

**UPHOLDING THE OATH OF COMPETENCY WHILE FILLING THE  
INDIGENT VOID: WHY THE LAW SCHOOL CURRICULUM  
SHOULD BE EXTENDED TO A FOURTH YEAR**

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*Your imagination, your initiative, and your indignation  
will determine whether we build a society where pro-  
gress is the servant of our needs, or a society where old  
values and new visions are buried under unbridled  
growth. For in your time we have the opportunity to  
move not only toward the rich society and the powerful  
society, but upward to the Great Society.*

— Lyndon B. Johnson<sup>1</sup>

**I. INTRODUCTION**

By all accounts, the current economic outlook for law students entering the job market is bleak.<sup>2</sup> Some law students who cannot find jobs have been forced to take temporary work paying a mere twenty dollars an hour.<sup>3</sup> In the midst of the current economic crisis, this country's most prominent firms are hiring approximately half as many stu-

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<sup>1</sup> Lyndon B. Johnson, President of the United States, Remarks at the University of Michigan (May 22, 1964), *available at* <http://www.lbjlib.utexas.edu/johnson/archives.hom/speeches.hom/640522.asp>.

<sup>2</sup> See Vesselin Mitev, *Job Anxiety Grips Graduating Law School Students*, N.Y.L.J., Apr. 22, 2009, *available at* <http://www.law.com/jsp/article.jsp?id=1202430074803>; Jessica Calefati, *Tough Job Market for Law School Students*, U.S. NEWS & WORLD REP., Aug. 31, 2009, *available at* <http://www.usnews.com/blogs/paper-trail/2009/08/31/tough-job-market-for-law-school-students.html>; Ameet Sachdev, *Ist-year Lawyers' Salaries Take Hit: Large Firms are Cutting Pay for Future Attorneys*, CHI. TRIB., Mar. 10, 2009, *available at* 2009 WLNR 4541074; Posting of Amir Efrati to WSJ Law Blog, <http://blogs.wsj.com/law/2007/09/24/the-dark-side-of-legal-job-market/> (Sept. 24, 2007, 8:50 AM EST).

<sup>3</sup> Efrati, *supra* note 2.

dents as they did during the previous year.<sup>4</sup> In the past, approximately two-thirds of law school graduates secured jobs prior to graduation; however, many of the 2009 graduates were without jobs just prior to receiving their diplomas.<sup>5</sup> This is perhaps “the worst attorney job market in years.”<sup>6</sup> The scariest part of this bleak legal job market is that if law students are not able to find employment with firms that will teach them how to practice law, they will have to hang their shingle and go it alone, severely unprepared.<sup>7</sup> In essence, a newly licensed attorney can begin to do legal work on behalf of a client without ever spending a day in a law office, without ever talking to a client, or without even drafting a single genuine legal document.<sup>8</sup> Perhaps this is the reason that solo practitioners and firms of five attorneys or less have the highest incidence of legal malpractice claims.<sup>9</sup> Currently, law schools are not preparing students with the practical skills needed for success after graduation, leaving students in a potentially career ending situation if they cannot find an experienced lawyer to adequately train them to be successful attorneys.<sup>10</sup> The legal profession should demand more. This shortfall in current American legal education directly relates to the growing inadequacy of legal representation for the poor by way of a solution to each problem.

In the landmark decision of *Gideon v. Wainwright* in 1963, the United States Supreme Court guaranteed the right to the assistance of

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<sup>4</sup> Calefati, *supra* note 2.

<sup>5</sup> Mitev, *supra* note 2.

<sup>6</sup> *Id.*

<sup>7</sup> See Jayne W. Barnard & Mark Greenspan, *Incremental Bar Admission: Lessons from the Medical Profession*, 53 J. LEGAL EDUC. 340, 354-55 (2003). For a website completely dedicated to solo practitioners, see <http://www.myshingle.com/> (last visited April 25, 2010).

<sup>8</sup> See Barnard & Greenspan, *supra* note 7, at 355. Genuine legal document refers to a document not required for a legal writing course. For purposes of this Article, *genuine legal document* means a document prepared for or by a practicing attorney in anticipation that the document would someday be filed with a court.

<sup>9</sup> AM. BAR ASS'N, PROFILE OF LEGAL MALPRACTICE CLAIMS 2004-2007, at 6 (2008) (noting that in 2007 seventy percent of all legal malpractice claims were filed against firms with between one and five attorneys); see also Barnard & Greenspan, *supra* note 7, at 354 (“Unfortunately, it is these same lawyers (solos and those in firms of two to five lawyers) who have the worst record for malpractice complaints and disciplinary complaints of any segment of the legal profession.”).

<sup>10</sup> See Barnard & Greenspan, *supra* note 7, at 356.

counsel for indigent defendants in state court criminal prosecutions.<sup>11</sup> However, in *Lassiter v. Department of Social Services*, a termination of parental rights case, the United States Supreme Court placed an almost insurmountable roadblock in the way of establishing a per se right to counsel in civil actions, halting *Gideon*'s progression.<sup>12</sup> Since the decision handed down in *Lassiter*, the government continues to provide limited avenues to aid indigent civil litigants, but these efforts suffer from inadequate funding, resources, and manpower needed to meet the legal needs of the nation's poor.<sup>13</sup>

These are the two main problems in the American legal system that this Article focuses on: a lack of civil representation for the poor and a lack of proper practical training for law students entering the workforce. This Article examines how a solution for the latter can help provide a solution to the former. Part II of the Article explores the current *justice gap* in America. Part III explores the inefficiencies of our current legal education system in preparing new attorneys for the practice of law. Part IV surveys other educational models and legal education systems for guidance on how to mend our broken system. Finally, Part V proposes the addition of a fourth year of law school as a solution to the problems identified in Parts II and III.

## II. THE VOID: THE GAP CREATED BY A LACK OF COUNSEL FOR THE INDIGENT, DESPITE SIGNIFICANT EFFORTS TO FILL THIS GAP

### A. *The History of the Legal Services Corporation*

Voluntary legal aid to indigent Americans has existed in the United States since 1876; however, legal aid initially existed through

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<sup>11</sup> *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963).

<sup>12</sup> *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 26-27 (1963) (finding a "presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty").

<sup>13</sup> See LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2009) [hereinafter JUSTICE GAP], available at [http://www.lsc.gov/pdfs/documenting\\_the\\_justice\\_gap\\_in\\_america\\_2009.pdf](http://www.lsc.gov/pdfs/documenting_the_justice_gap_in_america_2009.pdf).

local voluntary groups rather than a government-sponsored program.<sup>14</sup> This changed when Congress established the Legal Services Corporation (LSC) in 1974 to provide funding “for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.”<sup>15</sup> Lyndon B. Johnson’s administration developed the original concept of using federal funding to provide legal services to the poor during President Johnson’s War on Poverty and movement toward the Great Society.<sup>16</sup> The Johnson administration created the federal Legal Services Program of the Office of Economic Opportunity, which paved the way for the creation of the LSC as it is known today.<sup>17</sup>

The LSC distributes federal funding to the various legal services organizations providing counsel to indigents across the United States.<sup>18</sup> Of note is the fact that it is not the LSC providing legal services; the LSC merely funds local programs that in turn hire their own directors, attorneys, and support staff to provide the actual aid.<sup>19</sup>

The yearly appropriations for the LSC vary from year to year, ranging from approximately \$329 million in fiscal year 2002 to appropriations of \$390 million in fiscal year 2009.<sup>20</sup> Despite Congressional intent to keep the LSC out of the political arena, its budget and authority generate ongoing political controversy—most notably the LSC’s budget

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<sup>14</sup> Note, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 HARV. L. REV. 2134, 2136 (2007) [hereinafter *Adopting and Adapting*] (citing BRYANT GARTH, NEIGHBORHOOD LAW FIRMS FOR THE POOR: A COMPARATIVE STUDY OF RECENT DEVELOPMENTS IN LEGAL AID AND IN THE LEGAL PROFESSION 17-20 (1980)).

<sup>15</sup> Joshua D. Blank & Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN ST. L. REV. 1, 4 (2005) (citing 42 U.S.C. § 2996b(a) (1994)).

<sup>16</sup> *Id.*; see also Johnson, *supra* note 1 (“The Great Society rests on abundance and liberty for all. It demands an end to poverty and racial injustice, to which we are totally committed in our time. But that is just the beginning.”).

<sup>17</sup> Blank & Zacks, *supra* note 15, at 4.

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 5 (stating that “[i]n addition to LSC funding, many local programs also receive funds from private sources, such as law firms and corporations,” as well as state and local governments).

<sup>20</sup> LEGAL SERVS. CORP., LSC APPROPRIATIONS: FY 2002 – FY 2009 [hereinafter LSC APPROPRIATIONS], available at <http://www.lsc.gov/pdfs/LSCAppropriations2002-2009.pdf> (last visited April 25, 2010).

reduction from \$400 million to \$278 million in 1996.<sup>21</sup> Notwithstanding the efforts of the U.S. government to provide legal representation to the poor through the LSC, there remains a very significant justice gap in America, leaving millions of impoverished Americans without much needed civil representation.<sup>22</sup>

### ***B. The Justice Gap***

In September 2009 the LSC updated its 2005 report entitled *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, “which documented the enormous challenge the nation faces in providing civil legal assistance to low-income individuals and families.”<sup>23</sup> The report defines the *justice gap* as “[t]he difference between the level of legal assistance available and the level that is necessary to meet the needs of low-income Americans . . . .”<sup>24</sup> Importantly, the report conveyed very significant findings, specifically that the findings of the 2005 report remained valid through 2009 and confirmed that the gap between the legal needs of indigent Americans and the actual legal help they receive still exists.<sup>25</sup> The most troubling statistic is that for every person an LSC program is able to aid, another LSC program must turn down a person seeking help.<sup>26</sup> In addi-

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<sup>21</sup> See Blank & Zacks, *supra* note 15, at 5-6 (citation omitted); see also Letter from Robert D. Evans, Dir., Governmental Affairs Office, Am. Bar Ass’n, to Ernest F. Hollings and Judd Gregg, Ranking Members, Subcomm. on Commerce, Justice, State, the Judiciary and Related Agencies, Comm. on Appropriations (July 15, 2002), available at <http://www.abanet.org/poladv/letters/107th/lsc071502.html>. A further fact showing the attempted distancing of the LSC from the political discourse is the fact that the “LSC is headed by an 11-member Board of Directors appointed by the President and confirmed by the Senate. By law, the Board is bipartisan: no more than six members may be of the same political party.” Legal Servs. Corp., LSC: Board of Directors Profiles, <http://www.lsc.gov/about/board.php> (last visited April 25, 2010); see also Blank & Zacks, *supra* note 15, at 5 (citation omitted). This \$390 million appropriation for fiscal year 2009 was an eleven percent and \$40 million dollar increase to the LSC’s 2008 budget. Legal Serv. Corp., Press Release, House Votes to Increase LSC’s Budget by \$40 Million (Feb. 26, 2009), available at [http://www.lsc.gov/press/pressrelease\\_detail\\_2009\\_T248\\_R6.php](http://www.lsc.gov/press/pressrelease_detail_2009_T248_R6.php).

<sup>22</sup> See JUSTICE GAP, *supra* note 13, at 7.

<sup>23</sup> Helaine M. Barnett, *Preface to JUSTICE GAP*, *supra* note 13.

<sup>24</sup> JUSTICE GAP, *supra* note 13, at 1.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

tion, private or legal aid attorneys address less than one in five of all the different types of legal problems suffered by indigent Americans.<sup>27</sup> Furthermore, there is only one legal aid attorney available to assist every 6415 indigent people.<sup>28</sup> Finally, state courts are experiencing a significant increase in the number of unrepresented litigants, the majority of whom appear pro se because they are unable to afford an attorney.<sup>29</sup> The study also recognizes “that outcomes for unrepresented litigants are often less favorable than those for represented litigants.”<sup>30</sup>

The LSC makes several recommendations for ways to close this justice gap, most of which revolve around increasing the LSC’s funding. One recommendation is that there needs to be an increase in the efforts of our nation’s lawyers to offer pro bono services.<sup>31</sup> From a funding standpoint, however, the study first recognizes that only half of the people who seek help from LSC-funded programs actually receive the legal aid they need.<sup>32</sup> Therefore, the LSC’s budget must be doubled, including a doubling of the funds provided by state, local, and private actors.<sup>33</sup> The report also recommends that since state studies show “less than one in five low-income persons get the legal assistance they need,” the federal contribution should increase fivefold to \$1.6 billion.<sup>34</sup> Therefore, in order for the LSC to be able to serve the number of indigent Americans necessary to close the justice gap, the agency requires more funding, a larger commitment from the legal community, and more attorneys providing legal services to indigent clients.<sup>35</sup>

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* “By comparison, there is one private attorney providing personal legal services . . . for every 429 people in the general population who are above the LSC poverty threshold.” *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 2.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 2-3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 3.

<sup>35</sup> *See id.* at 2-3. “In order to keep faith with our national commitment to equal access to justice, it is essential that the nation move toward the necessary funding levels in firm, measured strides that are designed to close the justice gap as quickly as possible.” *Id.* at 3.

### III. UNPREPARED LAW GRADUATES AND STRUGGLING YOUNG SOLO PRACTITIONERS

#### A. *The Origins of Legal Education*

The modern casebook-based legal education is the legacy of Harvard law professor Christopher Langdell.<sup>36</sup> Langdell wanted to create a more *university-based* legal education that would cover both the theoretical and practical aspects of the law; however, the practical side of his model was ultimately severed, leaving a heavily theoretical approach.<sup>37</sup> The objective of Langdell's model was to have legal education take place in the university, not in apprenticeships or the combination of law school and apprenticeship, as was the popular custom of that time.<sup>38</sup> In 1870 Langdell introduced his new teaching method to his Contracts class, which was "met with student outrage."<sup>39</sup> However, while Langdell's new model received criticism from students, practitioners, and other educational institutions, his theoretical approach to teaching law ultimately prevailed.<sup>40</sup> Criticism of the Langdell model for its lack of emphasis on practical training attributed this dearth to Langdell's own limited practical experience.<sup>41</sup> However, while his background was not well suited for him to be a trial lawyer, he originally wanted to offer practical training in his legal education model and "would have been concerned about any system that did not prepare a lawyer to provide a fair and thorough service to the client."<sup>42</sup>

The ultimate failure of Langdell's original model, however, is that while law professors emphasized the theoretical approach to legal education and this approach thrived, the importance of practical training

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<sup>36</sup> See generally W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1 (1997) (discussing Langdell and his legacy).

<sup>37</sup> *Id.* at 2-3.

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.* at 23. Langdell's method included inquiring about the assigned case facts and arguments, as well as engaging the students to discuss their opinion of the court's arguments. *Id.*

<sup>40</sup> See *id.* at 34 ("Resistance to the new case method also came swiftly in educational and bar circles.").

<sup>41</sup> *Id.* at 67 & n.238 ("Langdell was a 'bookish' man who spent his time in the library and rarely attended court." (citing Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1303 (1947))).

<sup>42</sup> *Id.* at 67-68 (citations omitted).

has received much less scrutiny and has been largely cast to the way-side.<sup>43</sup> This leaves a gap between the legal education received by law students and the education students need to become competent practitioners—and this gap is widening.<sup>44</sup>

### ***B. Current Requirements and the Practical Training Gap***

One of the American Bar Association's (ABA) objectives for the program of legal education is that "[a] law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession."<sup>45</sup> However, it appears the ABA standards are much more tailored to bar passage rates than actually training students to be successful members of the legal community.<sup>46</sup> This becomes apparent by browsing the required curriculum for law school accreditation.<sup>47</sup> In that section, the ABA explains law schools must only offer *substantial opportunities* for:

- (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
- (2) student participation in pro bono activities; and

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<sup>43</sup> See *id.* at 3; see also Stephen J. Friedman, *Why Can't Law Students Be More Like Lawyers?*, 37 U. TOL. L. REV. 81, 81 (2005) ("No one expects a doctor to 'think' like a doctor when she leaves medical school. We expect her to be a doctor.").

<sup>44</sup> Friedman, *supra* note 43 ("The gap between legal education and the needs of both new lawyers and the law firms that employ them seems to be widening.").

<sup>45</sup> AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2009-2010 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 301(a) (2009) [hereinafter APPROVAL STANDARDS], available at <http://www.abanet.org/legaled/standards/2009-2010%20StandardsWebContent/Chapter3.pdf>.

<sup>46</sup> See generally *id.* ("A law school shall . . . prepare[ ] its students for admission to the bar, and effective and responsible participation in the legal profession.") (emphasis added). However, it is the assertion of this Article that the current requirements do not adequately prepare students for the legal profession. See *infra* notes 47-95 and accompanying text.

<sup>47</sup> See APPROVAL STANDARDS, *supra* note 45, at Standard 302.

(3) small group work through seminars, directed research, small classes, or collaborative work.<sup>48</sup>

This section goes on to explain in *Interpretation 302-5* that such *live-client* or *real-life practice* can be accomplished through either law school clinics or field placements.<sup>49</sup> However, the interpretation specifically states “[a] law school *need not* offer these experiences to *every* student *nor* must a law school accommodate *every* student requesting enrollment in any particular live-client or other real-life practice experience.”<sup>50</sup> The inherent problem with the ABA standards is that they set as an objective the preparation of students to be “effective and responsible [participants] in the legal profession” without mandating schools to meet this objective; there is nothing in the ABA standards requiring a law school to ensure that students get exposure to the real world of the legal profession.<sup>51</sup>

Recently, in the spring of 2008, the Center for the Study of Applied Legal Education (CSALE) surveyed *applied legal education*, where students in ABA-accredited law schools provide supervised legal representation to real-life clients.<sup>52</sup> The survey was comprehensive, covering over 77% of ABA-accredited law schools.<sup>53</sup> Out of the schools responding to the survey, only 3% of those schools had student

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<sup>48</sup> *Id.* at Standard 302(b). There is a possibility that Standard 302(a)(4) could also apply, which states “[a] law school shall require that each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession . . . .” *Id.* at Standard 302(a)(4). However, this section does not specifically state *live-client* and therefore has not been included in the main text.

<sup>49</sup> *Id.* at Interpretation 302-5.

<sup>50</sup> *Id.* (emphasis added).

<sup>51</sup> *See id.* at Standards 301-302.

<sup>52</sup> Center for the Study of Applied Legal Education, CSALE Home, <http://www.csale.org/> (last visited April 25, 2010); *see also* Center for the Study of Applied Legal Education, Home, <http://www.csale.org/> (last visited April 25, 2010) (discussing the meaning of *applied legal education*).

<sup>53</sup> CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007-2008 SURVEY 1 (2008) [hereinafter CSALE SURVEY], *available at* <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf>. A copy of the survey itself is also available on CSALE’s website. Ctr. for the Study of Applied Legal Educ., 2007 Survey of Applied Legal Education, Master Survey, *available at* <http://www.csale.org/files/Master.Survey.Complete.pdf> (last visited April 25, 2010).

participation with in-house, live-client clinics that exceeded 50% of the student population.<sup>54</sup> The vast majority of schools reporting, 75.5%, had student-participation rates between 1 and 20% of their student population.<sup>55</sup> The results for participation in field-placement programs were similar, with only 2.7% of the schools responding to the survey having over 50% of students participating, and 75.6% of participating schools having only 1–20% student participation.<sup>56</sup> These results are important because they show there is a very large population of law students who, if they cannot secure real-life legal experience independently, will most likely never receive it before they graduate. In addition, because these clinical and field-placement programs “remain at the periphery of law school curricula” and suffer from both financial and participant constraints, they “can provide only token direct service to the poor as compared to need.”<sup>57</sup>

The simple fact is that despite the existence of live-client clinics, field-placement programs, and law school classes that attempt to teach students practical skills, “[l]awyers complain constantly about the lack of preparation for practice of law school graduates.”<sup>58</sup> In today’s world, law firms want to hire graduates who know “more than just how to think like lawyers.”<sup>59</sup> One reason for this may be that legal education assumes hiring law firms will train students to be effective attorneys.<sup>60</sup> However, this is not happening today, resulting in many new lawyers

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<sup>54</sup> CSALE SURVEY, *supra* note 53, at 7.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Adopting and Adapting*, *supra* note 14, at 2137-38 (citing Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 32 (2000)).

<sup>58</sup> Friedman, *supra* note 43, at 83.

<sup>59</sup> Karen Sloan, *Reality’s Knocking: The Ivory Tower Gives Way to the Real World’s Demands*, NAT’L L.J., Sept. 7, 2009, at col. 1.

<sup>60</sup> See Barnard & Greenspan, *supra* note 7, at 355 (“Just as new physicians would become ‘real doctors’ only after they completed their internship and residency programs, law students would become real lawyers only when they completed an intensive training regime at their law firms.”); see also Friedman, *supra* note 43, at 84 (“The classical paradigmatic relationship between legal education and training to be a lawyer is simple: the most important function of law school education is to teach its students to think like lawyers, and law firms will do the rest.”).

never receiving the proper training.<sup>61</sup> It is apparent that “the model in which senior partners line-edited their associates’ memos and the associates accompanied their partners to court for years before being given a case of their own to handle has become but a dim memory.”<sup>62</sup> Schools have recognized that, especially in the increasingly competitive legal market created by the slumping economy, their graduates need to be prepared with practical skills, not just knowledge of legal theory.<sup>63</sup> This is because legal employers are not willing to pay large salaries to individuals who lack practical training.<sup>64</sup> The recent economic crisis has caused law schools to take notice of the gap in legal education and preparation for the legal profession, resulting in schools “revamp[ing] their curricula to prepare students for the realities of the legal profession.”<sup>65</sup>

For instance, the University of California at Los Angeles recently started an LLM program that gives graduates the skills they would otherwise develop as new firm associates.<sup>66</sup> At Washington and Lee’s law school, third-year students have an option to go through four long simulations that portray real-world legal problems, in lieu of classroom courses.<sup>67</sup> Students receive a case file with a fictitious client.<sup>68</sup> They work through the various legal issues, argue motions, submit briefs and maintain billable hours.<sup>69</sup> More importantly, the school guarantees students involved in this program will have the opportunity to work with a real client.<sup>70</sup> However, these new programs, which are reforming the law school curriculum, are far from comprehensive.<sup>71</sup> A

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<sup>61</sup> Barnard & Greenspan, *supra* note 7, at 355 (“[T]oday, many new lawyers never get this type of training even in the most elite firms, and . . . elite lawyers are no longer getting the kinds of training they received even fifteen years ago.”).

<sup>62</sup> *Id.*

<sup>63</sup> Sloan, *supra* note 59.

<sup>64</sup> *Id.* This article also pointed out that some law firms have “announced apprenticeship programs wherein starting associates earn less and spend a significant amount of time training and shadowing partners.” *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* (“At least one of those [four] cases must involve working with a real client.”).

<sup>71</sup> *See id.* (stating that “[a]lthough the law school curriculum reform movement is gaining steam, legal educators said, progress is piecemeal and not comprehensive”).

much larger fundamental change in curriculum is needed to properly address the gap between legal education and the legal profession.

### C. *Proposals to Change the Current Legal Education Model*

#### 1. *The MacCrate Report*

The Task Force on Law Schools and the Profession in 1992 produced the *MacCrate Report*.<sup>72</sup> Its central focus was on the educational continuum of legal education and what skills a law student should learn in that continuum.<sup>73</sup> The study developed a statement of “the fundamental lawyering skills essential for competent representation.”<sup>74</sup> The skills identified in the *MacCrate Report* are as follows: (1) problem solving, (2) legal analysis and reasoning, (3) legal research, (4) factual investigation, (5) communication, (6) counseling, (7) negotiation, (8) litigation and alternative dispute resolution procedures, (9) organization and management of legal work, and (10) recognizing and resolving ethical dilemmas.<sup>75</sup> The report also provides a list of fundamental values of the legal profession, which includes: (1) provision of competent representation; (2) striving to promote justice, fairness, and morality; (3) striving to improve the profession; and (4) professional self-development.<sup>76</sup> The task force goes on to make a series of recommendations in the *MacCrate Report* to “[e]nhanc[e] professional development during” law school.<sup>77</sup> One recommendation is for law schools not to define their purpose as just preparing students for admission to the bar, but instead “to prepare them to participate effectively in the legal profession.”<sup>78</sup> Another recommendation encourages law schools to develop or expand their instruction in areas such as “problem solving, factual investigation, communication, counseling, negotiation[,] and litigation”

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<sup>72</sup> SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter *MACCRATE REPORT*], available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at II.5.A.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at IV.C.

<sup>78</sup> *Id.* at IV.C.2.

and to recognize that developed methods exist for teaching students these skills.<sup>79</sup> The *MacCrate Report* also recommends that by using clinical programs law schools will assist students in understanding the importance of “organization and management of legal work.”<sup>80</sup> With its outline of skills and values and its recommendations, the *MacCrate Report* was a comprehensive effort to convey that which was necessary for the development of new lawyers and for a self-evaluation by law schools to implement new programs to teach the necessary skills they were not providing.<sup>81</sup>

## 2. The Carnegie Foundation

In 2007 the Carnegie Foundation published a book studying the system of education for lawyers.<sup>82</sup> In this book, the authors make five observations about legal education.<sup>83</sup> One of the observations is that while the casebook method effectively teaches a law student to think like a lawyer, the repetitiveness of this method forces students to change complex situations of actual or potential conflict into only those facts which are necessary for the litigant’s legal claim.<sup>84</sup> While students do this very well, this method hinders a student’s ability to bring this method into “actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions[.]”<sup>85</sup> The study also notes the focus on “systematic abstraction from actual social contexts” suggests two major

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<sup>79</sup> *Id.* at IV.C.13 (internal quotation marks omitted).

<sup>80</sup> *Id.* at IV.C.15.

<sup>81</sup> “This report has provided a unique overview of the legal profession today for which new lawyers must prepare,” and recommends that “[e]ach law school faculty should determine how its school can best help its students to begin the process of acquiring the skills and values that are important in the practice of law . . . .” *Id.* at IV., IV.C.5.

<sup>82</sup> WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

<sup>83</sup> *Id.* at 185-91. These observations are that “[1] [l]aw school provides rapid socialization into the standards of legal thinking. . . . [2] [l]aw schools rely heavily on one signature pedagogy to accomplish their socialization process. . . . [3] [t]he signature pedagogy has valuable strengths but also unintended consequences. . . . [4] [a]ssessment of student learning remains underdeveloped. . . . [and] [5] [l]egal education approaches improvement only incrementally rather than comprehensively.” *Id.*

<sup>84</sup> *Id.* at 187.

<sup>85</sup> *Id.*

limitations on legal education.<sup>86</sup> These are “the casual attention that most law schools give to teaching students how to use legal thinking in . . . actual law practice”; and “law schools’ failure to complement the focus on skill in legal analysis with effective support for developing the ethical and social dimensions of the profession.”<sup>87</sup>

The Carnegie Foundation report goes on to recommend an “Integrative Model for Law Schools,” which would help students piece together their educational development and prepare them for actual practice.<sup>88</sup> One recommendation is that law schools should extend class work beyond the casebook method and provide students with lessons on how to think like a lawyer in a real-world setting.<sup>89</sup> The study also recommends that lawyering should be taught in a way that coincides with the students’ understanding of legal doctrine.<sup>90</sup> The report determined that “[i]deally, this experience [of lawyering courses as intentional compliments to doctrinal instruction] would continue in the second and third years as a gradual development of practice knowledge and skill, beginning in simulation and moving into actual responsibility for clients.”<sup>91</sup> Therefore, consistent with the *MacCrate Report*, the Carnegie Foundation report also recognized the shortfalls of the theoretical casebook method, its lack of attention to the skills needed to be a successful lawyer beyond simply passing the bar exam, and the legal education system’s need to place more emphasis on practical development.

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<sup>86</sup> *Id.* at 188.

<sup>87</sup> *Id.*

<sup>88</sup> *See id.* at 194-97.

<sup>89</sup> *Id.* at 195.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

**IV. THIS IS NOT A NOVEL IDEA: A LOOK AT SIMILAR SYSTEMS  
WITH MANDATORY ON-THE-JOB TRAINING  
BEFORE ACTUAL PRACTICE**

***A. The Medical Profession and Other Professions***

1. The Medical Profession

While it is not my intention to propose the complete adoption of the medical model,<sup>92</sup> the legal profession could benefit greatly by adopting some of its supervised, hands-on clinical training.<sup>93</sup> Medical students must take the United States Medical Licensing Examination (USMLE), also known as the *boards*.<sup>94</sup> The National Board of Medical Examiners (NBME) administers the USMLE, provides the results to state licensing agencies, and works together with the Federation of State Medical Boards to ensure equal recognition of the assessment throughout all fifty states.<sup>95</sup> There are three steps to the medical model.<sup>96</sup>

The first step, usually occurring at the end of the second year of medical school, assesses whether the student “can understand and apply important concepts of the sciences basic to the practice of medicine.”<sup>97</sup> This first step consists of multiple-choice questions prepared “by examination committees composed of faculty members, teachers, investigators, and clinicians with recognized prominence in their respective fields.”<sup>98</sup>

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<sup>92</sup> See Barnard & Greenspan, *supra* note 7, at 340-41.

<sup>93</sup> *Id.* at 342 (“[W]e show how incremental testing over a period of years beginning in law school, coupled with *supervised practice in clinical or simulated settings while in law school, can improve the readiness of new lawyers to practice law.*”) (emphasis added).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> See United States Medical Licensing Examination: Test Content and Practice Materials, <http://www.usmle.org/Examinations/index.html> (last visited April 25, 2010).

<sup>97</sup> Barnard & Greenspan, *supra* note 7, at 342 (quoting United States Medical Licensing Examinations, <http://www.usmle.org/> (last visited April 25, 2010)).

<sup>98</sup> United States Medical Licensing Examination, Step 1 Content Description Online, [http://www.usmle.org/Examinations/step1/step1\\_content.html](http://www.usmle.org/Examinations/step1/step1_content.html) (last visited April 25, 2010).

The test is designed to measure basic science knowledge. Some questions test the examinee's fund of information per se, but the majority of the questions require the examinee to interpret graphic and tabular material, to identify gross and microscopic pathologic and normal specimens, and to solve problems through application of basic science principles.<sup>99</sup>

Step one is considered to be the most nerve racking of the medical examinations, but more importantly, most medical schools require a student to pass step one in order to proceed to her third year of medical education.<sup>100</sup> However, in 2008 94% of Medical Doctor (MD) degree first-time test takers passed, while 81% of Doctor of Osteopathic Medicine (DO) degree first-time test takers passed.<sup>101</sup>

Step two usually occurs near the beginning of the fourth year of medical school "after the student has spent at least a year in a rotation through various clinical specialties."<sup>102</sup> This step seeks to

assess whether [the student] can apply medical knowledge, skills, and understanding of clinical science essential for the provision of patient care under supervision and includes emphasis on health promotion and disease prevention. Step 2 ensures that due attention is devoted to principles of clinical sciences and basic patient-centered skills that provide the foundation for the safe and competent practice of medicine.<sup>103</sup>

This step is now further divided into two substeps.<sup>104</sup> The first is the "Clinical Knowledge (CK) Substep," and consists of multiple-

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<sup>99</sup> *Id.*

<sup>100</sup> Barnard & Greenspan, *supra* note 7, at 342-43.

<sup>101</sup> United States Medical Licensing Examination, 2008 USMLE Performance Data, [http://www.usmle.org/Scores\\_Transcripts/performance/2008.html](http://www.usmle.org/Scores_Transcripts/performance/2008.html) (last visited April 25, 2010) [hereinafter Performance Data]. These numbers account for both United States and Canadian medical schools. *Id.*

<sup>102</sup> Barnard & Greenspan, *supra* note 7, at 343.

<sup>103</sup> United States Medical Licensing Examination, Step 2, <http://www.usmle.org/Examinations/step2/step2.html> (last visited April 25, 2010).

<sup>104</sup> *See id.*

choice questions also prepared by examination committees.<sup>105</sup> The focus of these questions is “on the principles of clinical science that are deemed important for the practice of medicine under supervision in postgraduate training.”<sup>106</sup> The test items describe clinical situations and require that the student provide “a diagnosis, a prognosis, an indication of underlying mechanisms of disease, [and] the next step in medical care, including preventive measures,” or a combination thereof.<sup>107</sup> The second is the Clinical Skills (CS) Substep.<sup>108</sup> This substep “assesses whether [the medical student] can demonstrate the fundamental clinical skills essential for safe and effective patient care under supervision.”<sup>109</sup> Teachers assess medical students using standardized patients who are trained to portray real patients, and the students “are expected to establish rapport with the patients, elicit pertinent historical information from them, perform focused physical examinations, answer questions, and provide counseling when appropriate.”<sup>110</sup> After each interaction, students must record the pertinent patient history, make examination findings, list their diagnostic impressions, and, if necessary, create a plan for further evaluation.<sup>111</sup> The cases the student encounters in this setting mimic situations a physician would be likely to encounter in various medical settings in the United States.<sup>112</sup> Most medical schools require students to pass this step before allowing them to graduate or receive the award of their MD degree.<sup>113</sup> Further, students’ test scores from this step can affect their consideration for placement in teaching hospitals’ postgraduate programs.<sup>114</sup> Passage rates for first-time CK test takers in 2008 were 96% for MD degree test takers and 87% for DO

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<sup>105</sup> United States Medical Licensing Examination, Step 2 CK Content Description Online, [http://www.usmle.org/Examinations/step2/step2ck\\_content.html](http://www.usmle.org/Examinations/step2/step2ck_content.html) (last visited April 25, 2010).

<sup>106</sup> *Id.*

<sup>107</sup> U.S. MED. LICENSING EXAMINATION, 2009 BULLETIN OF INFORMATION 12 (2008), available at [http://www.usmle.org/General\\_Information/bulletin/2009/2009bulletin.pdf](http://www.usmle.org/General_Information/bulletin/2009/2009bulletin.pdf).

<sup>108</sup> *Id.* at 13.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Barnard & Greenspan, *supra* note 7, at 343.

<sup>114</sup> *Id.*

degree test takers, while passage rates for first time CS test takers were 97% for MD degree takers and 87% for DO degree takers.<sup>115</sup>

The third and final step occurs either just after graduation or after a year of postgraduate medical training.<sup>116</sup> This step “assesses whether [a medical student] can apply medical knowledge and understanding of biomedical and clinical science essential for the unsupervised practice of medicine, with emphasis on patient management in ambulatory settings.”<sup>117</sup> This section is similar to the bar exam, as it includes a very large number of multiple-choice questions, a computer-based case simulation section, and it takes a full two days to complete.<sup>118</sup> The passage of this step permits the student to earn his or her license.<sup>119</sup> However, in most states this is only a provisional license, with a permanent license issued after the “satisfactory completion of the [student’s] postgraduate program.”<sup>120</sup> The passage rate in 2008 for first-time MD and DO degree takers was 95%.<sup>121</sup>

As mentioned above, passage of step three allows an applicant to gain a provisional license.<sup>122</sup> Most students, therefore, go on to some type of a postgraduate program.<sup>123</sup> For this program, the medical student selects a specialty and undergoes that specialty’s required training, which usually lasts three to seven years, depending on the specialty selected.<sup>124</sup> During the first year of postgraduate training the student practices more independently than in school, but senior physicians still supervise the student.<sup>125</sup> The student “sees patients, writes orders, makes rounds, and is the first call for problems that arise or need clarifi-

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<sup>115</sup> Performance Data, *supra* note 101.

<sup>116</sup> Barnard & Greenspan, *supra* note 7, at 344.

<sup>117</sup> United States Medical Licensing Examination, Step 3, <http://www.usmle.org/Examinations/step3/step3.html> (last visited April 25, 2010).

<sup>118</sup> Barnard & Greenspan, *supra* note 7, at 344.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Performance Data, *supra* note 101.

<sup>122</sup> Barnard & Greenspan, *supra* note 7, at 344.

<sup>123</sup> *Id.* at 345.

<sup>124</sup> *Id.* at 345-46.

<sup>125</sup> *Id.* at 346.

cation for the nurses responsible for the patient's bedside care."<sup>126</sup> During subsequent years the student still attends classes and takes examinations, but her primary focus is delivering patient care while being supervised by a more senior resident.<sup>127</sup> The student gradually receives increased responsibility, depending on her abilities.<sup>128</sup> During the final, or chief, resident year the student essentially has independent responsibility for patient care, being under general supervision of a faculty member.<sup>129</sup>

After completion of the postgraduate program, the student seeks certification through a national medical specialty board.<sup>130</sup> Certification requires further examination of the student; typically, this is a two-part exam.<sup>131</sup> The first is "a daylong multiple-choice examination," and if the student passes the first part, "an oral examination conducted by a panel of board-certified physicians" follows.<sup>132</sup> Successful passage of these exams allows the student to receive an American board certification, permitting the student to practice in her specialty without supervision.<sup>133</sup> The importance of board certifications is evident because most hospitals will not confer admitting privileges without it and "many HMOs will not credential a physician who is a new graduate unless she gains board certification in one of the recognized specialties."<sup>134</sup>

Jayne Barnard and Mark Greenspan sum up the importance of this model by stating:

[P]hysicians only receive their licenses to practice without supervision after two years of post-college course

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<sup>126</sup> *Id.* & n.21 ("Rounds are conducted in two ways. Bedside rounds involve visiting patients at their bedside and conducting bedside examinations to document clinical progress or deterioration. Usually this includes a review of the chart and pertinent recent laboratory work. Informal rounds involve sitting around a conference table with charts and other available data and reviewing the patients without bedside contact.").

<sup>127</sup> *Id.* at 346.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 346-47.

<sup>134</sup> *Id.* at 347.

work in basic science and two more years of intense, supervised clinical placements in the highly structured environment of an accredited medical school. Then even more is required: three or more additional years of progressively responsible patient care under close supervision in a postgraduate program. By the time they are licensed, physicians have experienced thousands of hours of hands-on contact with patients, most of which involved direct oversight, immediate feedback, systematic periodic evaluation, and rigorous comparison with their peers.<sup>135</sup>

It appears therefore, that when medical students complete their journey to become practicing physicians, they have the requisite skills, knowledge, and experience to be successful members of the medical community. However, a law student can graduate from law school, pass the bar exam, get admitted to the bar, and start *the unsupervised practice of law* without ever spending a day in a law office, meeting a client, stepping into a courthouse, or even drafting a genuine legal document.<sup>136</sup>

## 2. Cooperative Education

Northeastern University founded the cooperative education program, or co-op program, approximately a century ago.<sup>137</sup> Northeastern's co-op program is "one of the largest and most innovative in the world."<sup>138</sup> The program allows students to earn up to three semesters of real-world, "full-time employment in positions related to their academic or career interests."<sup>139</sup> The cooperative education program boasts over 2000 participating employers, in almost forty U.S. states and forty countries around the world, in the areas of "business, health care, education, engineering and technology, the visual and performing arts, and

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<sup>135</sup> *Id.* at 355.

<sup>136</sup> *See id.*

<sup>137</sup> *See* Northeastern University, Cooperative Education, <http://www.northeastern.edu/experiential-learning/coop/> (last visited April 25, 2010).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

public policy . . . .”<sup>140</sup> Northeastern integrates the program into the educational curriculum.<sup>141</sup> Coordinators within each college support students and prepare them for success in their co-ops.<sup>142</sup> According to Northeastern University, “the combination of classroom study and real-world experience is the best possible way to develop the knowledge, capability, and leadership skills that lead to a lifetime of achievement.”<sup>143</sup>

The co-op works by alternating the student’s semesters of class curriculum with participation in full-time employment in a position related to the student’s academic or career interest.<sup>144</sup> The student starts with a course preparing her to participate in the co-op, and the student’s first participation in the co-op begins in her sophomore year.<sup>145</sup> In total, a student will be able to participate in up to three co-ops in the five-year program, but fewer if the student elects to participate in the four-year program.<sup>146</sup> The program uses both academic advisors and co-op coordinators.<sup>147</sup> The coordinator helps the student prepare to participate in

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<sup>140</sup> *Id.*; Northeastern University, Cooperative Education Quick Facts, <http://www.northeastern.edu/experiential-learning/coop/quickfacts/index.html> (last visited April 25, 2010).

<sup>141</sup> Northeastern University, Cooperative Education, How Co-op Works, <http://www.northeastern.edu/experiential-learning/coop/howcoopworks/index.html> (last visited April 25, 2010).

<sup>142</sup> *Id.* “For example, a management student in the College of Business Administration who is interested in corporate security can pursue a security position with one of the College of Criminal Justice’s corporate co-op partners. Or a music industry student in the College of Arts and Sciences can gain valuable insight into founding a record label by landing a College of Business Administration co-op with an entrepreneurial focus.” Northeastern University, Cooperative Education, Areas of Study, <http://www.northeastern.edu/experiential-learning/coop/areasofstudy/index.html> (last visited April 25, 2010).

<sup>143</sup> Northeastern University, Cooperative Education, Co-op at a Glance, <http://www.northeastern.edu/experiential-learning/coop/howcoopworks/coopataglance.html> (last visited April 25, 2010).

<sup>144</sup> *See* Northeastern University, Cooperative Education, Co-op Scheduling Options, <http://www.northeastern.edu/experiential-learning/coop/howcoopworks/schedule.html> (last visited April 25, 2010) (showing a typical four and five-year co-op/class schedule).

<sup>145</sup> Northeastern University, Cooperative Education, How Co-op Works, *supra* note 141.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

the co-op, figure out which co-op job is the right fit for the student, and after the co-op is over, helps the student “reflect on the experience and see how it integrates with [her] classroom studies.”<sup>148</sup> In addition to better preparing students for their professional lives, the Northeastern co-op program also results in nearly two-thirds of its graduates receiving job offers from their co-op employer.<sup>149</sup>

Northeastern’s model of cooperative education is a great example of how to integrate classroom learning with preparation for the student’s ultimate career.<sup>150</sup> The model also shows that real-world experience combined with classroom learning is something that is very attractive to potential employers.<sup>151</sup> The Northeastern model, giving students eighteen months of professional experience throughout the student’s academic career, is a successful example legal education can look to in implementing the new integrative four-year model.<sup>152</sup>

### ***B. Other Countries’ Legal Training Systems***<sup>153</sup>

#### 1. England

In England, there are two paths to becoming a member of the legal profession—as a solicitor and as a barrister.<sup>154</sup> Generally, a solicitor advises and consults clients and prepares legal documents, whereas a barrister actually argues in front of the court.<sup>155</sup> The education of an applicant for solicitor involves four stages: academic, vocational, pro-

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<sup>148</sup> *Id.* (“The reflection process may include participation in seminars, faculty conferences, writing assignments, and presentations.”).

<sup>149</sup> Northeastern University, Cooperative Education, Co-op Outcomes, <http://www.northeastern.edu/experiential-learning/coop/coopoutcomes/index.html> (last visited April 25, 2010).

<sup>150</sup> *See supra* notes 137-49 and accompanying text.

<sup>151</sup> *See supra* note 149 and accompanying text.

<sup>152</sup> *See supra* notes 137-49 and accompanying text.

<sup>153</sup> I have chosen common law countries as those seem to be the most relevant in contemplating a change to the American legal system. *See* Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1222-28 (1995).

<sup>154</sup> *Id.* at 1222.

<sup>155</sup> BLACK’S LAW DICTIONARY 171, 1520 (9th ed. 2009).

fessional, and continuing education.<sup>156</sup> A student usually satisfies the academic stage by achieving a law degree, which is similar to an undergraduate degree, from a university.<sup>157</sup> The next stage, the vocational stage, contains the Solicitor's Finals—an intensive course consisting of a series of lectures and exams requiring students “to commit an array of legal information to memory.”<sup>158</sup> After passing the exams required in the Solicitor's Finals course, the professional stage begins.<sup>159</sup> This stage entails exactly what the name suggests, “a [mandatory] clerkship with a practicing solicitor or law firm.”<sup>160</sup> The students arrange the clerkship themselves, often with help from a group similar to the American Bar Association.<sup>161</sup> After completion of the professional stage, an applicant is “called to the bar as a solicitor,” but must then enter the continuing legal education stage which entails three years of “continuing legal education courses to ensure ongoing development as a practitioner.”<sup>162</sup>

The path to becoming a barrister also has four stages: academic, vocational, bar examination, and pupillage and practical training.<sup>163</sup> The academic stage contains the same requirements for a solicitor; however, in order to advance to the vocational stage, the Council of Legal Education must rank the student's degree high enough, limiting the number of

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<sup>156</sup> Hansen, *supra* note 153, at 1222 (citing Richard Ramsay, *Routes into the Profession*, in THE IVANHOE/BLACKSTONE GUIDE TO THE LEGAL PROFESSION 1990, at 45 (Jonathan Grosvenor ed., 1990)).

<sup>157</sup> *Id.* (citing Ramsay, *supra* note 156, at 45-46; G.S.A Wheatcroft, *The Education and Training of the Practising Lawyer in England*, 30 B. EXAMINER 3, 10-11 (1961)). If a student does not study law at her university, but gains a degree in some other subject, she must take the Common Professional Examination (CPE), which is an “intensive one year course.” *Id.* at 1222-23 (citing Ramsay, *supra* note 156, at 46).

<sup>158</sup> *Id.* at 1223 (citing Ramsay, *supra* note 156, at 47).

<sup>159</sup> *Id.* (citing Ramsay, *supra* note 156, at 47).

<sup>160</sup> *Id.* (citing Ramsay, *supra* note 156, at 47) (“There is no requirement that these positions be paid; however, most of these articles or clerkships are in fact paid positions.”).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* (citing Ann Halpern, *Routes into the Profession*, in THE IVANHOE/BLACKSTONE GUIDE TO THE LEGAL PROFESSION 1990, *supra* note 156, at 159, 159-60).

students who can become barristers.<sup>164</sup> During the vocational stage, students train for three academic terms at the Inns of Court School of Law.<sup>165</sup> These terms consist of “intensive teaching of the skills necessary to be a barrister.”<sup>166</sup> This stage focuses on training students for practice and upon its completion students take the bar examination.<sup>167</sup> Students who pass the vocational stage and the bar examination go on to the fourth stage, which requires them “to work under a certified pupil master, who is a practicing barrister.”<sup>168</sup> The student, “now called a *pupil*,” gets the opportunity to actually practice as a barrister, arguing real cases in front of the court.<sup>169</sup> The oversight by the practicing barrister lasts for six months, at which time the master signs a certificate showing the pupil *performed satisfactorily*.<sup>170</sup> This allows the pupil to obtain a practicing certificate.<sup>171</sup> The practicing certificate allows the student to “advocate on his or her own behalf” without the close supervision of the barrister.<sup>172</sup> As in the initial pupil stage, after an additional six months of practicing without supervision, if performance is *adequate*, the student earns a full practicing certificate and finally becomes a barrister.<sup>173</sup>

Therefore, both parts of the legal profession in England have at least one stage of legal education devoted solely to the development of the skills necessary to practice.<sup>174</sup> In addition, both parts invoke a practicing member of the bar to teach students those necessary skills.<sup>175</sup>

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<sup>164</sup> *Id.* at 1223-24 (citing Halpern, *supra* note 163, at 160-61; Ramsay, *supra* note 156, at 46). “Therefore, not everyone who obtains a law degree or some other degree in combination with the CPE may qualify to become a barrister.” *Id.* at 1224.

<sup>165</sup> *Id.* at 1224 (citing Halpern, *supra* note 163, at 159-60).

<sup>166</sup> *Id.* (citing Halpern, *supra* note 163, at 159-60).

<sup>167</sup> *Id.* (citing Ann Halpern, *The Formal Training – the Vocational Course and the Bar Examinations*, in THE IVANHOE/BLACKSTONE GUIDE TO THE LEGAL PROFESSION 1990, *supra* note 156, at 165, 165-67).

<sup>168</sup> *Id.* (citing David Latham, *Pupillage and the Practical Training*, in THE IVANHOE/BLACKSTONE GUIDE TO THE LEGAL PROFESSION 1990, *supra* note 156, at 171, 171).

<sup>169</sup> *Id.* (emphasis added).

<sup>170</sup> *Id.* (citing Latham, *supra* note 168, at 172).

<sup>171</sup> *Id.* at 1224-25.

<sup>172</sup> *Id.* at 1225.

<sup>173</sup> *Id.* (citing Latham, *supra* note 168, at 172).

<sup>174</sup> See *supra* notes 154-62 and accompanying text.

<sup>175</sup> See *supra* notes 154-62 and accompanying text.

## 2. Canada

Canada's legal education system is very similar to the system in the United States; however, Canada's system significantly diverges after students leave law school.<sup>176</sup> To become a lawyer in Canada, a student must first get a bachelor's degree from a Canadian university.<sup>177</sup> The student then has to graduate from a three-year program at a Canadian law school.<sup>178</sup> Finally, the student "must complete a bar admission course provided by the practicing legal profession."<sup>179</sup> This course contains the "articles in clerkship," followed by six months of "classroom course work."<sup>180</sup> The course work equips students with practical legal skills for the "day-to-day operation of a law practice."<sup>181</sup> The "articles in clerkship" is also practical in purpose, requiring a student to clerk for one year under a practicing attorney.<sup>182</sup> Specifically, the clerkship "provides the graduating law student with an opportunity to learn from an experienced practitioner many of the techniques and procedures not included in the academic courses given at law school."<sup>183</sup> Therefore, as with the English legal education model, the Canadian model includes a period of legal education focusing on preparing the student specifically for the practice of law, which includes a period of oversight by a practicing member of the bar.<sup>184</sup>

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<sup>176</sup> Hansen, *supra* note 153, at 1225 (citation omitted).

<sup>177</sup> *Id.* (citing GERALD L. GALL, *THE CANADIAN LEGAL SYSTEM* 114 (1977)).

<sup>178</sup> *Id.* at 1225-26 (citing GALL, *supra* note 177).

<sup>179</sup> *Id.* at 1226 (citation omitted) (citing GALL, *supra* note 177, at 115).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* (citation omitted).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* (quoting GALL, *supra* note 177, at 115). "When Canadian lawyers are eligible to practice law" it is referred to as being "called to the bar," which means they are "part of the Law Society of a particular province." *Id.* at 1225 (citing GALL, *supra* note 177, at 115).

<sup>184</sup> *See supra* notes 154-83 and accompanying text.

## V. IMPLEMENTATION OF THE NEW SYSTEM: FULFILLING OLD PROMISES

### A. *The Original Promise*

In 2006 the ABA House of Delegates unanimously approved a resolution that urged “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in . . . proceedings [involving] basic human needs . . . such as . . . shelter, sustenance, safety, health or child custody . . . .”<sup>185</sup> The report appended to the resolution stated a core value of the ABA is that “society must provide equal access to justice . . . .”<sup>186</sup> However, the ABA chose to place the burden of providing assistance, not as a tenet of the legal profession itself, but as a service that state, federal, and territorial governments should provide.<sup>187</sup> This is apparent in the ABA’s *Model Rules of Professional Conduct*.<sup>188</sup> While the pertinent rule states that each lawyer has a professional responsibility to assist indigent litigants, the rule and the comments that follow make it clear that this *responsibility* is merely a voluntary one.<sup>189</sup> Therefore, while the ABA appears to be committed to providing legal services to indigents, it has yet to develop a mechanism whereby it can guarantee indigent representation and meet this recognized need.<sup>190</sup>

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<sup>185</sup> Task Force on Access to Civil Justice, Am. Bar Ass’n, Res. 112A (Aug. 7, 2006) [hereinafter ABA Resolution], *available at* <http://www.abanet.org/legalservices/sclaid/downloads/06A112A.pdf> (unanimously approved by ABA House of Delegates) (on file with author).

<sup>186</sup> *Id.* at 2. The report goes on to quote former ABA President Justice Lewis Powell saying, “[e]qual justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.” *Id.*

<sup>187</sup> *See id.* (“[T]he [ABA] urges federal, state, and territorial governments to provide legal counsel.”).

<sup>188</sup> *See* MODEL RULES OF PROF’L CONDUCT R. 6.1 (2009), *available at* [http://www.abanet.org/cpr/mrpc/rule\\_6\\_1.html](http://www.abanet.org/cpr/mrpc/rule_6_1.html) (last visited April 25, 2010).

<sup>189</sup> *Id.* & cmts. 1, 12 (“The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.”).

<sup>190</sup> *See* ABA Resolution, *supra* note 185, at 1-2.

Another standard in the model rules is that of competence.<sup>191</sup> Rule 1.1 mandates that “[a] lawyer *shall* provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”<sup>192</sup> In determining competence, factors the ABA takes into account include the lawyer’s general experience and training, and specific knowledge of the subject matter being advised.<sup>193</sup> In addition, the rule states that the applicable standard is usually “that of a general practitioner.”<sup>194</sup> The problem with this standard is that most, if not all, law school graduates today simply cannot meet this standard of competence.<sup>195</sup> Consequently, many new law school graduates violate this rule. It is a matter of great concern that the public cannot trust the legal education system to produce competent attorneys prepared to provide adequate representation after earning a law degree.<sup>196</sup>

Under the current ABA model rules and law school approval standards, both the need for assistance of counsel to indigents and the required competence of newly graduated attorneys is not being met.<sup>197</sup> The addition of a fourth year of legal education devoted to the development of practical skills is a fundamental change the legal education system must make to meet these current shortfalls.<sup>198</sup>

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<sup>191</sup> See MODEL RULES OF PROF’L CONDUCT R. 1.1 (2009), available at [http://www.abanet.org/cpr/mrpc/rule\\_1\\_1.html](http://www.abanet.org/cpr/mrpc/rule_1_1.html) (last visited April 25, 2010).

<sup>192</sup> *Id.* (emphasis added).

<sup>193</sup> *Id.* at cmt. 1 (“In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer’s general experience, [and] the lawyer’s training and experience in the field in question . . .”).

<sup>194</sup> *Id.*

<sup>195</sup> See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 26 (2007) (“Most law school graduates are not sufficiently competent to provide legal services to clients or even to perform the work expected of them in large firms.”).

<sup>196</sup> *Id.* (“Potential clients should be able to hire any licensed lawyer with confidence that the attorney has demonstrated at least minimal competence to practice law[,] . . . but today they cannot.”).

<sup>197</sup> See MODEL RULES OF PROF’L CONDUCT R. 1.1, 6.1 cmts. 2, 10; APPROVAL STANDARDS, *supra* note 45, at Standard 302.

<sup>198</sup> See *infra* Part V.B-C.

### ***B. Implementation of What and from Where?***

Adding a fourth year to the law school curriculum will require a number of structural changes to the current legal education model, which must come into effect through modification of the current ABA law school approval standards.<sup>199</sup> Implementation of this four-year model will draw upon other professional education models and legal systems.<sup>200</sup> This four-year model will continue the Langdellian tradition, but will extend legal education to what Langdell thought impossible, infusing the practical and theoretical aspects of the law into the system of legal education.<sup>201</sup>

The first, second, and third years of law school will remain unchanged.<sup>202</sup> The only major change to the educational system currently in place will be the addition of practice-based elements to the existing requirements.<sup>203</sup> The fourth year will consist entirely of real-world experience and will not contain a classroom component. This fourth year will be similar to the United States medical model and the English and Canadian legal models.<sup>204</sup> This new four-year model of instruction will expose students to the actual practice of law with direct oversight from an active member of the bar.<sup>205</sup> This new model will mandate that every student attending an ABA-accredited law school during their fourth year participate in either an in-house live client clinic or work for an LSC-funded program. Therefore, the current language of ABA standard 302(b), which concerns the curriculum requirements for law schools, will have to be changed.<sup>206</sup>

The current language of ABA standard 302(b) states:

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<sup>199</sup> See generally APPROVAL STANDARDS, *supra* note 45.

<sup>200</sup> See *supra* Parts III-IV.

<sup>201</sup> See Carter, *supra* note 36, at 2-3 (“Langdell’s original goal was to forge a university-based legal education that would teach both the practical and the theoretical . . . [, but] Langdell eventually concluded that his hope of integrating the practical and theoretical within the university was unrealistic and he turned to supporting a heavily theoretical approach . . .”).

<sup>202</sup> See APPROVAL STANDARDS, *supra* note 45, at Standard 302.

<sup>203</sup> *Id.*

<sup>204</sup> See *supra* Part IV.

<sup>205</sup> See *supra* Part IV.

<sup>206</sup> See APPROVAL STANDARDS, *supra* note 45, at Standard 302(b).

(b) A law school shall offer substantial opportunities for: (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence; (2) student participation in pro bono activities; and (3) small group work through seminars, directed research, small classes, or collaborative work.<sup>207</sup>

The new language should state that a law school “shall mandate that all students participate in,” replacing the voluntary language of the old standard (“[a] law school shall offer substantial opportunities for . . . .”).<sup>208</sup> Additionally, standard 302(b)(1) should be changed from “live-client or other real-life practice experiences”<sup>209</sup> to “school-sponsored live-client clinic or live-client LSC funded program.” The reason for requiring both in-house clinics and participation in LSC-funded programs is that presumably the LSC programs may not be amenable or able to offer every law student in the country a slot in their programs. Therefore, the in-house clinics will offer guaranteed practical experience opportunities to students in their fourth year.<sup>210</sup> Students will also need to obtain the required provisional certificate from the state's bar to represent clients under the supervision of clinical faculty or an LSC staff attorney.<sup>211</sup> Mandating that a student has real-life, practical work experience under the supervision of practicing attorneys will ensure the student acquires the basic professional skills before graduating.

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<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* at Standard 302(b)(1).

<sup>210</sup> This system differs from the medical model, where if a student does not get selected for a residency, they are usually foreclosed from advancing their education and must turn to other options. Further, law schools should be required to ensure the student receives this year of practical training because it is their objective to prepare students for “effective and responsible participation in the legal profession.” *Id.* at Standard 301(a).

<sup>211</sup> For Florida's Certified Legal Intern requirements, see Checklist To Register for Certified Legal Internship (CLI) Clearance, <http://www.floridabarexam.org/public/main.nsf/checklistcli.html?OpenPage> (last visited April 25, 2010).

Requiring students to participate in a mandatory year of work practice will solve many of the problems identified by the various reports which criticize the current legal education model.<sup>212</sup> This system will force students to take a step away from the doctrinal instruction which dominates the classroom. Instead of professors handing students an exam with all of the facts in front of them, the fourth year will require students to discover facts and analyze legal problems in a way that attorneys do on a daily basis. More importantly, this exposure to practice, before actual practice, will provide oversight of the student's work, thus protecting the client's interests and reducing the increased risk of malpractice associated with inexperience.<sup>213</sup>

Another point to make is that this model does not completely center on litigation. This model can operate in any area of the diverse legal practice arena. In the recent CSALE survey, covering current clinical programs at ABA-accredited law schools, the survey identified that there were over thirty-four different substantive focuses for these clinics.<sup>214</sup> The clinical offerings included a broad array of practice areas, including civil litigation, alternative dispute resolution, transactional, and intellectual property.<sup>215</sup> Therefore, even if a student does not want to be a trial lawyer, clinical offerings should be able to provide enough different types of topic areas to accommodate their desired area or a similar area of practice.<sup>216</sup> Allowing students to satisfy the fourth-year clinical requirement by working at a LSC-funded program *or* a live-client in-house clinic also helps fill the pressing need for representation of indigents in legal matters the government would otherwise bar LSC-funded programs from handling.<sup>217</sup>

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<sup>212</sup> See *supra* Part III.C.1-2.

<sup>213</sup> See *supra* Part I.

<sup>214</sup> CSALE SURVEY, *supra* note 53, at 8.

<sup>215</sup> See *id.*

<sup>216</sup> See *id.* Presumably, each school will not be able to provide clinical experience in every practice area in which its students may wish to gain experience. However, this problem is largely solved by the student selecting a law school that does contain her preferred area of practical experience, similar to what medical students do when seeking practical experience in their chosen specialty. See *supra* notes 122-34 and accompanying text.

<sup>217</sup> For instance, federal statutes prohibit LSC-funded programs from participating in class action lawsuits. 42 U.S.C. § 2996e(d)(5) (2006). Since the law school's clinical programs are funded by student tuition, not government tax dollars, the clinical

**C. *The Fourth Year's Funding: No Additional Government Funding is Necessary***

At first glance, this four-year model seems like another instance of more government spending. However, it is my contention that law schools can implement this program without one dollar of taxpayer money. This funding solution, however, does come at a cost to someone; the cost will be borne by the students who receive the educational benefit.

The ABA keeps statistics on law schools, including the number of Juris Doctorate (JD) degrees earned each year and the average tuition cost for public school resident students (R), public school nonresident students (NR), and private school students (P).<sup>218</sup> Extrapolating the number of schools taken into account for the R, NR, and P categories can determine a total average law school tuition cost. In the R category, using tuition figures from eighty public schools, the resulting average tuition figure is \$16,836.<sup>219</sup> For the NR category, the average tuition cost, taking into account seventy-nine schools, results in an average tuition figure of \$28,442.<sup>220</sup> Next, in the P category, with 118 schools taken into account, the average tuition figure is \$34,298.<sup>221</sup> Taking the number of schools measured and multiplying the total by the average tuition for that category determines the total amount of tuition measured for that category.<sup>222</sup> Next, taking the total amount of tuition measured and dividing that by the number of schools determines the average law

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programs would be allowed to participate in class action lawsuits, free of the constraints placed on the LSC.

<sup>218</sup> See A.B.A., LAW SCHOOL TUITION 1985-2008, available at <http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf> (last visited April 25, 2010); A.B.A., JD & LL.B DEGREES AWARDED 1981-2008, <http://www.abanet.org/legaled/statistics/charts/stats%20-%207.pdf> (last visited April 25, 2010).

<sup>219</sup> See LAW SCHOOL TUITION 1985-2008, *supra* note 218.

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> For the R category, the number of schools (80) multiplied by the average tuition (\$16,836) comes to a total of \$1,346,880. *See id.* For the NR category, the number of schools (79) multiplied by the average tuition (\$28,442) comes to a total of \$2,246,918. *See id.* For the P category, the total number of schools (118) multiplied by the average tuition (\$34,298) comes to a total of \$4,047,164. *See id.*

school tuition cost.<sup>223</sup> This figure comes to \$27,584.70.<sup>224</sup> Finally, using this number and multiplying it by the total number of JD degrees awarded in 2008 determines the total amount of money available for this fourth-year program.<sup>225</sup> This figure comes to \$1,202,361,903.60—approximately three times the current LSC budget of \$390,000,000.<sup>226</sup>

Recall the earlier discussion of the LSC's recommendations on how to close the justice gap.<sup>227</sup> To meet the needs of those currently seeking help from LSC-funded programs, the recommendations included increasing the amount of lawyers offering pro bono services and doubling the LSC's current budget, including the funding coming from state, local, and private actors.<sup>228</sup> The funding model proposed will generate \$1.2 billion dollars—over three times the amount of the LSC's current budget.<sup>229</sup> However, to ensure that the LSC programs receive the requisite funding and personnel to fill their current shortfalls, the system will require schools to allocate at least 40% of students and their tuition to an LSC-funded program.<sup>230</sup> Therefore, while the program should have ample funds to meet the current needs of clients LSC pro-

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<sup>223</sup> Total number of schools is determined by adding the three categories of school tuition together. *See id.* Therefore, 80 (R tuition) plus 79 (NR tuition) plus 118 (P tuition) equals 277 schools total. *See id.* The total amount of tuition from note 222 is \$7,640,962; when this is divided by 277, the final average tuition number comes out to \$27,584.70.

<sup>224</sup> *See supra* note 223.

<sup>225</sup> *See* JD & LL.B DEGREES AWARDED 1981-2008, *supra* note 218. Multiplying \$27,584.70 times 43,588 equals \$1,202,361,903.60. *See id.*

<sup>226</sup> LSC APPROPRIATIONS, *supra* note 20.

<sup>227</sup> *See supra* Part II.B.

<sup>228</sup> *See supra* Part II.B. Note also that the report recommended to increase federal funding fivefold to \$1.6 billion in order to meet the state needs studies that indicated only “one in five low-income persons get the legal assistance they need.” JUSTICE GAP, *supra* note 13, at 3. However, this Article focuses on the LSC's outline of “those *currently* seeking help from LSC grantees.” *Id.* (emphasis added).

<sup>229</sup> *See* LSC APPROPRIATIONS, *supra* note 20; *see also supra* notes 225-26 and accompanying text.

<sup>230</sup> The reason for choosing 40% as opposed to 33.3% is that while it would be ideal that all of the tuition from the students goes directly to the participating LSC program, the school will need to take some sort of fee for the school personnel in charge of coordinating and matching students with LSC programs.

grams must now turn away, it will also make a substantial step toward closing the justice gap.<sup>231</sup>

## VI. CONCLUSION

When a patient goes to a doctor's office, that patient is not hoping for the doctor to merely *think* like a doctor, they want her to be able to diagnose the problem and provide the correct treatment.<sup>232</sup> Clients need to be able to hire an attorney who is competent to listen to their problem, analyze and reason through its legal issues, counsel the client on their various options, negotiate with opposing counsel, litigate the matter to a conclusion, and simultaneously remain organized and able to manage the other cases that the attorney is handling.<sup>233</sup> The current Langdellian method of legal education is not properly preparing law school graduates to competently represent clients upon graduation and bar certification.<sup>234</sup> There is also a justice gap in America that results in millions of Americans not receiving the legal services they desperately need.<sup>235</sup> These two problems persist.<sup>236</sup> Solving them requires fundamental changes to the legal education system.<sup>237</sup> The legal education system can look to other successful professional education models, including the medical profession, cooperative education, and other countries' legal education programs for guidance on how to better prepare lawyers for the practice of law.<sup>238</sup>

This new four-year model adopts concepts from the medical model and the English and Canadian legal models, including first providing classroom education in students' career topic and finishing their education by supervising students as they learn to actually perform that career.<sup>239</sup> Similarly, it borrows concepts from the cooperative education

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<sup>231</sup> See JUSTICE GAP, *supra* note 13, at 3; see also *supra* Part II.B.

<sup>232</sup> Friedman, *supra* note 43, at 81 (citing Nancy B. Rapoport, *Is "Thinking Like a Lawyer" Really What We Want to Teach?*, 1 J. ASS'N LEGAL WRITING DIRECTORS 91, 92 (2002)).

<sup>233</sup> See *supra* Part III.C.

<sup>234</sup> See *supra* Part III.

<sup>235</sup> See *supra* Part II.B.

<sup>236</sup> See *supra* Parts II-III.

<sup>237</sup> See *supra* Part V.

<sup>238</sup> See *supra* Part IV.

<sup>239</sup> See *supra* Parts IV.A.1, B.1-2.

model to integrate a students' education with professional experience, increasing that students' marketability by better preparing them for their posteducation career.<sup>240</sup> Further, the four-year model also accounts for existing studies on the current shortfalls of the legal education model, by not just teaching students how to "think like lawyers," but instead also giving students practical instruction to develop skills such as case management, counseling, and actual responsibility for clients.<sup>241</sup> Finally, the four-year model has the additional-but-necessary benefit of impacting the current lack of legal representation for the poor by providing the manpower and funds necessary to make a substantial step toward closing the justice gap.<sup>242</sup>

The ABA mandates that law schools prepare students for "effective and responsible participation in the legal profession."<sup>243</sup> Through introduction of the fourth-year mandatory practice model, schools can finally fulfill this mandate.<sup>244</sup> This solution is especially attractive because in addition to creating a better legal education system and improving competency, the fourth year will provide much needed assistance to indigent litigants—something the ABA believes every lawyer should strive to do.<sup>245</sup> In viewing the current condition of the American legal system, the legal profession should demand more from lawyers.<sup>246</sup> The four-year model does this by better preparing lawyers through practice with close oversight by members of the bar and providing the assistance needed to greatly impact the justice gap, thus aiding the legal profession in moving closer toward its goal of "equal justice under law."<sup>247</sup>

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<sup>240</sup> See *supra* Part IV.A.2.

<sup>241</sup> See *supra* Part III.C.1-2.

<sup>242</sup> See *supra* Parts II, V.C.

<sup>243</sup> See *supra* Part III.B.

<sup>244</sup> See *supra* Part V.

<sup>245</sup> See *supra* notes 188-89.

<sup>246</sup> See Barnard & Greenspan, *supra* note 7, at 356.

<sup>247</sup> ABA Resolution, *supra* note 185, at 2 ("The ABA has long held as a core value the principle that society must provide equal access to justice, to give meaning to the words inscribed above the entrance to the United States Supreme Court – 'Equal Justice Under Law.'").