

## **Some Thoughts on the Future of Legal Education: Why Diversity and Student Wellness Should Matter in a Time of Economic “Crisis”**

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### INTRODUCTION

I am honored to participate in the Mitchell Lecture Series at the University at Buffalo, School of Law. As the dean of a law school, I have devoted considerable time and attention over the last few years to the central question to be addressed today—how law schools should respond to the changing legal marketplace. Needless to say, a growing body of critical commentary on contemporary legal education provides much food for thought. Nevertheless, I readily confess that I do not have all (or perhaps any) of the answers. My modest hope in this Article is to contribute to the ongoing dialogue about possible reforms to legal education.

As they must, law schools have responded to the rapidly changing legal market. At the same time, it is deeply contested—inside and outside of legal academia—how law

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schools should best proceed. Debates continue over whether law schools in fact have been responding appropriately to the “crisis.” Changes in the legal marketplace no doubt will continue to fuel considerable discussion and reforms.

Deep pessimism, if not downright hostility, about the efficacy of legal education has spread like wildfire. Hyperbole, intense criticism, and accusations of grievous wrongdoing run rampant. Some critics have gone so far as to claim that law schools routinely engage in nothing less than fraud in order to dupe students into paying exorbitant tuitions.<sup>1</sup> Some of the same observers go so far as to express serious doubts about whether legal education has much of a future.<sup>2</sup>

The harsh condemnation of legal education is unsettling, if not deeply disturbing, especially to those persons whose professional lives are based in law schools. Despite the devastating critiques, I, for one, remain cautiously optimistic about the future. The thoughtful analysis of engaged scholars, such as the group that has been assembled in this installment of the Mitchell Lecture Series, hopefully will offer constructive ideas about the future of legal education.<sup>3</sup>

As we all have experienced, change can be extremely difficult for the average person to accept. Let me offer a non-legal example. A high school and college friend of mine is a

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1. A number of law graduates have unsuccessfully sued law schools for fraud in the reporting of employment data. *See, e.g.*, Elizabeth Olson, *Law Graduate Who Sued Her School Loses at Trial*, N.Y. TIMES (Mar. 24, 2016), <http://www.nytimes.com/2016/03/25/business/dealbook/law-graduate-who-sued-her-school-loses-at-trial.html> [<http://nyti.ms/1RCc7Ry>]; *see also* Morgan Cloud & George Shepherd, *Law Deans in Jail*, 77 MO. L. REV. 931, 933 (2012) (contending that law school deans may be criminally liable for misreporting information to boost schools' *U.S. News & World Report* rankings).

2. *See* sources cited *infra* note 21.

3. For a review of possible reforms to legal education, *see* CAREL STOLKER, *RETHINKING THE LAW SCHOOL: EDUCATION, RESEARCH, OUTREACH AND GOVERNANCE* (2014).

diehard Major League Baseball fan. To this day, he claims with enthusiastic disdain to all who will listen that the “designated hitter” (DH) rule—a change in place in the American League *for more than 40 years*—nothing less than ruined professional baseball.<sup>4</sup> His feelings have not mellowed at all with the passage of time. Fortunately for him, Facebook and Twitter provide my friend ready and available outlets to regularly share with the world his deep and enduring displeasure with the DH rule.

To further complicate matters, it unquestionably is the case that, in the heat of any particular moment in time, the perceived significance of change is prone to exaggeration and distortion. As readers will no doubt recall, a popular refrain in the United States for years after the tragic events of September 11, 2001 was that “September 11 changed everything.”<sup>5</sup> With the passage of more than fifteen years, most observers today probably would admit that, even though that day had long-term consequences on American society, it greatly exaggerated matters to claim that the day’s events changed “*everything*.”<sup>6</sup>

My point here is that change is often difficult for people to accept. In addition, the assessment of the enduring significance of change generally improves with the passage

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4. See *National League Could Adopt DH by 2017*, Rob Manfred Says, SPORTING NEWS (Jan. 21, 2016), <http://www.sportingnews.com/mlb/news/national-league-dh-2017-rob-manfred-mlb-designated-hitter/a6pb3p52bz2n1nubgi5g00jnw>; see also Dustin E. Buehler & Steve P. Calandrillo, *Baseball’s Moral Hazard: Law, Economics, and the Designated Hitter Rule*, 90 B.U. L. REV. 2083 (2010) (engaging in a cost/benefit analysis of the designated hitter rule).

5. See Kevin R. Johnson, *Protecting National Security Through More Liberal Admission of Immigrants*, 2007 U. CHI. LEGAL F. 157, 157 (“Commentators and pundits have repeated the mantra ‘September 11 changed everything’ so often . . . that the phrase has lost nearly any and all meaning.”).

6. My high school chum, for example, would quickly point out that the DH rule has remained unchanged in the American League for more than fifteen years after September 11, 2001.

of time and experience. Consequently, rushes to judgment are not likely to help us to collectively assess and effectively respond to change.

With this background in mind, we can begin properly to evaluate the recent changes to legal education. Few informed observers could reasonably dispute that American law schools have experienced a turbulent few years.

The current crisis in legal education coincides with a crisis in the practice of law. Law practice has changed as a result of technology, globalization, and economic pressures. The market for legal education's product, law graduates, has diminished. *Law schools cannot remain the same in this environment. Except for a very small number of elite schools, those that do not adjust are at serious risk of failing.*<sup>7</sup>

Law schools have faced formidable challenges and experienced dramatic external changes. Whether we like the changes or not, they will likely continue for the foreseeable future. Law school administrators have attempted to adapt to the rapidly changing environment. Only with the passage of time will we be able to accurately judge the significance, magnitude, and staying power of contemporary changes to the legal marketplace as well as the efficacy of the responses.

A number of observers have speculated that we may be seeing the beginning of the end of legal education, at least as we currently know it. Some vocal critics appear to revel in making such dire doomsday predictions.<sup>8</sup> They also express anger, distrust, and disdain at virtually any statement—however measured and limited in scope—that law schools might have some kind of legitimate future. The critics also deeply discount—and indeed attack—virtually any and all defenses of legal education, regularly impugn the integrity of respected law school administrators, and more. The criticism

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7. James E. Moliterno, *And Now a Crisis in Legal Education*, 44 SETON HALL L. REV. 1069, 1072 (2014) (emphasis added).

8. See, e.g., sources cited *infra* note 21.

has been harsh, unforgiving, and not always conducive to constructive dialogue.

All this said, most knowledgeable observers generally understand the need for significant reforms to legal education are necessary. Nonetheless, how law schools should best respond to recent developments, has been much-discussed and remains deeply contested.<sup>9</sup>

Calls for reform offer a wide variety of contrasting, and at times conflicting, prescriptions for change. Part of the challenge stems from the fact that the myriad of proposals focus on very different aspects of the so-called “crisis” in legal education.<sup>10</sup>

Although some critics denounce in venomous tones the role of law schools in causing the “crisis,” other knowledgeable observers contend that the accusations and cries of alarm are, to put it mildly, exaggerated.<sup>11</sup> Still, almost all generally admit that change is occurring in the legal marketplace and that law schools must respond in some fashion. Some commentators characterize the changes as bringing a “new normal” to legal education.<sup>12</sup> I am far from certain what the “new normal” is but share the hope for a

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9. See, e.g., Frank H. Wu, *Reforming Law Schools: A Manifesto*, 46 U. TOL. L. REV. 417 (2015).

10. See *infra* text accompanying notes 11–12, 15–28.

11. See, e.g., Alfred S. Konefsy & Barry Sullivan, *In This, the Winter of Our Discontent: Legal Practice, Legal Education, and the Culture of Distrust*, 62 BUFF. L. REV. 659, 660–66 (2014); Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 2–3 (2015); Michael A. Olivas, *A Personal Reflection on Law Teaching, or How I Became an Establishment Insider on the Outside*, 99 RADICAL TEACHER 34, 35 (2014), <https://radicalteacher.library.pitt.edu/ojs/index.php/radicalteacher/article/view/57/59>; Erwin Chemerinsky & Carrie Menkel-Meadow, Opinion, *Don't Skimp on Legal Training*, N.Y. TIMES (Apr. 14, 2014), <http://www.nytimes.com/2014/04/15/opinion/dont-skip-on-legal-training.html>.

12. See, e.g., Peter C. Alexander, *Law School Deans and “The New Normal,”* 46 U. TOL. L. REV. 251, 251–52 (2015); Courtney G. Lee, *Changing Gears to Meet the “New Normal” in Legal Education*, 53 DUQ. L. REV. 39 (2015).

more stable and predictable law school marketplace.

A much less-publicized concern with legal education involves the lack of racial diversity of the student bodies of many, if not most, law schools (and ultimately new attorneys) and law faculties. Few of the most visible contemporary critics who regularly attack legal education have suggested that the unquestionable lack of diversity amounts to a “crisis.” At the same time, students regularly protest incidents that remind us all of the adverse consequences of the relative homogeneity of most American law schools.<sup>13</sup>

In my estimation, the relative lack of diversity of student bodies at the vast majority of law schools dwarf the other deficiencies of legal education that have been proclaimed to have reached “crisis” proportions. Of course, changes in the marketplace require adjustments. However, the longstanding lack of diversity among students threatens to ensure that the literal face of the legal profession remains static for generations. The lack of diversity among law school faculties means that the current generation of law students (like all previous ones) will be taught by faculties that are relatively racially homogenous.<sup>14</sup>

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13. See, e.g., Steve Annear & Laura Krantz, *Harvard Police Call Defaced Portraits of Blacks a “Hate Crime”: Tape Found on Faculty’s Photos at Law School*, BOS. GLOBE, Nov. 20, 2015, at B3; Rhonesha Byng, *Racial Tensions Grow at UCLA Law After Black Student Receives Hate Mail*, HUFFINGTON POST (Feb. 27, 2014), [http://www.huffingtonpost.com/2014/02/27/ucla-law-school-racism-diversity\\_n\\_4860406.html](http://www.huffingtonpost.com/2014/02/27/ucla-law-school-racism-diversity_n_4860406.html); see also Tomiko Brown-Nagin, *The Mentoring Gap*, 129 HARV. L. REV. FORUM 303, 303 (2016), <http://harvardlawreview.org/2016/05/the-mentoring-gap/> (“The alienation of students of color and those from low-income backgrounds on elite, majority-white campuses is hardly a new problem. . . . [However,] in an era of social fracture and civil unrest, students’ expressions of discontent are louder and sharper.”). In response to student protests, Yale Law School Dean Robert Post appointed a committee of faculty and students that made recommendations on how to best address law school diversity and climate concerns. See Qi Xu, *Law School Releases Diversity Report*, YALE DAILY NEWS (Mar. 30, 2016), <http://yaledailynews.com/blog/2016/03/30/law-school-releases-diversity-report/>.

14. See *infra* Section III.A.

In a different yet parallel vein, law students long have complained about legal education and demanded a more humane and student-friendly learning environment. Rising fees have contributed to the increasing frequency of these demands, or at least in the willingness of students to make them. Along those lines, students today seek additional academic support, career counseling, and mental health programs, all of which were virtually non-existent at most law schools just a few years ago. Such services may assist students in adjusting in a healthy fashion to the stresses of legal education as well as to more effectively compete for employment in the highly competitive contemporary legal job market. Whatever the benefits of such reforms, they cost money to implement, and law schools find it increasingly difficult to cover those costs.

#### I. THE ECONOMIC “CRISIS” IN LEGAL EDUCATION

The much-discussed “crisis” in legal education generally centers on a great many concerns with its economic costs, benefits, and outputs. Besides transforming law schools, the changing economics have generated a great deal of anxiety and head-scratching among law students, faculty, and administrators.

Consider the facts. “The dramatic drop in law school applicants—a 40% decline between 2005 and 2014—has many wondering when demand for a law degree will finally rebound.”<sup>15</sup> Some law schools are admitting students who are less qualified, at least as measured by traditional metrics,

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15. Jacob Gershman, *Law School Applicant Pool Still Shrinking*, WALL ST. J. L. BLOG (Apr. 23, 2015, 3:21 PM), <http://blogs.wsj.com/law/2015/04/23/law-school-applicant-pool-still-shrinking/>; see Mark Hansen, *Count Off: Law School Enrollment Continues to Drop, and Experts Disagree on Whether the Bottom Is in Sight*, 101 A.B.A. J. 64, 64 (2015) (reporting that law school enrollment in 2014 fell for the fourth straight year); Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES, Dec. 18, 2014, at B3 (reviewing the decline in law school applications and enrollments).

than in the recent past. Nationally, bar passage rates have been in decline.<sup>16</sup> To halt the drops in admission test scores and grade point averages (and declines in law school rankings), some law schools have significantly reduced enrollments.<sup>17</sup> To attract the most highly qualified students, many schools have greatly increased the monies allocated to “merit” scholarships and financial aid generally.<sup>18</sup>

To make matters worse for law graduates, the global recession decimated the job market.<sup>19</sup> Employment rates plummeted. Consequently, law schools scrambled to creatively find ways to help their students secure legal employment.

Rising law school tuitions have not helped matters and, among other things, have contributed to rising average student loan debt loads.<sup>20</sup> Higher debt loads, in turn, added to the financial pressures facing recent law school graduates while they were searching for work in a tight job market.

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16. See Cheryl Miller, *California Law School Deans Want Bar Exam Pass Score Lowered*, RECORDER (Feb. 1, 2017), <http://www.therecorder.com/home/id=1202778168822/California-Law-School-Deans-Want-Bar-Exam-Pass-Score-Lowered?mcode=1202617072607&curindex=1>; Natalie Kitroeff, *Bar Exam Scores Drop to Their Lowest Point in Decades*, BLOOMBERG (Sept. 17, 2015), <http://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades>.

17. See Peter Schworm, *Waning Ranks at Law Schools: Institutions Fear Recession's Effect Could Be Lasting*, BOS. GLOBE (July 6, 2014), <https://www.bostonglobe.com/metro/2014/07/05/law-school-enrollment-fails-rebound-after-recession-local-colleges-make-cuts/fr7dYqwBsrOeXPbS9ibqtN/story.html>.

18. See *infra* text accompanying notes 42–44.

19. See Bernard A. Burk, *What's New About the New Normal: The Evolving Market for New Lawyers in the 21st Century*, 41 FLA. ST. U. L. REV. 541 (2014); Deborah Jones Merritt, *What Happened to the Class of 2010? Empirical Evidence of Structural Change in the Legal Profession*, 2015 MICH. ST. L. REV. 1043; Danielle Douglas-Gabriel, *Law Schools Try to Adapt as Job Market Sours*, WASH. POST, Apr. 21, 2015, at A1.

20. See Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CAL. L. REV. 1561, 1575–79 (2015).

Rising student debt fueled student demand for jobs with higher relative salaries in the private sector and served to discourage students from seeking public service jobs.

By at least some vocal accounts, the economic problems of law schools have reached nothing less than “crisis” proportions.<sup>21</sup> At the same time, no clear-cut solutions are readily apparent.

A closer look reveals that major law school constituencies define the law school “crisis” in very different ways. Not surprisingly, students persistently demand reductions in tuition; almost in the same breath, they insist that law schools should provide increased career placement services, mental health counseling, and more.<sup>22</sup> Students also vociferously complain about the challenging job market.

The *New York Times*, the American newspaper of record, has frequently sided with the critics who claim that law schools are responsible for a “debt crisis” among law graduates and that there are simply “too many law students, too few legal jobs.”<sup>23</sup> In a wholly different vein, the organized bar has demanded, among other things, that law schools

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21. See, e.g., PAUL CAMPOS, DON'T GO TO LAW SCHOOL (UNLESS): A LAW PROFESSOR'S INSIDE GUIDE TO MAXIMIZING OPPORTUNITY AND MINIMIZING RISK (2012); STEVEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS (2013); BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (2012); Kyle P. McEntee, Patrick J. Lynch & Derek M. Tokaz, *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. MICH. J.L. REFORM 225 (2012). The critics' dire claims have been questioned. See, e.g., Paul Horwitz, *What Ails the Law Schools?*, 111 MICH. L. REV. 955, 956–57 (2013) (noting the vagueness in the claims about the precise nature of the “crisis” in modern legal education); Edward Rubin, *The Future and Legal Education: Are Law Schools Failing and, if So, How?*, 39 LAW & SOC. INQUIRY 499 (2014) (offering a different perspective than the critics on the reforms needed in legal education).

22. See *infra* Section III.B.

23. See, e.g., Editorial, *The Law School Debt Crisis*, N.Y. TIMES, Oct. 25, 2015, at SR8; Steven J. Harper, *Too Many Law Students, Too Few Legal Jobs*, N.Y. TIMES, Aug. 25, 2015, at A19.

provide more practical skills training to students.<sup>24</sup>

All said, one might characterize this historical moment as nothing less than a “perfect storm”<sup>25</sup> for law schools. What could be worse economically for these once financially stable institutions than a wicked combination of declining applications, rising tuition, a tough job market for law graduates, and seemingly endless criticism from virtually all quarters?

In a time of rapid economic change, stabilization of the budgetary picture was a priority at virtually every American law school.<sup>26</sup> Law school deans were forced to quickly make many difficult choices in hopes of balancing their budgets. Those measures included layoffs of faculty and staff. Vacant positions went unfilled. The goal has been to reduce costs in an attempt to ensure financial viability.<sup>27</sup>

Budgetary pressures placed enrolling students and ensuring a stable flow of tuition dollars at a premium. Despite aggressive cost cutting measures pursued by law schools, rumors persist that some law schools—possibly even a “top” law school—might even be forced to close.<sup>28</sup>

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24. See *infra* Section II.A.

25. Victor Gold, *Reducing the Cost of Legal Education: The Profession Hangs Together or Hangs Separately*, 66 SYRACUSE L. REV. 497, 498 (2016).

26. See, e.g., Steven Davidoff Solomon, *Creditors Keep Troubled Law Schools on Life Support*, N.Y. TIMES: DEALBOOK (Nov. 4, 2014, 3:25 PM), <https://dealbook.nytimes.com/2014/11/04/worth-nothing-failing-law-schools-are-kept-on-life-support>; see also Leo P. Martínez, *Legal Education in a Modern World: Evolution at Work*, 9 CHARLESTON L. REV. 267 (2015) (analyzing the evolution of legal education in response to contemporary developments).

27. See *infra* Section I.C.

28. See Dorothy A. Brown, *Which Top Law School Will Close? Follow the Money*, FORBES (Mar. 17, 2016, 10:03 AM), <http://www.forbes.com/sites/schoolboard/2016/03/17/which-top-law-school-will-close-follow-the-money/>.

A. *The Brooding Omnipresence of the U.S. News Law School Rankings*

Long before the emergence of the current economic “crisis,” law school administrators had deep concerns about each school’s relative placement in the much-watched *U.S. News and World Report* law school rankings. The rankings, among other things, have ripple effects on admissions and enrollment, and thus on law school revenues and budgetary bottom lines.<sup>29</sup>

The shortcomings of the *U.S. News* rankings are too many to list here.<sup>30</sup> Whatever the deficiencies, the rankings matter much to current students, faculty members, alumni, university administrators, and employers. Prospective students also rely a great deal on the *U.S. News* rankings in selecting a law school to attend. A few law deans over the years reportedly have lost their jobs over declines of their respective schools in the *U.S. News* rankings.<sup>31</sup>

The Law School Admissions Test (LSAT) profile of a law school’s entering class factors significantly into the *U.S. News* rankings. It, along with job placement, is one of the few variables that may change significantly for a law school from

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29. See David Yellen, *The Impact of Rankings and Rules on Legal Education Reform*, 45 CONN. L. REV. 1389, 1394–402 (2013). See generally Olufunmilayo B. Arewa et al., *Enduring Hierarchies in American Legal Education*, 89 IND. L.J. 941 (2014) (analyzing the enduring hierarchy among American law schools).

30. For a sampling of critical assessments of the *U.S. News* law school rankings and their impacts, see, for example, Alex M. Johnson, Jr., *The Destruction of the Holistic Approach to Admissions: The Pernicious Effects of Rankings*, 81 IND. L.J. 309 (2006); Brian Leiter, *How to Rank Law Schools*, 81 IND. L.J. 47, 51–52 (2006); Nancy B. Rapoport, *Ratings, Not Rankings: Why U.S. News & World Report Shouldn’t Want to Be Compared to Time and Newsweek—or The New Yorker*, 60 OHIO ST. L.J. 1097 (1999).

31. See, e.g., Monica Guzman, *Dean of UH Law Center Resigning: Move Follows Criticism for Drop in National Ratings*, HOUS. CHRON. (Apr. 18, 2006), <http://www.chron.com/news/houston-texas/article/Dean-of-UH-Law-Center-resigning-1901006.php> (reporting on the resignation of the dean of the University of Houston Law Center).

year to year. With a contracting applicant pool, the possibility of lower LSAT medians (and a possible decline in the rankings) contributed to responses by law schools. In the hopes of maintaining, if not increasing, a school's ranking, aggressive competition through tuition discounts grew for applicants with LSAT scores on the high end of the spectrum. In addition, attempting, among other things, to maintain their LSAT medians, some law schools enrolled smaller entering classes.<sup>32</sup>

As previously mentioned, recent graduates have experienced considerable difficulty in securing employment.<sup>33</sup> Declining job placement rates, in turn, triggered drops in the *U.S. News* rankings of a number of law schools.<sup>34</sup> Law schools in some regions of the country, especially the two coasts where the job market was particularly hard-hit by the recession, were more adversely affected in the rankings than those in other regions.

Some law schools responded to job placement declines by providing funding support for the hiring of recent graduates. Such hiring assists the graduates and boosts the schools employment numbers, thereby helping to avoid drops in the *U.S. News* rankings. The post-graduate fellowships also can provide valuable employment experience. Critics vigorously attacked law schools that funded large post-graduate

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32. See Debra Cassens Weiss, *DC Law Schools Shrink, See Declining LSAT Scores; Are Rich Schools Winning the Financial-Aid War?*, A.B.A. J. (Sept. 16, 2013, 12:14 PM), [http://www.abajournal.com/news/article/dc\\_law\\_schools\\_shrink\\_see\\_declining\\_lsat\\_scores\\_are\\_rich\\_schools\\_winning\\_th](http://www.abajournal.com/news/article/dc_law_schools_shrink_see_declining_lsat_scores_are_rich_schools_winning_th). For analysis of the disparate impacts of reliance on the LSAT in admissions, see Harvey Gilmore, *The SAT, LSAT, and Discrimination: Professor Gilmore Again Responds to Professor Subotnik*, 34 *LAW & INEQ.* 153, 160–66, 171–73 (2016).

33. See *supra* text accompanying note 19.

34. See Jason Song, *Faced with Job Complaints, Loyola Law School Accepting Fewer Students*, L.A. TIMES (Aug. 19, 2013), <http://articles.latimes.com/2013/aug/19/local/la-me-loyola-law-20130819>.

employment programs.<sup>35</sup>

In response to critics of the costs of legal education, the American Bar Association has required law schools to report increasingly detailed career placement information about their graduates.<sup>36</sup> Such information helps applicants and students as they make all-important educational and career decisions, and, in certain circumstances, select a law school.

When the global economic recession hit with a vengeance in 2008, the legal job market tightened significantly.<sup>37</sup> Attorneys were laid off. Law firms reduced hiring, with some of the largest and most prestigious ones freezing hiring altogether. Recovery in the legal job market has been ongoing yet slow.<sup>38</sup> Despite the modest rebound in legal jobs, few informed observers expect the job market to return soon, if ever, to the relatively robust pre-2008 legal employment levels.

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35. See Ogechi Achuko, *The Blame Game: Law Students Sue Their Law Schools for Deceptive Employment Reporting Practices*, 20 VA. J. SOC. POL'Y & L. 517 (2013); see also Jacob Gershman, *Law Schools Face New Rules on Reporting Graduates' Success*, WALL ST. J. (Mar. 17, 2015), <http://www.wsj.com/articles/law-schools-face-new-rules-on-reporting-graduates-success-1426629126> ("law schools are artificially gaming the system for the purpose of the U.S. News rankings").

36. David Yellen, *Advancing Transparency in Law School: The ABA's New Standard 509*, BAR EXAMINER, Dec. 2012, at 6.

37. See *supra* text accompanying note 19.

38. See Stephanie Francis Ward, *Employment Data for 2015 Law School Grads Is Concerning, Some Law Profs Say*, A.B.A. J. (May 3, 2016), [http://www.abajournal.com/news/article/employment\\_data\\_for\\_2015\\_law\\_school\\_grads\\_released\\_by\\_aba\\_legal\\_ed](http://www.abajournal.com/news/article/employment_data_for_2015_law_school_grads_released_by_aba_legal_ed); Mark Hansen, *Job Market Limbo: Employment Picture for Law Grads Looks Pretty Much the Same as a Year Ago—For Better and Worse*, A.B.A. J., June 2013, at 62–63; Katie Thisdell, *Class of 2015 Employment Stats a Mixed Bag*, NAT'L JURIST (May 5, 2016), <http://www.nationaljurist.com/content/class-2015-employment-stats-mixed-bag>. Some critics express continuing concern with the employment statistics for law graduates. See, e.g., Deborah Jones Merritt, *The Crisis That Wouldn't End*, LAW SCH. CAFÉ (May 14, 2016), [www.lawschoolcafe.org/2016/05/14/the-crisis-that-wouldnt-end](http://www.lawschoolcafe.org/2016/05/14/the-crisis-that-wouldnt-end).

### B. *Declining Applications*

Almost all of the analysis of the so-called crisis in legal education has focused on its changing economics.<sup>39</sup> To a certain extent, that focus is understandable. Over the last few decades, the market for attorneys has undergone substantial restructuring due to many factors, including but not limited to globalization and technological innovation. The global recession resulted in an exceedingly tight job market for attorneys. Market changes have led to the decline in demand for a law degree, as seen through the sustained decline in law school applications.<sup>40</sup> Tuition hikes to cover cost increases also have contributed to the decline in law school applications.<sup>41</sup>

In an attempt to avoid drops in the *U.S. News* rankings, law schools have vigorously competed for the most highly qualified applicants, who in raw numbers have been in decline with the rapid drop in law schools applications. At bottom, with applications down, there are fewer of the highest quality applicants than there were just a few years ago. A most sought-after group of applicants are those whose enrollment will help maintain, if not boost, a law school's *U.S. News* ranking. Demand for this group of applicants generally translated into greatly heightened competition for students with high LSAT scores, a particularly undiverse cohort.

One influential law school dean characterized the fierce financial competition for students as something akin to an "arms race" among law schools.<sup>42</sup> Greater student financial

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39. See sources cited *supra* note 21.

40. See *id.*

41. See Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES (Jan. 30, 2013), <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>.

42. Margaret Loftus, *Drop in Applications Spurs Changes at Law Schools*,

assistance increased costs and stretched already tight law budgets. Moreover, the focus on students with high LSAT scores tended to have a negative impact on student diversity.<sup>43</sup>

To maintain the numerical quality of their student bodies and keep pace in the *U.S. News* rankings, some law schools also decreased class sizes.<sup>44</sup> That meant a decline in revenues and even tighter law school budgets.

### C. *Cost Cutting and Revenue Generation*

The much-discussed law school economic “crisis” has had substantial impacts on ordinary law school operations. Scrambling to remain financially viable, law schools have taken aggressive steps to address budgetary shortfalls.

Cost cutting was the first step for many law schools. Some schools bought out senior faculty members and encouraged retirements and other departures.<sup>45</sup> A few law schools went so far as to cut faculty salaries.<sup>46</sup> To reduce the size (and costs) of existing faculties, many law schools hired far fewer new faculty members than in the recent past. As a result, law faculty hiring has declined dramatically nationwide over the last few years.<sup>47</sup> Staff reductions have

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U.S. NEWS & WORLD REP. (Mar. 11, 2015, 9:00 AM) (quoting Northwestern law school dean Daniel Rodriguez), <http://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2015/03/11/drop-in-applications-spurs-changes-at-law-schools>.

43. See *infra* Section III.A.

44. See *supra* text accompanying note 32.

45. See Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL ST. J. (July 15, 2013), <http://www.wsj.com/articles/SB10001424127887323664204578607810292433272>.

46. See, e.g., Jacob Gershman, *After Slashing Tuition, Pace Law Slashes Faculty Pay*, WALL ST. J. L. BLOG, (May 15, 2015, 12:11 PM), <http://blogs.wsj.com/law/2015/05/15/after-slashing-tuition-pace-law-slashes-faculty-pay/>.

47. See Karen Sloan, *Law Prof Jobs Drying Up: Always Tight Teaching Market Constricts Further*, NAT'L L.J., Sept. 7, 2015.

occurred along with faculty reductions.<sup>48</sup>

Besides cost-cutting measures, law schools have looked to generate additional revenues in ways other than through tuition increases. One area of revenue growth has been through new and expanded foreign LL.M. programs.<sup>49</sup> The increase in foreign students has subtly changed the character of American law schools and the experiences of faculty and J.D. students. Law schools now are more international than they once were. Ultimately, the creation and expansion of foreign LL.M. programs may be a net positive for the legal education of all students. Foreign students help expose domestic J.D. students, for example, to foreign lawyers with different ways of thinking about the law. However, the expanded foreign programs have required adaptation by law schools, including but not limited to providing increased academic support, improved career counseling, and other support services for foreign students.

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The market has spoken and changes in legal education likely will continue. The evolving marketplace, however, does not make the necessary adjustments—budgetary and otherwise—any easier for law schools, faculty, students, and staff. Nonetheless, the economic pressures for change show few signs of abating anytime soon.

## II. CHANGES IN LEGAL EDUCATION RESULTING FROM THE “CRISIS”

Over many generations, volumes have been written about the need to improve the delivery of legal education.<sup>50</sup>

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48. See Bronner, *supra* note 41.

49. See Karen Sloan, “Cash Cow” or Valuable Credential? Law Schools Add LL.M. Programs, but Their Value May Be Limited, *NAT’L L.J.*, Sept. 20, 2010.

50. See Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 *RUTGERS L. REV.* 1011, 1021–22 (2009) (reviewing reports calling for

Practical skills training, clinical legal education, and expansion of externship programs represent some of the reforms to legal education that have been in ascendance.<sup>51</sup> The educational experience for law students has changed dramatically from the days dominated by the Socratic questioning of students in large classes. Indeed, the architect of the traditional model of delivery of legal education, Harvard's Christopher Columbus Langdell,<sup>52</sup> would be hard-pressed to recognize the law school of the twenty-first century.

In important respects, the push for changes in legal education began well before the most recent global economic downturn. Some high profile failures of large national law firms attracted the attention of private legal employers and brought increased efforts to ensure their viability as business enterprises.<sup>53</sup> As one would expect of businesses in an increasingly competitive global marketplace, law firms responded by taking steps to reduce costs, including some measures that greatly affected legal education.

#### A. *Law Firms Shift the Costs of Skills Training to Law Schools*

With economic imperatives causing greater emphasis on the bottom line, law firms were less willing than in the past

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reforms to legal education).

51. See *infra* Section II.A.

52. See generally BRUCE A. KIMBALL, *THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL, 1826–1906* (2009) (analyzing legacy of Langdell's traditional (and Socratic) conception of legal education).

53. See, e.g., Tom Abate & Andrew S. Ross, *Heller Ehrman Law Firm to Dissolve Friday*, S.F. CHRON. (Sept. 26, 2008), <http://www.sfgate.com/business/article/Heller-Ehrman-law-firm-to-dissolve-Friday-3193215.php>; Jonathan Glater, *West Coast Law Firm Closing After Dot-Com Collapse*, N.Y. TIMES (Jan. 31, 2003), <http://www.nytimes.com/2003/01/31/business/west-coast-law-firm-closing-after-dot-com-collapse.html>; Peter Lattman, *Dewey & LeBoeuf Files for Bankruptcy*, N.Y. TIMES: DEALBOOK (May 28, 2012, 10:21 PM), <http://dealbook.nytimes.com/2012/05/28/dewey-leboeuf-files-for-bankruptcy/>.

to invest in the training of new law graduates. Legal employers, in turn, demanded that law schools transform legal education to provide that training. They specifically called on law schools to provide more skills training (achieved through classes with generally low student/faculty ratios) and thus to move away from the traditional form of large classroom instruction (with higher student/faculty ratios).<sup>54</sup> In short, to reduce costs of training new attorneys, law firms demanded that law schools produce more “practice-ready” law graduates.<sup>55</sup>

Even if fueled in large part by market pressures, the legal profession’s push for greater experiential learning frequently was framed as necessary to remedy the alleged deficiencies in legal education.<sup>56</sup> In response, law schools devoted greater resources to skills training and other forms of experiential learning. Some law faculty members viewed the changes as consistent with evolving notions of the most effective forms of legal education.<sup>57</sup>

The American Bar Association, which participates with the Association of American Law Schools in the regulation and accreditation of law schools, and many state bar

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54. See *infra* Section II.B. In another step aimed at reducing training costs, many law firms began to focus on hiring experienced attorneys, rather than recent law school graduates. See John Zappe, *Nation’s Law Firms Shift Focus to Lateral Hiring*, ERE MEDIA (Dec. 19, 2013), <http://www.ere-media.com/fordyce/nations-law-firms-shift-focus-to-lateral-hiring/>.

55. See Jacob Gershman, *The Practice-Ready Law Graduate is a “Fantasy,” Says Professor*, WALL ST. J. L. BLOG (Aug. 30, 2013, 4:44 PM), <http://blogs.wsj.com/law/2013/08/30/the-practice-ready-law-graduate-is-a-fantasy-says-professor/> (“[T]he idea of ‘practice ready’ lawyers is appealing to law firms because they see it as a vehicle for cost-cutting.”).

56. See TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, REPORT AND RECOMMENDATIONS (2014), [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf).

57. See generally Martin J. Katz, *Facilitating Better Law Teaching—Now*, 62 EMORY L.J. 823 (2013) (identifying possible ways of improving law teaching).

associations have jumped on the band-wagon for mandatory skills training. They have successfully sought to make experiential learning a required part of legal education.<sup>58</sup>

Skills training can improve the legal education of students. In addition, it arguably can help students land jobs in an increasingly competitive job market.<sup>59</sup> Moreover, training in lawyering skills can make students more aware of their own strengths and weaknesses. Such self-awareness can help students make more informed judgments about the appropriate direction for their legal studies and hopefully help them in making more educated and fulfilling career choices.

Legal employers also stand to benefit from the increased availability of skills training. They are able to hire graduates who are arguably more prepared for the contemporary practice of law.

In sum, legal employers until relatively recently had generally invested in the training of new lawyers. Economic pressures on law firms reduced their commitment to devote resources to training. To replace that training, the organized bar has increasingly demanded that law schools provide practical, hands-on skills training to students.<sup>60</sup> Legal employers have successfully shifted the costs of the training that they previously had provided to law schools.<sup>61</sup> By so doing, law firm economics in fact have helped fuel a major change in legal education—the rise of experiential learning.

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58. See, e.g., AM. BAR ASS'N, *supra* note 56; *Board of Trustees Approves Competency Skills Training Requirement*, CAL. BAR J., Dec. 2014, <http://www.calbarjournal.com/December2014/TopHeadlines/TH5.aspx>.

59. It has been questioned, however, whether experiential learning in fact improves employment outcomes for law graduates. See Jason Webb Yackee, *Does Experiential Learning Improve J.D. Employment Outcomes?*, 2015 WIS. L. REV. 601.

60. See *supra* text accompanying notes 58–59.

61. See *infra* Section II.B.

### B. *The Budgetary Consequences for Law Schools*

The transformation of legal education has had budgetary consequences. Clinical legal education and skills training tend to require lower student/faculty ratios.

While skills training necessarily requires small classes and is inevitably expensive, live-client clinical representation under some models limits teachers to supervision of no more than four or five students per semester, making such courses nearly four times as expensive to staff as simulation-medium classes that focus on teaching similar skills.<sup>62</sup>

Additional offerings of clinical legal education, skills training, and other forms of experiential learning, therefore placed additional strains on already strapped law school budgets.

None of this is meant to suggest that experiential learning as a whole does not provide concrete educational and other benefits to law students. Indeed, I count myself as a supporter of clinical legal education and other forms of experiential learning.<sup>63</sup> My sense is that such innovations generally have improved legal education and enhanced the student experience.

But whatever the benefits, the expansion of experiential learning offerings has added to the cost pressures in

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62. Richard W. Bourne, *The Coming Crash in Legal Education: How We Got Here, and Where We Go Now*, 45 CREIGHTON L. REV. 651, 693 (2012). Some knowledgeable commentators dispute the assertion that experiential learning costs more than the traditional lecture-style classroom experience. See Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28 (2015); Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U.L. REV. 1 (2014); Robert Kuehn, *Clinical Costs: Separating Fact from Opinion*, BEST PRACTICES FOR LEGAL EDUC. (May 5, 2016), <https://bestpracticeslegaled.albanylawblogs.org/2016/05/05/clinical-costs-separating-fact-from-fiction/>.

63. I analyze the substantial educational and related benefits of clinical legal education in Kevin R. Johnson & Amagda Pérez, *Clinical Legal Education and the U.C. Davis Immigration Law Clinic: Putting Theory into Practice and Practice into Theory*, 51 SMU L. REV. 1423 (1998).

providing a legal education. Law school budgets have been forced to account for the increased costs.

Moreover, the increase in the teaching of lawyering skills has not immunized recent law graduates from the fluctuations in the legal job market, which necessarily expands and contracts with the national and global economies. The recent sharp decline in the employment prospects for new law graduates brought on by the Great Recession can hardly be blamed on the lack of availability of skills training or some other deficiency in legal education. In fact, that training long has been provided by a great many law schools. Skills training or no skills training, today's law graduates face a highly competitive job market, with declining numbers of jobs and increasing competition for the ones that are available. Put simply, experiential learning is not the magic bullet for job placement of law graduates.

### III. MISSING FROM THE DEBATE OVER THE LAW SCHOOL “CRISIS”: DIVERSITY IN LAW SCHOOLS AND THE LEGAL PROFESSION AND STUDENT WELLNESS

The problems of legal education and the profession go well beyond the economic ones myopically focused on by contemporary commentators who proclaim that law schools are in crisis. The problems include but are not limited to, the relative lack of diversity among law students, faculty, and attorneys; limited access to legal services and justice for poor and middle-income people; limited public service and public interest job opportunities for law graduates; and the negative experiences in law school of students, especially students of color.<sup>64</sup>

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64. See Sheila I. Vélez Martínez, *Foreword SNX 2014: Challenges to Justice Education: South-North Perspectives*, 9 CHARLESTON L. REV. 213, 216–20 (2015). For criticism of legal education from the perspective of clinical practice, see Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201 (2016).

*A. Diversity of Students and Faculty*

The lack of diversity among students and faculty has often fallen by the wayside in the critiques of legal education and the cries of the “crisis” afflicting law schools. Few commentators direct attention to the lack of diversity in legal education, which has been a persistent and intractable problem at most law schools.

Many knowledgeable observers agree that a diverse student body and faculty are critically important ingredients to the training of attorneys to practice law in the increasingly diverse American society of the twenty-first century.<sup>65</sup> It is difficult to disagree that much remains to be done to increase the diversity of law schools. Established years ago, race-conscious affirmative action programs at universities, which the Supreme Court recently reaffirmed as constitutional so long as carefully crafted, were designed to promote student diversity.<sup>66</sup> Unfortunately, affirmative action has had limited success in achieving that goal.

Evidence shows that the sharp increase in student debt loads—a focus of many of the contemporary critics of legal education—disproportionately affects underrepresented minorities, namely African American and Latina/o students.<sup>67</sup> In part, this results from the fact that law schools

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65. See generally Kevin R. Johnson, *The Importance of Student and Faculty Diversity at Law Schools: One Dean’s Perspective*, 96 IOWA L. REV. 1549 (2011) (analyzing the benefits of faculty and student diversity to a modern American legal education).

66. See *Fisher v. Univ. of Tex.*, 136 S. Ct. 2198, 2208 (2016); *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2417–19 (2013); *Grutter v. Bollinger*, 539 U.S. 306, 333–35 (2003).

67. See LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2016 ANNUAL SURVEY RESULTS: LAW SCHOOL SCHOLARSHIP POLICIES: ENGINES OF INEQUALITY (2017), <http://lsse.indiana.edu/wp-content/uploads/2016/01/LSSE-2016-Annual-Report.pdf> (finding adverse impacts on African American and Latino law students of merit scholarships); LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, HOW A DECADE OF DEBT CHANGED THE LAW STUDENT EXPERIENCE 16 (2015),

compete with scholarship dollars for applicants with high LSAT scores in pursuit of a higher *U.S. News* ranking.<sup>68</sup> Unfortunately, minority applicants tend to be distinctly underrepresented in this group of applicants and, as a result, are more likely to need to take out more in student loans than other students. The racially disparate impacts of this development are generally ignored in the robust discussion of the law school economic crisis.

Faculty diversity also adds measurably to the education of law students. It unfortunately has long been largely absent at many law schools. We at UC Davis are fortunate to have built a majority-minority law faculty, about half of whom are women. The transformation represented a radical departure from the all-white, male-dominated faculty previously in place.<sup>69</sup> Most modern law school faculties, however, are considerably less diverse than the one at UC Davis. With faculty hiring on the decline due to tight law school budgets,<sup>70</sup> the diversity of law school faculties is unlikely to increase much in the foreseeable future.

Despite dramatic changes in the demographics of the United States in the last fifty years, law school student bodies and faculties are not much more diverse than they were a generation ago. Similarly, the demographics of the legal profession are little different racially from what they

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<http://lawprofessors.typepad.com/files/lssse-annual-report-2015.pdf> (to the same effect); Karen Sloan, *Law Student Debt and Stress Levels on the Rise, Survey Finds*, NAT'L L.J., Feb. 29, 2016 (same); see also Aaron N. Taylor, *Are Financially Desperate Law Schools Using a "Reverse Robin Hood Scheme" to Stay Afloat?*, CHRON. HIGHER EDUC. (Apr. 15, 2016), <http://www.chronicle.com/article/Are-Financially-Desperate-Law/236041> (contending that evidence suggests that law schools are using tuition dollars paid by African American and Latino students to subsidize more affluent students with higher LSAT scores).

68. See *supra* text accompanying notes 32, 42–44.

69. See Kevin R. Johnson, *How and Why We Built a Majority-Minority Faculty*, CHRON. HIGHER EDUC. (July 24, 2016).

70. See *supra* text accompanying notes 45–48.

were a half century ago.<sup>71</sup> And the problem arguably has gotten worse. The diversity gap between the general population and the legal profession has grown over time as American society has become increasingly diverse while the demographics of the legal profession have remained relatively static.

We occasionally hear complaints about the lack of diversity in law schools. However, relatively few of the most vocal contemporary critics of legal education have characterized the lack of diversity as an important part—or any part—of the modern “crisis” in legal education. There does not seem to be any end in sight for this specific crisis. Nor are commentators concentrating attention on the diversity problem and how to address the current lack of diversity in legal education.

Some legal employers, in no small part due to pressures from clients, have occasionally demanded greater diversity among attorneys.<sup>72</sup> At the same time, the large, prestigious

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71. See Jacqueline Bell, *US Law Firms Fail to Move Needle on Racial Diversity*, LAW360 (May 15, 2016, 10:14 AM), [http://www.law360.com/articles/794900?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=articles\\_search](http://www.law360.com/articles/794900?utm_source=rss&utm_medium=rss&utm_campaign=articles_search) (“Law firms continue to make negligible progress toward improving the diversity of their attorney ranks . . .”); Jacqueline Bell, *Why Law Is the Least Diverse Profession*, LAW360 (May 17, 2016, 6:47 PM), [http://www.law360.com/immigration/articles/795764?nl\\_pk=7d6ace88-5616-48a2-8f2f-2aeb95099bf5&utm\\_source=newsletter&utm\\_medium=email&utm\\_campaign=immigration](http://www.law360.com/immigration/articles/795764?nl_pk=7d6ace88-5616-48a2-8f2f-2aeb95099bf5&utm_source=newsletter&utm_medium=email&utm_campaign=immigration) (“The legal industry remains by some measures the least diverse profession in the U.S. . . .”); Elizabeth Olson, *Little Progress*, N.Y. TIMES, Nov. 20, 2015, at B5 (“Women and blacks have made almost no headway in recent years in increasing their ranks at major United States law firms . . .”). In light of the fact that women are well-represented in law schools across the country, it is difficult to understand how the relative dearth of women at law firms can be attributed to law schools. See generally Edward S. Adams & Samuel P. Engel, *Gender Diversity and Disparity in the Legal Profession: An Empirical Analysis of the Gender Profile in National Law Firms and Law Schools*, 63 BUFF. L. REV. 1211 (2015). Law firms historically have found it especially difficult to hire and retain women attorneys of color. See Liane Jackson, *Invisible Then Gone: Minority Women Are Disappearing from BigLaw—and Here’s Why*, A.B.A. J., Mar. 2016, at 36.

72. See Peter Lattman, *Clients Demand Diversity at Law Firms*, WALL ST. J.

law firms, often referred to as Big Law, have tended to restrict hiring to the top students at the very top law schools which is, generally speaking, not an especially diverse group.

With respect to efforts to change other aspects of legal education,<sup>73</sup> effectively addressing the lack of diversity at law schools implicates increased costs. Who will pay for efforts to achieve greater law school diversity? How, for example, will the costs be covered for programs designed to bring greater diversity to the law school applicant pool? Where will the financial resources come from that are necessary to provide the assistance to minorities and socioeconomically disadvantaged students who meet the requirements for law school admission?

Law schools are often asked to do more to increase the “pipeline” of minorities into law schools and the legal profession. Many law schools are making efforts to do precisely that. But we again find ourselves in an economic conundrum in which everyone seems to want something more out of law schools for less. Unfortunately, little attention is paid to how law schools will pay the substantial costs of pipeline and other outreach programs.

Even if one accepts that concrete benefits accrue due to increased diversity among law students, substantial costs must be incurred to achieve greater diversity. Such costs cannot be ignored at a time when many law schools are operating in the red. It does not seem entirely fair to have students bear the costs through using tuition dollars to pay for diversity pipeline and related programs that benefit the school, future students, the legal profession, and society at

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L. BLOG (Dec. 28, 2006, 12:44 PM), <http://blogs.wsj.com/law/2006/12/28/clients-demand-diversity-at-law-firms/>; see also Douglas E. Brayley & Eric S. Nguyen, *Good Business: A Market-Based Argument for Law Firm Diversity*, 34 J. LEGAL PROF. 1 (2009) (analyzing market pressures for increased diversity among attorneys at law firms).

73. See *supra* Section II.B.

large.

Many informed observers generally see the value of diverse student bodies and law faculties. For that reason, law school accreditation agencies devote attention to diversity.<sup>74</sup> However, the lack of diversity has not generated the demands for reform that the challenging economics of legal education have. Thus, although law schools have been pressured to supply more data about employment outcomes and to improve bar passage rates, for example, relatively little has been done to pressure law schools to address the lack of student and faculty diversity. No popular blogs are devoted to raising awareness of law student and faculty diversity concerns, unlike the ones that focus attention on job placement, increasing student debt loads, and rising tuition.<sup>75</sup>

Indeed, even minor reforms that might encourage law schools to diversify student bodies and faculties have not been adopted. For example, proposals to integrate the diversity of students and faculty into the *U.S. News* law school rankings, which would increase incentives for law schools to diversify, have met resistance.<sup>76</sup> The rankings currently do not directly consider student and faculty diversity.

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74. See AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, THE LAW SCHOOL ACCREDITATION PROCESS 3 (2013), <http://www.americanbar.org/content/dam/aba/publishing/abanews/1307552148abalawschacredproc.authcheckdam.pdf>.

75. See, e.g., INSIDE THE LAW SCHOOL SCAM, <http://insidethelawschoolscam.blogspot.com> (last visited Feb. 7, 2017); LAW SCHOOL TRANSPARENCY, <http://www.lawschooltransparency.com> (last visited Feb. 2, 2017).

76. See Johnson, *supra* note 65, at 1572–77.

*B. Law School Climate and Student Wellness*

Students long have complained about the unforgiving climate of law schools. Iconic films such as *The Paper Chase*<sup>77</sup> dramatically depict the anomie experienced by many law students engaged in the rigorous study of law and the unfeeling and unforgiving nature of the law school environment. Law schools have responded to these concerns to a certain extent.<sup>78</sup> For the most part, however, law schools have more or less continued to adhere to the time-worn “sink or swim” approach to students that historically has been the norm in legal education.

Put simply, the dissatisfaction of students with modern legal education is often minimized, if not simply ignored.<sup>79</sup> And student satisfaction is not something that directly factors into the *U.S. News* rankings.<sup>80</sup> That fact alone tends to minimize the incentives for law schools to respond to student discontent with legal education.

Along these lines, a quieter set of changes is occurring as the marketplace for law students has become increasingly competitive. Legal education has seen changing sensibilities about what had been the hands-off approach historically taken by law schools toward the well-being of students. Students today demand much more out of law schools than they traditionally have provided. The demands stem in no small part from the fact that students pay more to attend law school today than in the past. Students frequently view themselves as consumers of legal education who possess

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77. *THE PAPER CHASE* (20th Century Fox 1973).

78. See, e.g., Press Release, Harvard Law School, HLS Faculty Unanimously Approves First-Year Curricular Reform (Oct. 6, 2006), [http://www.law.harvard.edu/news/2006/10/06\\_curriculum.php](http://www.law.harvard.edu/news/2006/10/06_curriculum.php).

79. See Kevin R. Johnson, *The Forgotten Constituency? Law School Deans and Students*, 42 U. TOL. L. REV. 637 (2011) (analyzing how the concerns of law students often are not the primary focus of law school administrators).

80. Nor, strangely enough, is teaching quality directly factored into the *U.S. News* rankings.

market power. Today, they can, and in fact do, demand more from law schools.

However, the student push for increased services is motivated by more than merely monetary concerns. Students, for example, are demanding improved and expanded academic support (which in turn is linked to bar passage rates, with rankings and job placement consequences), counseling for stress and anxiety, and similar support services. Commentators offer intellectual support for the student demands.<sup>81</sup> Despite the positive contribution of such programs to the overall student experience, they, like other reforms,<sup>82</sup> cost money and strain already strapped law school budgets.

UC Davis School of Law has attempted to respond to climate and student wellness concerns<sup>83</sup> with, among other changes, a “Student Wellness Initiative,” which includes programming to educate students about healthy ways of coping with stress, as well as education about substance abuse (a well-known problem in the legal profession)<sup>84</sup> and

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81. See generally Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425 (2005); Lawrence S. Krieger, *What We’re Not Telling Law Students—and Lawyers—that They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J.L. & HEALTH 1 (1998), <http://engagedscholarship.csuohio.edu/jlh/vol13/iss1/3/>; Brittany Stringfellow Otey, *Buffering Burnout: Preparing the Online Generation for the Occupational Hazards of the Legal Profession*, 24 S. CAL. INTERDISC. L.J. 147 (2015).

82. See *supra* Section II.B. (discussing the costliness of experiential learning compared to traditional classroom instruction).

83. See generally Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209 (2005) (analyzing survey of students at UC Davis School of Law and finding that the experiences of women and minority students are less satisfactory than those of other students).

84. See Patrick R. Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (2016). On the general unhappiness of practicing

issues of professionalism generally. UC Davis has added an on-site trained counselor to assist law students in the adjustment to the rigors of law school life, cope with the stresses and strains of a legal education, and generally address student mental health concerns. Other schools are taking similar steps.<sup>85</sup>

In sum, student concerns with the non-economic aspects of legal education generally have not factored to any substantial degree into the commentary on the widespread concern with the “crisis” in law schools. This is true despite the fact that the persistent unhappiness of law students is well-known and long-standing. In my estimation, student concerns have been ignored for far too long and deserve our immediate attention.

#### CONCLUSION

Legal education is slowly responding to external and internal pressures. Simply put, law schools are changing. That is precisely as it should be. Some reforms have been prodded by changes in the legal marketplace. Put differently, change has in no small part been driven by hard economic realities as well as efforts to make graduates more competitive in the legal employment market. Concerns with the *U.S. News* rankings also have influenced changes in legal education.

At the same time, the increased law school commitment to clinical legal education, practical skills training, and externships in no small part represents responses to evolving

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lawyers, see Peter H. Huang & Rick Swedloff, *Authentic Happiness & Meaning at Law Firms*, 58 SYRACUSE L. REV. 335 (2008); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874–81 (1999).

85. See generally LAWRENCE S. KRIEGER, *THE HIDDEN SOURCES OF LAW SCHOOL STRESS* (2005); YALE LAW SCH. MENTAL HEALTH ALL., *FALLING THROUGH THE CRACKS: A REPORT ON MENTAL HEALTH AT YALE LAW SCHOOL* (2014); Karen Sloan, *Law Schools Tackle Mental Health*, NAT'L L.J., May 9, 2016.

views about how legal education is best delivered and what is best in terms of learning outcomes for law students. Once on the cutting edge of legal pedagogy, experiential learning is now mainstream and today is a core component of most law school curricula.

The changes in the legal marketplace and the delivery of legal education have placed increasing budgetary pressures on law schools. It seems that everyone wants more out of law schools for less. Ultimately, the all-important question is how to cover the costs of the improvements to legal education that benefit students and the profession.

Unfortunately, diversity among students and faculty is often little more than an afterthought in the debates about the so-called crisis of legal education. Besides the educational benefits of a more diverse student body and faculty, efforts to increase diversity are the right thing to do. This especially would seem to be the case for public law schools. Attention should be paid to ensuring that adequate incentives exist for law schools to strive to produce lawyers that reflect the rich diversity of contemporary American society. The legal profession and other institutions can assist in that endeavor by offering economic and other support for law schools to diversify.

Moreover, law schools must strive to improve the student experience in ways not measured in dollars-and-cents terms. Programs to improve the learning climate of law schools are long overdue. At a bare minimum, law schools owe an obligation to students to ensure that they are educated on how to become effective and healthy legal professionals.

In a time of rapid change, law schools have a unique opportunity to transform legal education and improve the lives of law students before and after law school. With the ferment in legal education, now is an ideal time to strive to make law schools more humane and to better reflect the best of American society.

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As we move forward in reforming legal education, there is room for optimism about the future and the ability of law schools, with the assistance and support of the legal profession, to address the many challenges facing legal education. That said, change will not be easy. But whether we like it or not, it will come. In responding to the inevitable pressures for reform, law schools should strive to shape their collective destiny.