world views, or consensus. Law school resists such disruption to its plan to dress the student for success; that suit simply does not look right with a Mohawk.

The school breaks students of original thought through orchestrated peer pressure. The requisite degree of complicity formalizes the acceptance of the uniform. A story from my first year section illustrates the process.

At the beginning of the year, one young student constantly surprised the others with her unique way of seeing things, interjecting unconsidered perspectives into the class discussion. Initially, she was admired for her breadth of vision. But professors soon made it clear, through their

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(1970), and his continued concern with those issues after he crossed over to the professorial side, evident in his infamous little red book, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983), which should be required reading at new student orientations as long as the school continues in its current form. It offers a healthy, skeptical view of how law school intimidates and indoctrinates its initiates.

arsenal of subtle and direct signals, that she was disrupting, rather than contributing to, the learning experience. She was humored for a while, as a nostalgic throwback to recently discarded adolescence. But as the year progressed, students began resenting her and her "digressions" because she robbed them of the time they desperately felt they needed to find out what the teacher wanted them to know. Her commentary became more vociferous in response to the palpable dislike. Teachers, now armed with clear class approval, treated her disrespectfully; students sneered and jeered. She became the ritual sacrifice of the section's rite of passage. In second and third year classes, few behaved so naively.

Law school ignores criticism of "thinking like a lawyer" by resting on its trivial circular triumph. The school asserts a tautology; since it always has taught all lawyers how to think, it teaches students how to "think like lawyers." With a monopoly on a desired credential, the school is relatively immune to pressure from students to improve; it basks in its structural security.<sup>3</sup>

While the law school devotes itself to dressing students' minds appropriately, it never deals with the obvious question—appropriately for what? Understandably, a student can enter the school with no idea what a lawyer does (except what she has learned by watching Perry Mason or *L.A. Law*). Amazingly, one can graduate without finding out more. The school is too busy teaching students how to "think like lawyers" to provide insight into where, when, or how this valuable skill is used.

This professional/academic split has led to the single biggest change in the legal curriculum—the development of clinical instruction. While current clinical programs are welcome, they are simply too little, too late: too little because they are not required courses, and usually are utilized by the committed rather than the confused; too late because the first year transformation already has occurred without any professional grounding.

Thanks to the law school's fear of being considered a "mere trade school," students are left untrained and unable to make informed career choices. They are unprepared for the otherwise unsurprising fact that law *is* work (like all work, whatever color the collar, or whether it calls itself a "profession" or a "trade"). The pejorative "mere" reflects only the school's myopic abhorrence; the trade itself is full of excitement and possibility if one is open to it. But the school sets the student up for disappointment by providing unrealistic expectations for life after law school, which is unlikely to resemble a steady diet of appellate opinions.<sup>4</sup>

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3. Like the phone company of our youth, the school operates by the unwritten rule—we don't care, we don't have to.

4. The dance of the school and the profession is reminiscent of young couples taking the

If house painters were required to graduate from art school, they would need both further training and adjustment of their expectations of what and how they would paint. Law school often is even less relevant to practice than a studio art course is to housepainting. It is more akin to requiring house painters to study art history—never picking up a brush. In this world, house painting students and law students alike must learn everything after school. Consequently, such schools fail to meet the larger objective of training their students for the demands of their careers.

Many professors themselves have never picked up the metaphorical brush—star student to keeper of the flame without missing a beat. The law school's self-absorption becomes incestuous as it desires and keeps its best and brightest for itself. By cutting the actual practice of law out of the loop entirely, the school sends a clear message to the student: Practice is what you have to do if you are not special enough for us to keep you. The profession that the school ostensibly serves becomes a giant pond into which the school throws back the thousands of little ones that end up in its nets. Ironically, the star student may be the least qualified to teach. In the higher calling of baseball, everyone knows that the marginal players who had to learn to stay in the game make the best managers. The superstars often cannot teach because they never had to be taught.

Professors who never practiced,<sup>5</sup> or only put their toes in the water before deciding it was too cold, communicate not only their own importance, but their ignorance, fear, and even disgust concerning the "dirty" realities of practice.<sup>6</sup> Both the faculty and the curriculum itself fail to educate students about the dramatically different career options available in law. The school merely provides career services on the side as if what and how one learns is not central to any choice. But career services are a poor substitute for the direct exposure that is unavailable in substantive classes. One cannot understand estate work without drafting a will, or recognize the nature of criminal practice without sitting in on arraignments and plea bargain negotiations. While Criminal Procedure raises fascinating constitutional issues, it does not assist a student in making an

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plunge into marriage after a whirlwind courtship. They do not know if they are compatible or not, and often have trouble adjusting to mundane reality. The high professional divorce rate—lawyers leaving practice—demonstrates this phenomenon.

5. As a student, I realize that I also have not practiced, limiting my perspective on this subject.

6. Although many organizations would rather train their own, the school should not abdicate its responsibility to all its students, especially those who will not join such organizations.

intelligent choice between civil and criminal practice. Students end up with only the myths of practice, which hide the breadth of information that the school could provide.<sup>7</sup> Too often, the student takes one arbitrary first step and is on that track for life.

Since the school sends students out unskilled, they must find a *de facto* apprenticeship themselves. Because schools fail to include it in the curriculum, however, not all students are provided with this opportunity. Typically, economic reality mandates that only two types of organizations can afford to do the school's work for it—the government and the law firm, both of which are large enough to absorb the cost. The apprenticeship process usually begins during the crucial summer job after the second year. The school, through career services, ostensibly assists the student in finding this job through the on-campus interview process. But, in truth, the school is assisting the large employers, granting them free advertising and first pick of the students.

Part of the problem is the unitary bar concept: the illusion that, with a few exceptions, every lawyer is ready and able to do any kind of work. The profession insists that law is a general study. It is not. No one actually practices all kinds of law, nor should they. The law is a large and varied universe, with many particular studies within its scope. Whether the bar or the school is to blame for this unitary bar notion, the loser of this chicken/egg debate is the student.

Presumably, the law school trains students to practice any type of law; in reality, it only trains them to be general law students. This training is doubly ineffective for actual practice in a specific area of law. Students matriculate with the sort of general knowledge more appropriate to a non-professional degree. But these "bachelors of law" are deemed worthy of a J.D. (perhaps the D stands for dilettante?). Instead of now pursuing specific expertise in an academic environment, neophyte lawyers must seek essential aspects of their education from other lawyers (as employers), with the quality of training varying dramatically.

Lawyers would line up to sue other professionals if necessary training for those professions were left up to a similar happenstance. But lawyers made the rules for themselves differently than those for others; demonstrating a delicate sensitivity to their own tough situation, while unrelentingly demanding higher standards from non-lawyers.

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7. The myths often function as *post hoc* justifications for paths taken (by choice or default), for example: large firm practice is more intellectually challenging; or, plaintiff's personal injury work redistributes wealth.

## B. Bad Food and Small Portions Too

Two works about attending law school are part of our popular culture. Significantly, both *The Paper Chase* and *1L*,<sup>8</sup> focus exclusively on the first year. Although the world has changed inexorably in the hundred years since Christopher Columbus Langdell discovered the modern law school, the first year has not. This entrenched groundwork effectively defeats the modern improvements to years two and three; while students do embrace later aspects of legal education, they already have been both molded and conclusively judged and sorted on the sacred core alone. First things first—only more so when first things count most too.

A typical three year program might start by laying a foundation of basic skills and information for all students, so that whatever their background and experience they could all start off on the right foot. Then, through more advanced study in particular areas, they could further demonstrate their individual strengths and weaknesses. The law school ostensibly does exactly that, but by classifying students as winners and losers during the ground-laying stage, it destroys one of the purposes of the foundation it is laying. The school serves as a talent scout rather than as a teacher, and the remaining study becomes less meaningful.

Historically, the front loading was designed as a positive feature—to assist in the screening process of an institution with open admissions. Times have changed, however, and students now are pre-screened. But the effect of early judgment is still present. After classification based on first year performance, a student spends the next two years in one of two parallel universes. The “good” student attends Dr. Jekyll’s law school, while the “bad” student is sent to Mr. Hyde’s. The good doctor provides respect, personal contact, opportunity, and support. His alter ego dishes out insult, isolation, and inevitably, self-doubt.<sup>9</sup> Even if the school accurately could gauge professional potential, this institutional neglect of half its population, stigmatized by the school itself, is inexcusable.

No other study values initial performance over final. Law school itself does not select its aspirants by their freshman, as opposed to senior,

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8. Authored by John Osborn (1971) and Scott Turow (1978), respectively.

9. For example, Mr. Hyde’s world does not include journal participation. Assuming that to be a valuable educational experience, it is denied expressly to those who have demonstrated the greatest need of it. The ineligible must suffer through their parallel universe peers bonding together in the masochistic excitement of their honored servitude, and listen to them gleefully complain about the horrors of the opportunity.

The supposed journal standards demonstrate another myth—that journals exist for the student, like the high school yearbook or some mutant Junior Achievement project. The proliferation of “scholarly” publications serves the faculty best, virtually guaranteeing that anyone can call themselves a “scholar.”

grades.<sup>10</sup> The school ends up judging only how easily one can slip into the school's mental uniform and look comfortable, rather than what one has learned through three long years of professional study. This subtle form of discrimination hits hardest at those already disadvantaged; for it is harder to get used to thinking like a part of the American system of justice when you have suffered at its hand in your own life. Thus, the school denies a legitimate opportunity to many students with one hand, while ostensibly offering it with the other.

After the initial classification has taken place, students often tune out and merely go through the motions. Once the challenge of learning a few skills—disguised as “thinking like a lawyer”—is over, the classroom is less compelling. Students may get involved in part-time jobs or clinicals, but classes often become trite. Student cynicism comes in part from realizing how much of the fear and excitement of first year was done with mirrors; “thinking like a lawyer” is straight-forward when no one is playing mind games with you.

Calling those games the Socratic method imbues the instructional process with a sense of ancient wisdom and nobility; we envision generations of professors and students risking hemlock in their quest for Truth. If it was ever like that, it certainly is not today. The process usually is a modified lecture with students occasionally filling in the blanks. The value of the method depends on student/teacher interaction; bereft of it, it makes little sense.

Assuming for the moment that the current methodology works well, using it exclusively is another form of discrimination. People differ in their responses to various types of learning experiences. Even if no method reaches a larger audience than the Socratic, other methods will reach a different audience.<sup>11</sup>

Unless the school claims that the Socratic method is somehow more appropriate to the successful study of law, it has no grounds for denying access to others. And make no mistake about it, how well one does in law school is all about access. There is a caste system that matches dif-

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10. First year law students also resemble freshpersons in college in that they similarly are thrown into a new environment likely to effect their initial performance, further reason to delay definitive classification.

11. This essay can hardly begin to describe the variety of interesting, different methodologies being used in the larger educational universe. A few law schools have experimented successfully, including Stanford (Curriculum B) and Montana (the Montana Plan). See generally, Brest, *A First-Year Course in the "Lawyer Process"*, 32 J. LEGAL EDUC. 344 (1982) (discussion of Curriculum B); Bahls, *STUDENT LAWYER*, Feb. 1989 at 24 (description of the Montana Plan).

ferent kinds of practice to different levels of academic performance.<sup>12</sup> The person who might shine under a different pedagogical method is pigeonholed by the school today as someone who doesn't quite "get it." While he may eventually become a very successful lawyer, he must overcome the hurdles that the school has placed in his path, including making him doubt his own abilities

The school cannot claim its methodology is justified by any external policy because it has already written such concerns out of the system. The school simply selects its own image—mirror, mirror on the wall, who is the fairest of them all. In fact, students who respond better to a "hands-on" approach, for example, may make better lawyers. Additionally, students who study a broader contextual fabric may help the profession define itself more globally. The school lets students try these hats on, but only after assigning them to a caste, which may preclude them from ever demonstrating their strengths.

The reason the law school does not include new approaches in the core curriculum is a combination of belief in its own tautology—if [by definition] it ain't broke, don't fix it—and the unreflective assertion that "thinking like a lawyer" is beyond the range of normal experience. Since the school is just baby-sitting after having dressed the student to pass in the corridors of power, it is acceptable to play silly educational games once the "real" program has established who's who and what's what. The only silly games being played, though, are in the "real" program in which professors impress students with professorial brilliance, rather than helping students discover their own.

The widespread use of commercial outlines by students today reveals that supposedly esoteric lawyerly thinking can be reduced to formula. Something is wrong with the pedagogy when the secrets of the kingdom, allegedly guarded by the wizards, turn out to be available on the corner.

The general law school environment is dominated by students obscenely obsessed with where they stand amongst their peers, and the school assists them by providing the essential data. While this data may seem necessary to employers to allow them to easily sort applicants, it is not at all necessary educationally. Indeed, the mechanism the school

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12. The most obvious example is the general choice of sides in tort litigation. The "defense bar" can attract the seemingly better qualified students with high salaries and paid training during campus recruiting. The "plaintiff's side" usually is represented by smaller firms or sole practitioners that cannot even afford to come to campus interview programs. Only the students who are unable to find jobs through the school's program end up applying for these jobs.

uses actually inhibits both learning and teaching. This anti-educational effect is accomplished structurally through complete reliance on a final examination, compounded by the superimposition of a grade curve.<sup>13</sup>

Law school grades depend entirely on an anonymous final examination with a grading curve. Having just one opportunity to demonstrate one's worth, after the completion of the study, prevents the test from providing any educational feedback. Since each course is a discrete event, and each professor an idiosyncratic judge, students find there is nothing to take from one test to another besides a pen. An interim test would give them a chance to respond to perceived shortcomings of their own and the professors, and to transcend their fear of the unknown. The law school hands down the party line: If you know how to "think like a lawyer," you have nothing to fear from this "challenge," if you do not, you will be found out. Students are forced to hand their futures over to a decidedly inexact authority posing as infallible.

Many faculty are good people trying their best to responsibly sort students within the parameters of the system. They do not like the process any better than students do. But the process protects the professors, while exposing the students to tremendous risks. If the professor did a good job of making things clear in class he is stuck with a flat curve and must split hairs to decide student destinies. Or he can build questions into the exam designed to stratify, injecting spurious mystery into the material. Worse, but not uncommon, is the professor, snug in sinecure, who simply does not put the requisite thought and effort into making or reading the tests. In all these situations the student is forced to accept a dubious, yet definitive, evaluation. While a fair exam, fairly graded, is possible, it is a rare event unlikely to be repeated each semester.

By counting only the examination, the school disregards other criteria that could be part of a fair evaluation. Perhaps if class participation was a factor, the Socratic method would not be dead. Certainly some recognition of verbal skills seems appropriate to the study of law.

Anonymous grading is premised on removing any hint of favoritism or prejudice from evaluations. Once again to protect itself, the school makes the student bear the cost. Grading decisions are completely subjective, anonymous or not. They can be made thoughtfully and in good faith, or arbitrarily and capriciously, but they always are subjective. The presumed fairness of anonymous testing is a sham. It removes only con-

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13. Most supposedly ungraded programs merely accomplish the same goal through euphemisms, such as non-grade grades like High Honors and Honors.

scious bias, leaving unconscious, cultural bias alive and well. Anonymity is used to protect the school from having arbitrary decisions questioned.

The school's policy mirrors nineteenth century contract law by limiting review to the four corners of the document. Modern law recognizes the value of extrinsic evidence, even if the law school does not. No one believes that vindictive or bargained-for grading has a place in any system, but requiring anonymous testing to avoid it is ineffective, and insulting to both professor and student.<sup>14</sup> The freedom to temper claimed objectivity with humanity is precious to our legal system, a basis for our right to trial by jury, but it is lacking in legal education.

Anonymous grading also denies professors the chance to get necessary feedback on the effectiveness of their testing. Under the current system, a professor can recognize when a curve is flat or natural, but cannot tell whether the test classified students by conceptual knowledge, the ability to memorize minutiae, or make use of a certain commercial outline. When teachers finally get names to match with numbers, the trail is cold; the specifics that would educate the professor about the effectiveness of her testing are inaccessible.

The law school test succeeds only in its usual tautological fashion—defining success by what it does. Whether a test is a probing examination written and read with care, or a Dadaist exercise in fatalistic futility, somebody gets an A and is happy, someone else does badly and feels wronged.

A student who questions the "verdict" on her law school worth, or even just wants to learn further from the evaluative process, is left with little recourse. The curve precludes substantive inquiry in reliance upon the inscrutability of relative worth.

Fair grading is a difficult and time consuming process at best, and one that all educational institutions deal with, usually without resorting to the sort of structural defenses the law school deems necessary. The school's fear of a pack of complaining law students is understandable, but if it cannot handle its own creation, something is wrong with the picture. Dr. Frankenstein had this same problem.

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14. A preferred method would be based on an assumption of equitable evaluations, but also would provide a viable grievance mechanism in reserve.

Anonymous testing does not protect anyone from vindictive grading on content, as opposed to personality (or on presumed identity), nor does it protect against favoritism which can circumvent anonymity directly (student tells the professor his number) or indirectly (student cutely communicates his identity in his exam paper).

## II. A Different School of Thought

This essay envisions an alternative two-part program that would provide a better legal education. The first two years establish a working vocabulary and threshold competence—in theory *and* practice—for each major area of study. The third year entails specialized, advanced work of the student's choosing. To complete this program successfully, students must know how to think *and* do, and can assert some control over their destinies by creating their own credentials in a chosen field.

The first part of the program lays a foundation upon which all students can build, constructed of a common language and skills, while simultaneously exposing students to the realities of practice in different areas of law. To accomplish this, the school is both a teaching clinic and a classroom. Faculty will be required to go both ways—to teach theory and practice, neither aspect given primary status. This dual requirement will keep scholarship grounded and practice thoughtful.

A professor will work with a group of students in a specific subject area for a month. By rotating through the courses monthly, there is no standard sequence that mandates prioritization.<sup>15</sup> The unique nature of each segment will frustrate the use of commercial outlines. Students simply will have to engage the material during the process instead. The material will be presented intensively, each subject studied full-time during its month. During that time, the material can be defined and approached in many ways: case study, work on actual cases, related readings from other disciplines or fiction, written assignments, journals, interviews, and observing proceedings, for example. The method of study can be both humanistic<sup>16</sup> and practical, unlike the current method which is neither. There will be no attempt to cover an entire subject; the focus instead will be on thoroughly understanding a few examples well enough to be able to understand others on one's own.<sup>17</sup>

Near the end of each month, the professor will evaluate each student subjectively, but openly, using some combination of written, oral, and performance testing. While not offering the illusion of objectivity, this

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15. There are educational reasons why some courses should precede others, but law school prioritization currently ranks the common law over statutory law, and all law over interdisciplinary study. The new school would vary those types of study within general educational levels.

16. See, e.g., E. DVORKIN, J. HIMMELSTEIN, H. LESNICK, *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (1981).

17. Students would need further preparation for the various bar examinations, as they do now. Bar preparation should be part of the curriculum, however, so that it can be included in financial aid packages. Today, students often accept jobs earlier than they might, limiting their options, in order to survive the bar review summer.

will increase accountability and reinforce fairness through a visible decision-making process. Each student must meet the professor's threshold competence standard or the group does not go on to the next subject. If someone does not establish competence, the ones who have done so will tutor their classmate for re-testing. They can learn teamwork skills that will be important later, while honing their own understanding through teaching.

If a student protests his evaluation, resolution of the problem becomes a group project. Students get a very real and personal chance to mediate a dispute.<sup>18</sup> Governing their own group, students will have to deal with law from the other side, and realize some of the complexity of the issues—a good cure for self-righteousness or indifference.

No grades are given out, but everyone has achieved a level similar to what the professor used to call a B or higher. This is possible through, for example, skills teaching, an ego-less yet effective method for providing everyone with skills they otherwise would not learn if they remained in the bottom of the class.<sup>19</sup>

The teaching clinic will be less compartmentalized than the current external programs. Interdisciplinary communication will keep the quality of work on the cutting edge. When free services are needed, the school can be a community resource. It also can assist the courts, or, when neither is appropriate, mock projects can be developed.

After spending a month in an area, students will possess two essential types of knowledge. They will understand the working language and skills of the law and its shortcomings—what it does and what it does not do—and they will know whether they liked doing that kind of work. At this juncture, they will be better qualified for summer jobs than students

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18. The group will have to design its own governmental process. For example, in a student/teacher dispute, shall there be a presumption of regularity in the teacher's decision? What will be the scope and standard of review? Review by whom—the whole class, a committee of students, a committee of faculty and students?

Students may have to decide in what situations they will cast someone out of the group: for being slow, for not trying (how do you prove that), or for being a pain in the neck. What mechanism should be used for this ultimate decision: majority rule, supermajority, consensus, or some veto or appeal mechanism? What will happen to that student afterward, and how much will the group concern itself with that fate? These problems will bring legal policy and procedural issues to life for the students.

19. This method was tried in one law school through a class called Contorts, a mixture of Contracts and Torts offered on an experimental basis at Rutgers-Camden. The class was a pedagogical success, but controversial within the Rutgers legal academic community. See Feinman & Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985); see also Feinman & Feldman, *Achieving Excellence: Mastery Learning in Legal Education*, 35 J. LEGAL EDUC. 528 (1985) (the pedagogy without the politics).

today. They then must take the initiative and decide what they will make of their third year.

The third year provides students both the opportunity and the responsibility to write their own curriculum. Being visibly smart will no longer suffice to open all doors. Instead of being a jaded lame duck, the third year student will be entering the most demanding phase of her study—and the demands will be her own. Choosing one or more areas of law that interest her and delving into them more deeply, she will create projects that communicate her affinity with, and commitment to, the material. Possibilities include exposing maladministered justice, designing a computer program to improve a particular type of practice's efficiency, writing a theoretical article, working on an appeal, or writing a book enabling nonlawyers to function in the legal system.<sup>20</sup>

No student can slide through the year without both engaging the material and gaining insight from deep, close study that a general education never brings. Coupled with the breadth of the first phase, the school attempts to offer the best of both worlds—far-ranging knowledge and hard-earned understanding.

After finishing his projects, the student will have a valuable credential—relevant examples of his own work. He will have references of weight as well, because professors worked closely with him, and they will have credibility outside of academic circles because of their involvement in practice.

There will be no grades; instead employers will have to examine the type of information for which grades are just a poor proxy.<sup>21</sup> This avoids the inequities of the current system, without sacrificing useful information. Initially, the oppression of monopolistic law school action will fall on the employers (instead of the student), but they will eventually realize that they are getting a better deal—applicants who know what they are applying for and know they want to do it. There will be less unhappy matching and less attrition.

The changes proposed here are sweeping, and undoubtedly will engender criticism from student and school alike. But they are worth trying, even if they make the process initially more difficult for all concerned, for the current system is a poorly designed workout. Stu-

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20. Students still uncertain about what type of practice they would like to embark on, and there should be fewer such students given the greater information available, can either do a variety of smaller projects, or projects of a general nature.

21. For that summer job after year two, no longer as necessary, employers will receive relevant references and examples of work from various student projects to assist them in selecting clerks.

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dents labor like weightlifters; their motto—"no pain, no gain." But what they gain is not worth the struggle. The new law school sketched here seeks to create a system in which the hard work pays off at every level. Students will have to work hard and long, as they do today. But they will earn a reward for their efforts that is currently unavailable—a real legal education.

