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## 2012 JAMES P. WHITE LECTURE ON LEGAL EDUCATION

### THE TRANSFORMATION OF THE LEGAL PROFESSION AND LEGAL EDUCATION\*

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I am delighted to be here today, returning to my alma mater, to deliver the James Patrick White Lecture in honor of one of my own teachers, one of my mentors, and my dear friend for forty years.

My topic is “The Transformation of the Legal Profession and Legal Education.” My emphasis is on the transformation<sup>1</sup> of American legal education. However, I will begin by mentioning the deep and broad transformation that is taking place in the legal profession, and as a consequence, what effect this transformation is having on legal education. Although it may be fashionable today to blame the 2008 recession as the cause of this transformation, I believe the root causes of the transformation run earlier than September 2008.

#### I. THE PRACTICE

For many years, critics have sounded the alarm that the pyramid structure of America’s largest private law firms was not a financially sustainable model.<sup>2</sup>

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1. For an excellent history of the problems with legal education, see BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 85, 107 (2012); William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble: How Long Will It Last if Law Grads Can’t Pay Bills?*, A.B.A. J. (Jan. 1 2012, 5:20 AM), available at [www.abajournal.com/magazine/article/the\\_law\\_school\\_bubble\\_how\\_long\\_will\\_it\\_last\\_if\\_law\\_grads\\_cant\\_pay\\_bills/](http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills/).

2. See, e.g., Peter Lattman, *Dewey & LeBoeuf Files for Bankruptcy*, DEALBOOK (May 28, 2012, 10:21 PM), <http://dealbook.nytimes.com/2012/05/28/dewey-leboeuf-files-for-bankruptcy/>

This model may well have served the leadership and senior partners of the large law firms for many years, but no student of efficiency would have embraced the high-pay associate model for the high-reward partner benefit as sustainable in the long-term. The 2008 recession broke the back on that well-worn model when the clients of private law firms made clear that they were no longer going to pay the high fees that supported the pyramid model.<sup>3</sup> As a result, the practice and financing of the private practice of law has gone through a dramatic change: (1) the top 250 private law firms in the United States have lost over 10,000 jobs since the recession began in 2008;<sup>4</sup> and (2) law firms shrank to profit growth during the recession.<sup>5</sup> In addition, law firms have reorganized their structure to create a second tier of lawyers, whether partners or associates, who no longer are equity owners but now are employees.<sup>6</sup> (3) There is outsourcing of some of the most basic and repetitious practices required in law firms—including work being done by non-lawyers.<sup>7</sup> (4) There is wide use of technology and software to track and utilize enormous amounts of information on behalf of clients. This use of technology and computers replaces much of the labor performed by lawyers, especially in matters of e-discovery that now has overtaken much of the pre-trial discovery world and litigation.<sup>8</sup> (5) Firms continue to move away from the

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(“Many observers say the root causes of Dewey’s fall are not unique. Several of the largest firms have adopted business strategies that Dewey embraced: unfettered growth . . . ; aggressive poaching of lawyers from rivals . . . ; and a widening spread between the salaries of the firm’s top partners and its most junior ones.”).

3. See Peter Lattman, *Assigning Blame in Dewey’s Collapse*, DEALBOOK (May 14, 2012, 9:12 PM), <http://dealbook.nytimes.com/2012/05/13/assigning-blame-in-deweys-collapse/>; Catherine Rampell, *At Well-Paying Law Firms, a Low-Paid Corner*, N.Y. TIMES, May 24, 2011, at A1, available at [http://www.nytimes.com/2011/05/24/business/24lawyers.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/05/24/business/24lawyers.html?pagewanted=all&_r=0).

4. See *How to Curb Your Legal Bills*, ECONOMIST, May 5, 2011, at 14, available at <http://www.economist.com/node/18651204>; *Law Firms: A Less Gilded Future*, ECONOMIST, May 5, 2011, at 72, available at <http://www.economist.com/node/18651114>; *Not Enough Lawyers?*, ECONOMIST, Sept. 3, 2011, at 28-29, available at <http://www.economist.com/node/21528280>; David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, at A1, available at [www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all&_r=0); Henderson & Zahorsky, *supra* note 1.

5. Press Release, NALP, *Class of 2010 Graduates Faced Worst Job Market Since Mid-1990s* (June 1, 2011), available at <http://www.nalp.org/uploads/PressReleases/11SelectedFindings.pdf> (stating the employment rate of graduates nine months after graduating “has fallen more than four percentage points since reaching a 20-year high of 91.9% in 2007 and marks the lowest employment rate since the aftermath of the last significant recession to affect the U.S. legal economy”).

6. Rampell, *supra* note 3.

7. See Heather Timmons, *Outsourcing to India Draws Western Lawyers*, N.Y. TIMES, Aug. 5, 2010, at B1, available at [http://www.nytimes.com/2010/08/05/business/global/05legal.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2010/08/05/business/global/05legal.html?pagewanted=all&_r=0).

8. Timothy P. Harkness & Dana L. Post, *Will Computers Soon Replace Your Lawyer?*,

venerable billable hours by lawyers, toward flatter fees, deferred and contingency fees, and particularly value billing concepts.<sup>9</sup> (6) Highly specialized boutique law firms have been created that focus practice on one or a few narrow areas.<sup>10</sup> (7) There is an increased influence of globalization as firms serve their clients with more international with branch offices throughout the world, demonstrating much more global competition among firms.<sup>11</sup> (8) Law firm merger activity and firm dissolutions have increased.<sup>12</sup> (9) Finally, there is the growth of non-law firm alternatives for low-end legal work, such as Legal Zoom and Robert Lawyer.<sup>13</sup>

No lawyer today would disagree with the characterization that the practice of law, be it in the private sector or in the public sector, is going through a very large, structural transformation. Some praise, and others lament, that the practice has gone from a profession to a commodity based business.

## II. THE ACADEMY

The implications for American law schools are profound. Fewer law firm and public sector jobs for lawyers has meant exactly that for the graduating law student. The cost of legal education, the tuition students pay for a legal education, and student debt are all inextricably linked to this transformation.

As of today, the number of students taking the Law School Admissions Test dropped 16%, from a high of over 171,000 applicants in the 2009-2010 academic

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THOMSON REUTERS NEWS & INSIGHT (June 5, 2012), [http://newsandinsight.thomsonreuters.com/Legal/Insight/2012/06\\_-\\_June/Will\\_computers\\_soon\\_replace\\_your\\_lawyer\\_/](http://newsandinsight.thomsonreuters.com/Legal/Insight/2012/06_-_June/Will_computers_soon_replace_your_lawyer_/).

9. See Arthur G. Green, *Thinking Outside the Box*, 13 BUS. L. TODAY 5 (May/June 2004), available at <http://www.apps.americanbar.org/buslaw/blt/2004-05-06/greene.shtml> (“Alternative billing methods will be an important strategy for lawyers seeking to stay at the leading edge of the change the profession will undergo in the 21st century.”).

10. Karen Sloan, *Boutique Firms Well-Positioned to Ride It Out*, NAT’L L.J. (Dec. 1, 2008), <http://www.law.northwestern.edu/career/markettrends/2008/prle6hoa3oas.pdf>.

11. Phil Ciciora ed., *Business Law Expert: Legal Education Must Respond to Market Forces*, NEWS BUREAU/ILL. (Apr. 25, 2011), [http://news.illinois.edu/news/11/0425legaleducation\\_Larry\\_Ribstein.html](http://news.illinois.edu/news/11/0425legaleducation_Larry_Ribstein.html); The Fellows CLE Research Seminar, *What Defines Competence? A Debate on the Future(s) of Lawyering*, 22 RESEARCHING L., Spring 2011, at 1, 1-10, available at [http://www.americanbarfoundation.org/uploads/cms/documents/rl\\_Spring\\_2011.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/rl_Spring_2011.pdf) [hereinafter *What Defines Competence?*].

12. See, e.g., Brian Baxter, *Report: Law Firm Merger Boom to Continue in 2012*, AM. L. DAILY (Jan. 4, 2012, 4:35 PM), <http://amlawdaily.typepad.com/amlawdaily/2012/01/mergers-2012.html> (“[L]aw firm merger activity increased 65 percent between 2010 and 2011.”).

13. *What Defines Competence?*, *supra* note 11, at 2-3; William D. Henderson, Professor, Ind. Univ. Maurer Sch. of Law, *New Legal Entrepreneurs Don’t Need Deregulation to Take Market Share*, Address at the ABA Section of Environment, Energy, & Resource Law Summit (Oct. 14, 2011), available at <http://truthonthemarket.com/2011/09/19/william-henderson-on-are-we-asking-the-wrong-questions-about-lawyer-regulation/>.

year to approximately 130,000 this year.<sup>14</sup> We have seen a 25% decrease in applications in the last two years for law school admissions.<sup>15</sup> At the same time, we have approximately 45,000 students expected to graduate in each of the next three years.<sup>16</sup> It is not hard to see that these numbers portend a serious long-term consequence for our American law schools. This is especially true, I believe, at the bottom of the law school rankings order and for schools that are heavily dependent on tuition.

The obvious strategies of cutting class size and lowering admission standards to maintain the present class size will have dramatic consequences on law schools. The context here, of course, is that in today's world, 85% of law graduates from ABA-approved law schools have an average debt upon graduation of \$99,000, and only 68% of these graduates from ABA-approved law schools have jobs within nine months after graduation.<sup>17</sup> The relationship among high tuition dependence, fewer higher paying jobs, more moderate incomes, and the high debt load is creating the "perfect storm" for many law students and, of course, now their law schools.

I should note that the debt issue is not one related only to law schools. As a provost for nearly eight years, and now an incoming president of a university, I have watched the alarming statistics. Those debt levels for undergraduate students<sup>18</sup> are, on average, approximately \$23,300<sup>19</sup> per year for those who took out loans. For dental schools, the debt averages \$175,000 upon graduation; for medical schools, \$160,000; and for vet medicine schools, at least that high. It should be no comfort that our law students have less debt substantially than other professional school graduates.

Before considering future dilemmas facing legal education today, perhaps a bit of history will inform how we got to where we are today.

### III. HISTORY

As we know, the study of law in the United States during the nineteenth century largely centered around an apprenticeship model rather than formal

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14. David Segal, *For 2nd Year, a Sharp Drop in Law School Tests*, N.Y. TIMES, Mar. 19, 2012, at B1, available at <http://www.nytimes.com/2012/03/20/business/for-1sat-sharp-drop-in-popularity-for-second-year.html>.

15. *Id.*

16. *Id.*

17. Henderson & Zahorsky, *supra* note 1.

18. See Andrew Martin & Andrew W. Lehren, *A Generation Hobbled by the Soaring Cost of College*, N.Y. TIMES, May 12, 2012, at A1, available at <http://www.nytimes.com/2012/05/13/business/student-loans-weighing-down-a-generation-with-heavy-debt.html?pagewanted=all> (stating that 60% of students who earn a bachelor's degree take out loans, in part, to pay for their education), reprinted in N.Y. TIMES, May 13, 2012, at A1 (correcting percentage of students who take out loans).

19. *Id.*

instruction.<sup>20</sup> It was not until the late 1800s that a formal curriculum, under the leadership of Dean Christopher Columbus Langdell at the Harvard Law School, attempted to create law as an academic discipline.<sup>21</sup>

From the writings of Plato, Langdell considered that the study of law should be a science that systemized data in a deductive structure.<sup>22</sup> Although this “autonomous Platonic science” was not completed or integrated into the Harvard curriculum as Langdell imagined, we all know what emerged was the “case law method” of education.<sup>23</sup> Unlike the curriculum at our best law schools today, the Langdellian approach did not envision interdisciplinarity as a core of the study of law.<sup>24</sup> Such interdisciplinary connections would have seemed to Langdell to violate the “autonomy” of law as a science.<sup>25</sup>

Roscoe Pound, in 1923, noted the importance of taking Plato’s suggestion that the study of the science of law is important, stating,

If we are to do our duty by the common law in the [twentieth] century, we must make it a living system of doing justice for the society of today and tomorrow, as the framers of our polity made of the traditional materials of their generation an instrument of justice for that time and ours.<sup>26</sup>

Many tensions, of course, have surfaced since the early development of the American law school, including the observations shared by William Twining, who in 1994, noted,

[A]ll Western societ[y] law school[s] are typically caught in a tug of war between three aspirations: to be accepted as full members of the community of higher learning; to be relatively detached, but nonetheless engaged, critics and censors of law in society; and to be the service-institutions for a profession which is itself caught between noble ideals, lucrative service of powerful interests and unromantic cleaning up of society’s messes.<sup>27</sup>

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20. MARTHA NUSSBAUM, THE LAW SCHOOL AND THE UNIVERSITY; Patricia Mell, *Not the Primrose Path: Educating Lawyers at the Turn of the Last Century*, 79 MICH. B.J. 846, 846 (2000).

21. NUSSBAUM, *supra* note 20.

22. *Id.*; Gary D. Finley, Note, *Langdell and the Leviathan: Improving the First-Year Law School Curriculum by Incorporating Moby Dick*, 97 CORNELL L. REV. 159, 163 (2011).

23. See Steven B. Dow, *There’s Madness in the Method: A Commentary on Law, Statistics, and the Nature of Legal Education*, 57 OKLA. L. REV. 579, 580-84, 593-94 (2004).

24. See John Veilleux, *The Scientific Model in Law*, 75 GEO. L. REV. 1967, 1975-76 (1987).

25. See Dow, *supra* note 23, at 593-94.

26. Martha Minow, Dean of the Faculty of Law, Harvard Law Sch., Legal Education: Past, Present and Future, Address Before the Harvard Law School Community 1 n.1 (Apr. 5, 2010) (quoting ROSCOE POUND, THE WORK OF THE AMERICAN LAW SCHOOL (1923), *reprinted in* STEVE SHEPPERD II, THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES 687 (1999)).

27. *Id.* at 3 (quoting WILLIAM TWINING, BLACKSTONE’S TOWER: THE ENGLISH LAW SCHOOL 2 (1994)).

We can all observe the internal tensions implicit in Twining's summary. The greatest tension among them, I might suggest, for American legal education, has been the appropriate balance between theory and practice (or the academic side and the applied skills side). I suggest that our very best law schools today fully accept this challenge and are doing very well in being serious, contributing members to the higher education and the research university community, as well as offering students a high level of clinical and practical lawyering skills opportunities. This point was lost in the recent series of articles written in the *New York Times*.<sup>28</sup>

Although it is no secret, nor should it be, that American law schools have come under much critique and criticism since Langdell's roll out of the "case method" in 1870,<sup>29</sup> much of the criticism today, as repeated in the recent *New York Times* stories,<sup>30</sup> is simply not current or accurate as representative of American legal education. To be sure, there are many challenges ahead, as I will note later in this White Lecture, but those challenges are not on whether we should have clinical legal education or practical lawyering skills integrated into the curriculum or how successful those efforts have been.

Spurred on, in part, by the Carnegie Foundation for the Advancement of Teaching's report, *Educating Lawyers: Preparation for the Profession of Law*,<sup>31</sup> and by the ABA accreditation standards,<sup>32</sup> our very best law schools today are incorporating clinical education and lawyering skills courses broadly and deeply within the curriculum.<sup>33</sup> This conclusion, I believe, is broadly understood and shared by those who are and have been participating in legal education and observing its transformation, incrementally, in at least the last thirty years. As one who has been a part of the legal academy for thirty-three years beyond my law school student days, and having chaired nearly twenty ABA-AALS inspection visits during this period of time, as well as chairing the ABA Section on Legal Education, I can attest to the remarkable improvement in American legal education across a wide spectrum of law schools. Importantly, this includes our most distinguished law schools that may have been the most recent converts

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28. See Segal, *supra* note 14.

29. See C. Michael Bryce & Robert F. Seibel, *Trends in Clinical Legal Education*, 70 N.Y. ST. B.J. 26, 26 (1998).

30. Segal, *supra* note 14.

31. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

32. A.B.A., SECTION OF LEGAL EDUC. & ADMISSION TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 17 (2012-2013), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_2013\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf).

33. See Hannah Hayes, *Recession Places Law School Reform in the Eye of the Storm*, 18 PERSPECTIVES, Spring 2010, at 8, 8-9, 14, available at [http://www.americanbar.org/content/dam/aba/publishing/perspectives\\_magazine/women\\_perspectives\\_spring10\\_recession\\_law\\_school.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/perspectives_magazine/women_perspectives_spring10_recession_law_school.authcheckdam.pdf).

to high quality and easily accessible clinics and practical skills courses.

The ABA created a survey of law school curricula which was to be released in the summer of 2012. The survey found that “[o]ver 85% of respondents regularly offered in-house live-client clinical opportunities and 30% of respondents offered off-site, live-client clinical opportunities.”<sup>34</sup> The section committee study report, chaired by Professor Catherine Carpenter of South Western Law School, concludes that the curricular developments of the past decade evidence a firm “commitment to clinical legal education” and rich and creative approaches to “experiential learning.”<sup>35</sup> The survey also found that legal writing has grown in stature and has been expanded and strengthened throughout the three-year curriculum.<sup>36</sup>

#### IV. A PRESCRIPTION GOING FORWARD

But these remarkable “quality” developments have come with big costs.<sup>37</sup> Critics of higher education and law schools today forget that with “quality” comes costs. The key is clearly identifying the “costs” of legal education and accordingly “prioritizing” those expenditures. Here, it is important for each school to identify the “distinctiveness” and “comparative advantage” of the school so that each does not replicate, at additional costs, the same features at other schools.

The prescription for this dilemma, while not easy, is twofold: (1) we must substantially reduce the cost of legal education, and (2) we must increase revenue in a way to support the fundamental priorities that remain. I suggest that the following are the “core” cost drivers today:

- (1) faculty salary and benefits (We are all familiar with the arms race that has taken place in the last twenty years regarding the star salaries that are being paid to recruit and retain our very best faculty.);<sup>38</sup>
- (2) the increased number of faculty who have been added to our law schools largely without regard to the size of the student body;<sup>39</sup>

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34. A.B.A. SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010, at 16 (Catherine L. Carpenter ed., 2012) (stating that response rate represented 83% of ABA approved law schools in 2010).

35. *Id.*

36. *Id.*

37. N. William Hines, *Ten Major Changes in Legal Education Over the Past 25 Years*, ASS’N OF AM. LAW SCH., [http://www.aals.org/services\\_newsletter\\_presNov05.php](http://www.aals.org/services_newsletter_presNov05.php) (last visited Nov. 11, 2012) (“Higher tuitions mean greater institutional investments in student financial aid, particularly in an increasingly competitive marketplace for students, and this in turn drives costs even higher.”).

38. See Fabio Arcila, *Whither Law Professor Salaries: Let’s Talk Money*, PRAWFSBLAWG (Dec. 14, 2009, 10:00 AM), <http://prawfsblawg.blogs.com/prawfsblawg/2009/12/whither-law-professor-salaries-lets-talk-money.html>.

39. See, e.g., Brian Tamanaha, *The Coming Crunch for Law Schools*, BALKINIZATION (June 28, 2011), <http://balkin.blogspot.com/2011/06/coming-crunch-for-law-schools.html> (“Law schools now pump out about 45,000 graduates annually at a time when the Bureau of Labor Statistics

- (3) substantial reduction in teaching loads of faculty;
- (4) the high cost of maintaining research libraries, given the near monopoly pricing that takes place in the world book market;
- (5) the enormous costs associated with building and maintaining very large facilities (again, part of the arms race);<sup>40</sup>
- (6) the arrival of the high use of IT, as a research tool as well as the infrastructure to help manage and run our law schools;<sup>41</sup>
- (7) the very large increase in the budget for financial aid, both merit and need, to recruit the talented, diverse student bodies we have today (This is driven, in part, by U.S. News ratings' focus on high GPA/LSAT numbers.);<sup>42</sup> and
- (8) the significant cost of running small classes with far fewer students than the large lecture classes, including the small student to faculty ratio in clinical education and practical lawyering skills courses.

Who among us would say that some or all of these were not top priorities?

But, the budget expansion in each of these categories is having a dramatic "cumulative" effect on the costs of legal education both from the institution's perspective as well as that of the student.<sup>43</sup>

Putting all of this together, we clearly have both a supply and a demand market problem. Law schools are enrolling too many students at the very time that employment prospects are poor.<sup>44</sup> I suspect for many of our law schools these factors are forcing law schools to admit more students, while at the same time the market is rejecting, for employment purposes, a very high percentage of those graduates. I suggest, as I have for twenty-two years as a law school and university administrator, and I hope what I have actually practiced, is that we should not let budget revenues dictate the optimal number of students that should be admitted and graduated from our law schools.

Thus, today, I suggest to you in this White Lecture that all of our law schools need to seriously consider rolling back their admission numbers. Now to be sure,

projects about 28,000 new lawyer positions per year.").

40. See Harrison Okin, *As Law Faculty Increases, School Plans Expansion*, CORNELL DAILY SUN, Nov. 22, 2011, <http://cornellsun.com/node/49072>.

41. E.g., *Information Technology*, VANDERBILT L. SCH., <http://law.vanderbilt.edu/about-the-school/information-technology/index.aspx> (last visited Jan. 9, 2013).

42. Bob Morse, *U.S. News Looks at the Rise in Merit Aid at Law Schools*, U.S. NEWS (May 5, 2011), <http://www.usnews.com/education/blogs/college-rankings-blog/2011/05/05/us-news-looks-at-the-rise-in-merit-aid-at-law-schools>.

43. I should note the very important work being done by two of our colleagues in the legal academy on the cost and financing of legal education, including Brian Tamanaha at Washington University in St. Louis, and Bill Henderson at Indiana University, Bloomington. TAMANAHA, *supra* note 1; see also Henderson & Zahorsky, *supra* note 1; Henderson, *supra* note 13; William Henderson, *The Hard Business Problems Facing U.S. Law Faculty*, LAW SCH. REV. (Oct. 31, 2011), <http://legaltimes.typepad.com/lawschoolreview/2011/10/the-hard-business-problems-facing-US-law-faculty.html>.

44. Tamanaha, *supra* note 39.



as an antitrust lawyer and antitrust scholar, I am *not* calling for collective action by our law schools or by our institutions of law. Rather, I am suggesting that individual institutions take a very serious “relook” and “reset” on their own. Each institution has, of course, its own history, culture, and mission. I make this recommendation in that context, that *each* individual institution should reevaluate its mission and its ability to support that mission.

The one “commonality” among these costs, as you know, is the H.R. factor—the size of the student body and the corresponding size of the faculty.

But, while I recommend a significant decrease in the number of seats open for law students, serious care needs to be taken to ensure that middle-class students, as well as students coming from the lower economic sectors of society and diverse populations, do not suffer the burden of this restructuring.

The transformation of the legal profession clearly has signaled to us that the traditional means and ways of hiring law students is largely gone. For example, one managing partner of one of our largest law firms told me in a confidential conversation last year that his firm had reduced from “on average, eighty summer associates down to four or five.” As Professor Tamanaha of Washington University has boldly, but correctly, noted, the economic model of law schools is broken.<sup>45</sup> He concludes that “the cost of a law degree is now vastly out of proportion to the economic opportunities obtained by the majority of graduates.”<sup>46</sup> And that is my point about the interaction of the supply and demand market in the legal world today! At least in the short to mid-range term, Professor Tamanaha notes that the disconnect between the cost of legal education and the economic return it brings is out of line.<sup>47</sup>

Unlike some of the critics, I *do* believe that law schools *can* reform themselves individually, without governmental intervention or increased regulatory oversight by accrediting agencies.

I am aware also that some people today either believe there are too many lawyers in society, or they believe the opposite—that there are barriers to legal education that have provided too few lawyers.<sup>48</sup> I disagree with both propositions.

We have a maldistribution of lawyers, to be sure, the result of which is we have many sectors of society that are not being serviced optimally or at all.<sup>49</sup> There continue to be real “access” and justice issues because of this maldistribution.<sup>50</sup>

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45. Brian Z. Tamanaha, Op-Ed., *How to Make Law School Affordable*, N.Y. TIMES, June 1, 2012, at A27, available at <http://www.nytimes.com/2012/06/01/opinion/how-to-make-law-school-affordable.html>.

46. *Id.*

47. Tamanaha, *supra* note 39.

48. *Not Enough Lawyers?*, *supra* note 4.

49. David Segal, *Is Law School a Losing Game*, N.Y. TIMES, Jan. 9, 2011, at BU1, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>.

50. *Id.*

On the other hand, for these critics, and some economists,<sup>51</sup> who claim that the legal profession and the accreditation process have created barriers to entry, I note that at least twelve new law schools have opened since 1999.<sup>52</sup> Given this evidence, I know of no other professional graduate education where the “output” expansion has been so great. It is just the opposite of an antitrust cartel or concern, I might add.<sup>53</sup>

Finally, I leave you with my belief that the legal profession and law schools today are *not* in crisis. They are, instead, in a large transition. Law schools will continue to balance the tensions between educating and graduating the generalist or the specialist, as well as between academic/research responsibilities and the practice of skills development. These are healthy tensions that have been present since the Langdellian changes in the 1870s.<sup>54</sup> Each school will need to find its own “distinctiveness” on this educational spectrum.

In sum, although I am suggesting a prescription here that may seem provocative, I do want to suggest a clarion call for an appropriate balance and proportion of consideration of all of the trade-offs involved. The American legal education’s greatest strength has been its value of turning out well-educated generalists, much like the theme expressed in Dean Tony Kronman’s wonderful book, *The Lost Lawyer*.<sup>55</sup> On reflection, however, the supply side of this market—the firms and entities that employ our law graduates—are telling us that our graduates must come out more focused, more finely educated, and practice-ready in more specific areas.<sup>56</sup>

I lament this direction or trend because while it may lead to greater depth of technical knowledge, I am not sure it builds the requisite judgment and wisdom that come from a more generalist-centered legal education experience.

And for our senior lawyers who remember the golden era<sup>57</sup> of law and urge us to produce the “perfect lawyer” in three years, recall our own educational progression. I offer you an idea: judgment and wisdom are the application of knowledge shaped through experience; and learning is incremental, informed

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51. *Not Enough Lawyers?*, *supra* note 4.

52. See *Alphabetical School List*, A.B.A., [http://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/in\\_alphabetical\\_order.html](http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/in_alphabetical_order.html) (last visited Nov. 11, 2012).

53. See generally THOMAS D. MORGAN, ANTITRUST IMPLICATIONS OF ACCREDITATION STANDARDS THAT LIMIT LAW SCHOOL ENROLLMENT, 86 BNA INSIGHTS (July 15, 2011).

54. Bryce & Seibel, *supra* note 29.

55. ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (Harv. Univ. Press 1995).

56. See generally Alfred S. Konefsky & Barry Sullivan, *There’s More to the Law Than ‘Practice-Ready,’* CHRON. HIGHER EDUC. (Oct. 23, 2011), <http://chronicle.com/article/Theres-More-to-the-Law-Than/129493/> (discussing the need for law schools to teach more than theory so that lawyers are prepared to practice upon graduation).

57. Rachel M. Zahorsky, *Can a Return to ‘Golden Era’ Values Prevent Your Firm from Becoming the Next Dewey?*, A.B.A. J. (May 24, 2012, 5:16 PM), [http://www.abajournal.com/news/article/can\\_a\\_return\\_to\\_golden\\_era\\_values\\_prevent\\_your\\_firm\\_from\\_becoming\\_the\\_next](http://www.abajournal.com/news/article/can_a_return_to_golden_era_values_prevent_your_firm_from_becoming_the_next).

through experience.

In closing, I return to the central dilemmas faced by law students and law schools—the relationship between (1) high tuition, (2) high debt (and the looming “federal loan bubble”),<sup>58</sup> and (3) more modest salaries and fewer jobs.

I have suggested that law schools need to look more closely at how to (1) enhance their comparative advantage by focusing on their distinctiveness or uniqueness, (2) avoid replicating all the same things that their competitors are doing, and (3) cut costs by reducing enrollments, individually, and by moderating the growth of law faculties and the concomitant “arms race.”<sup>59</sup>

Each of these strategies will drive down costs related to facilities, financial aid, IT capacity, libraries, and salaries, while leaving opportunities to reinvest savings in the real priorities of schools such as enhanced educational distinctiveness and quality. While some of these may be considered fixed rather than variable costs, over a longer term these, too, can be changed.<sup>60</sup>

I understand that if class size is reduced, so, too, will the revenue derived from tuition. The key is striking the right balance among revenue, costs, and enhanced reputation and quality. Above all, recall that (to the critics) “quality” requires investment that raises costs.<sup>61</sup> This will demand a greater focus on prioritization and the going without of some things that simply are not core or fundamental to the institution. The same strategies apply to the legal profession.

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58. John Paul Cassil, *The Recession and the Menacing Higher Education Bubble*, WASH. TIMES, Nov. 30, 2011, <http://communities.washingtontimes.com/neighborhood/conserving-freedom/2011/nov/30/looming-recession-higher-education/>.

59. See John A. Byrne, *An Unexpected B-School Arms Race for Top Students*, CNN MONEY (Dec. 12, 2011, 9:35 AM), <http://management.fortune.cnn.com/2011/12/12/mba-scholarship-arms-race/>.

60. For example, a reduction of faculty numbers, increased teaching loads, and more reliance on professors of practice will help drive down costs.

61. See, e.g., David Segal, *For Law Schools, a Price to Play the A.B.A.'s Way*, N.Y. TIMES, Dec. 18, 2011, at BU1, available at [www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all](http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all) (“Members of the A.B.A. Section say the point of the standards is not to raise the cost of law school, or to limit competition. The point is to ensure lawyers are well trained and that the public gets quality legal services.”).