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LECTURE

2011 JAMES P. WHITE LECTURE ON LEGAL EDUCATION A CHIEF JUDGE'S AFTER-LIFE: REFLECTIONS ON EDUCATING LAWYERS TODAY*

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Just to give you a bit of background, when my friend Jim White called several months ago requesting the title of my remarks, I responded with: How about "Women and Diversity" or "Children and the Law," to which he answered, "Choose a topic about which you have strong views. And by the way," he continued:

> Justice O'Connor, who gave the first White lecture, spoke about the internationalization of the practice of law and legal education with reference to CEELI (Central European and Eurasian Law Initiative). New York University President John Sexton next talked about legal education in a research university. And Lord Woolf discussed the differences in legal practice and legal education in the United Kingdom and the United States.

Before he could go on with the dazzling array of speakers (including Chief Justice John Roberts and Justice Ruth Bader Ginsburg) who have had the privilege of delivering the James P. White Lecture on Legal Education, I got the point. And yes, most definitely legal education is a topic about which I have strong views.

Before reaching that subject, I must say that, strong though my views may be on the subject of legal education, they are even stronger on the subject of James P. White. Jim, I cannot say for sure when it was that our paths first intersected. Over the past several decades your dedication to assuring the highest standards in our noble profession has happily brought us together in many exotic places. But it is my special pleasure to be here in your home, among your colleagues,

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* This is the text of the tenth James P. White Lecture on Legal Education delivered by Judith S. Kaye at the Indiana University Robert H. McKinney School of Law on September 13, 2011.

** Of Counsel, Skadden, Arps, Slate, Meagher & Flom, LLP; Chief Judge, New York Court of Appeals 1993-2008. Special thanks to Shari Graham, a superb Skadden, Arps colleague; to Diane Bosse, valiant head of New York's Board of Law Examiners; and to yet a third dear friend, former New York Court of Appeals Judge and former Dean of St. John's School of Law, Joseph Bellacosa. All three helped enormously in the development of these remarks.

friends and admirers who, together with the American Bar Association, have established this lecture in honor of your remarkable career.

Talk of remarkable, Jim and I were together in Toronto recently, when the American Bar Association honored Bob MacCrate, another star in the firmament of legal education and professional values. What a stunning coincidence that Bob was my very first "boss" and mentor when, fresh out of NYU law school, I had the good fortune to join the Litigation Department of the firm of Sullivan & Cromwell. As a woman, I guess the word "miracle" would be more apt than "good fortune" to describe that job opportunity back then. The first time my phone rang at Sullivan & Cromwell, on Tuesday, September 4, 1962—an incredible forty-nine years ago—it was Bob saying: "Miss Smith, this is Mr. MacCrate. Would you please come to my office?" Definitely an unforgettable day in my life, the official start of a half-century professional relationship and personal friendship. But it's an even greater coincidence that, like Jim White, so much of Bob's professional life has centered on the subject of the day: adequately educating students to perform effectively as lawyers.

Indeed, I spoke to Bob MacCrate as I was putting the finishing touches on these remarks. He wanted all of you to know that Jim White was a particular inspiration for him in his own relationship with the subject of legal education, that Jim more than anyone drew him to seeing what he could do to further a cause to which Jim has chosen to dedicate his life, and that reaching out to Jim always gave him new insights and fresh perspectives.

Clever man that he is, back in the early 1990s Bob MacCrate began his inquiry at the beginning, by identifying the skills required of a good lawyer: problem-solving, legal analysis and reasoning, legal research, factual investigation, oral and written communication, counseling, negotiation, understanding the procedures of litigation and dispute resolution, organizing and managing legal work, and recognizing and resolving ethical dilemmas. And as he explained in his influential 1992 report, today a classic on the subject, these skill sets must be used as a "checklist against which to judge the inclusiveness of . . . skills instruction or . . . the extent of [a student's] exposure to training in the skills needed in practice."[1] The MacCrate Report explored the educational continuum through which lawyers acquire their skills and values: prior to law school, during law school, and then in practice. It is safe to say that the MacCrate Report played a pivotal role in moving law schools from their previously static view of lawyers as repositories of legal knowledge to a more modern view of lawyers who do useful things with the law to anticipate and solve problems.

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1. Robert MacCrate, *The 21st Century Lawyer: Is There a Gap to Be Narrowed?*, 69 WASH. L. REV. 517, 523 (1994) (citing ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 127-30 (1992) [hereinafter MacCrate Report]).

CONTINUING CONCLAVES

Perhaps most significantly, Bob MacCrate's work, like Jim's and many others, inspired conclaves to continue the vital discussion of how best to educate law students for practice in a contemporary client-centered public profession. During the 1999-2000 academic year, a group of scholars at the Carnegie Foundation for the Advancement of Teaching examined and reported on the status of legal education across sixteen law schools.[2] They identified two major limitations of legal education. First, unlike other professional education such as medical school, legal education typically pays little attention to direct training in professional practice.[3] Second, they noted that law schools fail to recognize the different social and cultural contexts of legal institutions, and the varied forms of legal practice.[4] The 2007 report therefore concluded that the law school model needs to be a far more integrated one, where students are consistently moved back and forth between understanding and enactment, experience and analysis.[5]

The Carnegie findings were largely echoed in 2007 by University of South Carolina Law Professor Roy Stuckey, who chaired the Clinical Legal Education Association's "Best Practices for Legal Education" project. This six-year project culminated in a book calling on law schools to make a commitment to better prepare their students for practice, clarify and expand their educational objectives, improve and diversify teaching methods, and give greater attention to evaluating their success.[6] That message has resonated ever since in reports such as the American Law Institute–American Bar Association and the Association for Continuing Legal Education Summit,[7] and the April 2011 Report of my own State Bar Association's Task Force on the Future of the Legal Profession.[8] Most recently, I learned of a consortium of legal education reformers called Educating Tomorrow's Lawyers—part of the Institute for the Advancement of the American Legal System—which had its genesis in the 2007 Carnegie Report and now looks to new pedagogical models that blend and integrate the various skills required by contemporary law practice.[9]

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2. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 63 (2007).

3. *See id.* at 87-125.

4. *See id.* at 126-61.

5. *See id.* at 192-93.

6. *See generally* ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).

7. AM. LAW INST.-AM. BAR ASS'N CONTINUING PROF'L EDUC. & THE ASS'N FOR CONTINUING LEGAL EDUC., EQUIPPING OUR LAWYERS: THE FINAL REPORT OF THE CRITICAL ISSUES SUMMIT (2010), *available at* http://lawprofessors.typepad.com/files/finalreport.pdf.

8. N.Y. STATE BAR ASS'N, REPORT OF THE TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION (2011).

9. Karen Sloan, *Action on Law School Reform; Consortium Pushes Legal Education Reform: Legal Educators Are Organizing to Finally Move Beyond the Talking Stage*, NAT'L L.J., Aug. 22, 2011.

A NEW CROSSROADS

So, here we are again—or more accurately still—at a crossroads, which I am now witnessing from a new perspective, what I call my Chief Judge "after-life," back in the world of lawyering, now at the law firm of Skadden, Arps.

I use the word "back" advisedly. Yes, I did leave the New York City law firm world to join the State's high court on September 12, 1983. And yes, after twenty-five years, three months, nineteen days and twelve precious hours on the court (fifteen of those years as Chief Judge of the State of New York, in happy association with your great Chief, Randy Shepard) I am once again in a law firm in New York City. But to be frank, there is very little that is "back" about it. No surprise: the world is dramatically different. So are law firms in the City of New York, and throughout the world.

And I do want to pause here for a few disclaimers. First, it's pretty terrifying to be addressing the subject of legal education in the presence of one of the icons on the subject, Jim White, and I'd put your Chief Justice in that category too. I distinctly remember the years when Chief Justice Shepard passed up the opportunity to head the Conference of Chief Justices and the National Center for State Courts (which ultimately he did) because of his dedication to the American Bar Association's focus on legal education and professional standards. So I want to underscore that what you will hear are my personal views, with hardly the expertise of Jim, Randy and so many of you assembled here today.

Second, in the interest of full disclosure, you should know that I still bear the scars of New York State Dean-Chief Judge encounters on the subject of the bar exam and admission requirements, which in New York are under the aegis of the state court system as well as the American Bar Association. Those subjects invariably made the deans angry—some have even urged doing away entirely with the bar exam. I especially remember one national meeting—confrontation is a better description—in Phoenix, at a Chief Justices' conference with all the deans, which gave me some comfort, though small, that the fervor was not limited to New York.

And finally, on the subject of disclaimers, I recognize that big law firms hardly define the world of lawyering today, but it is my focus because it is the sliver of lawyer life that I know best. I think, additionally, that the big firm is a good model to draw on, given the resources and opportunities perhaps uniquely available in that universe, which in many ways (good and bad) has become a model for law practice generally. On the good side, I refer to my firm's wholehearted dedication to pro bono service, in order to better serve our profession and society, and to our relatively new two-month full-time training program for new associates in cross-pollination of the firm's practice areas and in business and finance, in order to better serve our clients. Clearly, we are part of the continuum in traditional on-the-job mentoring roles, and now more actively with a formal training program.

A SNAPSHOT OF TODAY

So against that backdrop, I briefly address the subject of my return to the world of lawyering at New York City firms today.

I could start with numbers—number of lawyers, number of partners, number of offices. Suffice it to say that my firm today—and we're hardly alone—has 2000 lawyers, of whom 432 are partners, with twenty-three offices around the globe. I don't need to give you examples of large law firms in 1983 for you to know that the difference is immense. But it's more than just numbers I'm talking about. I've lived in a large city all my adult life. I know that neighborhoods, communities, affiliations, even the high specialization within the profession today, can make the hugest enterprise familiar, home-like. For me, the two greatest differences are geography and technology.

Just to put a concrete example on the table, I recently returned from arbitrating in London—now a commonplace phenomenon (both arbitrating and doing so in London). While there, in the hotel breakfast room I met a lawyer from a global firm centered in Missouri, in London to defend his clients in depositions. His clients are from Dubai, and the lawsuit is pending in the United States District Court for the Eastern District of New York. That's Brooklyn. The messages that come across my firm email every single day can be about subjects as diverse as anti-suit injunctions in Argentina, Taiwan estates law, appeals in India, leasing transactions with foreign governments, and on and on. You name it, we've got it, including an amazing array of pro bono projects. Law practice in the world I now inhabit is around the globe, and therefore necessarily also around the clock, and the competition is intense.

The technological change may be even greater. As a young lawyer, and even an older one, I spent many days and nights in the library, immersed in books—treatises, case reporters, law reviews. I couldn't have imagined that within my own lawyer lifetime, I could type a case caption, a cause of action, a catch phrase, even a judge's name into a database and within seconds have a wealth of knowledge at my fingertips. Law libraries are obsolete and, at many law firms, extinct. Fortunately, at Skadden, I can still travel down to the 39th floor at 4 Times Square in New York City, take a deep breath and be intoxicated by the smell of real books. But it's more than the smell I am talking about. While these automated programs can generate information, they have not, and cannot, replace what the lawyer does best: understanding the information, analyzing it, and finding ways to apply it creatively and persuasively. That, after all, is how our law moves forward to accommodate a rapidly evolving society.

A CONTRAST TO THE PAST

And speaking of my early days as a lawyer, I harbor the fantasy of decades ago wandering down the hall in my old law firm to toss around an interesting legal question with a couple of associates. Turning the prism, I called it, to find new approaches to client problems. Today, the corridors are empty. If you have a question you simply email your next-door neighbor, or the whole firm, and you have the worldwide answer—including forms—in minutes. When I recently

addressed a group of young lawyers about how isolating and impersonal this all seemed, one of them took issue with me. In his view there is far more communication today—it's just in a different form.

I suppose that the young lawyer was correct: There is far more communication today—so much that this era has been dubbed the "communication revolution."[10] But I wonder, does *more* necessarily mean *better*? Once upon a time, face to face or by phone were our primary modes of interaction with one another. Now, we have the choice of communicating via voice, text, email, instant message, video, Facebook, Twitter—and the list goes on. Communication has become more efficient, but at what expense? Are students able to pay undivided attention to a law professor explaining a nuanced matter of law, while at the same time g-chatting with classmates down the aisle or friends in another country? Can attorneys give undivided attention to a client on a conference call while simultaneously emailing co-counsel on an unrelated case? It's common at meetings to see several lawyers prominently eyeballing their Blackberries, the balance of the group undoubtedly doing the same less prominently. I know a lady lawyer who has Blackberried her thumbs square.

So I leave open the question whether communication is better these days and turn particularly to law schools in the legal education continuum today—preparation for those magic moments of law practice that I've been describing. And I ask: Given our brave new world, are the skill sets today different from those identified two decades ago for practice in a client-centered public profession? And how are law schools doing in meeting today's needs?

As to the first question, my own suspicion is that the MacCrate Report's conclusions back in 1992 are still "right on," even in this dramatically changed world. Surely we still need that comprehensive list of essential problem-solving skills, perhaps now more than ever. The form of our communication today may be different, the forum of our dispute resolution today may be different, but our professional objectives remain unchanged and challenge the full range of human skills the Report identified. Surely the continuum known as legal education begins prior to law school and continues in practice. And finally, I think it is clearer than ever before that, in this rapidly changing world, we need to continue and even ratchet up our collaborations to secure the continuing vitality of our noble profession.

So it's not the first question—the identification of required skills—that at the moment troubles me as much as the second—the law school segment of the continuum, today at the center of a tornado. It shocked me as I prepared this lecture, time after time to find my research and ruminations that very day the subject of articles in the *New York Times*, *New York Law Journal* and *National Law Journal*, resolutions by the American Bar Association, even lawsuits, one filed in Michigan federal court against the Thomas Cooley Law School,[11] a

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10. *See generally* INSIDE THE COMMUNICATION REVOLUTION: EVOLVING PATTERNS OF SOCIAL AND TECHNICAL INTERACTION (Robin Mansell ed., 2002).

11. *See* Barton Deiters, *Cooley Law School Target of Federal Lawsuit Claiming It Cooks Its Books When It Comes to Employment Claims*, MLive.com (Aug. 13, 2011), http://www.mlive.com/

second in New York state court against New York Law School.[12] Additionally, in New York today, and I imagine elsewhere, there is lively ongoing debate regarding a practice-oriented versus theory-oriented approach between the bar examiners and the law schools. These are really and truly the hot issues of the day, nationwide, complex issues to be carefully addressed by knowledgeable people after significant inquiry. I will simply venture views on three subjects dear to my heart—practice-ready courses, legal writing, and law school debt. I do not, by these observations, intend to inject myself into the maelstrom. I'll leave that delightful prospect to Jim White and all of you.

PRACTICE-READY COURSES

As contemporary practice demands high quality service, law schools must produce competent, ethical professionals with a commitment to the rule of law who are able to do more with the knowledge they possess. It is not enough—if it ever was—to have substantive knowledge without also being able to persuade, collaborate, draft and advise. The demand for "practice-ready lawyers"—lawyers who must "know how to do useful things with the law to help solve client problems"[13]—is one that is only going to continue to grow with the present economy.

What exactly does "practice-ready" mean? It means that students must graduate with more than just successful completion of, say, courses on contract law. They also need the skills to negotiate an agreement, draft a contract and make an oral presentation. Plainly, while the core curriculum of law schools—courses in contracts, civil procedure, torts, property, constitutional law, criminal law—constitute the foundation of legal education, they are not alone sufficient in preparing competent, ethical professionals to practice law today.

Without question, one way to shape students into "practice-ready" lawyers is by also moving the class a bit outside of the classroom—where, through clinics, students meet with and interview clients, represent their interests in court, and apply their skills in a practical setting. Clinics, and other professional skills programs, have received well-deserved attention lately—even the *U.S. News* magazine has established a special ranking category. I was pleased to learn of some of the more fascinating legal clinics offered today, such as Cornell's Water Law Clinic, Columbia's Sexuality and Gender Law Clinic, Duke's Guantanamo Defense Clinic, University of Washington's Tribal Court Public Defense Clinic, and of course, Indiana's Health and Human Rights Clinic. In addition to valuable skills, law students gain the opportunity, and hopefully the inspiration, to use their skills to help people in need and make the world a better place.

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news/grand-rapids/index.ssf/2011/08/cooley_law_school_target_of_fe.html.

12. *See* Sophia Pearson, *New York Law School Sued by Students over Claims About Graduates' Success*, BLOOMBERG (Aug. 10, 2011), http://www.bloomberg.com/news/2011-08-10/new-york-law-school-sued-by-students-over-claims-about-graduates-success.html.

13. John Caher, *State Bar Asks ABA to Support 'Practice Ready' Law School Education*, N.Y. L.J., Aug. 4, 2011, at 1.

It seems to me that all law students should be required to take some "practice-ready" courses, of which clinics are at the moment most familiar to me, as study of new pedagogy proceeds. To complement clinical work, capstone courses and projects should be encouraged, which also blend doctrinal study with real-world application. This experience allows students, with faculty supervision, to translate what they have learned during previous book study into practical legal skills.

Duke University School of Law, for example, offers third-year students an opportunity to develop a capstone project, where they work closely with a faculty member on a project of their design.[14] Although the parameters of each project vary, the program requires a substantial final written product, such as a scholarly article, or a draft complaint and supporting memorandum. In some cases, outside experts are brought in for assistance and mentorship.[15] In one recent project, a student worked with a professor to "evaluat[e] and recommend[] various mechanisms for improving procedures used by the North Carolina Office of Administrative Hearings, including evaluation of the office's docketing and case assignment system, [and] revising procedural mechanisms to ensure due process for litigants."[16]

The new model of *classroom-based* learning enriched and complemented by skills training is fascinating as well. I refer, for example, to an advanced contracts class at Southern California Gould School of Law where students work through real-world case studies as if they were lawyers and clients; and, to a labor relations course that not only teaches statutes and cases but also pits students against one another to play out real-life issues.[17]

Plainly, law school must be an interactive learning community, not a place to get a degree online in the shortest possible time. Opportunities such as these allow students to make sense out of ethical issues that are just theoretical in the classroom; learn how to identify issues in the real world, experience a niche field of law, and develop a rapport with clients—all while gaining course credit. A win-win, that's for sure.

Some years ago, I authored a snotty article regarding academic law review writing, in which I took law reviews to task for their concentration on meta-hermeneutics and other esoterica instead of subjects of use in the real world.[18] Though I stand by my thesis, I have come to regret it a bit. Law school is a place

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14. *See Capstone Projects*, DUKE L. ACAD., http://www.law.duke.edu/curriculum/capstone/procedure (last visited Feb. 6, 2012).

15. *See id.*

16. *Recent Capstone Projects*, DUKE L. ACAD., http://www.law.duke.edu/curriculum/capstone/recentprojects (last visited Feb. 6, 2012).

17. *See* Lori Craig, *Making Law Their Business*, USC L. (June 16, 2010), http://weblaw.usc.edu/news/article.cfm?newsID=3590; *see also, e.g.*, Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132, 179, 194 (1998); *see generally* STUCKEY, *supra* note 6.

18. Judith S. Kaye, *One Judge's View of Academic Law Review Writing*, 39 J. LEGAL EDUC. 313 (1989).

to learn about meta-hermeneutics and jurisprudence, *and* to learn the essentials of tort law, *and* to learn how to research issues and draft documents. As we have incontrovertibly established over the recent decades, blended, integrated courses have an essential place in the law school curriculum. And, most importantly, the courses, as well as those who teach them, must be equally valued alongside the other course offerings, by students and faculty, by law schools and by universities.

I want to add just a word about a related phenomenon I am seeing—lawyers and judges in their 60s and 70s, "retired" from decades of active law practice, now affiliating with law schools to offer "boutique" seminars centered on their own unique skills and experiences. Just to give you a few examples, the former head of the Legal Services Corporation is now teaching a law school seminar on pro bono services;[19] a former General Counsel of a Fortune 500 Company is offering one on the business world; one former Court colleague, Judge Joseph Bellacosa, instructs on court administration and another, Judge Albert Rosenblatt, has a seminar on actually litigating in state courts (a too-long-neglected subject).[20] Judge Rosenblatt picks a case from the upcoming court of appeals docket, the students prepare to argue the case both orally and in briefs (which they write for both sides), and he critiques their performance. They then moot the lawyers who will actually present the arguments to the court; they conference the case just as the court does; they travel up to Albany to hear the argument; and they each draft the decision. Pretty terrific all around, for the so-called retired people now teaching and mentoring, for the students, and for the law schools.[21]

LEGAL WRITING

I next turn to a related subject especially important to me—writing. It was never my aspiration to be a lawyer. I always loved to write, and focused on a career equally ludicrous for a woman back in the 1950s—I aspired to be a maker and shaper of world opinion as a renowned international journalist. After all, how could the Editor-in-Chief of the Monticello High School and Barnard College newspapers fail? I learned.

When the only job I could land in the press world was social reporter for the *Hudson Dispatch* of Union City, New Jersey, I began scrambling around to rewrite my life, and hit on the idea of attending law school at night—NYU had

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19. *See Teaching Access to Justice*, A.B.A., http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/blueprints_for_better_access/teaching_access_to_justice.html (last updated Sept. 26, 2011).

20. All four examples are personal friends, and what follows is based on my conversations with them.

21. And by the way, the subject interests me greatly for another reason: How do we most effectively utilize the growing cadre of energetic, highly skilled so-called "retired" lawyers and judges who want to continue making a contribution? With the demands for legal services so huge today, this is plainly a wasted resource. A subject for another day.

one at the time. With a couple of years of law school under my belt, I felt that no self-respecting editor would deny me a job on the news side of the paper. As you see, law triumphed, thankfully. I've had a phenomenal career as a lawyer—I just cannot imagine a more challenging, satisfying life—and happily I missed the opportunity to be fired from one of the many newspapers I have seen collapsing around me. But I also believe that my success in law school was largely attributable to skills I honed as a journalist, like diagnosis—what are the core issues, what's most important, what's the lead paragraph—and clear, articulate expression in the English language. Incomprehensible though the news may sometimes be, you don't see a lot of semicolons and Latin on our front pages.

It hardly seems necessary to underscore the importance of written and oral communication in the law—especially for the audience gathered here this afternoon. In law, words matter. The effective usage of communication—precise, persuasive, cogent writing is an indispensable skill not only for success in law school, but also in legal practice itself. Words are critical to the practice of our profession; the better used the better the practice. And while technology may speed production of work and expand our access to information, word processing will never replace wordsmithing. As wordsmiths, lawyers engage in an intensely human endeavor. And it is only through such a human process that justice emerges.

Unfortunately, notwithstanding the importance of the ability to research and write well, law schools today may not be giving sufficient sustained attention to the subject. With the emphasis on grades, particularly during the first year, a pass/fail legal writing course in year one, taught by a part-time adjunct sends the message that it is acceptable—even recommended—to pay less attention to that course because the consequences of a lower score in a graded course can have a for more detrimental impact on one's future career.

What a pity! There are so many wonderful things I could say about the value of legal writing courses, starting with the fact that they allow for regular individual feedback and learning, as compared to more traditional law school courses, where the first and only evaluation that a student receives is a letter grade months after the end of the semester. It is an unfortunate reality that many law students have little motivation to meet with their contracts professor to understand why they earned a "B" on a long-forgotten exam, especially when they are already engrossed in new legal subjects with exams to prepare for. Educational theorists distinguish between formative assessment, which, like the legal writing course, occurs during learning and is designed to help students improve performance, and summative assessment, which, like traditional core classes, occurs at the end of a course and measures how much the student has learned. The key difference between these two models is that because feedback is an intrinsic component of formative assessment, students improve their learning at every juncture. This is a shining attribute of legal writing courses.

Brevity and clarity are also essential ingredients to strong writing, and qualities learned only through time and practice. I'm sure you've heard people say that a three-hour speech they could deliver immediately, but for a three-minute address they'd need time to prepare. A good attorney knows how to say more in fewer words, orally and in writing.

Bryan Garner, author and editor of a number of distinguished books on legal writing, explains that of all law school courses, legal writing is both the single most time-intensive subject and the least respected, and most often law school's biggest failure is the "dearth of seriously good skills courses, especially training in legal writing."[22] Garner also believes—and I concur—that the second and third years of law school should include more research, writing and editing, with short papers in every course—again, taught by professors who are respected by the students and by the institution.[23]

Finally, legal writing should teach students not only how to write briefs and present oral arguments, but also how to prepare documents that are essential in trial preparation and the general practice of law. It's part of preparing students to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers. This exercise does more than simply develop and enhance technical skills. It also aids the students' understanding of theory and doctrine, sharpens their analytical skills, improves their understanding of the legal profession, and even cultivates practical wisdom.[24] We reflect the importance of the skill, and the instruction, not only by more writing courses but also by the quality of and respect accorded to those who teach them. I rest my case.

DEBT

So I next turn to the final subject I've singled out from the many legal education issues at the center of the storm today: student debt. I've saved it for last both because it's the grimmest and because I have only one suggestion to offer: We need to talk.

The media, of course, have pounced on the issue. I was blown away by a *New York Times* headline some months ago: "Law School Economics: Ka-Ching!" and the response it set off.[25] Suffice it to say that the *Times* series—and the *Times* is not alone in this—is not at all flattering to today's law schools, which are portrayed as revenue centers. Bryan Garner's piece, also published in the *Times*, is titled "Three Years, Better Spent,"[26] the word "spent" meaning not so much the passage of time in law school as large profits law schools generate and coordinate debt for students.[27]

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22. Bryan A. Garner, *Three Years, Better Spent*, N.Y. TIMES, July 25, 2011, http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/three-years-in-law-school-spent-better.

23. *Id.*

24. *See* STUCKEY, *supra* note 6, at 109.

25. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17, 2011, at BU1, *available at* http://www.nytimes.com/2011/07/17/business/law-school-economics-job-market-weakens-tuition-rises.html.

26. *See* Garner, *supra* note 22.

27. *See id.*

Some law schools are accused of misleading students by finessing surveys—managing the data—to secure spots on the life-determinative *U.S. News* and other rankings reports, keeping costs down through larger and larger classes—in effect indifferent both to the students and to the profession they will enter—and by false advertising of scholarships that merely lure students in and then dump them.[28] At the same time, law school tuition is outpacing the cost of an undergraduate degree. According to the National Association of Law Placement, the median debt among lawyers who joined the bar in 2000 was $70,000[29]—a figure one can only assume has risen as law school has become increasingly expensive.

And the personal stories now being publicized are absolutely hair-raising. Consider Adam and Jessica, both graduates of Cornell University Law School, now married and living in Los Angeles, whose monthly student loan repayment is about equal to their mortgage payment.[30] Or James, a recent law school graduate who anticipates that he will not be able to pay off his loans until he is close to sixty, even with an average lawyer salary.[31] Congress, too, has weighed in, seeking greater transparency and accuracy from the American Bar Association Section on Legal Education and Admissions to the Bar, given the taxpayers' ultimate responsibility for federally-supported loans when students default, a growing problem.[32]

Perhaps even more seriously from the perspective of the profession and society at large, law school debt impacts career choices, and by that I mean both people considering law school and law school graduates. Evidence indicates that rising law school debt may well affect the ability of public interest and government legal service providers to recruit and retain attorneys to serve clients' needs, and that the debt both compels law school graduates to pursue more remunerative private practice careers and deters them from transferring out of jobs that are lucrative but unfulfilling.

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28. David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, May 1, 2011, at BU1, *available at* http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all.

29. GITA Z. WILDER, NALP FOUND. FOR LAW CAREER RESEARCH AND EDUC. & NAT'L ASS'N FOR LAW PLACEMENT, LAW SCHOOL DEBT AMONG NEW LAWYERS: AN AFTER THE JD MONOGRAPH 11 (2007).

30. *See* Kathy M. Kristof, *Money Make-Over: Laying Down the Law on Spending Priorities*, L.A. TIMES, Oct. 2, 2001, http://articles.latimes.com/2001/oct/02/business/fi-52292.

31. *See Student Debt, Fool's Gold?*, N.Y. TIMES, June 15, 2009, http://roomfordebate.blogs.nytimes.com/2009/06/15/student-debt-fools-gold/.

32. *See* Philip Nannie, *Congress Wakes Up to Law School Transparency*, NASHVILLE POST, July 14, 2011, http://nashvillepost.com/blogs/postbusiness/2011/7/14/congress_wakes_up_to_law_school_transparency; Debra Cassens Weiss, *Will Senate Hold Hearings on Law Schools? Lawmakers' Data Collection Could Be Backdrop*, ABA J. (Nov. 14, 2011), http://www.abajournal.com/news/article/will_senate_hold_hearings_on_law_schools_lawmakers_data_collection_could_be/.

So what should be done? Some say cut the standards, cut the course of study, cut the bar exam. To which I say cut it out. I think that these responses are short-sighted and ill-advised. Address the deception and abuse? Absolutely. Eliminate the waste and inefficiency? For sure. But additionally we need to gather the data and find good, constructive ways to address these critical issues. And we cannot allow all the huckstering to skew the picture. What I have been reading is largely focused on advising students on how best to handle their debt and refinance their loans. All well and good, but managing debt is one thing; finding ways to reduce and eliminate it quite another. I know that many law schools are trying to tackle the issue through loan forgiveness programs and the like. Clearly we need to expand the conversation about how to address the issues surrounding student debt—a step that is essential to addressing this crisis.

CONCLUSION

The reality is that excellence in legal education requires cost, time and standards because legal education has immeasurable value for those who are serving, for those who are being served, and above all, for the future of this great nation, whose fundamental ideals have through the ages been secured by the great American bar. In response to the deluge of recent negative *Times* commentaries, University of Wisconsin law professor Linda Greene authored a counterpoint titled, "A Priceless Degree."[33] The important question, says Greene, is not cost, but access. "What will we do to insure that talented people from all groups in our society, especially those historically excluded, have access to this course of study . . . ?" she asks.[34] "And how do we insure that all groups in society, including our public and governmental institutions, enjoy the services of our brightest and best prepared?"[35] Green ends by saying, "When the history of legal education is written, the important question is unlikely to be, 'What was the cost of legal education?' Rather, it will be, 'Did our legal education system deliver equal justice under the law?'"[36] A great question and a great note on which to conclude, as I now do.

My only regret is that I will be unable to attend the next James P. White Lecture on Legal Education, which will be given on April 3, 2012 by E. Thomas Sullivan (an Indiana alum), former Provost and Senior Vice President for Academic Affairs at the University of Minnesota. Given his hands-on experience with the new models of legal education as well as the more traditional classroom models, I am most eager to hear his views on "The Transformation of the Legal

33. Linda Greene, *A Priceless Degree*, N.Y. TIMES, Nov. 7, 2011, http://www.nytimes.com/roomfordebate/2011/07/21/the-case-against-law-school/a-law-degree-is-priceless.

34. *Id.*

35. *Id.*

36. *Id.*

Profession and Legal Education." In all other respects, I have only boundless thanks for this extraordinary occasion, and to you especially Jim White, for keeping our attention always trained on the vital subject of legal education, plainly essential to the future of our profession.