RECREATING THE LAW SCHOOL TO INCREASE MINORITY PARTICIPATION: THE CONCEPTUAL LAW SCHOOL

By Patricia A. Wilson

By now, there is more than enough evidence that minorities are significantly under-represented in the legal profession. According to the 2000 United States census, total minority representation in the legal profession is approximately 9.7%, notwithstanding that those same statistics indicate that nearly 25% of the population is non-white.[1] Although Blacks/African-Americans make up 12.3% of the total population, they comprise only 3.9% of the legal profession. Hispanics comprise 12.5% of the total United States population but make up only 3.3% of the legal profession.[2]

Moreover, there is general consensus that increasing the racial and ethnic diversity of the bar is something to aspire to for any number of reasons. Indeed, there are many stakeholders who stand to benefit by increasing the diversity of the bar. Law firms, looking to acquire business from clients in the global marketplace, fully recognize that a mostly white, mostly male firm puts them at a distinct disadvantage. Clients, for their own personal and business reasons, seek to have representation by attorneys whose diverse backgrounds and experience are more likely to result in the best representation. Diversity in the bar serves to guard against injustice in general or, to state it slightly differently, to be a necessary component to making justice for all a reality.

No doubt there exist a substantial number of ethnically, racially, and culturally diverse individuals who are capable of completing a quality program for legal education. They have the intelligence to master the law. Moreover, there are likely a significant number of prospective attorneys who have the ambition to complete a rigorous program of legal education, become licensed, and practice the law competently and ethically.

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1. U.S. DEP'T. OF COMMERCE ECONS. AND STATISTICS ADMIN., U.S. CENSUS BUREAU, CENSUS 2000 BRIEF: OVERVIEW OF RACE AND HISPANIC ORIGIN 3, *available at* http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf. In fact, minority representation among other professionals is significantly better than that in the legal profession. For example, minority representation in the accounting profession is 20.8%; with respect to physicians, 24.5%; and among college and university professors, 18.2%. *See* COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, AM. BAR ASS'N, EXECUTIVE SUMMARY: MILES TO GO 2000: THE PROGRESS OF MINORITIES IN THE LEGAL PROFESSION, *available at* http://www.abanet.org/minorities/publications/milesummary.html.

2. COMM'N ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION, AM. BAR ASS'N, STATISTICS ABOUT MINORITIES IN THE PROFESSION FROM THE CENSUS, http://www.abanet.org/minorities/links/2000census.html (last visited Feb. 20, 2010).

Yet too many of those individuals never become members of the bar due to a number of barriers that diminish the likelihood of an individual ever practicing law. The lack of knowledge about what steps one must take to become a lawyer poses a significant problem. It is a problem that this author encounters regularly among current college students who have a nascent dream to become lawyers but have little guidance on how to make their dream reality, notwithstanding the availability of prelaw advisors on virtually every undergraduate campus. Of course, there are those who have already taken themselves out of consideration on the mistaken belief that they lack the necessary intelligence or skills to enter into the ranks of attorneys. We have perpetuated or allowed the misconception that one must be extraordinarily smart in order to become a lawyer.

Arguably, the current law school model is also in part responsible for the lack of diversity in the bar. The plain but harsh truth is that the traditional law schools have themselves created or allowed a number of barriers to exist that ultimately affect the lack of diversity. No single factor is responsible, but the combination of different practices, policies, and factors have combined to depress the number of minorities that are accepted and that ultimately graduate from law school and sit for the bar exam.[3]

First, the cost of higher education in general and post-graduate education in particular is prohibitively expensive for many would-be law students. In 2008, the average non-resident tuition and fees for one year of law school at a state school was more than $24,000.[4] For that same year, private tuition and fees averaged more than $34,000.[5] Neither figure includes living expenses. With tuition increases of approximately 8% per year, a student who commenced law school in 2008 with no award of scholarship aid could expect to spend on average nearly $50,000 to obtain his juris doctor from a state school and more than $110,000 for a private law school education. That very well is likely to make law school an unobtainable goal for many students who do not have the means to pay for law school out of their pockets or the desire or ability to finance their education. This is particularly likely if an individual has amassed substantial debt to finance his or her undergraduate education.

3. The increased numbers of minority law school graduates does not detract from the fact that various barriers exist to depress those statistics.

4. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION STATISTICS: LAW SCHOOL TUITION, http://www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf (last visited Feb. 20, 2010).

5. LAW SCH. ADMISSION COUNCIL, MINORITY DATABOOK 14, tbl. IV-1 (2002) ("The average for African-American students over a seven year period was 141 to 142. For Native Americans, 147 to 148; Asian Americans, 150-151; Caucasians, 151 to 152; Hispanic 146 to 147; Mexican-Americans, 146 to 147; and Puerto Ricans, 137 to 138.").

For those who are willing to proceed, the next barrier may be the Law School Admissions Test (LSAT) and the likely over-reliance on it by many law schools as a tool for selecting applicants for admission. The weaknesses of the LSAT have been well-documented, including that a significant disparity exists between the scores of white test-takers versus minority test-takers.[6] While there is a correlation between LSAT scores and first-year grades, that correlation generally hovers around 0.4.[7] Moreover, while it appears that combined, the LSAT and the undergraduate grade point average (UGPA) are correlated to the cumulative law school grade point average (LGPA), the author of the study that reached that finding concluded that the correlation is such that a substantial amount of variance in outcomes is left unexplained by the LSAT and UGPA measures.[8]

Perhaps most importantly, no study appears to correlate LSAT scores, alone or in combination, with either UGPA or LGPA, to success or effectiveness in the actual practice of law, whether success is measured by income, position, job performance, reputation among colleagues, or any other possible indicator. Indeed, a relatively recent study considered whether LSAT scores or UGPA had predictive validity for effectiveness as a lawyer.[9] The researchers concluded that neither the LSAT nor the UGPA, either alone or in combination, was

6. Law School Admission Council, Minority Databook 14 tbl.IV-1 (2002) ("The average for African-American students over a seven year period was 141 to 142. For Native Americans, 147 to 148; Asian Americans, 150-151; Caucasians, 151 to 152; Hispanic 146 to 147; Mexican-Americans, 146 to 147; and Puerto Ricans, 137 to 138").

7. Lisa Anthony Stilweel et al., *Predictive Validity of the LSAT: A National Summary of the 2005–2006 Correlation Studies*, *in* LSAC RESEARCH REPORT SERIES 6 (2009), *available at* http://lsacnet.lsac.org/research/tr/Predictive-Validity-LSAT-National-Summary-2005%E2%80%932006-Correlation-Studies.pdf. There is a stronger correlation to first year grades when a student's LSAT score and uniform grade point average (UGPA) are considered together. *Id.*

8. Linda F. Wightman, *Beyond FYA: Analysis of the Utility of LSAT Scores and UGPDA for Predicting Academic Success in Law School*, *in* LSAC RESEARCH REPORT SERIES 2 (2000), *available at* http://lsacnet.lsac.org/research/rr/Utility-of-LSAT-Scores-and_UGPA-for-Predicting-Academic-Sucess-in-Law-School.pdf. Wrightman concluded that combined, the LSAT and UGPA have predictive validity for the LGPA. *Id.* Correlations ranged from .23 to .62 among the different racial and ethnic groups. *Id.* at 22. Interestingly, the study also indicated that the combined measures had a tendency to *overpredict* law school performance for non-white students, particularly for non-white students with a higher predicted LGPA as compared to students with a lower predicted LGPA. *Id.* at 4.

9. *See generally* MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION DEVELOPMENT AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING (2008), *available at* http://www.law.berkeley.edu/files/LSACREPORT final-12.pdf. Using a variety of methods, the researchers first identified twenty six factors of lawyer effectiveness. They then selected standardized tests or created tailor-made tests that might predict actual performance on those twenty six factors and gave those tests to the study participants. The researchers collected LSAT scores and other law school performance data, with the consent of the participants, and the researchers additionally sought appraisals on each participant's actual job performance, obtaining ratings on the twenty six factors from the participant's supervisors, peers, and the individual participants themselves. The researchers then investigated the pre-

particularly useful in predicting performance on the majority of the effectiveness factors identified in the research.[10]

Notwithstanding the identified weaknesses of the LSAT, the very real implications of law school rankings, like those published annually by *U.S. News and World Report,* seemingly nudge law schools to even greater reliance on the LSAT as an admissions tool. As much as law school administrators lament the rankings and would prefer to be unaffected by them, the fact of the matter is that the importance that alumni, legal employers, and prospective students ascribe to those rankings compels schools to study what measures they can take to maintain their ranking, at a minimum, and ideally to improve their rankings.

Looking specifically at the *U.S. News* rankings, many factors go into them. However, not all of them can be directly affected by actions of law school administrators. The LSAT scores of matriculating students is one of the measures that can have a significant effect on a school's ranking in *U.S. News,* forcing schools to compete for the students with the highest LSAT scores, or, as one commentator has described it, engaging in an arms race.[11] Given the documented differences in LSAT performance by non-whites as compared to whites, the implications for minority applicants are obvious.[12]

The effect of cases like *Grutter v. Bollinger*[13] and the various state initiatives to limit the consideration of race or ethnicity in admissions decisions similarly cannot be overlooked. Common practice prior to *Hopwood v. The University of Texas*[14] included a consideration of an applicant's race or ethnicity in making an admissions decision.[15] Various schools used various methods to ensure that they seated a diverse class of entering students.[16] With the holdings in *Grutter* and *Gratz v.*

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dictive validity of LSAT scores, UGPA, and the various other standardized or tailor-made tests.

10. *Id.* at 74.

11. Abiel Wong, Note, *"Boalt-ing"Opportunity?: Deconstructing Elite Norms in Law School Admissions*, 6 GEO. J. ON POVERTY L. & POL'Y 199, 238 (1999).

12. *See, e.g.*, William D. Henderson, *The LSAT, Law School Exams, and Meritocracy: The Surprising and Undertheorized Role of Test-Taking Speed*, 82 Tex. L. Rev. 975, 978 (2004) (Discussing the effect of test-taking speed on disparity of LSAT score between whites and non-whites).

13. Grutter v. Bollinger, 539 U.S. 306 (2003).

14. Hopwood v. Tex., 78 F.3d 932 (5th Cir. 1996) (concluding that a consideration of race or ethnicity in making an admissions decision violated the U.S. Constitution's Equal Protection Clause).

15. *See id.* at 935–36 (describing the admissions process of law schools).

16. *See, e.g.*, Gratz v. Bollinger, 539 U.S. 244 (2003). The plaintiffs, two Caucasian applicants who unsuccessfully sought admission to the University of Michigan, challenged the University's affirmative action admissions policy, alleging that it violated the Equal Protection Clause of the U.S. Constitution. Under that policy, among other practices meant to increase diversity in the entering class, the University automatically awarded minority applicants twenty points, which increased the likelihood that they would ultimately gain admission to the school. The Supreme Court agreed, by a 6–3 majority, that the affirmative action plan was unconstitutional because it was not

Bollinger,[17] however, at best, a school can consider race or ethnicity among a list of "plus factors."[18] Arguably, the other possible plus factors, such as a disadvantaged educational background, disadvantaged economic background, first generation college graduate, etc., benefit both majority and minority students, thus blunting any real effect of the ability to consider race or ethnicity as a means to increase diversity in the class.

Beyond the barriers identified above, law school performance may stand as an additional barrier to minority graduation, which then affects minority licensing. Data indicates that, at least among the elite schools, minorities are concentrated in the bottom half of their classes.[19] The debate continues as to why that is the case,[20] but what is indisputable is that poor law school performance directly impacts the likelihood of graduation.[21] Students who place at or near the bottom of their first-year class are less likely to graduate, which then makes them ineligible to sit for the bar exam in the vast majority of states.[22] Moreover, those who finish in the bottom half of their classes are

narrowly tailored and was more in the nature of a quota system. *Id.* *See also Grutter*, 539 U.S. 306 (2003). The plaintiff challenged the University of Michigan Law School's admissions program, which was significantly different from that employed by the undergraduate school. The Law School considered race and ethnicity in reviewing an applicant's file, but the applicant received no automatic advantage as result, unlike the practice of the undergraduate school. In a 5–4 decision, the Supreme Court concluded that the Law School's plan did not violate the Equal Protection Clause. Rather, because the Law School employed a more holistic approach, looking at a variety of factors, including individualized interviews and other factors, that approach passed constitutional muster. Race and ethnicity were simply "plus factors" that the Law School considered. *Id.*

17. *Gratz*, 539 U.S. at 274; *Grutter*, 539 U.S. at 334.

18. *See Grutter,* 539 U.S. at 334.

19. Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 427–28 (2004).

20. *Id.* at 441–42. Sanders theorizes that affirmative action has two separate negative effects on the grades of black law students, which grades ultimately affect graduation rates. First, Sanders argues that affirmative action boosts African-Americans from schools where they would have had average grades to schools where they are competing against higher credentialed students and thus are likely to have poor grades. The resulting effect is that lower-tiered schools must similarly boost African-American's with lower credentials on average than their white counterparts if those lower-tiered schools are to seat diverse classes. Second, Sanders argues that this cascade effect results in the lowest-tiered schools accepting blacks that would have not qualified for admission to any law school but for the affirmative action plan and thus ultimately having poor outcomes in terms of grades and graduation. *Id.* at 441–42.

Many other commentators have criticized Sanders' statistical methodology or the conclusions he draws on the effect of affirmative action. *See, e.g.*, Daniel E. Ho, *Why Affirmative Action Does Not Cause Black Students to Fail the Bar*, 114 YALE L.J. 1997 (2005); Ian Ayres & Richard Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STAN. L. REV. 1807, 1809 (2005); Beverly I. Moran, *The Case for Black Inferiority? What Must Be True if Professor Sander is Right: A Response to* A Systemic Analysis of Affirmative Action in American Law Schools, 5 CONN. PUB. INT. L.J. 41, 48 (2005).

21. Sander, *supra* note 20, at 435.

22. *Id.* at 440.

more likely to face extra challenges in finding employment in the legal field.[23]

That is the situation. Nonetheless, the purpose of this Article is not to criticize the current law school model. It is a model that has, in many respects, served society well, having produced thousands of competent lawyers over the years since it became the dominant model. It is the model that has produced all of the minority lawyers that are currently members of the profession. Moreover, to their credit, faculty and administration at many law schools are very motivated to improve the situation but are constrained in their efforts by the law and other factors. This Article is not meant to be unduly critical of the current law school model.

In addition, this is not meant to be yet another article arguing that law schools need to increase skills training.[24] Rather, the simple question put forth is whether a different model for legal education might serve as an alternative to the traditional law school model and, in conjunction with the efforts of the traditional law schools, aid in increasing the numbers of minorities licensed to practice law.

DEFINING THE LAW SCHOOL MISSION

If a law school is to be a major factor in increasing the number of minority lawyers, it must conclude that its primary mission is to prepare students to actually practice law, and it must not lose sight of that mission.[25] Much has been written criticizing the graduate school model of legal education, i.e., where a law school's philosophical mission is to engage in scholarly pursuits in a quest to produce knowledge for the sake of knowledge and to equip students with the knowledge needed to become competent lawyers after graduation.[26] Law schools offer many interesting and important courses, but those courses may only tangentially relate to the practice of law. As Paul Lippe noted, "[l]aw schools are extremely disengaged from professional practice—they seek neither to understand nor to influence it."[27]

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23. *See id.*

24. *See, e.g.*, John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 180 (1993); John W. Reed, *The Practice of Law in the Third Millenium: From Angst to Optimism?*, 36 TENN. B.J. 18 (2000).

25. *See generally* William D. Underwood, Commentary, *The Report of the Wisconsin Commission on Legal Education: A Road Map to Needed Reform, or Just Another Report?*, 80 MARQ. L. REV. 773, 775–76 (1997) [hereinafter Underwood 1997]; *see also* William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 226 (1996) (proposing that graduates of those schools that subscribe to the graduate school philosophy are likely to be unprepared to practice law without additional training and close supervision by experienced attorneys).

26. *See, e.g.*, Underwood 1997, *supra* note 26, at 778.

27. Paul Lippe, *A Call for Law School 4.0*, COMPENSATION AND BENEFITS FOR L. OFFS., Sept. 2009, *available at* 09-9 CBLOFF 10 (Westlaw).

A graduate school model may be appropriate for schools that have developed a reputation for placing their graduates in academia and that attract students who aspire to that career path. In short, a well-established school can continue the program that has brought it success. In addition, a school that has developed a reputation sufficiently strong that it can place its graduates, notwithstanding their lack of preparation to practice law, because law firms and other employers are willing to invest in training those graduates, similarly has little reason to adopt a different model of legal education.

However, such an education will not serve well the vast majority of law students who will not land teaching jobs or those students who graduate from a school whose reputation is not yet established.[28] Rather, those graduates must possess marketable skills and knowledge that justify the time and money expended to obtain a law degree. The curriculum under which these graduates have trained must reflect the school's mission to prepare practicing lawyers, and all major decisions must reflect that mission, including faculty hiring. This idea was the guiding principle in conceiving the proposal set forth herein.

DEFINING THE CURRICULUM FOR THE NEW MODEL LAW SCHOOL

A school that adopts the mission to train lawyers must give serious consideration to the knowledge and skills necessary to practice law. At a minimum, it would seem that the law school curriculum must include courses directed at the following:

1. Developing analytical skills, including logical reasoning. The ability to analyze cases and to utilize the various forms of reasoning is key to any successful practice. Perhaps the most challenging aspect of law school is the realization that many legal issues have no definitive answer, but rather, one must be able to build or dissect a logical argument to reach a principled conclusion and to persuade others to agree with that conclusion.
2. Teaching basic legal principles across the broad spectrum of the law. To be effective as lawyers, students must understand the black letter rules as they currently exist, as well as the policy underlying those rules.[29] Theory cannot, and should not, be overlooked as an important element of the law school's curriculum. Just as importantly, there should be a focus on black letter law, ideally, the law of a particular jurisdiction.

28. Indeed, only those law school graduates with stellar academic credentials from top-ranked schools are likely to be competitive in obtaining law school teaching jobs.

29. Perhaps one of the biggest temptations of faculty members who teach in schools that have adopted the graduate model is a tendency to expend a disproportionate amount of class time in their narrow area of expertise. Those instructors who give in to the temptation may tend to spend less time on the law as it currently exists in favor of a theory or test proposed but not adopted by any court of law or subscribed to by any practicing lawyer. It is certainly appropriate to raise new theories and to share with one's students the fruits of one's research, but not at the expense of the students learning legal principles that are demonstrably useful.

3. Developing both oral and written communication skills. Communication is one of the most important skills to be developed, regardless of whether a lawyer's practice focuses on litigation or transactional matters. Moreover, graduates must be skilled in communicating with different audiences—judges and other lawyers, as well as laypeople, including clients. As such, each graduate must develop the interpersonal skills that facilitate communication with those different audiences and in those different contexts.
4. Developing research skills. The law is too vast for any individual to learn it all during law school. Graduates must be armed with the ability to access all of the resources that exist to know the different aspects of the law.
5. Developing advocacy skills. Oral advocacy is a key skill for both transactional and trial lawyers. Consequently, students must be able to construct a logical and persuasive argument aimed at achieving a particular goal. Trial skills, appellate skills, negotiation skills are all important in this area.[30]

RETHINKING LAW SCHOOL: THE PROPOSED MODEL

If things are done the way they have always been done, we can generally expect to get the results we have always gotten. Law schools have made great strides in increasing minority enrollment, but perhaps we should entirely rethink the model. We should keep what is good about the current law school model, but we should not be limited by it. If we continue to limit ourselves to educating students the way we have for the past 100 years, we may miss opportunities to accomplish more. We may miss an opportunity to provide a quality legal education that also increases minority representation in the bar.[31]

The first consideration is the structure of the program for the new model. As accustomed as most lawyers, law faculty, and prospective law students are to the structure of the traditional law school—namely, four years of undergraduate education to obtain a bachelor's degree, followed by three years of law school and the conferring of a *juris doctor* degree, perhaps it is time to reexamine whether this structure is so necessary that an alternative cannot be considered. Plenty

30. Schultz and Zedeck identified twenty six individual factors, grouped into eight umbrella categories, in their research. Their eight umbrella categories include: 1) intellectual and cognitive, e.g. analysis and reasoning and problem solving; 2) research and information gathering; 3) communications; 4) planning and organizing; 5) conflict resolution; 6) client and business relations–entrepreneurship; 7) working with others; 8) character. SHULTZ & ZEDECK, *supra* note 9, 26–27. All of the factors they identified are almost certainly important for effective lawyering. It would seem, however, that some of the factors cannot be taught directly, e.g. working with others. For such a trait, perhaps the goal should be to provide opportunities and encouragement for the development of those traits.

31. See Trail & Underwood, *supra* note 26, at 204–08, for a summary of the history of legal education in America.

of evidence suggests that the traditional structure need not necessarily be followed in the new model law school.[32] Indeed, the current structure associating a law school with a university has not always been the means for training new lawyers.[33]

Rather than the typical seven year course of study, perhaps it would be worth considering a five- or six-year program that commences with the start of college rather than after one has earned a four-year degree. Precedent exists already for such a program when one considers, for example, the program of many pharmacy schools. A two-year pre-pharmacy program is followed with four years of pharmacy school.[34] A number of medical schools have similarly established programs that require a shorter course of study—a six- or seven-year program versus the traditional four years of college and four years of medical school.[35]

An effective model of legal education might be one that includes two phases. The first phase would consist of a minimum of two years of intensive pre-law preparation, followed by the second phase consisting of three years of law school courses. The first two years should be multi-disciplinary in nature, devoted to learning the knowledge and developing the skills that serve as foundations for success in law school and beyond. Courses that would appear to be particularly valuable include courses in logic, history, government and the legislative process. Additionally, a well-prepared student should have completed basic business courses, such as accounting and finance. Courses aimed at honing oral communication skills should also be a vital part of the planned pre-law program. Given that the goal is to eventually obtain a law degree, the entire course of study should be focused on developing strong analytical and communication skills.

32. *See, e.g.*, Tulane University Law School, Prospective Students: Frequently Asked Questions About Admission, http://www.law.tulane.edu/tlsadmissions/index.aspx?id=46 (last visited Feb. 27, 2010).

33. There was a time when lawyers trained through an apprenticeship model. *See* Trail & Underwood, *supra* note 26, at 204. That method of legal education had its weaknesses but it produced some of the great lawyers of the past. More recently, there has been the development of the on-line schools through which an individual can obtain a legal education. *See, e.g.*, Concord Law School, http://www.concordlawschool.edu/ (last visited Feb. 20, 2010).

34. *See, e.g.*, Purdue University School of Pharmacy and Pharmaceutical Sciences Doctor of Pharmacy Program, http://www.pharmacy.purdue.edu/academics/pharmd/ (last visited Jan. 24, 2010); Purdue University School of Pharmacy and Pharmaceutical Sciences Pre-Pharmacy Curriculum, http://www.pharmacy.purdue.edu/academics/prepharm/curriculum.php (last visited Jan. 24, 2010); Kansas University School of Pharmacy Curriculum, http://www.pharm.ku.edu/index.php?page=content:pharmd_curriculum (last visited Jan. 24, 2010).

35. *See, e.g.*, Penn State's Accelerated Premedical-Medical Program, Pennsylvania State University, http://www.science.psu.edu/premedmed/ (last visited Jan. 24, 2010); Honors Program in Medical Education, Northwestern University, http://www.feinberg.northwestern.edu/AWOME/HPME/Prospective_HPME/overview.html (last visited Jan. 24, 2010). (http://www.feinberg.northwestern.edu/AWOME/HPME/Prospective_HPME/overview.html).

Such an approach is only a slight departure from the traditional stance on pre-law education. The American Bar Association takes no position on a recommended course of study.[36] Rather, it suggests that prospective law students take difficult courses from demanding instructors.[37] To be successful, a new model should ensure that students indeed have actually taken courses that challenge them to think hard and work hard from the outset of their course of study. The new model should not leave it to chance that these students have been well-advised to take courses that are beneficial to their preparation.[38]

As students complete the first phase of their education, a decision by the student as well as the institution would be required to determine if the student continues on to the second phase, that is when a student begins the actual law school courses. Those students who have concluded that law school is not a fit for them should ideally have a sufficient foundation to move into another major, with most, if not all, courses counting towards fulfilling the degree requirements. On the other hand, for those who wish to continue to law school, the time will have come to prove their mettle.[39]

This determination should be made using a variety of traditional and nontraditional methods for deciding who progresses on to phase two. Grades during those first two years would be a key component. Solid grades should be expected and required. Other key components in the selection process (the admission process, if you will) might include a personal interview—a practice followed by many medical schools but by few law schools.[40] While personal statements and letters of recommendation would continue to be important considerations, a personal interview would provide the prospective phase-two student an opportunity to demonstrate his or her communication skills

36. *See* PRE-LAW COMM. OF THE ABA SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, PREPARING FOR LAW SCHOOL, http://www.abanet.org/legaled/prelaw/prep.html (last visited Feb. 20, 2010).

37. *Id.*

38. One wonders how often students are encouraged to take a less challenging course of study as a means to achieving an exceptional grade point average, but with the attendant cost in terms of preparation for law school.

39. Once again, such an idea is not without precedence. Acceptance into the various six- or seven-year medical school programs, for example, is often dependent on satisfying various conditions. *See* SHULTZ & ZEDECK, *supra* note 9.

40. A critical weakness in all selection methods is the inability to gauge perseverance, work ethic, people skills, or other intangible traits. An applicant's personal statement as well as letters of recommendation may provide some insight to the decision-makers. However, given that the personal statement is often the product of a number of individuals who have written or edited the statement, and that letters of recommendation are, in the cynic's view, little more than a measure of how well an applicant has identified his or her supporters, these provide limited information about the intangibles of an individual's personality. While there are those who "interview well" it is more challenging to hide one's true persona during a face-to-face interview or even a telephone interview.

and the interviewer(s) an opportunity to gain more insight into the intangibles that are key to successful lawyering.

A student proposing to continue on to phase two might be required to provide a writing sample or to provide other evidence of skills necessary to success as a lawyer. A moot court argument or some other "audition" that demonstrates one's ability might be a consideration.

One thing that should play only the most minor role is the LSAT. To be accredited by the American Bar Association, a law school must require applicants to take a valid and reliable admissions test to assist the school and the applicant in assessing the applicant's capabilities to complete the program.[41] A school is not required to use the LSAT specifically, but any test used must be shown to be valid and reliable.[42] Indeed, the Standard suggests that a pre-admission program of course work taught by full-time faculty members could be useful.[43] In any event, Standard 503 does not require that any particular weight be given to such a test.[44] Consequently, whether the school relied on the LSAT or another test would be open for consideration.

If the decision is made to require the LSAT, it should account for little in the determination. Beyond the weaknesses in using the LSAT, there is less need to rely on the LSAT for a number of reasons. The LSAT serves as one mean to gauge a student's likely success in law school by law school admissions officers who have relatively little additional information about the applicant and certainly nothing that is standardized in nature.[45] The LSAT serves as a shorthand, standardized means for comparing applicants with a variety of degrees earned from a diverse range of colleges to determine which will be allowed to matriculate.[46]

However, under the new model law school, the decision-makers should have substantially more relevant information about a prospective phase two student at their disposal. Thus they should have greater insight to the abilities of the particular students, including the intangibles. The LSAT is simply not as necessary in this instance.

In many respects, phase one of the new model law school has a precedent, namely the Council on Legal Education Opportunity (CLEO) program. CLEO is designed to serve as a stepping stone into law school for students whose LSAT scores or undergraduate grades

41. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2009–2010 EDITION 39 (2009).

42. *Id.*

43. *Id.*

44. *Id.*

45. *See* Dennis J. Shields, *A View from the Files: Law School Admissions and Affirmative Action*, 51 DRAKE L. REV. 731, 736–37 (2003) (discussing law school admission process).

46. *See* Eulius Simien, *The Law School Admission Test as a Barrier to Almost Twenty Years of Affirmative Action*, 12 T. MARSHALL L. REV. 359, 371 (1987).

are otherwise disappointing.[47] The summer institutes, during which participants take abbreviated courses in topics typically taught during the first year of law school, are designed to prepare students for the rigor of law schools.[48] In addition, the summer institutes provide participants the opportunity to demonstrate to law schools their ability to succeed.[49] The "grades" they receive in courses taught by law faculty may serve to help those participants gain admission to a law school that would otherwise be inclined to deny them admission.

The new model law school differs from CLEO, however, in a significant and positive way. The new model aims to provide a broader and more complete foundation for preparing for law school courses while proving that one is capable of completing the course work necessary to obtain a law degree.

THE NEW MODEL CURRICULUM

At some point, students must commence their legal education, and phase two seems to be the appropriate place. The phase two curriculum should, as is the case with traditional law schools, consist of three years of law school courses. The courses required during the first year would in many respects resemble those required at most American law schools. Torts, Contracts, Property, Criminal Law, Civil Procedure, Criminal Procedure, and Legal Writing are fairly typical courses and with good reason. These courses tend to serve as the foundation for the more specialized courses that occur later during the three years.

What should be different, however, is the manner in which those courses are taught. Rather than one instructor, two instructors who team teach each course would seem to offer students a number of advantages, particularly if one instructor was the typical law school professor and the other was an active practitioner.

Traditional law school professors and practicing attorneys have the potential to complement the strengths that each bring to the classroom. The intellectual, theoretical side of law is important and relevant. So too is the practical side. Perhaps a more colloquial way of expressing the two sides is as book smarts and street smarts. Law school professors tend to be high on the scale in terms of book smarts, whereas one might expect that practitioners tend to rank high on street smarts. This is not to suggest that practitioners are not similarly intellectual or to suggest that academics lack practical knowledge. Rather, it is simply a recognition that many academics have followed a

47. *See* Pre-Law Programs: Six Week Summer Institute, http://www.cleodivercity network.org/index.cfm?fuseaction=page.viewPage&pageId=569&parentID=557& nodeID=1 (last visited Jan. 12, 2010) (describing the CLEO Summer Institute for 2010).

48. *Id.*

49. *Id.*

different career path for which there may be little incentive to fully develop the practical knowledge necessary for every-day-client representation.[50] The same can be said for successful practitioners, who are likely to be quite adept at achieving a particular objective for a client with less time to spend, and little incentive to do so, in contemplating the theoretical aspects of law beyond a particular case on which the attorney is working. Students, however, should be exposed to both types of individuals such that they benefit from the synergy of the different ways of viewing the law.

How a course is taught is just as important as *who* teaches the course. The Socratic method has its place, but a combination of Socratic teaching, problem solving, and practical exercises that encourage students to develop a range of skills and traits necessary for success should be included in the course. Ideally, mock client interviews or oral arguments would be worked into the substantive course. Group projects, as a means to encourage collaboration, should be another consideration. Business school students routinely complete group projects.[51] On the other hand, one queries how frequently law students are encouraged to collaborate with each other beyond simply moot court or mock trial competitions, notwithstanding that most lawyers regularly collaborate formally or informally, whether they are members of a large firm or sole practitioners.

Using the team approach would provide students the benefit of a more complete understanding of the law, the policies that underlie the rules of law, and just as importantly, the relevance of those concepts to the practice of law. I would venture to guess that many professors have been told by former students that as students, they failed to recognize the importance of a particular concept or its relevance in the larger scheme until they completed a summer clerkship or the first year or two of their careers. Perhaps no instructor can fully apprise students of the significance of what they are learning, but one would expect that two instructors, working in tandem from different perspectives, would stand a greater chance of giving students a more complete picture of the substance of the law and its use as a means to accomplishing a particular goal.

A team approach, however, does present challenges. The coordination necessary to teach a coherent course would have to be addressed. Moreover, at first blush, one would have to question how financially practical it is to potentially double the faculty needed to teach each course. A definitive response is not offered to the question of the expense associated with such a proposal. However, the expense need not necessarily be double the cost of a one-instructor-per-class system,

50. *See, e.g.*, Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems"*, 61 RUTGERS L. REV. 867, 972 (2009).

51. *See* McCombs School of Business, Cohort System, http://mba.mccombs.utexas.edu/students/academics/curriculum/cohort-system.asp (last visited Feb. 20, 2010).

particularly if the team's teaching responsibility did not split evenly between the two instructors.[52] Moreover, given that law firms and corporations have a stake in the quality of legal education as well as in increasing the number of minorities, one could foresee a company with an in-house legal department or a law firm agreeing to "lend" to the law school for some predetermined duration a limited number of attorneys at no cost to the law school. In other words, the firm would continue the salary of its attorney while allowing that individual to serve on the law faculty for a year or ideally two years. The intangibles of allowing their practitioners a sabbatical or leave from practice might prove attractive to firms or companies.

Ideally, the second-year courses in the curriculum would similarly be team-taught, with an emphasis on courses that are directly useful to practicing attorneys. Indeed, to ensure that students have the best opportunity to be prepared from the outset, courses in Family Law, Partnerships and Corporations, Trusts and Estates, Secured Transactions, and the like should be required. In other words, the required curriculum should include what is sometimes derisively referred to as the "bar courses" because those are the subjects that are tested on the bar exams of many states. Requiring such courses is simply a recognition that the new model law school is meant to prepare students for the practice of law, and the bar exam is the measure of whether an examinee has achieved minimal competence to entitle him or her to represent clients.[53]

The third year might emphasize developing the skills necessary for success as an attorney. A concentrated course in practical lawyering skills, whether in trial advocacy skills or transactional skills, should serve as a key component of the new model law school. A well-structured and monitored clinical experience would prove useful given the real-world experience a clinic provides.

On the other hand, a structured laboratory program should not be overlooked. The ability to control the exercises and to ensure that all students have the opportunity to develop practical lawyering skills has its advantages, not least of which may be cost.[54]

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52. For example an academic might over the duration of the course have primary responsibility for teaching 75% of the in-class time, with input from the practitioner, with the practitioner teaching the remaining 25%, with input from the academic. As such, two sections of one course could be taught by a total of three instructors–two academics and one practitioner.

53. The bar review courses that the vast majority of bar examinees take to prepare for the bar exam should be just that: courses that review that which an individual has already learned during the previous three years of education. A two or three hour lecture is no substitute for a well-planned course. To the extent a law school relies on a bar review course to prepare its graduates for sitting for the bar exam, that school is potentially engaging in fraud if it purports to prepare students for practicing law.

54. A laboratory learning experience avoids the cost associated with the extra faculty members necessary to supervise law students, the support staff, maintenance of the physical facilities, and liability insurance. However, a well-designed laboratory

Finally, it would be appropriate to consider the merits of a required internship with a practicing lawyer. Internships already serve to provide students a quality experience. It is sensible to consider this—one of the aspects of traditional legal education that can be very beneficial—in designing the new model law school.

Other Components

Examinations. Many law school exams, particularly first-year exams, are often time-pressured affairs, consisting of questions that may or may not present realistic situations likely to be encountered in practice. Time-pressured exams have their place. There are times when an attorney must file the emergency motion or a lawyer has limited time to act in a commercial matter. But one must question how often a lawyer is called on to act under such conditions. In connection with questions about appropriate accommodations for disabled students, researchers have begun to question whether such time-pressured tests are valid measures of a student's grasp of the material.[55]

This is not to suggest that no test ever be time-pressured, but rather that a student's final grade be comprised of practice-like projects during the term or take-home exams that require use of a broad spectrum of resources to hone research skills and require a student to draft a well-constructed answer, allowing reasonable time for completing the project or exam. The tests and the projects can and should still be rigorous. However, given the artificiality of even the best test or project, an instructor should strive to avoid injecting more artificiality into the process by imposing unreasonable time constraints on students as a means of evaluating them.

Grading

Grades are a necessary evil of virtually all academic endeavors, and grades should be important and meaningful measures of a student's accomplishment in the course. Ideally, the new model law school would ditch any mandatory curve, opting instead for a reasonable straight grading scale in which theoretically, every student in the class could receive an A or B, rather than some students being graded down simply to comply with a mandatory curve. By the same token, top grades should be reserved for only those students who have done top quality work. A straight curve would additionally seem to encourage students to work collaboratively rather than compete for the 10% of As that might be available on a mandatory curve.

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program can guaranty that all students will try a set number of cases or put together a variety of transactions, including negotiating the deal, drafting the documents, and addressing related legal issues.

55. *See, e.g.*, Ruth Colker, *Extra Time as an Accomodation*, 69 U. PITT. L. REV. 413, 474 (2008).

Regardless of whether the school imposed a mandatory grading curve or a straight grading scale, instructors would have to guard against the kind of grade inflation that could result in all but the most academically-challenged students receiving As or Bs, thus undermining the credibility of those grades. To state it more bluntly, theoretically there would be the possibility that no student earned an A, but rather the top grade was a C if that indeed was the best work done by any student. From the standpoint of job placement following graduation, the students are likely to be more marketable if prospective employers have a meaningful gauge of a candidate's ability based on that candidate's grades.

EXTRACURRICULAR ACTIVITIES

The next question to be addressed is where extracurricular activities fit into the new model law school. The simple answer is they are to be encouraged, to the extent they are consistent with the mission of the law school. That is, to the extent they complement the mission of developing practical skills, extracurricular activities should be encouraged.

I appreciate all that membership on a legal journal entails.[56] It is an honor to be a member of a law journal, but in the end, much of what occurs in connection with a law journal tends to serve as a distraction from endeavors that are more directly useful in practice. Researching and writing are to be encouraged, but a journal is not the only means to accomplish that, and too many law journals focus on esoteric theories that no one, with the exception of other academics, is likely to read.[57] I believe that this is part of what Paul Lippe is referring to when he refers to law schools being out of touch with practice.[58]

Moreover, with respect to cite checking, one should be familiar with the Blue Book and proper use of legal citations, but many hours are devoted to tedious cite checking that would prove valuable to someone who aspires to be an editor, perhaps, but not to someone whose future is to represent clients. The exposure to new ideas and theories that comes with law review membership is to be encouraged, but again, one must question whether the trade-off in time and effort is justified by the post-graduation benefit.

On the other hand, extracurricular activities that provide additional opportunities to develop the skills necessary for practice are particularly worthy of encouragement, including participation on a moot court team. Conducive to preparing for the practice of law are developing good appellate arguments and dissecting those of an opponent

56. I particularly appreciate the Texas Wesleyan Law Review for conceiving the idea of the symposium, organizing it, and publishing the symposium papers.

57. *See, e.g.*, Erwin Chemerinsky, *Why Write?*, 107 MICH. L. REV. 881, 893 (2009).

58. *See* Lippe, *supra* note 28..

in preparing the brief; fine tuning the oral advocacy skills and thinking on one's feet during the oral arguments; and working collaboratively with the other team members. The same can be said of the preparation for mock trial competitions as well as negotiation, client counseling, arbitration competitions, and other similar activities.

LOCATION

The final consideration is where to establish the new model law school. Folklore has it that when bank robber Willie Sutton was asked why he robbed banks, he responded, "Because that's where the money is."[59] Aside from the questionable morality of the statement, Sutton had a valid point: one has to go to the place that has what one wants. If the goal is to increase the numbers of minorities that matriculate in law school, common sense would suggest going to those places where a significant concentration of students of color can be found to establish the new model of law school.

Locating the school in any number of the major cities, many of which have significant minority populations, would certainly be worth considering. However, the Historically Black Colleges and Universities (HBCUs) seem to offer some distinct advantages.[60] The same is true for Hispanic Serving Institutions (HSI) as well as those that have a high Hispanic enrollment.[61] The students at these institutions have already committed to higher education and no doubt, some have already considered law school. The ideal situation seemingly would be a school that already has the infrastructure to create and administer an educational program, as well as a student body that contains a sufficient number of students who are interested in obtaining a law degree. These students would serve as the core of the student body within the law school. Developing a one-school course of education for obtaining a law degree over five or six years would seem to make sense.

The suggestion to locate a new model law school at a HBCU or HSI is by no means meant to suggest that students enrolled at these institutions are less competitive in gaining admission to a traditional law school. Many HBCU and HSI graduates are admitted each year to traditional law schools and go on to have successful careers in all as-

59. Some attribute the quote to John Dillinger as well.

60. *See generally* Stephen Provasnik et al., Nat'l Ctr. for Educ. Statistics, *Historically Black Colleges and Universities, 1976 to 2001*, E.D. TAB, Sept. 2004.

61. The Hispanic Association of Colleges and Universities defines HSIs as colleges, universities, or systems/districts where total Hispanic enrollment constitutes a minimum of 25% of the total enrollment. "Total Enrollment" includes full-time and part-time students at the undergraduate or graduate level (including professional schools) of the institution, or both (i.e., headcount of for-credit students). The U.S. Department of Education uses a slightly different definition, requiring a minimum of 25% full-time equivalent student enrollment.

pects of the legal profession.[62] Rather, the aim is to take advantage of the unique character of these institutions in attracting significant numbers of minority students and to use that to the advantage of the legal profession.[63]

A Critical Evaluation of the New Model

The new model law school is not perfect, nor is it complete. Perhaps most obviously, only scant attention has been paid to the cost of such an endeavor as proposed. To accomplish what is suggested and to do it in such a way that graduates are fully prepared for the responsibility of practicing law may make tuition cost-prohibitive. I recognize this distinct possibility. Nonetheless, at this point, the purpose is simply to raise the possibility of such a model to encourage further consideration.

Beyond the measurable costs of such endeavor, there must also be a consideration of the intangible costs to the graduates of such a law school. A full four years of undergraduate school provides an opportunity for growth, exploration, and maturation. It might be easy to lament that in years gone by, productive adulthood started at a significantly earlier age than it does now. Only in more recent years have we have stretched adolescence such that it lasts through the mid-20s or later, with college students regularly needing five or six years to complete their Bachelor's degrees.[64] Nonetheless, the long adolescence provides a time for simply growing up. It gives young adults time to discover themselves and learn their strengths and weaknesses before becoming fully responsible for themselves. Expecting that at perhaps as early as 22 or 23 years of age a law graduate would be sufficiently mature to handle the legal affairs of their clients may be asking more than what many young adults are capable of achieving.

62. *See generally* Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, First Year J.D. and Total J.D. Minority Enrollment for 1971–2007, http://www.abanet.org/legaled/statistics/charts/stats%20-%208.pdf (showing number and percentage of minority students enrolled in juris doctorate programs); *Employment Patterns: 1982-2004*, NALP Bulletin, (Nat'l Assoc. of Legal Career Prof'ls, Inc., D.C.), June 2006, *available at* http://www.nalp.org/2006junemploymentpatterns (illustrating the increasing percentage employment of minorities across all types of positions across the legal profession); *A Demographic Profile of Judicial Clerks*, NALP Bulletin, (Nat'l Assoc. of Legal Career Prof'ls, Inc., D.C.), June 2008, *available at* http://www.nalp.org/jun2008demographicprofile (showing the increasing percentage of minorities obtaining judicial clerkships); *Women and Minorities in Law Firms by Race and Ethnicity*, NALP Bulletin, (Nat'l Assoc. of Legal Career Prof'ls, Inc. D.C.), Jan. 2010, *available at* http://www.nalp.org/race_ethn_jan2010 (showing that minorities are achieving partner status in all size firms).

63. The ability to obtain a law degree over a shorter period of time may, in fact, draw certain students to the school, particularly those individuals who have long planned to become lawyers and are anxious to start their legal studies.

64. Kevin Carey, *A Matter of Degrees: Improving Graduation Rates in Four-Year Colleges and Universities*, The Educ. Trust, May 2004, at 15.

Moreover, beginning the curriculum for law school after two years of college courses would necessarily mean that a student loses the opportunity to take those kinds of enriching courses that provide a perspective for life beyond just one's means for making a living. There is value in taking a broad-based liberal arts course of study in which multiple courses in history, anthropology, literature, geography, and foreign languages are completed.

There is also a question of whether prospective law students will buy into an untried model, particularly when the choice is to be made before a particular student knows all of his or her options. Minority students who complete their four-year degrees with stellar grades and who excel on the LSAT will be heavily recruited by many traditional law schools and are likely to be offered substantial awards of scholarship aid to induce their matriculation at those schools. There is certainly advantage to be had in going with a model of education with a proven record of success. As proposed, however, students who are asked to consider the new model law school will not know their full range of options at the time they are expected to begin phase two of the new model. There is the risk that the very students best suited for the new model law school, because of their success thus far in phase one, are also the same students who might be willing to gamble on themselves that they will be among those who are offered many opportunities to attend a traditional law school. It is similarly possible that the opportunity to commence one's legal education one to two years earlier than usual in a traditional model as well as the attendant cost savings may outweigh this particular risk. There is, however, no way to predict how prospective students will view the new model law school.

CONCLUSION

While the proposal described herein is not perfect, it offers some advantages that might serve to increase the number of minority members in the bar while serving the needs of the public in having well-trained practitioners. If a new way of delivering legal education serves to minimize or avoid entirely the issues encountered with the LSAT while providing an education that assures that the graduates are at least as well prepared, if not better prepared to practice law, it is a model worth considering.