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Shanin Specter

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What Practitioners Can Do for Law Students and What Law Students Can Do for Practitioners

SHANIN SPECTER[†]

[†] Founding Partner, Kline & Specter, P.C.; Professor of Practice, UC College of the Law, San Francisco; Lecturer in Law, UC Berkeley School of Law; Irving R. Segal Adjunct Professor of Law, University of Pennsylvania Carey Law School; Lecturer in Law, Stanford Law School; J.D., University of Pennsylvania, 1984; LL.M., Cambridge University, 1984; B.A., Haverford College, 1980. Thank you to George Zindel, Associate, Kline & Specter, P.C.; University of Pennsylvania Law School Class of 2022, for his excellent research assistance.

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INTRODUCTION

The legal academy and legal practice move in parallel. Each has little to do with the other, to the detriment of both. It wasn't always this way. When American law schools were founded, they were taught by practitioners. There was no such thing as a "law professor." Today, the academy is dominated by law professors with little or no experience in legal practice.

Since 2000, I have taught at law schools while engaging in an active trial practice at a civil trial firm I founded with Tom Kline in Philadelphia in 1995. My journey in academia began when, after a string of verdicts, I was asked by University of Pennsylvania Law's dynamic new dean, Mike Fitts, to teach trial advocacy. After several years teaching trial advocacy, I began teaching other courses, including courses in trial skills, law practice and impact litigation. In 2015, I began teaching on the West Coast as well, offering classes at UC Hastings (now UC Law San Francisco), Berkeley Law, and Stanford Law. Today my regular teaching rotation includes core courses—Evidence and Torts—as well as electives like "How to Ask a Question" and "The Civil Justice System as an Agent of Change."

I liked teaching immediately. I felt I had a lot of real-world know-how to impart but I also had a lot to learn about the legal academy. There are tensions between practitioners and tenured faculty, all unnecessary and unproductive. Practitioners have much to offer law schools and vice versa. Practitioners bring know-how and real-time, relevant reporting on the practice of law. Academicians bring critically important underlying doctrine and theory. Practice without doctrine is rudderless, while doctrine without practice is powerless.[1]

Teaching law while engaging in active trial practice has taught me a lot about both worlds. Much can be gained by law schools if they broaden their reach to welcome practitioners. And much can be gained by practitioners if they take the initiative to educate and mentor law students. This Essay explores the dynamics of these relationships and suggests a model for the future. Part I traces the development of legal education, which was for generations the exclusive province of practitioners, to today's dominance by full-time academicians. Part II explains the current relationship between practitioners and American legal education, the importance of know-how and its undervaluation by law schools, and how the academy and rating agencies should change to value the contributions of practitioners and others who supply law students with know-how. Part III discusses the value of law school engagement to practitioners and sets forth what practitioners should do for law students.

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1. Harold Anthony Lloyd puts it: "Theory without practice is empty, while practice without theory is blind," channeling Kant's "Thoughts without contents are empty, intuitions without concepts are blind." Harold Anthony Lloyd, *Exercising Common Sense Exorcising Langdell: The Inseparability of Legal Theory, Practice, and the Humanities*, 49 WAKE FOREST L. REV. 1213, 1246; IMMANUEL KANT, CRITIQUE OF PURE REASON 45 (F. Max Muller trans., Anchor Books 1966) (1781).

I. EARLY AMERICAN LEGAL EDUCATION

A. THE RISE OF THE LAW PROFESSOR

Early American law schools were not taught by law professors as we now know them. During the nineteenth century, Penn Law students were taught exclusively by practitioners.[2] It was only at the turn of the twentieth century that Penn, my alma mater, hired its first full-time faculty member.[3] Similarly, Yale Law School did not have its first full-time faculty member until 1903, when Arthur L. Corbin rejoined his alma mater to supplement the practitioners who had taught there over the past century.[4]

Long before cold calls and casebooks, legal instruction was exclusively apprenticeship-based.[5] During the colonial period, there was no "formal" legal education. Students eager to practice law would seek out an accomplished lawyer and pay a fee.[6] In return, they would gain practice experience working in the lawyer's office and the lawyer himself would provide academic instruction.[7] While some colleges of the day hosted "law lectures," these were created with the general student in mind and far from a legal curriculum.[8] Though imperfect and somewhat rudimentary, for a long time, the apprenticeship system worked.

As the colonial period closed, however, the precursors to modern law schools were slowly born out of necessity. As many practicing lawyers joined the Revolutionary War effort, apprenticeship opportunities for aspiring lawyers were few and far between.[9] After the Revolution, the demand for lawyers increased exponentially as the new nation's fledgling government needed educated and principled people to run it.[10] The first dedicated legal classrooms opened their doors around this time when enterprising lawyers, sensing an opportunity gap, "converted their offices into law schools."[11]

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2. Owen J. Roberts, *William Draper Lewis*, 98 U. PA. L. REV. 1, 2 (1949).

3. *Id.*

4. HISTORY OF THE YALE LAW SCHOOL: THE TERCENTENNIAL LECTURES 13 (Anthony T. Kronman ed., 2004); Robert W. Gordon, *Professors and Policymakers*, *in* HISTORY OF THE YALE LAW SCHOOL (Anthony T. Kronman ed., 2004).

5. Livia Gershon, *The Origins of American Law Schools*, JSTOR DAILY (Dec. 30, 2014), https://daily.jstor.org/america-runs-law-schools.

6. Susan Katcher, *Legal Training in the United States: A Brief History*, 24 WIS. INT'L L.J. 335, 339 (2006).

7. *Id.*

8. Katcher, *supra* note 6, at 339. Though not officially founded until 1850, the University of Pennsylvania traces the origin of its law school to similar lectures given by James Wilson in 1790. These lectures were attended by President Washington, Vice President Adams, and "many members of the Cabinet and Congress." Penn Libraries, *Brief Histories of the Schools of the University of Pennsylvania: Law School*, https://archives.upenn.edu/exhibits/penn-history/school-histories/law (last visited May 24, 2024).

9. Gershon, *supra* note 5.

10. *Id.*

11. Gershon, *supra* note 5 (citing Mark T. Flahive, *The Origins of the American Law School*, 42 A.B.A. J. 1868 (1978)).

While apprenticeships "continued to be the standard means of legal education," talented practitioners slowly began to formalize legal education through their own "startup" law schools.[12] Lawyer Tapper Reeve was the first to do it, founding the Connecticut-based Litchfield School in 1784.[13] Similar schools cropped up across the former colonies in the years that followed. By the 1820s and 30s, larger universities, apparently warming up to legal education, began to formally affiliate with these independent schools and, eventually, adopt legal instruction into their own curricula.[14]

Although the traditional apprentice-based education model was "useful to everybody," formalized legal education was a welcomed change.[15] The apprenticeship model lacked meaningful standardization. Quality varied greatly, and students typically learned whichever areas of the law their mentor knew well and practiced—and not much more.[16] In large part because of involvement from the American Bar Association, legal instruction became more standardized with the onset of formal law schools.[17] Students relied less on self-study and the whims of their hired mentor and more on established principles—taught by experienced practitioners—that better molded them into well-rounded lawyers.[18] This development was for the better, as it combined the wisdom and insight of practitioners with the quality control of formal coursework and educational benchmarks.

In the late nineteenth century, the legal academy began to develop. Harvard, under the direction of Christopher Columbus Langdell, adopted the case-book methodology of teaching and hired the first full-time law professors.[19] Langdell was avowedly anti-practitioner, saying that "all of the available materials . . . are contained in printed books."[20] Law students began to be taught by full-time professors, though some instruction from practitioners continued. A

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12. Katcher, *supra* note 6, at 342, 347.

13. Gershon, *supra* note 5.

14. Katcher, *supra* note 6, at 344. While these relationships were tenuous during the first half of the century, the number of formal law schools increased six times over from 1850 to 1900, growing from just fifteen to one hundred and two. *See id.* at 344–45, 348.

15. *Id.* at 341. Apprentices received individualized legal instruction and practicing lawyers enjoyed clerical help that paid for itself. *See Id.*

16. *Id.* at 339.

17. *Id.* at 362.

18. *Id.* at 349.

19. Russell L. Weaver, *Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517, 518, 522 (1991).

20. Jerome Frank, *Why Not a Clinical Lawyer School*, 81 U. PA. L. REV. 907, 907 (1933) (quoting the fundamental tenant of Langdell's system of teaching) [hereinafter Frank, *Clinical Lawyer School*]. Harvard University president Charles Eliot, who hired Langdell in 1870, wrote of him in 1920 that:

> [H]e held that the fact that a man had become a distinguished lawyer or a respected judge did not prove that he knew how to teach law, or indeed that he could learn to teach law. He was inclined to believe that success at the Bar or on the Bench was, in all probability, a disqualification for the functions of a professor of law.

Charles W. Eliot, *Langdell and the Law School*, 33 HARV. L. REV. 518, 520 (1920).

tension developed between the interests of the academy in scholarship, doctrine, and theory and the interests of students and the profession in imparting know-how. Since Dean Langdell, there's been a long- running dispute between advocates of the doctrinal, case method approach and proponents of practitioner-based education.[21]

B. EMERGING TENSION

An early and leading advocate for reversion to practitioner-based teaching was Yale Law professor and, later, Second Circuit judge Jerome Frank, who argued that "For the law student to learn whatever can be learned of (i) the means of guessing what courts will decide and (ii) of how to induce courts to decide the way his clients want them to decide, he must observe carefully what actually goes on in court-rooms and law-offices."[22] Judge Frank regarded the rigid separation of practice from theory as "like the difference between kissing . . . and reading a treatise on osculation."[23]

Jerome Frank was bitterly critical of Christopher Columbus Langdell. Law schools, he felt, should recoil from "Langdell's morbid repudiation of actual legal practice."[24] Under Langdell's approach, Frank said, "law school came to mean 'library-law.'"[25] Frank urged that law schools be "lawyer-schools" not "law-teacher schools,"[26] arguing for a "clinical lawyer-school" run by a mix of scholars and practitioners, rather than Langdell's model of a "law-teacher school" run exclusively by scholars.[27] But Judge Frank conceded that while he frequently wrote and spoke about the importance of infusing law school with the lessons of practice, "no one has ever paid much attention to those views."[28]

While Judge Frank lost his battle for a clinic-based law school, it's always been true that modern law school has a dual identity as both an academic department in a university and a school that trains students for specific professional work,[29] and that there's always been a tension between the doctrinal and the practical.

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21. Susannah Furnish, *The Progression of Legal Education Models: Everything Old is New Again*, 6 NE. U. L.J. 7, 9 (2013) ("Although the Langdell model of legal education continues to be the predominant methodology for legal instruction, it has been critiqued almost since its inception as insufficiently practical, divorced from the realities of real life practice.").

22. *See* Frank, *Clinical Lawyer School*, *supra* note 20, at 911; *see also* Jerome Frank, *What Constitutes a Good Legal Education*, 19 A.B.A. J. 723 (1933); Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947) [hereinafter Frank, *A Plea for Lawyer-Schools*]. This wisdom spans the disciplines. Yogi Berra said about hitting: "Just watch me." BUDDY BELL & NEAL VAHLE, SMART BASEBALL: INSIDE THE MIND OF BASEBALL'S TOP PLAYERS 165 (2006).

23. Frank, *A Plea for Lawyer-Schools*, *supra* note 22, at 1317.

24. *Id.* at 1313.

25. *See* Frank, *Clinical Lawyer School*, *supra* note 20, at 908.

26. *Id.* at 915.

27. *Id.* at 914–20.

28. *See* Frank, *A Plea for Lawyer-Schools*, *supra* note 22, at 1303.

29. Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 283 (2012).

II. WHAT LAWYERS CAN DO FOR LAW STUDENTS

A. LAWYERS NEED KNOW-HOW

The legal profession recognizes that it's essential for newly minted lawyers to have practical skills. The American Bar Association Task Force on the Future of Legal Education noted that "calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice—preparation opportunities for students."[30] The ABA mandates six credit hours of experiential learning for all law school graduates, and some states have greatly expanded these training requirements.[31] So too, the bar exam is changing to emphasize lawyering skills. Starting in 2026, the Bar Exam will reduce testing on substantive law in favor of questions on investigation, client service, dispute resolution, and investigation[32]—all skills utilized by practitioners. Practical skills training is presumably best provided by those with practical skills.

Maximizing the value of law school requires that law schools teach not just what the law *is* but also what the law *does* and what lawyers should do with the law. As the Carnegie Foundation's landmark study of American legal education noted, law schools undermine "the goal of training competent and committed practitioners" by neglecting the practical skills "necessary to orient students to the full dimensions of the legal profession."[33]

It is, of course, essential to the success of a client's interest that the lawyer understand how rights are vindicated and how cases are decided. But to win,[34] you need to know how to win. Those answers are found less in the case books and more in the pragmatism of the American experience. That has been recognized since at least 1881, when Oliver Wendell Holmes wrote on the first

30. A.B.A., TASK FORCE ON FUTURE LEGAL EDUC., REPORT AND RECOMMENDATIONS 3 (2014), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf.

31. ABA requirements can be satisfied by law clinics, externships and simulations. A.B.A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2023-2024) § 303(a)(3), 304, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-revised-standards-and-rules-since-aug-2023.pdf [hereinafter ABA STANDARDS]; The California Bar requires fifteen credit hours of practical education courses, while the New York Bar similarly requires fifteen credit hours or verification of other comparable skills competency training. ST. BAR CAL., TASK FORCE ADMISSIONS REGUL. REFORM, PHASE III FINAL REPORT (Sept. 25, 2014) (enacted Nov. 7, 2014), http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012730.pdf [https://perma.cc/4HA5-AZ3U]; N.Y. COMP. CODES R. & REGS. tit. 22, § 520.18 (2015).

32. Emily Lever, *'Next Generation' Bar Exam to Focus on Lawyering Skills*, LAW360 (Mar. 25, 2022), https://www.law360.com/articles/1477546.

33. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOD & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 29 (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [hereinafter THE CARNEGIE REPORT].

34. "Winning isn't everything, it's the only thing," said Vince Lombardi. Marshall Smith, *The Miracle Maker of Green Bay, Wis.*, LIFE, Dec. 7, 1962, at 49, 52.

page of *The Common Law* that: "The life of the law has not been logic: it has been experience."[35]

Preeminent Seventh Circuit judge and prolific legal writer Richard Posner observed that outcomes are less controlled by academic doctrinal analysis than a sense of what's right, or as Judge Posner put it, what's the "best outcome."[36] "Most judges evaluate cases in a holistic, intuitive manner, reaching a tentative conclusion that they then subject to technical legal analysis."[37] Judicial pragmatism, often called realism, "places trust in the judiciary, deciding case by case, to assess the facts and law and policy of cases – drawing upon their diverse individual backgrounds and ideologies – to ultimate ultimately reach a 'good' legal rule."[38]

When Richard Posner became a federal appellate judge, he had no trial experience. To make up for it, he began conducting trials in the district court.[39] He found it so valuable that he proposed requiring federal appellate judges to do the same.[40] If trial experience is necessary to supervise a trial as a judge, then perhaps case supervision experience is necessary to analyze cases as a professor. Practitioners, whose work life in real cases and clients informs a sophisticated feel for balancing facts, law, and policy, are likely to understand and communicate those relationships and realities to law students and thereby better prepare them for practice.

Posner proposed that law school courses should be taught with "less emphasis on doctrine . . . and more on the realities of the legal process."[41] As Berkeley Law Dean Erwin Chemerinsky has said, arguing for greater emphasis on clinical education: "I constantly hear lawyers lament about how they were not taught to practice law when they were in law school and how law schools still do a poor job of this."[42] The lauded Carnegie Report recommends that "both

35. OLIVER WENDELL HOLMES, THE COMMON LAW 1 (1881).

36. RICHARD A. POSNER, DIVERGENT PATHS: THE ACADEMY AND THE JUDICIARY 82 (2016).

37. *Id.* at 1–2.

38. Frank B. Cross, *What Do Judges Want?*, 87 TEX. L. REV. 183, 232 (2008).

39. POSNER, *supra* note 36, at 146. Some of Judge Posner's trial decisions produced high-profile reversals. *See, e.g.*, Debra Cassens Weiss, *Posner Rejects Pattern Jury Instruction While Sitting as Trial Judge and Gets Reversed*, A.B.A. J. (Aug. 28, 2017, 7:00 AM CDT), https://www.abajournal.com/news/article/posner_rejects_pattern_jury_instruction_while_sitting_as_trial_judge_and_ge [https://perma.cc/MQ47-P7WM]; Debra Cassens Weiss, *Citing Posner Opinion, 7th Circuit Grants New Trial Because of Posner Comments*, A.B.A. J. (Oct. 26, 2017, 7:00 AM CDT), https://www.abajournal.com/news/article/citing_posner_7th_circuit_grants_new_trial_because_of_posner_comments [https://perma.cc/F8YH-2HH8]. This suggests that practical experience is important for district court judges, too.

40. *Id.*

41. *Id.* at 322.

42. Erwin Chemerinsky, *Why Not Clinical Education?*, 16 CLINICAL L. REV. 35, 40 (2009). As Dean Chemerinsky noted:

> This is not the first time that there has been an effort to reform legal education and make it more practical. In 1921, a study, supported by the Carnegie Foundation for the Advancement of Teaching, called for more professionally relevant training in law schools. In 1933, Yale law professor and later federal court of appeals judge Jerome Frank proposed the idea of a clinical law school. In 1944, a report for the Association of American Law Schools, edited by the eminent Karl Llewellyn, stressed

doctrinal and practical courses are likely to be most effective if faculty who teach them have some significant experience with the complementary area."[43] This thinking appears to have influenced the National Board of Law Examiners, who determined to revise the bar exam to place less emphasis on memorization of doctrine and more emphasis on legal skills.[44] Those with legal skills seem best served to teach legal skills.

B. LAW STUDENTS NEED KNOW-HOW

The need for practical-based instruction suggests that it would be better if core courses, including first year courses, were taught by those experienced in practice within that area of law. It would be preferable if torts were taught by lawyers with tort experience and criminal law and procedure were taught by those with some significant background as prosecutors or criminal defense lawyers, and so on. Although that's how law was taught for at least the first century of legal education in the United States—whether law was taught through apprenticeship or school—that's seldom the case today, regardless of the impressive weight and content of blue-ribbon reports, law review commentary and books by the best and brightest, and student preference.[45]

Law schools and their students should be particularly concerned about broadening doctrinal education to include know-how in more efficient and lean economies within both law firms and the United States as a whole. The market for legal services is pinched by the growth of outsourcing of legal services to foreign countries, low paid contract attorneys, the substitution of computers for

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> the need for greater skills training for lawyers. In 1992, the MacCrate report, prepared for the American Bar Association (ABA), emphasized the same themes. The Carnegie Commission report, for all the attention that it has received, is just the latest in a series that makes the same basic points about the need for more training in practical skills and more experiential learning.

Id. at 37 (citations omitted).

Despite repeated anecdotal accounts of under-prepared lawyers entering practice, no comprehensive study has attempted to quantify this skill gap. UC Irvine has instituted an annual practice-readiness survey with great results. *See infra* note 92 and accompanying text. Perhaps an annual, industry-wide survey gauging new hire practice-readiness from the perspective of both employer and employee would provide useful accountability within the academy as well as possible curriculum modification.

43. THE CARNEGIE REPORT, *supra* note 33, at 196. There is a general perception of a "gap between the teaching and practice segments of the profession." *See also* A.B.A., – SECTION ON LEGAL EDUC. & ADMISSIONS BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 4, 5 (1992) [hereinafter MACCRATE REPORT]. "Most law schools give only casual attention to teaching students how to use legal thinking in the complexity of actual practice. While law schools help students acquire some of the essential skills and knowledge for law practice, most law schools are not committed to preparing students for practice. It is generally conceded that most law school graduates are not as prepared for law practice as they could be and should be. Law schools can do much better." ROY STUCKEY & OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 5 (2007). *See also* John S. Elson, Address, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1135 (1997).

44. Karen Sloan, *Modernized Bar Exam Gets the Green Light*, LAW.COM (Jan. 28, 2021), https://www.law.com/2021/01/28/modernized-bar-exam-gets-the-green-light [https://perma.cc/6576-GN7R]; *see also* Lever, *supra* note 32.

45. *See infra* Part II.D.1.

lawyers in some research and discovery tasks and tighter control of lawyer billing by corporate clients.[46] If lawyers don't know how to practice, they're of even less value. If law schools are insensitive to these realities, enrollment and graduate employability may shrink.

While Langdell's creation of the doctrinal professoriate may have been unwise, his reliance on a casebook is defensible. Casebooks collect excerpts of the main cases, statutes, rules and commentary in the field and support those with helpful notes. Teaching out of a casebook is fine.

The question though, is: How is the casebook to be used to teach students about both the doctrine and the practice of law? It's not enough to review the excerpt of the case and regurgitate the legal principles for which it stands, providing PowerPoint slides of the main points as twenty-first century Cliff's Notes. Probing is necessary. The questions that need to be asked and answered include: How would you present the case for or against each side? Why was the case decided as it was by the jury and the judge(s)? What were the factual and societal considerations? How did the law influence the outcome? Was the outcome right? Would it turn out the same if we change a few facts? Would it have turned out the same a generation earlier? Would it turn out the same today? Would it turn out the same ten years from now? Asking these questions is pretty close to the way Langdell taught his students at Harvard.[47]

Discussion around these questions helps develop the practical wisdom critical to being a good lawyer.[48] And having a student simulate an argument—as often happens in a first year classroom taught in the traditional Socratic method—is lauded by modern analysis of legal education.[49] Experiential learning is also an important part of the first year experience.[50] But, in order to teach all this, it helps to have significant experience in those fields. When I read a case in a torts textbook, I understand from handling thousands of tort cases over four decades why the plaintiff's lawyer took the case, pled and sought to prove specified theories of liability, and refrained from others. I understand why the case was defended as it was. I understand the trial and judicial approach to the legal issues. I can often read between the lines and strongly doubt I'd be able to do so without my practice experience. Where appropriate, this helps enrich class discussion.

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46. POSNER, *supra* note 36, at 342.

47. BRUCE A KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C LANGDELL, 1826-1906 147–48 (2009).

48. *See generally* ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1995).

49. *See, e.g.*, THE CARNEGIE REPORT, *supra* note 33, at 50–59.

50. The ABA requires all accredited law schools to teach legal writing through a first-year course that develops the fundamental skills of research, analysis and writing through simulated exercises. *Glossary for Experiential Education*, ASS'N AM. L. SCHS. – SECTION ON CLINICAL LEGAL EDUC., 9–10 (2017), https://www.aals.org/wp-content/uploads/2017/05/AALS-policy-Vocabulary-list-FINAL.pdf [https://perma.cc/2LJC-MZSR].

C. VALUING KNOW-HOW IN FACULTY HIRING

The more tenuous a law professor's connection to legal practice, the less likely that they'll be able to help students answer those important questions. "Many faculty members—often the most illustrious—have little experience in the practice of law . . . . [They] may have difficulty conveying to the students a feel for how the legal system actually operates."[51] But unfortunately, a tension exists as many "scholars may deride applicants for law school teaching positions who have a rich background of practical experience in law,"[52] and this undoubtedly affects hiring decisions.

Dean Langdell practiced law for fifteen years before he began teaching law in 1870,[53] so he had a lot of practical wisdom available for his discussion of cases. Yet, as Dean, Langdell routinely hired professors without significant practical experience, causing one critic to object: "If you would teach baseball you would select not merely a teacher who knew the laws of projectiles, but one who played the game himself."[54] Elite law schools today, however, largely follow Langdell's nineteenth century hiring practices.[55] Yale Law School, which graduates the largest number of future tenure-track professors, formally advises their students against gaining more than five years of practical experience if their ultimate goal is to teach.[56] Why does Yale think that practice experience is a strike against applicants for law teaching jobs? The implication is that those who know how to practice are less valued than those whose understanding of legal practice is largely theoretical.[57]

A 2010 survey of hiring at top-tier law schools since 2000 found that the median practical experience was only one year and that nearly half the faculty had never practiced law.[58] Although this specific survey doesn't appear to have been repeated since, the trend can be seen in the data we do have. More than 50 percent of the entry-level professor hires in 2023 had graduated law school less than ten years ago, and, for many of those applicants, those years were spent

51. POSNER, *supra* note 36, at 10–11.

52. *Id.*

53. Kimball, *supra* note 47, at 77.

54. *Id.* at 171–72.

55. Most law schools, including those in the fourth tier, are filling their tenure-track spots with scholars, not practitioners. Philip E. Merkel, *Scholar or Practitioner? Rethinking Qualifications for Entry-level Tenure-Track Professors at Fourth-Tier Law Schools*, 44 CAP. U. L. REV. 507, 511 (2016).

56. *Entering the Law Teaching Market*, YALE L. SCH. CAREER DEV. OFF., ch. 2, § F.1 (2018), https://law.yale.edu/sites/default/files/area/department/cdo/document/cdo_law_teaching_public.pdf [https://perma.cc/36EQ-YTJ5]. *See* Sarah Lawsky, *Entry Level Hiring: The 2023 Report*, PRAWFSBLAWG, https://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report (last visited May 24, 2024).

57. "'Practical' has an almost pejorative connotation in law school hiring" Wendel, infra note 73.

58. David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 20, 2011), https://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html [https://perma.cc/WK4Q-DXH8].

seeking advanced degrees, fellowships, and/or clerkships.[59] Indeed, in recent years, many law schools have increased their hiring of law professors with a PhD in a non-legal discipline. A 2016 study found that, of the one hundred entry-level hires by the top twenty-six law schools between 2011 and 2015, 48 percent went to candidates with PhDs.[60] In 2023, 33 percent of entry-level hires across all law schools went to candidates with PhDs., up from the 15 percent reported in 2012, but down from 2019's high of 50 percent.[61] The overall number of entry-level professor applicants is down 59 percent since 2010, at least in part due to the increased requirements to land a professorship.[62] This trend suggests that new hires at elite law schools are even more likely to have little or no practice experience.[63]

Of those newly hired professors who had prior practical experience, approximately half had worked only for law firms.[64] If these were brief experiences at large law firms, they were unlikely to include courtroom experience, client contact, or case management. More likely, the work involved document review, legal research, basic drafting, and other unpleasant drudgery. That may explain the decision to leave the firm and enter academia, but such slender practice experience suggests a limited ability to impart the important lessons of practice.

Law schools routinely assign new tenure-track hires—with or without a PhD—to teach the heart of the law school curriculum: the large, required first year and core upper-level courses. Their primary qualification to teach those courses is that they took the same courses a few years earlier, usually someplace prestigious. Since new professors don't have much practical experience to convey, their ability to prepare law students for practice is bounded.[65] In light of all of this, it's no surprise that an American Lawyer survey found that 47 percent of law firms had a client refuse to pay for the work of first or second year

59. Lawsky, *supra* note 56 (scroll to the "Year of JD" section and select "2023" to view the 2023 report). This trend has remained largely consistent since the 2010 survey was taken. *Id.* (scroll to the "Year since JD over time" section).

60. Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 507 (2016)

61. Lawsky, *supra* note 56 (scroll to the "percent doctorate" section).

62. Karen Sloan, *Law Professor Applications Plummet as Law Schools Raise Their Sights*, REUTERS (Aug. 22, 2022), https://www.reuters.com/legal/legalindustry/law-professor-applications-plummet-law-schools-raise-their-sights-2022-08-22.

63. Steven K. Berenson, *From the Ashes of the Lawyer-Statesmen Rises the Lawyer-Democrat: Practical Legal Wisdom from the Ground Up*, 2014 J. PROF. LAW. 17, 27. Whether new-hire PhD's have practice experience is data that should be gathered and shared. Disappointingly, otherwise thorough data analyzing the backgrounds of new hires in legal academia don't include information on whether new hires have practical experience. *See* Lawsky, *supra* note 56. Such data should be collected and the fact that it isn't speaks to how unimportant practical experience is to the Academy.

64. Richard E. Redding, *"Where Did You Go to Law School" – Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 601 tbl.3 (2003). Chemerinsky politely says: "There has been a trend against law professors engaged in legal practice." Chemerinsky, *supra* note 42, at 39 (arguing for further appreciation of clinical education programs in law schools).

65. MACCRATE REPORT, *supra* note 43, at 5.

associates.[66] Similarly, 15 percent of 2022 graduates from ABA accredited law schools were unable to obtain full-time bar passage required or JD advantage jobs within ten months of graduation.[67] This data does not account for the recent trend of start date deferrals for entry level lawyers, being offered to summer associates as early as a full year before their graduation, or for the many large firms issuing reductions in force.[68] Law schools don't prepare lawyers for practice, so the marketplace responds by not hiring, deferring, or even firing new lawyers.[69]

In addition to responding to what legal employers want, law schools should also be sensitive to what law students want. Having taught a lot of courses in a lot of places for a long time, I have a pretty good idea of what students look for in a professor and what they don't care about. They want the professor to be informative, interesting, and respectful. In my experience, they don't know or care much about the professor's publications,[70] or the professor's pay or tenure status. Student evaluation forms focus on whether professors are informative,

66. *See* Segal, *supra* note 58.

67. *See* EMPLOYMENT OUTCOMES AS OF MARCH 15, 2023, A.B.A. – SECTION LEGAL EDUC. & ADMISSIONS BAR (2023), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2023/class-2022-online-table.pdf [hereinafter EMPLOYMENT SUMMARY REPORT].

68. Justin Wise, *Dechert Is Giving Summer Associates Option to Delay 2024 Start*, BLOOMBERG L. (Aug. 4, 2023), https://news.bloomberglaw.com/business-and-practice/dechert-is-giving-summer-associates-option-to-delay-2024-start; Jenna Greene, In the language of layoffs, a few firms stand apart, REUTERS (June 26, 2023), https://www.reuters.com/legal/transactional/language-layoffs-few-law-firms-stand-apart-2023-06-26.

69. Undoubtedly, there is also less demand for legal services than there is supply. *See* Greg Garman, *2020 Outlook: Supply-Demand Tidal Wave*, ABOVE L. (Jan. 23. 2020), https://abovethelaw.com/legal-innovation-center/2020/01/23/2020-outlook-supply-demand-tidal-wave [https://perma.cc/2RBY-NUHP] (observing that 30,000 to 35,000 new lawyers enter the workforce every year, while the legal economy remains stagnant and becomes increasingly commoditized).

70. Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105 (2010); *see* Benjamin Barton*, Is There a Correlation Between Law Professor Publication Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study*, 5 J. EMPIRICAL LEGAL STUD. 619, 619 (2008) ("[T]here is either no correlation or a slight positive correlation between teaching effectiveness and any of the . . . measures of research productivity."). Barton's study included nineteen public law schools from all four tiers in the U.S. News & World Report. *Id.* at 623 (listing schools); *see also* Paul L. Caron & Rafael Gely, *What Law Schools Can Learn from Billy Beane and the Oakland Athletics*, 82 TEX. L. REV. 1483, 1523 (2004) (reviewing MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING AN UNFAIR GAME (2003)) (grouping law schools into four tiers with one school from the survey in each tier); Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 767 (1998) ("Consistent with many other studies in this field, the article finds no significant relationship between excellence in teaching and distinction in scholarship. Instead, teaching excellence appears difficult to predict, at least with currently available predictors, while scholarly distinction relates most strongly to earlier achievement in scholarship."); Fred R. Shapiro, *They Published, Not Perished, But Were They Good Teachers?*, 73 CHI.-KENT L. REV. 835, 839–40 (1998) ("It is hard to escape the judgment that while, generally, praise of teaching is a nearly universal feature of tributes to law faculty, for the most highly cited scholars, it is often completely absent from their tributes, and this despite the fact that such scholars typically are accorded much longer tributes than is the norm. Good teaching, indeed teaching period, was not part of the story of many of their lives. . . . In a reward system based, in law schools as in universities as a whole, on published scholarship credentials, emphasis on teaching inevitably perishes, and those who succeed admirably in the scholarship game may nonetheless have some kind of problem with the task of teaching law students." (citations omitted)).

interesting, and respectful, rather than publications, pay or title, so law schools know both what matters to law students and what should matter to the law schools.[71] Yet, within the professoriate, the latter is prized, not the former.

What is most important to law schools is not training students to be practice-ready—as employers and students may prefer—but the law school's ranking, in which a professor's scholarship—not their teaching excellence or lessons for practice—plays an important part.[72] Scholarship affects reputation, and reputation affects the law school's U.S. News & World Report ranking.[73] As a result, at schools strongly motivated by ranking. The "name of the game is scholarship . . . teaching is of secondary importance only . . . . You will be hired, evaluated, given tenure, promoted, and recognized in the profession based almost entirely on the quality of your scholarship."[74]

Perversely, at the most elite schools, significant practical experience may be directly detrimental to non-clinical tenure-track candidates' chances of being hired.[75] After hiring, tenure-track faculty are promoted based on both scholarship and teaching, though, as noted, literature suggests that scholarship

71. *See, e.g.*, HLS STUDENT GOV'T, ACAD. AFFS. COMM., HLS COURSE EVALUATIONS SPRING 2019 STUDENT SURVEY REPORT ON RESULTS 4 (May 15, 2019), https://orgs.law.harvard.edu/studentgovernment/files/2019/10/HLS-Course-Evaluations-Survey_Student-Government-Report_May-2019-merged.pdf (discussing the contents of student evaluation forms and finding that, if anything, students would prefer more detail on these qualities to properly inform their course selection).

72. Of course, ranking is also very important to students and some employers.

73. Brad Wendel, *The Big Rock Candy Mountain: How to Get a Job in Law Teaching*, CORNELL UNIV. L. SCH., https://ww3.lawschool.cornell.edu/faculty-pages/wendel/teaching.htm [https://perma.cc/P8VS-QC2T] (last visited May 30, 2021). "No one gets hired just because she's a good teacher." *Id.* at 21. Wendel is a member of Cornell Law School's hiring committee. While correlation is not causation, there is a 0.87 correlation coefficient between the ranking of a school's law journal, as determined by citation count, and the U.S. News ranking. Alfred L. Brophy, T*he Emerging Importance of Law Review Rankings for Law School Rankings, 2003-2007*, 78 U. COLO. L. REV. 35, 39 (2007) (detailing the results of his empirical research on law school rankings and law journals).

74. Wendel, *supra* note 73. Scholarship is most important at elite schools. Dan Subotnik & Laura Ross, *Scholarly Incentives, Scholarship, Article Selection Bias, and Investment Strategies for Today's Law Schools*, 30 TOURO L. REV. 615, 620 (2014) (arguing that top schools use scholarship to ratchet up the U.S. News rankings, which in turn provides a competitive edge in fundraising and attracting top students). Lower-tier institutions are suffering from a mirroring problem; they try to mimic the scholarship-centric model of top institutions. *See* Merkel, *supra* note 55, at 521. It's hard for professors at lower-tiered schools to be published in highly regarded law reviews. Subotnik & Ross, *supra* at 627.

75. Newton, *supra* note 70, at 134. Perhaps this is because hiring committee members view themselves as academics first, and lawyers second. *See, e.g.*, *Entering the Law Teaching Market*, *supra* note 56; Gregory W. Bowman, *The Comparative and Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools*, 2008 BYU EDUC. & L.J. 171, 204 n.108 ("Based on my own anecdotal experience, people on the law school tenure-track job market are often advised to practice law for no more than five years or so."); Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students?*, 45 S. TEX. L. REV. 753, 762 (2004) ("Neither practice skills nor 'real world' experience matter. Indeed, apart from judicial clerking, they may even be seen as detrimental."); Wendel, *supra* note 73 ("One of the oddities of the legal teaching market is that candidates for classroom positions are considered tainted if they have too much of a background in practice. Because of the obsession . . . with being perceived as legitimate by their colleagues in the arts and sciences, law faculties are not looking for people with extensive practice experience as classroom teachers."). As suggested *supra* note 63, such data should be rigorously collected.

is more important that teaching.[76] If true, that would be a disservice to students. Similarly, tenure is for life, with academic freedom trumping racism.[77] Armed and guarded by lifetime appointment, the professoriate reigns supreme in the academy, towering over the other legal educators who teach most of the courses: the clinicians, the legal writing and research instructors, and the adjuncts. There should be transparency within the law school around the relative importance of scholarship, practice experience, and teaching. All three should be relevant in the hiring and promotional matrix.

Clinical legal education arose during the social and political upheaval of the 1960s and the expansion of consumer, tort, and criminal defense rights. Clinical coursework made law school more relevant to students, particularly third years who were otherwise bored and ready to graduate. Clinicians, lawyers themselves, advise students in providing legal assistance to the lay clients of the law school's clinic. Clinic courses teach valuable lessons in practical skills and the know-how that comes only with experience, as well as teaching students substantive law. It is a ready pathway into small firm practice, public interest law, and government service. Dean Chemerinsky has correctly observed that: "There is no better way to prepare students to be lawyers than for them to participate in clinical education."[78] Clinical work gives students systematic training in effective techniques for learning law and the practice of law by practicing law, which is superior to learning from reading appellate cases and listening to a professor lecture, no matter how good the professor.[79]

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76. Newton, *supra* note 70, at 136. *See* Frank T. Read & M.C. Mirow, *So Now You're a Law Professor: A Letter from the Dean*, 2009 CARDOZO L. REV. DE NOVO 55, 59 n.13 ("Sadly, at most institutions-even those espousing 'excellence in teaching' as a goal-scholarship is now king. Teaching takes a distant second place. No one in the past twenty years has heard of a promotion or a lateral move based solely on 'excellence in teaching."). Many law professors appear to share Professor Owen Fiss' opinion: "Law professors are not paid to train lawyers, but to study the law and to teach their students what they happen to discover." Peter W. Martin, *"Of Law and the River," and of Nihilism and Academic Freedom*, 35 J. LEGAL EDUC. 1, 26 (1985) (quoting Letter from Owen M. Fiss, Professor of Law, Yale Law Sch., to Paul D. Carrington, Dean and Professor of Law, Duke Univ. Sch. of Law).

77. Penn (now Penn Carey) has not fired a professor whom the Dean determined to have publicly and repetitively espoused racial bigotry. *See* Coleen Flaherty, *A Professor's 'Repugnant' Views*, INSIDE HIGHER ED. (July 24, 2019), https://www.insidehighered.com/news/2019/07/24/penn-law-condemns-amy-waxs-recent-comments-race-and-immigration-others-call-her [https://perma.cc/NHG9-B3AN]. Similarly, Indiana University refused to fire a professor who made racist, homophobic, and sexist remarks, even though they admit those remarks were "vile." *See* Nicholas Bogel-Burroughs, *Our Professor's Views Are Vile, University Says. But We Can't Fire Him*, N.Y. TIMES (Nov. 22, 2019), https://www.nytimes.com/2019/11/22/us/indiana-university-eric-rasmusen.html [https://perma.cc/64FY-G955]. *Cf.* U.S. CONST. art. III, § 1 ("[J]udges . . . shall hold their offices during good behavior . . . .").

78. Chemerinsky, *supra* note 42, at 35. *See also* MACCRATE REPORT, *supra* note 43, at 4–5; Comm. on Curriculum, Ass'n Am. L. Schs., *The Place of Skills in Legal Education*, 45 COLUM. L. REV. 345, 345–46 (1945); Frank, *Clinical Lawyer School*, *supra* note 20, at 911–23.

79. *See* Newton, *supra* note 70, at 140; Anthony G. Amsterdam, *Clinical Legal Education – A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 613 (1984); Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 87 (2009); *see also* Sandefur & Selbin *supra*, at 85 tbl.1 (showing that 62 percent of new attorneys surveyed rated clinical courses as being "helpful to extremely helpful" as part of their preparation

There is a disconnection between the value of clinical law professors in teaching practical skills and their role at the law school. While great strides have been made in the growth of clinical legal education, parity between clinical and non-clinical faculty remains elusive.[80] According to a 2020 survey of all clinical faculty, while 65 percent of faculty teaching in a clinical or field placement were employed full-time by the school, only 29 percent had the clinical equivalent of tenure or were on the tenure track.[81] Many full-time clinical faculty don't teach doctrinal classes,[82] though they have the significant practical experience to do so.[83]

Moreover, clinic would be more valuable if law schools offered apprenticeships at local legal employers—be they law firms, in-house counsel, public interest, or government. The supervisors could be adjuncts at the law school, though preferably not in the same firm as the student. This apprenticeship approach would also be less expensive than the current model because adjuncts are inexpensive.

Dean Chemerinsky observes that: "It is frightening to imagine medical schools training doctors who had never seen patients before their graduation. Yet, although most law schools have clinics, only a minority of students participate."[84] Clinic should be encouraged by law schools, since clinics most closely resemble the practice environment that awaits after graduation.[85] We would be horrified if our medical doctors were trained by physicians inexperienced in that area of medical specialization. But how many professors teaching criminal law or procedure can represent the government or a criminal defendant? How many professors teaching torts can represent a tort plaintiff or defendant?[86] How many business association professors can serve as corporate

for becoming a practitioner, while only 48 percent rated upper level doctrinal classes and only 37 percent rated first-year courses in that manner).

80. Bryan L. Adamson, Calvin G. C. Pang, Bradford Colbert, Kathy Hessler, Katherine R. Kruse, Robert R. Kuehn, Mary Helen McNeal & David A. Santacroce, *Clinical Faculty in the Legal Academy: Hiring, Promotion and Retention*, 62 J. LEGAL EDUC. 115, 115 (2012).

81. ROBERT R. KUEHN, MARGARET REUTER & DAVID A. SANTACROCE, THE 2019-20 SURVEY OF APPLIED LEGAL EDUCATION, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION 18 (2020) (including participation from 95 percent of ABA accredited schools).

82. Roughly half of all full-time clinical professors had taught a doctrinal class in the preceding 3 years, and only 35 percent had taught a skills course. *Id.*

83. Full-time clinicians boast a median of seven years' full-time work experience. *Id.* at 39. *Cf.* discussion *supra* Part II.B.

84. Newton, *supra* note 70, at 143.

85. A tiny minority of law schools require clinic. *See Id.* Yale does not require clinic but about 80 percent of students do clinic anyway and Yale asserts that they offer more clinical slots per student than any U.S. law school. Heather K. Gerken, *Resisting the Theory/Practice Divide: Why the 'Theory School' is Ambitious About Practice*, 132 HARV. L. REV. F. 134, 139 (2019). Dean Gerken notes that more than a dozen of the non-clinical faculty run clinics. Id. at 142. Perhaps this laudable focus might cause Yale to revise its advice to students seeking a professorship to not acquire substantial practice experience. *See supra* note 56 and accompanying text.

86. Anne Bloom, *Injury and Injustice*, ANN. REV. L. & SOC. SCI. at 252 (2020), https://www.annualreviews.org/deliver/fulltext/lawsocsci/16/1/annurev-lawsocsci-101518-043000.pdf?itemId

counsel? It has been said that law schools are primarily run for the benefit of professors, not students.[87] If it is true that many professors cannot practice what they teach,[88] then not only are law schools not run for the benefit of students, but they are also not run for the benefit of those who need legal services.

Over the course of the last decade, there has been impressive and increased emphasis on clinical education.[89] Among the most ambitious of these endeavors has been U.C. Irvine. With Chemerinsky behind the wheel as founding Dean, U.C. Irvine sought to break the mold: become a pre-eminent law school that focuses on preparing students for practice.[90] U.C. Irvine focused primarily on clinical opportunities, integrating this concept into the 1L curriculum.[91] The program includes a strong emphasis on effective communication skills, research strategies and methodologies, effective lawyering, problem solving, and self-education, all while conducting annual surveys to determine whether students have been properly trained for their real-world employment.[92]

Just as clinicians reside below tenured and tenure-track professors, legal writing instructors reside below clinicians, being paid much less than traditional faculty.[93] Notwithstanding their lower status, legal writing professors have close

=/content/journals/10.1146/annurev-lawsocsci-101518-043000&mimeType=application/pdf (arguing that scholars studying injury litigation would benefit from engaging with practitioners who have real-world clients).

87. *See e.g.*, Newton, *supra* note 70, at 148; Schuwerk, *supra* note 75, at 761.

88. While non-elite schools proportionally hire 5 percent fewer full-time faculty than their top-14 counterparts, there is an increasing trend for even the fourth-tier institutions to prefer full-time, scholarship-oriented professors over practitioners. *See Analytix, Faculty (Academic Year) DataSet (2017-2019)*, ACCESSLEX (data on file with the author); Merkel, *supra* note 55, at 521.

89. See, for example, the creation of the University of California, Irvine School of Law. Carrie Hempel, *Writing on a Blank Slate: Creating a Blueprint for Experiential Learning at the University of California, Irvine School of Law*, 1 U.C. IRVINE L. REV. 146, 146 (2011). See also the Drexel University Thomas R. Kline School of Law's year-long civil and criminal clinical programs, Georgetown's fifty years of clinical experience, Harvard's robust in-house, external and independent clinical offerings, University of Maryland, Francis King Carey's top-10 clinical program with 150 student participants annually, Stanford's full-time Mill's Legal Clinic, Washington & Lee University's third-year practical component, and the integrated clinical opportunities available to second- and third-year students at Touro's Jacob D. Fuchsberg Law Center. *See Clinical Programs*, DREXEL UNIV. THOMAS R. KLINE SCH. L., https://drexel.edu/law/academics/kline-difference/clinics (last visited May 24, 2024); *Clinics*, GEO. L., https://www.law.georgetown.edu/experiential-learning/clinics (last visited May 24, 2024); *Clinical Programs*, HARV. L. SCH., https://hls.harvard.edu/dept/clinical/clinics (last visited May 24, 2024); *Clinics*, UNIV. MD., https://www.law.umaryland.edu/academics/clinics (last visited May 24, 2024); *Mills Legal Clinic*, STAN. L. SCH., https://law.stanford.edu/mills-legal-clinic/what-we-do (last visited May 24, 2024); *Clinics and Externships*, WASH. & LEE L., https://law.wlu.edu/academics/clinics-and-externships (last visited May 24, 2024); *Clinics*, TOURO LAW, JACOB D. FUCHSBERG L. CTR., https://www.tourolaw.edu/Academics/66 (last visited May 24, 2024).

90. Hempel, *supra* note 89, at 146.

91. *See* Newton, *supra* note 70, at 148.

92. Rachel Croskery-Roberts, *Ten Years in: A Critical View of the Past, Present, and Future of Skills Education at UC Irvine Law School*, 10 U.C. IRVINE L. REV. 469, 472 (2020).

93. Newton, *supra* note 70, at 143–44. *See also* Caron, *supra* note 70. ("Only 18% of legal writing faculty were tenured or on tenure track in 2016, with another 6% in positions with programmatic tenure/tenure track. . . . The median salary for legal writing faculty is estimated to be $10,000 lower than the median for clinical faculty."). Market forces may also explain differences in faculty salaries. Some faculty were or could have been well-compensated in the private sector; this likely influences faculty salaries. *See* Fabio Arcila, *Whither Law*

contact with students.[94] Legal writing is arguably the most demanding law school teaching discipline, as the bulk of the teaching of legal writing requires probing and detailed written commentary on individual student work.[95] "More than any other participants in the legal education enterprise, save perhaps the clinicians, legal writing professors are willing to roll up their sleeves and do transformative dirty work."[96]

Writing faculty are paid less than standard faculty, though they also lack the scholarship obligations of their tenure-track peers.[97] The lack of scholarship may occasion an argument that this is why standard faculty are paid more, but writing faculty also fulfill an important function that standard faculty generally do not. Writing professors use their time to analyze student writing and draft individualized comments for their students[98]—on a cost-of-time basis, legal writing professors provide students with a terrific "bang for their buck."

In addition to differences in pay, voting rights also underscore the relative low value accorded to certain faculty. All universities, including most law schools, are governed by the faculty and everything important is subject to a faculty vote.[99] While there is no single system of faculty voting rights, many schools only offer voting privileges to professors on traditional tenure-track appointments.[100] "A long-term contract might make voting more likely . . . but [it] certainly does not guarantee it,"[101] as faculty voting systems vary significantly from school to school. Although a title like "Professor of Practice" may sound fancy, such an appointment doesn't confer voting rights—the same is true for many others with significant teaching responsibility. Of course, all faculty members interact with students, with some of the closest connections

Professor Salaries: Let's Talk Money, PRAWFSBLAWG (Dec. 14, 2009), https://prawfsblawg.blogs.com/prawfsblawg/2009/12/whither-law-professor-salaries-lets-talk-money.html [https://perma.cc/7737-GCML]; Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47, 61 (2015) (noting that many deans cite the role of market forces in salary decisions). *But see* Paula A. Monopoli, *The Market Myth and Pay Disparity Legal Academia*, 52 IDAHO L. REV. 867, 881 (2016) (arguing that market forces can be inherently biased and have been used to defend gender-based pay disparity among faculty).

94. Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1071 (2017).

95. *Id.* at 1072.

96. John A. Lynch, Jr., *Teaching Legal Writing After a Thirty-Year Respite: No Country for Old Men?*, 38 CAPITAL U. L. REV. 1, 4 (2009).

97. Catherine Martin Christopher, *Putting Legal Writing on the Tenure Track: One School's Experience*, 31 COLUM. J. GENDER & L. 65, 69–70 (2015).

98. *See* Levine, *supra* note 94, at 1072.

99. Susan P. Liemer, *The Hierarchy of Law School Faculty Meetings: Who Votes*, 73 UMKC L. REV. 351, 363 (2004). An exception to this is some of the newer, for-profit law schools. *See* Paul Campos, *The Law-School Scam*, ATLANTIC (Sept. 2014), https://www.theatlantic.com/magazine/archive/2014/09/the-law-school-scam/375069 [https://perma.cc/FD9B-84CP] (noting that, with respect to for-profit law schools, control is largely in the hands of the managing investor).

100. *See* Liemer, *supra* note 99, at 361.

101. *Id.* at 361–63 (concluding that, without the right to vote in faculty meetings, an individual professor's input on governance is not as highly valued and may not even be sought).

being with clinicians and legal writing and research instructors, and therefore all could be valuable participants in governance, if permitted.

At the bottom of the academy ladder are adjunct faculty members, who are generally "treated like nobodies by the regular law faculty,"[102] though they comprise an increasingly large proportion of the faculty.[103] The ABA has considered expanding the role of adjunct faculty in the modern legal curriculum, though the industry remains protective of the institutional status quo of the professoriate and opposes a greater role for adjuncts.[104] This protectionism is anti-competitive and unworthy, as well as depriving students of valuable learning opportunities.

Adjuncts are usually practitioners or judges. They're invited to teach because of their apparent excellence in practice, yet they exist on the fringe of the legal academy. Their time on campus is circumscribed to the hours of the class they teach. They usually aren't welcome to teach more than one class. They are seldom permitted to teach first-year courses.[105] They are excluded from most all-faculty listservs, are not welcome at faculty meetings, are not provided an on-campus office, are paid little or nothing,[106] and are consigned to conducting office hours at whatever bench or coffee shop is nearby. They irregularly receive the courtesy of a thank you note from the dean at the end of the semester, but more regularly receive fundraising solicitations from the development office. Some students say that adjuncts are more effective teachers than full-time tenured or tenure-track faculty.[107] For most adjuncts, student appreciation is an

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102. Newton, *supra* note 70, at 144 (citing Wendel, *supra* note 73). *See also* David Hricik, *Life in Dark Waters: A Survey of Ethical and Malpractice Issues Confronting Adjunct Law Professors*, 42 S. TEX. L. REV. 379, 418 (2001) ("A more fundamental issue is the apparent disdain some full-time academicians have toward adjuncts and the subjects they teach and the effect this has on the education process. Some have observed that tenured faculty do not associate much, if at all, with adjunct professors who 'exist on the periphery of most law school operations' and who are 'ignored as part of the intellectual and social life of the school.' I have felt this anti-adjunct attitude firsthand and have heard it is prevalent in some of the best law schools." (quoting Karen L. Tokarz, *A Manual for Law Schools on Adjunct Faculty*, 76 WASH. U. L.Q. 293, 296–97 (1998) (citations omitted)).

103. While the total number of employed professors has declined from 2016 to 2018, full-time faculty employment has declined at a 4 percent faster rate than full-time adjunct faculty employment. *See Analytix*, *supra* note 88; *see also* Interview by Andrew Hibel with Lauren Robel, J.D., former President of the Association of American Law Schools (2012) (noting that there is a trend towards hiring more adjuncts and fewer full-time faculty members), https://www.higheredjobs.com/HigherEdCareers/interviews.cfm?ID=326.

104. *Everything You Need to Know About OCI: On-Campus Interviewing*, A.B.A. (July 1, 2018), https://abaforlawstudents.com/2018/07/01/everything-you-need-to-know-about-oci-on-campus-interviewing [https://perma.cc/99GE-DV5Q].

105. *See supra* Part II.C. The ABA currently requires full-time faculty to teach "substantially all" of the first one-third of each student's coursework. *See* ABA STANDARDS, *supra* note 31, § 403(a).

106. Adjunct faculty in law schools might be the best bargain in higher education.

107. Newton, *supra* note 70, at 145–46. *See also, e.g.*, Hricik, *supra* note 102, at 385 ("In my own experience, students-particularly those at more theoretically-oriented schools-crave teaching by those who actually know how to practice law."); Merkel, *supra* note 55, at 540 (concluding that practice experience enhances a professor's credibility by students); I. Richard Gershon, *In Ten Years, All New Law Schools*, 44 U. TOL. L. REV. 335, 341 (2013) (stating that practitioners' perspective in the classroom is a valuable asset to their students). But see William Prosser, an otherwise brilliant dean and professor, who misstated: "One thing

adequate substitute for remuneration, formal thanks, or an invitation to the faculty lounge, but it shouldn't have to be. If students appreciate adjuncts, law schools should too.[108]

Although most won't hire practitioners, law schools welcome presentations by practitioners on various topics, including lectures about their practice, particular cases they have worked on, or how their students may attain professional satisfaction. I developed a lecture titled "How to Get a Job You'll Really Like"[109] which I have given for many years to students at UC Law SF, Berkeley, and Stanford law schools, as well as elsewhere. One year it was so popular that I gave it three times to the Beasley School of Law at Temple University. The talk lays out a four-step plan for getting a rewarding job: (1) figure out what area of law you like; (2) figure out where you want to live; (3) figure out by doing some basic online research what are the best places to practice that type of law in that geographical location and; (4) write letters—not emails—to those potential employers. That formula has worked over and over again and is much appreciated by the career services offices at law schools, as it provides an alternative to the well-trodden path of on-campus interviews, connecting students with a far greater number and broader range of potential employers than those who fly around the country to interview at various law schools. It also enhances the law student's chance of being employed in a law-related job after graduation, which is a U.S. News metric. Talks like these[110] are mostly welcomed, because they're useful to the law school and because, though a talk is not a job, actionable advice is also useful.

D. HOW U.S. NEWS METRICS SHOULD CHANGE

1. *De-emphasize Law Review Articles*

Part of what pulls the legal academy away from practitioners is the U.S. News rankings. Law school deans, students, and alumni are obsessed[111] with their institution's U.S. News ranking, so much so that many law schools,

on which all law schools are in agreement is that too many years of practice hardens the arteries, stunts the intellect, and ossifies the ideas, so that few lawyers over the age of 50 are ever much of a success when they retire and enter teaching." William L. Prosser, *Advice to the Lovelorn*, 3 J. LEGAL EDUC. 505, 513 (1951). Such wide differences of opinion suggest that administrators and students alike would benefit from the disclosure of anonymous student course evaluations, so that we can better understand the types of professors students truly prefer. At present, such databases exist within the law schools, but aren't aggregated anywhere, including by AALS, ABA, U.S. News, or other rating or supervisory entities.

108. *See infra* Part II.D.3.

109. A full version of the talk can be found on YouTube. *See* Kline & Specter*, Shanin Specter on 'How to Get a Job You'll Really Like' UC Law San Francisco, 2/27/23*, YOUTUBE (Mar. 23, 2023), https://www.youtube.com/watch?v=nD3Cpqzl_40.

110. At the request of a Stanford Law student, I developed another valued talk—a three-part lecture series called "How to Start a Firm and Build a Practice." I've given those lectures to big groups at U.C. Law S.F., Berkeley, and Stanford, in coordination with their receptive and imaginative career services offices.

111. Newton, *supra* note 70, at 123.

including two where I've taught, have reportedly manipulated it.[112] This, and other concerns over the ranking methodology, led many schools to publicly boycott the list, "withdrawing" themselves from consideration.[113] Although U.S. News responded by altering some metrics and weighting, it didn't go far enough.[114] A concerning level of focus remains on metrics that do not translate to a law school producing better-trained lawyers.

Even after the revised weighting, which considers student outcomes more heavily than before, the reputation of the law school remains one of the most important metrics, accounting for 25 percent of the ranking.[115] A significant factor in the reputation of the school is the reputation of its law review[116] and its faculty publications.[117] There are at least two problems with this: (1) law review articles have very limited utility;[118] and (2) producing scholarship is expensive, accounting for roughly 15 to 20 percent of the cost of law school tuition.[119]

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112. Christopher D. Iacono, *Legally Unhappy: How US News and Law Schools Have Failed and How This Can be Fixed*, 37 TOURO L. REV. 219, 222 (2021).

113. Anemona Hartocollis, *Yale and Harvard Law Schools Withdraw from the U.S. News Rankings*, N.Y. TIMES (Nov. 16, 2022), https://www.nytimes.com/2022/11/16/us/yale-law-school-us-news-rankings.html. Although some have "withdrawn" from the list, the practical effect is minimal: U.S. News ranks all schools based on data they must report to the American Bar Association. *See* Stephanie Saul, *U.S. News Releases Its Latest, Disputed Rankings of Law and Medical School*, N.Y. TIMES (May 11, 2023), https://www.nytimes.com/2023/05/11/us/us-news-rankings-law-medical-schools.html. While there is some evidence that the influence of U.S. News is waning, there is no indication that law schools will stop caring about their ranking or doing what they can to make it, or keep it, as high as possible. Alison Knezevich, *Once A Standard, US News Rankings Now 'Entirely Irrelevant,'* CAL. PULSE (May 29, 2024), https://www.law360.com/pulse/articles/1841995. In any event, the observations in this essay are equally applicable to any ratings agency.

114. Robert Morse & Eric Brooks, *Methodology: 2023-2024 Best Law School Rankings*, U.S. NEWS & WORLD REP. (May 10, 2023), https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology.

115. *Id.*

116 Newton, *supra* note 70, at 123–24. Although Newton's article predates the revised modification, reputation is subjectively measured by the "overall quality" of the program, in the eyes of survey respondents.

117. Jeffery Evans Stake, *The Interplay Between Law School Rankings, Reputations, and Resource Allocation: Ways Rankings Mislead*, 81 IND. L.J. 229, 245 (2006) (noting that the peer reputation component of rankings is built primarily on faculty publications and not teaching quality). U.S. News is considering publishing a second ranking list devoted to measuring the impact of faculty citations. Robert Morse, *U.S. News Considers Evaluating Law School Scholarly Impact*, U.S. NEWS & WORLD REP. (Feb. 19, 2019), https://www.usnews.com/education/blogs/college-rankings-blog/articles/2019-02-13/us-news-considers-evaluating-law-school-scholarly-impact [https://perma.cc/W8NT-7PYR].

118. *See* Wendel, *supra* note 73.

119. David Segal concludes that roughly one sixth of law school tuition goes to fund legal scholarship. Segal, *supra* note 58. Harrison and Mashburn corroborate this figure, conservatively estimating the annual cost of legal scholarship at $240 million. Adding a student-faculty ratio of five-to-one and average private school tuition of $49,548 onto their base assumptions yields a similar result: one sixth of tuition funds faculty scholarship. *See* Jeffrey L. Harrison & Amy R. Mashburn, C*itations, Justifications, and the Troubled State of Legal Scholarship: An Empirical Study*, 3 TEX. A&M L. REV. 45, 53 (2015); Ilana Kowarski, *Setting the Price, Payoff, of Law School Before Enrolling*, U.S. NEWS & WORLD REP. (Mar. 18, 2020), https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/law-school-cost-starting-salary [https://perma.cc/Y9W2-TXDF].

It is questionable, however, how much (if anything) faculty scholarship adds to student experience and outcomes—that is, to the production of well-trained, ready-to-practice lawyers.[120] Academic legal scholarship is often "esoteric" and sometimes "impenetrable."[121]

Tuition has increased in part to subsidize faculty scholarship.[122] But even preeminent professors conclude that there's too much focus on scholarship. Jesse Choper began teaching at Berkeley Law in 1965 and noted that the quality of law school instruction has declined because "too much emphasis is now placed on scholarship for full-time members."[123] Robert Reinstein, who began teaching law in 1969, complained that the instructors who are the most invested in their scholarship are those that "have no clue how to teach."[124] Posner wrote that "the scholar's object is to impress other scholars. His field is his world, and it is the world of scholars rather than legal professionals in general. He teaches students, who are future lawyers, but he does not write for them."[125]

Former Solicitor General Seth Waxman noted that "at the Supreme Court, academic citations are viewed as largely irrelevant—only a true naïf would blunder to mention one at oral argument."[126] Chief Justice Roberts is not shy about this, noting publicly that law reviews are not "particularly helpful for

120. Law professors think nothing of traveling far and wide to study and write about other legal systems. Jerome Frank suggested to Karl Llewellyn, a prominent scholar at Columbia Law School, that instead of studying the Cheyenne legal system, he take a subway ride from Columbia to the New York City trial courts. ROBERT JEROME GLENNON, THE ICONOCLAST AS REFORMER: JEROME FRANK'S IMPACT ON AMERICAN LAW 63 (1985). Not much has changed. The Dean of a Philadelphia law school recently characterized a judge of the Pennsylvania Superior Court as being of the "Philadelphia Superior Court"—a court that does not exist—as a short subway ride to Philadelphia's City Hall would have revealed.

121. Richard A. Posner, *The Judiciary and the Academy: A Fraught Relationship*, 29 U. QUEENSL. L.J. 13, 15 (2010) (highlighting issues with the course of modern scholarship on "legal theory"). "Law professors write a great deal about the judiciary—and mainly the federal judiciary. But there was a question how well-informed about, or helpful to, the judiciary that writing is. At present, not very, I have discovered." POSNER, *supra* note 36, at 43–44. No wonder, then, that "few judges have much interest in or contact with law professors." *Id.* at 4. Judge Posner has also taught law school. *Richard A. Posner*, UNIV. CHI. L. SCH., https://www.law.uchicago.edu/faculty/posner-r [https://perma.cc/6UFH-DAGN] (last visited May 30, 2021). Judge Harry T. Edwards is less diplomatic. He writes that law reviews are "exotic" and "out of touch" publications that do "not even purport to address concrete issues relating to legal practice, procedure, doctrine, legislation, regulation, or enforcement." Harry T. Edwards, *Another Look at Professor Rodell's Goodbye to Law Reviews*, 100 VA. L. REV. 1483, 1484 (2014). While citations in opinions are the stuff of contest among law professors, such citations are widely seen as not contributing to judicial analysis but are simply confirmatory. *See, e.g.*, Derek Simpson & Lee Petherbridge, *An Empirical Study of the Use of Legal Scholarship in Supreme Court Trademark Jurisprudence*, 35 CARDOZO L. REV. 931 (2014); Diane P Wood, *Legal Scholarship for Judges*, 124 YALE L.J. 2592 (2015).

122. Law school tuition has risen to obscene levels over the past two decades. Merkel, *supra* note 55, at 539. Another reason tuition has increased is that high tuition is rewarded by the U.S. News metrics. *See infra* Part II.D.2.

123. Iacono, *supra* note 112, at 243.

124. *Id.* at 244. *See also* discussion *supra* note 70.

125. POSNER, *supra* note 36, at 12.

126. Seth P. Waxman, *Rebuilding Bridges: The Bar, the Bench, and the Academy*, 150 U. PA. L. REV. 1905, 1909 (2002).

practitioners and judges."[127] At the Fourth Circuit Judicial Conference in 2011 he commented "[p]ick up a copy of any law review that you see, . . . and the first article is likely to be . . . the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I'm sure was of great interest to the academic that wrote it, but isn't of much help to the bar."[128] Even the prolific and oft-quoted Dean Chemerinsky noted the limited value of scholarship: "The reality is that legal scholarship, especially from elite faculty and in elite law reviews, is even more disconnected from the issues that judges and lawyers face."[129] There is also growing concern that modern scholarship is influenced by corporate America, which raises more fundamental concerns about reliability.[130]

This is not to suggest that all scholarship is unproductive. Theoreticians like Oliver Wendell Holmes were instrumental to the advancement of the profession. More recently, the law and economics movement, as well as changes in interpretive practice as the methods of originalism and textualism are explored, have been highly influential in the development of law. Treatises are also exceptionally useful, though writing them is out of vogue for law professors.[131] Ironically, practitioners now produce many excellent treatises.[132]

Research organizations that focus on producing timely, detailed research on injustices and other infirmities, like Berkeley's Civil Justice Research Initiative[133] are valuable and could serve as a model for encouraging

127. Brent Newton, *Scholar's Highlight: Law Review Articles in the Eyes of the Judges*, SCOTUSBLOG (Apr. 30, 2012, 12:15 PM), https://www.scotusblog.com/2012/04/scholar%E2%80%99s-highlight-law-review-articles-in-the-eyes-of-the-justices/ [https://perma.cc/X33Y-TYRB].

128. *Id.*

129. Erwin Chemerinsky, *Foreword: Why Write?*, 107 MICH. L REV. 881, 885 (2009).

130. Google and other large corporations have funded "hundreds of research papers" to defend against regulatory challenges. Brody Mullins & Jack Nicas, *Paying Professors: Inside Google's Academic Influence Campaign*, WALL ST. J. (July 14, 2017), https://www.wsj.com/articles/paying-professors-inside-googles-academic-influence-campaign-1499785286 [https://perma.cc/9V4S-GEV3]. Professor Robin Feldman of UC Law SF notes that such behavior can "have an insidious effect on values scholars hold dear in academia . . . [running] the risk of creating the impression in the minds of the public that academics are lobbyists rather than scholars." Robin Feldman, Mark A. Lemley, Jonathan Masur & Arti K. Rai, *Open Letter on Ethical Norms in Intellectual Property Scholarship*, 29 HARV. J.L. & TECH. 336, 340 (2016).

131. As Wendel notes:

> In the early part of the 20th century, the model of successful legal scholarship was the great treatise, like Wigmore on Evidence, Scott on Trusts, or Williston on Contracts . . . . That mode of scholarship is now pretty much dead . . . . Now an ambitious scholar would never set out to write a treatise . . . .

Wendel, *supra* note 73.

There are exceptions. For example, U.C. Law SF Dean David Faigman's magisterial treatise on scientific evidence. DAVID L. FAIGMAN, DAVID H. KAYE, MICHAEL J. SAKS & JOSEPH SANDERS, MODERN SCIENTIFIC EVIDENCE: THE LAW AND SCIENCE OF EXPERT TESTIMONY (2019). Jurists like Judge Posner see treatises and restatements as the preferred type of scholarship. *See A Conversation with Judge Richard A. Posner*, 58 DUKE L.J. 1807, 1814 (2009).

132. *See* Wendel, *supra* note 73.

133. *Civil Justice Research Initiative*, BERKELEY L., https://civiljusticeinitiative.org [https://perma.cc/BD8B-YKTM] (last visited June 16, 2020).

practitioners to contribute to useful scholarship, as they're closest to the fray,[134] which is also what makes them well-suited to produce treatises. Were esoterica de-emphasized, law professors would have more time to teach and produce actionable research, which in turn would save law schools and law students a lot of money, while enriching judges and lawyers.[135]

Some law professors argue that, though oft-criticized, current, theoretical scholarship is highly impactful.[136] Without legal scholarship, they argue, students would be inadequately trained, legal thinking would be stunted, and judges and legislators would lose valuable critical commentary on the law, among other things.[137] But if student participation in scholarship is so vital, why limit the number of journal editors?[138] When looking at legal scholarship empirically, a *de minimis* number of the arguments or research of cited works were explicitly considered by the citing authors.[139] With respect to judicial opinions, legal scholarship influenced fewer than 20 percent of the decisions in which it was cited, determined by whether the citation serves a useful function in helping the court advance or articulate a new idea, theory, or insight.[140] Legislators rarely cite to law reviews; a legislator is more likely to be moved by a law professor's twitter post or op-ed than by her scholarship. "Way-to-go" congratulations on faculty listservs most often go to media appearances, not academic publications, to my observation. Law professors who have the most impact are those who act beyond the academy—the ones who argue in court, like Laurence Tribe, Alan Dershowitz, and Erwin Chemerinsky; the ones who speak out in the public arena, like Pamela Karlan, Noah Feldman, and Lawrence Lessig; and the ones who transition from teaching to public service, like Barack Obama, Elizabeth Warren, and Elena Kagan.

2. *Reward Lower Tuition*

U.S. News previously considered expenditures per student—the higher the better.[141] This had the perverse consequence of incentivizing law schools to raise tuition. Although U.S. News has since removed this metric,[142] and rightfully so,

134. *See* Bloom, *supra* note 86, at 12.13 (arguing that practitioner-scholar collaboration presents opportunity for research that is extremely valuable to policy makers and others seeking to ensure meaningful remedies for injured individuals).

135. *See* Chemerinsky, *supra* note 129, at 881.

136. "Ideas change slowly, and while no doubt there's tons that's 'esoteric,' what seems 'esoteric' today is central tomorrow. Ronald Coase's work was esoteric—until it changed everything." Lawrence Lessig to the Author, June 23, 2020. The same might be said of Professor Lessig's early contributions to cyberlaw.

137. *See* Robin West & Danielle Citron, *On Legal Scholarship*, ASS'N AM. L. SCHS. (2014), https://www.aals.org/wp-content/uploads/2014/08/OnLegalScholarship-West-Citron.pdf [https://perma.cc/H62H-EBDW]

138. *See* Harrison & Mashburn, *supra* note 119, at 58. Limitations on size may be related to manageability.

139. *Id.* at 77.

140. *Id.* at 77, 79.

141. Iacono, *supra* note 112, at 224–25.

142. Morse, *supra* note 114.

they should go a step further by incentivizing lower cost to students. Less expensive tuition would reduce barriers to disadvantaged and marginalized Americans and increase law school applications. Student debt forces students to seek positions within large firms that offer high starting salaries. But the associate experience at big firms is overwhelmingly negative, with 80 percent departing within five years.[143] If tuition were lower, students could more readily accept jobs they'd like, including jobs more connected to the public interest. And lower tuition is achievable: reduce scholarship, hire more practitioners,[144] and welcome more adjuncts.

3. *Consider Student Satisfaction*

Another area where the U.S. News metrics should change is inclusion of client satisfaction. Students are the clients of the law schools. But U.S. News does not consider student satisfaction as a ranking metric. U.S. News claims that's because it is not an objective criterion.[145] But since 25 percent of the U.S. News ranking remains based on the subjective assessment of reputation according to deans, lawyers, and judges across the country, subjectivity is an accepted part of the process.[146]

What students think of the teaching they receive is highly relevant to the quality of the law school. Law schools rigorously collect student evaluations of courses. Tenure committees at a majority of law schools consider a candidate's teaching history in some manner when evaluating promotions.[147] Yet that information is not requested by U.S. News, though it should be. What students think should matter—their satisfaction with their instruction should be essential to the law school's mission. Consumer approval is necessary to the continued existence of any business—except perhaps a monopoly. There's no good reason why law schools and their professors should be an exception.

Law schools do an excellent job collecting data from law students on a broad range of indices—teacher effectiveness, knowledge, respect for students, workload and the like, so the data are readily available. There are limitations on the evaluations—they may reflect biases, perceived effectiveness is not necessarily true effectiveness, they are subjective, and there's no one standard of evaluation. But the perfect should not be the enemy of the good. U.S. News should consider student evaluations. This would place a greater externally recognized and publicized value on the quality of teaching, more accountability within the legal academy and might lead to greater utilization of practitioners,

143. *Id.* at 16. *See also* Jill Schachner Chanen, *Are You Happy Now?*, A.B.A. J. (Nov. 1, 2010), https://www.abajournal.com/magazine/article/are_you_happy_now [https://perma.cc/7L7S-KZU4] (finding that most big firm lawyers are unsatisfied).

144. Many practitioners would teach for little or nothing, as they do in the adjunct role.

145. Iacono, *supra* note 112, at 237; Morse, *supra* note 114.

146. *Id.*

147. Meera E. Deo, *A Better Tenure Battle: Fighting Bias in Teaching Evaluations*, 31 COLUM. J. GENDER & L. 7, 17 (2015).

who are valued by students,[148] all of which may explain why there's no significant effort to include student satisfaction as a U.S. News metric.

4. *Consider Graduate Satisfaction*

The post-graduate experience should also be measured, weighed, and disclosed.[149] Right now, U.S. News only measures whether first-year graduates are employed ten months after they graduate. They should also measure whether new lawyers are happily employed. Multiple surveys exist on this topic, including the American Bar Association's own newly annual "Life and Practice" survey first conducted in the Fall of 2019, so the data is available.[150] Again, this would serve the interests of students and would incentivize law schools to more closely integrate the values and realities of practice, professional satisfaction, and wellness[151] into the law school experience.

III. LAW STUDENTS ARE IMPORTANT FOR PRACTITIONERS

A. THE VALUE OF LAW SCHOOL ENGAGEMENT TO PRACTITIONERS

Practitioners are just about as ignorant of law schools as law schools are ignorant of practitioners. Unlike law professors, practitioners don't have the excuse of "never been there," as nearly every lawyer attended law school.[152] But most lawyers look at law school as an instrument for obtaining a professional license, and not much more. Those practitioners are missing a lot, much of which may be obtained with little time or cost.

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148. *See supra* note 107.

149. Iacono, *supra* note 112, at 234.

150. Stephen Embry, *2019 Firm Culture*, A.B.A (Oct. 30, 2019), https://www.americanbar.org/groups/law_practice/publications/techreport/abatechreport2019/firmculture2019 [https://perma.cc/V859-7TAX]; *see also* Michelle Fivel & Ru Bhatt, *2019 Millennial Attorney Survey: New Expectations, Evolving Beliefs and Shifting Career Goals*, MAJOR, LINDSEY & AFRICA (Apr. 3, 2019), https://www.mlaglobal.com/en/knowledge-library/research/2019-millennial-attorney-survey-new-expectations-evolving-beliefs-and-shifting-career-goals [https://perma.cc/HF4R-4HUV].

151. Ninety-six percent of students report medium to high levels of stress during law school. *See Law Student Stress*, LSSSE (Aug. 8, 2016), https://lssse.indiana.edu/blog/law-student-stress [https://perma.cc/53GZ-F3DW]. Practicing lawyers are more likely than the general population to experience psychological distress. Pamela Bucy Pierson, Ashley Hamilton, Michael Pepper & Megan Root, *Stress Hardiness and Lawyers*, 42 J. LEGAL PROF. 1, 11, 13 (2017). According to a 2016 survey, lawyers experience depression, anxiety, and stress at rates of 28 percent, 19 percent, and 23 percent, respectively. *Id.* at 12.

152. California, Vermont, Virginia and Washington offer apprenticeship-like programs for bar applicants who have not received a formal legal education. *See Study in a Law Office or Judge's Chamber*, ST. BAR CAL., https://www.calbar.ca.gov/Admissions/Requirements/Education/Legal-Education/Law-Office-or-Judges-Chamber [https://perma.cc/2S22-4J59] (last visited May 30, 2021) (overviewing the requirements for the Law Office Study program); *Admission to the Vermont Bar: Law Office Study Program*, VT. JUDICIARY, https://www.vermontjudiciary.org/attorneys/admission-vermont-bar [https://perma.cc/Z6KQ-CNHU] (last visited May 30, 2021) (detailing the Vermont Law Office Study Program); *Law Reader Rules & Regulations*, VA. BD. BAR EXAM'RS, https://barexam.virginia.gov/reader/readerrules.html [https://perma.cc/96L9-5ATN] (last visited May 30, 2021) (introducing the rules for the Law Reader program); Wa. Sup. Ct. Admission & Prac. R. 6(d)(2)–(3) (codifying the four-year work and study requirements for the Law Clerk Program), https://www.courts.wa.gov/court_rules/pdf/APR/GA_APR_06_00_00.pdf.

Law schools are a ready pool of current law clerks and future associates. Of course, that's well known to the couple of hundred large firms and other legal mega-employers who ride the law school circuit conducting on-campus interviews. A majority of large law firms do most of their new-graduate hiring through on-campus recruiting.[153] But most potential legal employers, such as small firms, small public interest practices, and in-house counsel, never find their way to a law school campus.[154]

Legal employers who don't have a rigorous process for hiring tend to hire who they know—be he the partner's son, the neighbor's kid, the client's cousin, or the lawyer sitting across the table in a deposition. That reinforces the existing social strata and discourages diversity and minority hiring. It's also just plain bad for business to not make more effort to hire great people who can bring something new and different to the practice. And why should the big firms—who do most of the on-campus interviewing—get most of the best young lawyers?

The on-campus interview process can be dynamic and unpredictably rewarding. Even if a firm doesn't hire a well-qualified candidate straight out of law school, for the candidate, the connection made through the interview may eventually lead to clerkship, a temporary position, or a future permanent job. For the firm, perhaps the connection won't lead to a hire, but instead to a future networking relationship.

Especially for practices in areas of legal concentration under political assault, such as the plaintiff's tort bar or the criminal defense bar or community legal services, each interaction between law student and a lawyer is a valuable lesson for that student to carry over to their professional life. Today's law students are tomorrow's leaders of the bar, judges, legislators, CEOs—major players in society in all ways—economic, political and charitable. We cannot expect them to be sensitive to what we do if we don't introduce ourselves to them and them to us.

So, practitioners shouldn't limit themselves and their firms to participating in on-campus interviewing. They should consider a range of student interactions, including through teaching, not only as a means of drawing the interest of potential new hires, but as a means of developing the legal sector in which they practice.

B. WHAT PRACTITIONERS SHOULD DO FOR STUDENTS

At the less costly end of the spectrum, there are many ways that practitioners can and should establish connections with students interested in their area of practice. At nearly no cost, practitioners can establish close ties with and support law school affinity bar associations, which is a terrific way to

153. *Everything You Need to Know About OCI*, *supra* note 104.
154. *Id.*

develop recruiting relationships. One method is to simply put greater effort into responding to inquiries for informational interviews or job interviews from law students and recent graduates. Practitioners could also volunteer to give a talk on their area of practice or other subject matter in which they are particularly expert. A practitioner can reach out to the law professor who teaches courses in their area of practice, and volunteer to come in and teach a single day's class or fraction thereof. Such interchanges are both welcome and mutually valuable. Most practitioners also have something valuable to say about getting a job you'll like, running a practice, and building a career—those lessons stick to the ribs.[155]

Practitioners might also consider establishing a student prize in their name or the name of their firm or entity for students at the local law school who excel in their area of professional concentration. They should consider establishing one-year fellowship programs. Given the high rate of unemployment for recent law school graduates,[156] new grads are receptive to working for a relatively low wage for a year to get their feet wet in practice. A sizable percentage of graduates already do this this with clerkships,[157] and fellowships can follow largely the same model: providing students with a short-term, work-intensive dip into practice before accepting a full-time job offer. Such programs would be mutually beneficial: law firms could fill the experience gaps clients complain of without paying market rates for full-time new hires,[158] and students would be able to combat the high rate of new-graduate unemployment. Fellowships would likely be undertaken with a presumption that no permanent offer will be made; but the reality is that a good fellow will end up being a good lawyer, and they will likely get a permanent offer. Practitioners should also get to know the career services officer at the local law school. That relationship is a great feeder for fellows or new lawyers even if the firm doesn't do on-campus interviewing.

Toward the upper end of commitment of resources, practitioners should consider teaching a course. Although the full-time faculty run the law schools, 64 percent of all law professors are part-time.[159] Many of my colleagues in the practice of law have taught at law school, influenced perhaps by my conversations with them over the years. Uniformly, they have found it to be invigorating and valuable.

My experience is that preparing a class teaches me a lot that I should know for my practice, whether it's material I didn't learn in law school, didn't learn in practice, or just forgot.[160] My students teach me a lot too, and some continue to contribute to me, and me to them. Our law firm has hired many of

155. *See* discussion *supra* p. 1468.

156. EMPLOYMENT SUMMARY REPORT, *supra* note 67.

157. Across all reporting law schools, 9.8 percent of the Class of 2018 pursued a clerkship in the year after graduation. *See id.*

158. *Id.*; *see* discussion *supra* Part II.D.2.

159. *See Analytix*, *supra* note 86.

160. Teaching should count toward continuing legal education requirements.

my best students to be lawyers in our firm. There's no substitute for the thirteen-week interview process that teaching a semester of law school provides.

A central benefit of practitioners teaching law students is the mentoring relationship and all that goes with it. All benefit. From the student perspective, when law students haven't had real, prolonged contact with practitioners, they may perceive big law jobs as the best, since those are said to be prestigious, blessed by career services offices at the law schools, and highly paid, at least initially.[161] When you don't know much about the legal world, and your school emphasizes big law, with highly publicized firm lunches and happy hours on campus, it seems like a no-brainer.[162] The second summer clerkships usually lead to permanent job offers made during the clerkship,[163] with an expectation that the student will say "yes" before the clerkship is over, which is obviously coercive.

Entering third-year students at elite schools[164] often have their permanent job lined up before they begin classes—fully a year before they'd start the job. That's unnecessary and counterproductive, because these students have time and should consider other opportunities, through part-time work during the school year or interviewing. Some career offices push students hard to accept early, influenced perhaps by their own stress that students get jobs, which is a U.S. News metric.[165]

Small firms don't regularly conduct on campus interviews because they don't have formal hiring programs. Most of my students learn a fair amount about small firm practice from their exposure to me. Many ask for my advice. Some ask for my help. As I have an active practice, lots of contacts and pretty good knowledge of a fair amount of the legal field, it's easy for me to advise and help. If there were more practitioners teaching and mentoring—especially when the job process begins in the first year—students would know a lot more about life after law school and would develop many more options. I'm thrilled to help

161. Ilana Kowarski, *10 Law Schools That Lead to Jobs at Big Firms*, U.S. NEWS & WORLD REP. (Apr. 22, 2020), https://www.usnews.com/education/best-graduate-schools/top-law-schools/slideshows/10-law-schools-that-lead-to-full-time-jobs-at-big-law-firms [https://perma.cc/Y6BF-PMS5].

162. Unfortunately, lawyers report the least amount of professional satisfaction in big firm practice compared to small firms, public interest or government jobs. Chanen, *supra* note 143 (finding that only 44 percent of big firm lawyers are professionally satisfied, as opposed to 68 percent of government lawyers, and the small firm and public interest lawyers who fall somewhere in the middle of those proportions).

163. Press Release, National Association for Law Placement, Entry-level Law Firm Recruiting Activity Remains Strong, Exceeding Some Pre-Recession Benchmarks (Mar. 13, 2019), https://www.nalp.org/uploads/PressReleases/3-13-19_Perspectiveson2018Recruiting_PressRelease.pdf [https://perma.cc/7KQU-DYWB]). Students interested in the plaintiffs' practice have organized dozens of affinity chapters at law schools across the country as well as an umbrella organization—the National Plaintiffs' Law Association. *See About Us*, NLPA, https://www.nationalplaintiffslawassociation.org/about (last visited May 24, 2024).

164. Graduates from fourth-tier law schools report the highest level of professional satisfaction of any of the four tiers. *See* Chanen, *supra* note 143. That's likely because few go to big firms.

165. Iacono, *supra* note 112, at 225.

a student or recent grad find the right career path; other practitioner-professors report similar joy, which is a big part of why we teach.

My eyes were opened to the value of practitioners to law students when I took Advanced Criminal Procedure at Penn from Donald Goldberg. Don was the leading white-collar criminal defense lawyer in Philadelphia. I had no interest in criminal defense work, but I heard he was a great lawyer. He was a striking professional—elegant, urbane, poised, confident but not cocky. I learned a lot just by looking at him. When Don Goldberg spoke, he taught many law-related life-lessons that have stuck with me. I have passed them along to my colleagues in the law and my students in law school.[166]

I found myself going to watch Don Goldberg at trial, and I learned more. Decades earlier, Jerome Frank urged law students to learn by watching lawyers try cases.[167] Lawyers passing along wisdom through the generations is essential to professional success. I tell my trial advocacy students that when something bad happens in the courtroom—which is often—"never let your face show how hard your ass is getting kicked." I heard it from my father who, among other skills, was an excellent trial lawyer. He heard it from his mentor, Morton Witkin, who also was an excellent trial lawyer. Witkin came to the bar about one hundred years ago.

CONCLUSION

I suggest a revised model. Practice experience, teaching ability, and scholarship should all be relevant to hiring and promotion. Scholarship should retain importance if it looks to contribute to the development of the law or practice. All who teach should matter, and clinicians, legal writing instructors, and adjuncts should be more closely integrated with the academy. What students want and need should matter too, so their preparation for practice, satisfaction with their law school and post graduate experiences, and tuition burden should be gathered and considered by law schools and rating entities such as U.S. News. Students should learn from practitioners in all ways—from the classroom in core courses, to the clinic and beyond. And practitioners should see and act on the benefit to themselves of closer interactions with students.

Many of the best lessons for law students are timeless, but they must be known to be imparted and must be heard to be learned. That's what practitioners bring to law students. They should be together, in ways small and great.

166. As an example, I asked him in class if it was permissible to accept, as a legal fee, a large amount of cash removed from a paper bag by someone who says he's concerned about being arrested for bank robbery. To me, the answer was unknown, but I thought it lay somewhere in the intersection of principles I'd been taught in property, torts, contracts and professional ethics. Professor Goldberg replied only with a question: "Does the cash have blood on it?"

167. *See supra* discussion Part I.B.