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Column

Teaching Health Law [\[FN1\]](#)**\*841 WHAT WE IN LAW CAN LEARN FROM OUR COLLEAGUES IN MEDICINE ABOUT TEACHING  
STUDENTS HOW TO PRACTICE THEIR CHOSEN PROFESSION**[Jennifer S. Bard](#) [\[FN2\]](#)

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This column is based on my personal experience teaching in both United States medical and law schools and is intended to provide an overview of how they each take very different approaches to what is inherently a very similar task: educating young adults who want to join a specific profession. It is intended to compare and contrast the two in order to promote better understanding between the two professions and to point out ways in which each might learn from the other. I know that American medical education is not perfect and do not advocate adopting it wholesale into legal education. I also know that many of the teaching techniques used in American medical schools are already being used in a wide variety of higher-education setting including law schools. [\[FN1\]](#) Evidence from teaching conferences sponsored by the Society of American Law Professors (SALT), the listervs on teaching methods and humanizing legal education of the Association of American Law Schools (AALS), and a review of the literature collectively demonstrate that numerous law professors are committed to incorporating many of the things discussed in this column. Professor Roy Stuckey's *Best Practices for Legal Education* is an outstanding resource that brings together many innovative and effective teaching methods. [\[FN2\]](#) The literature on clinical legal education and teaching legal research and writing also suggests innovations analogous to those adopted in medical schools. [\[FN3\]](#)

However, in my conversations with lawyers and doctors I am struck by how little information each has about how the other was educated. Doctors are surprised to find that law professors not only do not practice law, they may have never done so. Lawyers are surprised that physicians who are on the faculty of medical schools seldom devote even half of their time to pure teaching activities but rather mostly teach in the context of their own practice of medicine.

Yet, unlike legal education which as an entity has changed very little over the past thirty years, substantial innovations have fundamentally changed medical education over the last 15 years, both because of changing views on education and because of pressure from the Association of American Medical Colleges (AAMC), which regulates

medical schools. Market pressures to provide more compact [\[FN4\]](#) and more practice-oriented [\[FN5\]](#) educations has already pressured law schools to add more clinical and legal writing courses, but neither has been particularly well integrated into what is seen as the core curriculum. With or without such external pressure, it is still interesting to compare contemporary practices in medical and legal education, and I will highlight particular medical school practices that I think are underutilized in law schools. My goal is not just to provide information about how very different these two methods of education are; I also hope that a better understanding of how doctors are educated will raise fundamental questions about how we train future lawyers.

One significant change in medical education has been to de-emphasize the study of pure science during the first two years of medical school in favor of the study of science as applied to medicine. This change has directly affected hundreds of basic scientists employed by medical schools who <sup>\*842</sup> were required to revise their classroom practices substantially in order to emphasize application of clinical medicine over pure science. Some internal critics of medical education reform are concerned that this focus on practical education is wrong because by teaching medical students how to do things, rather than having them learn on the job, schools are dumbing down medical education to the detriment of future patients. [\[FN6\]](#) Despite these criticisms, medical education has changed substantially and continues to evolve. As a result, most of the physicians in academic medicine were educated in a way very different from how they are teaching. By examining what medical schools have been doing, we perhaps can overcome skepticism with which traditionally prepared law professors often greet efforts to bring more skills training into legal education. Medical education's experiences can also provide law faculties with a way of expanding the pie to allow us to move beyond the "either/or" of theoretical versus practical training in order to develop a structure in which we can provide both.

Legal and medical education both share a commitment to the students as individuals and to the people who will be their clients and patients. Florida State College of Law Professor Lawrence Krieger has made a life's work of studying the role that law schools play in the unhappiness and depression of our students. [\[FN7\]](#) Unfortunately, their depression is not confined to law school. Many studies have found that lawyers have a rate of depression three times that of those in other professions. [\[FN8\]](#) This should be unacceptable to those of us who teach law students. Doctors also suffer disproportionately from depression and the frightening result is disproportionate rates of suicide, their transition from medical school to the practice of medicine is easier because they have a much better idea of what to expect as physicians in hospitals or clinics. [\[FN9\]](#) Perhaps if our law students were more familiar with the options available to them after graduating and taking the bar exam and were better prepared to meet their early professional challenges, it would make them better emotionally as well as substantively prepared to represent their clients.

Medical education struggles with the same concerns. Within the a culture where seeking help for any illness is seen as weakness, doctors often do not seek treatment for mental illness. Recent research shows that as a result suicide rates for male physicians are 70 percent higher than the general population and that suicide rates for female physicians are 250-400 percent higher than the general population. [\[FN10\]](#)

## **My Background**

I am very lucky to have had three big doses of medical school education without the need to touch a single cadaver. The public health program where I got my master's degree was housed in the University of Connecticut's

medical school. This meant that I was able to work closely with faculty developing law and ethics teaching material. I also spent a summer in the neonatal intensive care unit where I went bed to bed with the medical students, residents, nurses, and attending physicians.

My first job in academe in 2001 was as a faculty member at the University of Texas Medical Branch in Galveston (“UTMB”). At that time, I was responsible for a short course in medical jurisprudence which was one of the required rotations for third-year medical students. The result was I had the status of a “Clerkship Director” and went to all the curriculum review and development meetings. In 2001, the medical school had only recently adopted an almost entirely small-group, problem-based curriculum, and over the next two years, I co-taught with physicians on the medical school faculty. While much change had already occurred, there were still things to do and still many open wounds. Primarily these were the wounds of the scientists who had previously done most of the teaching in the first two years and who were now being asked to work with physicians and integrate clinical knowledge at the expense, they felt, of scientific rigor.

While at UTMB, I held an adjunct position at the University of Houston Law Center which was my first experience back in a law schools since I graduated from Yale 15 years earlier. For the past six years my job titles have essentially flipped, and I now hold a primary appointment at Texas Tech University School of Law and an adjunct position at the Texas Tech University School of Medicine. Many of the perspectives I share in this column are based on my personal experience. I have provided references, which can allow readers from all disciplines to review some of the available literature on legal and medical education, but in no sense is this essay intended to be a complete review.

### **The Basic Difference between Medical and Legal Education**

The core of the difference between medical education and legal education is that medical students are taught to practice medicine while \*843 law students are taught to study law. Medical students are exposed to patients during their first week of school and assume increasing levels of responsibilities over the next four years, culminating in a supervised residency that may then be followed by even more specialized training called a fellowship. They are treated as professionals beginning on their first day at medical school. This is emphasized by a White Coat Ceremony during orientation, which welcomes medical students into the profession by literally having them put on the clothing of the doctor. [\[FN11\]](#) By contrast, many law students graduate without ever having met or help represent an individual in need of legal services. My colleague Larry Cunningham, now at St. John's Law School, and I developed a professionalism ceremony for Texas Tech in which law students, dressed in business garb, took an oath, or a pledge, that was very similar to the one they will take when being admitted to the bar. I know many other law schools are engaging in similar induction ceremonies. [\[FN12\]](#) Talking about law students as professionals is, I believe, an important first step but it alone cannot make law students professionals.

Although there are significant differences in methodology and objectives, the closest analogy between legal and medical education is to compare the three years of law school to the first two years of medical school. Medical school starts with two years of primarily classroom training followed by two years of very closely supervised training while rotating through the major departments in a fully operational hospital. These four years are usually described as “undergraduate medical education,” even though, like law students, medical students all have either B.A.

or B.S. degrees. After graduating from medical school, the students choose a specialty and move on to highly structured residency programs (called “graduate medical education”)--the first year of which is still sometimes called an internship--which is funded by tax-payers through the Federal Medicare Program. [\[FN13\]](#) Residents all hold M.D. degrees and after one year are eligible for licensure. They receive a small salary, about \$45,000 a year, rather than pay tuition. [\[FN14\]](#) The hospital where they train also gets paid per resident. On the one hand, this means that graduate medical education is always vulnerable to spending cuts depending on political priorities. [\[FN15\]](#) But on the other hand, it allows an elaborate post-graduate training program that could not be supported by any individual hospital from current income. It is increasingly common for residents to continue their supervised training with a sub-specialty through a fellowship program. Fellowships range from one to four years, and some people do more than one.

By contrast, law school typically consists of three years of classroom education with limited opportunities, and in most cases no requirement, [\[FN16\]](#) to do elective practice-oriented work in a supervised legal clinic or in externships with government agencies or non-profit organizations. [\[FN17\]](#) There are several law schools which require either participation in a clinic, like the University of New Mexico, or a co-op system such as Northeastern University and Drexel University in which students alternate between classroom and real world legal settings. There is no funding for postgraduate legal education. Many state bars have required training programs for first year attorneys which the new lawyers must pay for themselves. [\[FN18\]](#) Otherwise, law students receive on-the-job training. [\[FN19\]](#) The quality of this training is completely dependent on the patience, skills, and availability of their first employer. Students who go out on their own to practice teach themselves.

### **How Did Law Schools and Medical Schools Get to Be the Way They Are?**

The recent report on contemporary legal education sponsored by the Carnegie Foundation offers two excellent observations. First, both law and medical schools are “hybrids” [\[FN20\]](#) that combine “the historic community of practitioners ... carrying on traditions of craft, judgment, and public responsibility” [\[FN21\]](#) with the modern research university, which “put[s] a premium on formal knowledge, abstracted from context.” [\[FN22\]](#) Second, both schools “somewhat awkwardly accommodated both training in formal knowledge and direct preparation for practice by placing them in sequence.” [\[FN23\]](#) Law schools do this by deferring practice experience until entry into the profession. [\[FN24\]](#) So, while medical schools train their students to be doctors by first dividing a four-year curriculum in half and then by structuring three-plus years of residency and fellowship training, law schools cede the task of learning how to practice law to a legal community.

### **Contrasting Medical Students with Law Students**

It is my observation that for most medical students, admission to medical school is the realization of a lifelong dream. Contrast this to our law students who may well have never met a lawyer, let alone know what they do all day. Worse, they often come with a distorted picture gleaned from television programs or movies in which all lawyers spend each day in court, and no lawyer thinks, researches, or writes. Despite this unpromising beginning, research shows that many law students come to us with great enthusiasm and, with what should be shocking regularity, are reduced within a year to depression and apathy. [\[FN25\]](#) Interestingly, there is similar data about the fall-off in enthusiasm of medical schools as they move from classroom to clinic.

### **Contrasting Medical School Professors with Law Professors**

The most fundamental difference between the people who teach today's medical students and those who teach today's law students is that the former love to practice medicine while the latter love to study the law. Medical school professors, have completed medical school, a three- to five-year residency, depending on specialty, and two or more multi-year fellowships, and are very likely in the active practice of medicine every day of \*844 their working lives. [FN26] Medical school professors do conduct research and, indeed, are under considerable pressure to obtain funding. However, given the increasing complexity of medical research, the training required is most increasingly comes through a doctorate program, not in medical school. The purpose of medical education is to train practicing physicians. If those students also want to conduct research, they are encouraged, through substantial subsidies from the National Institutes of Health (NIH), [FN27] Howard Hughes Medical Institute, [FN28] and others, to enroll in joint M.D./Ph.D. programs. [FN29] While some medical schools are more research oriented than others and most medical schools offer or even require a research experience because all practicing physicians will be lifetime consumers of medical research, it is still generally true that no more than a minority of medical students will adopt research as a profession or will be trained to do so.

This is not the case in law schools even though it is even less likely than in medical schools that any of the students will ever make their living doing research. A law school faculty is not there to teach the practice of law. Very few members of the law faculty outside the clinical or legal writing programs have more than a year or two of work experience beyond their judicial clerkships. [FN30] Moreover, being a law professor is a full-time job for which we receive regular distributions of a fixed salary. [FN31] While law professors may consult, this work is episodic and in no way representative of day to day practice. By contrast, almost no physician makes a living by teaching medicine full time. Being "on the faculty" of a medical school primarily entails supervising medical students and residents while caring for patients in the hospital and conducting funded research. While there are some full-time medical educators, who usually hold Ph.D.s in education or psychology, it is still the case that teaching is only part of the job of a physician in academic medicine, along with seeing patients, serving on committees, and doing research. A doctor who can do all these things well is called a "triple threat." Because the term "faculty" essentially refers to the doctors who staff a hospital connected with a medical school--i.e., teaching hospital--the number of faculty on a medical school is huge in comparison to a law school.

One thing law and medical professors have in common is that until very recently, it was unusual for either to have any formal training in teaching methods. The issue, however, is not training in methods of teaching, it is training in the implementation of the subject being taught. Groups of law professors often dispute the need for practice experience because of a belief that even those who have never practiced can be excellent teachers. In my view, these debates miss the point because the standard should not be "teaching excellence" in the abstract. It's not that practice experience makes one better at conveying information from a casebook in a lecture hall. It is that it is difficult to teach someone how to do something that you yourself do not know. Thus, by "training" I do not mean previous time spent in a classroom studying methods of instruction. Nor do I see the trend toward hiring law professors with newly minted Ph.D.s in the social sciences as responsive to this concern. [FN32] While a Ph.D. student may have been responsible for discussion sections of large undergraduate classes, what that really means is that they were thrown into the deep end with no formal training a year or two before their other law faculty colleagues. Yet in saying that

most law professors do not know how to practice law, I don't think that means there is no place for them. I believe it would be unnecessary, and perhaps foolish, to abandon teaching about the law in favor of a purely clinically based program. Much more so than medicine, law is a construct. It is man made and subject to rapid change. In contrast, while understanding of how the human heart will no doubt advance, it is unlikely that the heart itself will change any time in the foreseeable future. Thus, a practicing attorney must understand the concepts on which the current laws are based. She must know the law's past as well as its present because every practicing lawyer will find herself involved in developing the law's future.

### **Undergraduate Medical Education**

As recently as 15 years ago, the first and second years of medical school looked quite a bit like contemporary law schools. One hundred or so students sat in large lecture halls and listened to lectures they often found boring and far removed from practice. This is because during the first two years they were taught by scientists, not practicing physicians, who maintained their income and research slots by offering dry lectures on basic science. While learning about the function of each organ is not quite as abstract as learning about who should bear the costs of accidents, [\[FN33\]](#) it is probably equally removed from the actual day-to-day work of a doctor. Things have changed considerably.

In 1998 the AAMC, which is given the authority by most states to accredit American medical schools, announced its dissatisfaction with contemporary medical school curriculums. Pointing to the failure of \*845 American medical schools to implement the recommendations of a series of reform proposals dating back at least to 1932, the AAMC announced that they were forming the Medical School Objectives Project (MSOP) task force “to develop a set of goals and objectives that could guide individual schools in establishing objectives for their own programs.” [\[FN34\]](#) The MSOP was designed to be an ongoing project, and for the past 10 years, this task force has issued several different reports in a series called “Contemporary Issues in Medicine.” While the AAMC tried to use language acknowledging the independence of each medical school to develop its own curriculum, [\[FN35\]](#) its words read as an edict.

Medical schools were instructed that they “must ensure that before graduation a student will have demonstrated to the satisfaction of the faculty” each of the 10 objectives stemming from four basic principles: that Physicians Must be Altruistic, Knowledgeable, Skillful, and Dutiful. [\[FN36\]](#) This has proven to be a daunting task.

In order to accommodate the many and varied areas of study required by the MSOP, almost all medical schools have moved beyond the strict lecture model of instruction which emphasizes basic sciences, and they now incorporate some version of problem-based learning (PBL) or team learning to better integrate clinical practice.

### **Problem-Based Learning**

Problem-Based Learning (PBL) was introduced with the goal of substituting active learning by engaging with materials for the passive learning of listening to lectures. At first glance, PBL seems analogous to the case-based learning in law schools. It is quite different. While legal cases are reports of the decisions of specific judges or courts, PBL is prospective. The problems are case files that replicate an evolving medical situation. [\[FN37\]](#) Students

meet in small groups with facilitators and evaluate a file containing treatment notes, lab tests, and diagnostic images. They learn medical science as it arises in the context of the problem. Thus, they are never simply studying “a cell,” or even “cancer” but rather, specifically “the cancer cell” that is the origin of their patient's disease process. So far, however, studies show that PBL does not result in better standardized test scores, measures of clinical competency, or success in finding residencies [FN38]. In other words, it does not produce better doctors as that is currently measured. Here, again, the issue isn't all or nothing. The National Institute for Trial Advocacy produces excellent legal case files, but they are not widely used outside of classes intended to teach trial skills as opposed to substantive law. [FN39] We have no data to know if it is a more effective way of learning law practice than current methods.

### **Team Learning**

Because of the extraordinary demands on faculty resources, many schools have rejected small group PBL, in favor of a technique called “Team Learning.” Unlike PBL where much of the learning takes place in the group, medical students study material outside of class first. Once in class, they are tested individually; then they divide into small groups to teach each other the material they did not master. [FN40] Although there is a temptation to call this PBL “lite,” it works quite well.

I have been through the training on team learning at Baylor Medical School, [FN41] one of the national centers for team learning, and have adopted a modified form of it with great success in my first-year torts class. The students are visibly energized after even five minutes of addressing a problem in their groups, coming to a consensus and sharing their conclusions with the group as a whole.

### **Assessment and Grading**

One of the frequent objections to group work in law schools is that it makes it difficult to assign individual grades. This is true, although there are effective methods for grading group work it is more complex. Individual grading is not as much of a problem for medical schools, many of which have moved to a pass-fail system, because all medical students in the United States must pass three national qualifying exams before they can receive their licenses. Somewhat unimaginatively, these exams are called steps one, two, and three, and they occur after the second year of medical school, the fourth year of medical school, and following one year of residency. While there are a limited number of opportunities to retake a failed exam, it is impossible to advance further without passing. In the absence of grades, residency programs looking to distinguish among students have given increasing importance to the scores on these board exams. The State of California has implemented a similar process of a standardized screening exam for students attending unaccredited law schools. [FN42] While the objection to such implementing a national exam would be the fear that law school would become a process of teaching to a test, in fact students currently pay three to five thousand dollars to private companies for what are euphemistically called “bar review courses” where they learn the foundational information they may or may not have covered in law school. Perhaps a little teaching to the test is warranted.

### **\*846 Clinical Education in Medicine**

Medical students are trained to perform the specific clinical skills detailed by the AAMC. They do not, howev-

er, perform any of these tasks unsupervised. Historically, medical students conduct physical exams on their clinical rotations, but these are always in addition to the exams of the residents and attending doctors. Similarly, when they perform a procedure such as inserting a catheter or drawing blood, they, ideally, do so under the supervision of a resident or at least a highly experienced nurse. Long before the AAMC guidelines, the main job of a medical student had been to learn how to take an effective history. Medical students are famous for spending hours talking to a patient when a similar interview by a senior resident might take five or at most ten minutes. When I was at UTMB, a medical student could not receive his or her diploma without taking a history and conducting a physical exam on a “standardized” patient to the satisfaction of two faculty members observing through a video monitor and also of the patient, who is trained to simulate specific medical conditions. This is expensive and requires the availability of several clinically trained faculty to administer these exams as well as numerous “standardized” patients. It does not guarantee empathetic or even competent clinicians. It does, however, help achieve the goal that ever graduate can have an effective and professional conversation with a human being seeking medical care.

### **Standardized Patients**

Standardized patients are highly trained and well compensated in order to provide medical students with an experience that is as close as possible to a real patient. [\[FN43\]](#) While paying willing volunteers, often out-of-work actors, to undergo physical exams by nervous beginners may not seem immediately helpful in a law school, in fact standardized patients are frequently used to simulate conversations with different kinds of patients. For example, a standardized patient may be trained to drop clues during an initial interview to train a medical student to not only to ask questions, but to listen to the answers. Any of my colleagues in clinical legal education or legal writing, practice or research programs would immediately recognize this as a very familiar technique called “role-playing.” However, with few exceptions role-playing is not often used in the classroom by doctrinal professors. Part of the reason for this is resources. A law school contracts or tax class may have as many as a hundred people in it and is not structured, within the class hour, to allow for this kind of one-on-one activity.

### **Computerized Simulations**

Medical schools have made substantial investments in sophisticated, computerized mannequins that can be programmed to accurately simulate not just a cardiac arrest, but the likely results of the specific medications used by the student attempting to stabilize the heart rhythm. [\[FN44\]](#)

Simulations of legal problems are far less complex since they are based on words, not physiological reactions. There are many computerized legal education aids [\[FN45\]](#) (and more could be developed) that provide immediate feedback in a way an instructor cannot. For example, some programs provide immediate judicial responses to students' attempts to introduce various kinds of evidence. Many law students also already supplement their casebooks and classroom instructions with the self-study modules developed by the Center for Computer Assisted Legal Instruction (CALI). [\[FN46\]](#)

### **Role Models**

Because the faculty of medical schools consists primarily of practicing physicians, medical students have role

models from the very first day. Moreover, one of the primary functions of the second two years of medical school is to expose students to the variety of medical specialties so they can make an informed decision about which field to go into for residency training.

The situation is quite different in law schools. Few of us are role models in this way because very few of our students will ever be law professors. Even when our students go out into the world as externs or law clerks, there are major areas of practice, especially transactional ones, that they do not see because there is less work in which they can effectively assist. In order to provide a variety of role models for our students to see “what real lawyers do from the time they get up to the time they go to sleep,” as one of my students told me wistfully, we must reach out to the practicing bar for opportunities. This lack of knowledge about options for practice can, I think, contribute to future unhappiness.

### **Clinical Education in Law Schools**

Clinical education is viewed by many in legal academe in a negative light. The first sentence in a recent article tells the entire story: “The value of clinical legal education courses and the faculty teaching those courses has long been contested.” [\[FN47\]](#) They are expensive because of the need for very low faculty-student ratios.

While clinics alone are insufficient to provide an adequate legal education, it is hard to imagine the perspective of those who object to their role as providing an effective transition from the classroom to practice. As important as it is for students to study law, there must be room within three years to actually practice it. Ideally, every law student should have the experience of representing real clients in a supervised law school clinic. This is not always possible because it is expensive. There are other ways, including simulations, but it is important that they be carefully developed and supervised. I do not think that student-run competitions such as mock trials, mock client-counseling, and mock negotiations--which are sometimes described as preparation for practice--are sufficiently realistic to serve as good training.

### **\*847 Legal Research, Writing, and Practice Faculties**

Every law school in the United States harbors a group of people with considerable legal practice experience as well as the knowledge, skills, ability, and interest to teach these skills to law students. [\[FN48\]](#) Law schools boast of legal practice faculty in their recruiting materials, yet continue to treat them as second-class citizens. [\[FN49\]](#) It is no coincidence that the vast majority of these low-status, underpaid jobs are held by women. [\[FN50\]](#) Like clinics in medical schools, legal writing programs are an integral part of the law school education, and it is even more unfortunate that so many of our students absorb the message that legal writing teaching positions are not prestigious. Yet these people, described as either “legal practice” or “legal research and writing professors,” are held in the lowest possible esteem. They are usually paid half the salary of a starting law professor and almost none are on a full tenure track. Students quickly learn that these experts are not respected and often openly resent the time they have to spend learning the skills they teach, which the other faculty may make clear are not important.

### **Preparation for Licensing Exams**

Just as medical students must pass licensing examinations, law students too must pass a state's bar exam in order to be licensed. Medical schools avoid the issue of devoting an entire curriculum to test preparation because the three parts, steps, of the licensing exams are increasingly practice oriented. The science-based questions, which are still couched in terms of patient care, of the step one test following the second year of law school give way far more functionally oriented clinical vignettes. Since law schools have no tradition of moving from the classroom to the clinic, the issue of bar exam preparation has always been a sensitive one. As Professor Lorenzo A. Trujillo, the Assistant Dean of Students and Professional Programs and Professor-Attendant Rank at the University of Colorado School of Law, wrote recently

Law schools have a moral and ethical obligation to society-- and, to an even greater degree, to their students--to adequately prepare the students to succeed as professionals. Ultimate success for law students is measured by the ability to competently practice the legal profession. This necessarily requires licensure. Therefore, academics should teach and prepare their students for success by ensuring that they are adequately equipped to pass their state's bar examination. [\[FN51\]](#)

There is nothing in his words that suggest converting law school into a three-year bar exam preparation course. Rather, it is another call for ending the monopoly which study about the law has had on legal education for the past one hundred years.

### **Take-Home Messages**

So what can law faculty learn from the considerable time, effort, and money that medical educators have put into studying teaching methods? The first thing is to take advantage of the students' natural enthusiasms and curiosities. Law students come to us excited about the prospect of becoming lawyers in the same way medical students come excited about becoming doctors. Rather than harness this energy, we tell them that first they need to sit in a classroom for a year, or three. Students excited about practicing law find that their classes are oriented toward studying the law, instead of practicing it.

No wonder that study after study has documented the dramatic mood shifts between the ebullient first years and the depressed second years. [\[FN52\]](#)

Since almost all of our students are going to practice law, not become law professors, we need to make the transition from school to practice an easier one by introducing them to practice as soon as possible. We could easily learn from the medical schools by having our first-year law students do initial interviews for local legal aid organizations or shadowing lawyers in the community.

While we do not have the luxury of federally funded post-graduate training, medical education gives us many ideas on how to do this within the current three-year structure ranging from career exploration opportunities to direct training in practical skills such as interviewing and case management. This need not be prohibitively expensive since not all skill training requires the presence of actual clients. There is still much that can be done with simulations, both live and computer-based, which can put the work students are doing within a context.

The arguments against changes in law school curriculum are remarkably\***848** similar to those raised against

changing the medical school curriculum. First among these is an understandable reluctance of those of us who provide legal education to admit that, although traditional legal education is wonderful preparation for being a law professor, it is not so well suited for the vast majority of our students who do not want to be law professors.

Second, since all practicing lawyers have been trained under the present system, it is difficult for them to imagine how it could be done differently. I think that the tough grading curves that result in most students graduating with what they consider to be low grades makes it difficult for most lawyers to criticize their legal educations. Those who did well want to believe in the system, and those who did not may wonder if the problem is with their abilities, not with the structure of legal education. There is also a substantial element of elitism. We are actually able to convince many students that their lack of preparation for practice is a good thing, rather than a bad one! I have read in blogs the speculation that instruction in “lower tier schools” is different and more oriented toward practice. But I have not found this to be true because the majority of law professors working today received very traditional educations from the same three to five years and tend to teach as they were educated regardless of the tier of the school which employs them.

It is unlikely that the forces opposing change can fend off the growing challenge to traditional legal education. The most significant challenge, I think, is coming from distance learning which may force law schools into more developing more hands-on, skills based programs. [\[FN53\]](#) While some may scoff at the possibility of getting a law degree online, in fact almost every business school short of Harvard has already deferred to the demands of today's students who do not want to quit their jobs and move to remote locations in order to complete a professional degree. California already allows graduates of not just non-accredited but non-corporate law schools to sit for the bar exam and other states may well follow. The advantages of distance learning are hard for a brick and mortar law school to overcome unless it can offer training beyond the traditional lecture model. As Concord Law School explains on its website under the heading of “Finally, A Law School That Offers Flexibility.”

Prior to Concord Law School's inception, a legal education was generally only available to those who lived in large metropolitan areas or university towns. Today, you can go to law school wherever and whenever you connect to the Internet. The benefits of a distance-learning law program are immediate and obvious. You do not have to move, change employment, or even commute to take advantage of a Concord legal education.

Moreover, with schools like Northwestern shortening their program [\[FN54\]](#) and others like Franklin Pierce offering specialized programs to prepare students for practice, [\[FN55\]](#) the pressure to change is coming thick and fast. It is unlikely that medical schools will be similarly threatened although there is discussion of making better use of live broadcasting for lectures or demonstrations of general interest.

Perhaps it is appropriate to end by referring to the prescription for a happy life attributed to the Epicureans: all things in moderation. Medical education is not perfect and legal education is not terrible. Moreover, unlike medical education which is heavily subsidized by the Federal Medicare Program any innovations in legal education must fit within existing economic constraints. Nevertheless, it is still possible for law schools to do much more for our students to prepare them for their goal of practicing law. It is not necessary to reach consensus on what constitutes the perfect legal education in order to benefit from the time and money our colleagues in medical schools have devoted to discovering effective methods of turning college graduates into licensed professionals. Three years should be

more than sufficient time to provide all of our students a mix of practice and theory.

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#### [\[FN1\]](#). **About This Column**

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[\[FN1\]](#). A. Jakab, "Dilemmas of Legal Education: A Comparative Overview," *Journal of Legal Education* 57 (2007): 253-265 (identifying dilemmas in legal education, looking at advantages and disadvantages of different forms).

[\[FN2\]](#). R. Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association, 2007).

[\[FN3\]](#). J. P. Oglivy and K. Czapanskiy, "Clinical Legal Education: An Annotated Bibliography (third edition) Part Three: Synopses of Articles, Essays, Books and Book Chapters," *Clinical Law Review* 12 (Fall 2005): 101-412; W. K. S. Wang, "The Restructuring of Legal Education along Functional Lines," *Journal of Contemporary Legal Issues* 17 (2008): 331-373; and T. Pollman and L. H. Edwards, "Scholarship by Legal Writing Professors: New Voices in the Legal Academy," *Legal Writing: The Journal of the Legal Writing Institute*, 2005.

[\[FN4\]](#). Northwestern Law, "Accelerated JD," available at <http://www.law.northwestern.edu/academics/ajd/> (last visited October 9, 2008).

[\[FN5\]](#). Northeastern University School of Law, "Cooperative Legal Education Program," available at <http://www.slw.neu.edu/coop/default.htm> (last visited September 15, 2008); and Drexel University Earle Mack School of Law, "Drexel Law Co-op Program: Overview," available at <http://www.drexel.edu/law/coop-overview.asp> (last visited October 15, 2008).

[\[FN6\]](#). Personal communication with Suzanne-Graham, M.D., Associate Professor of Pathology, Texas Tech University Health Sciences Center Department of Pathology, to author, September 7, 2008.

[\[FN7\]](#). See, e.g., L. Krieger, "Human Nature as a New Guiding Philosophy for Legal Education and the Profession,"

*Washburn Law Journal* 47 (Winter 2008): 247-311 (reviewing the literature on the growing rates of depression among law students as they move through law school and proposing increased attention to professionalism as a way of combating this).

[FN8]. *Id.*, at 265-66 (citing E. Mertz, *The Language of Law School: Learning to Think Like a Lawyer* (Oxford University Press, 2007): at 95.

[FN9]. D. T. Lustig, "Depression is Law's Occupational Hazard," *The Complete Lawyer* 4, available at <<http://www.thecompletelawyer.com/volume4/issue2/article.php?ppaid=6261Depression6261>> (last visited October 10, 2008) (depression is described as an "occupational hazard" of lawyers); Lawyers with Depression Web site, available at <<http://www.lawyerswithdepression.com>> (last visited October 10, 2008); and "Depression Takes a Heavy Toll on Lawyers," *California Bar Journal*, May 2008, available at <[http://www.calbar.ca.gov/state/calbar/calbar\\_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/May2008&sCatHtmlPath=cbj/2008-05\\_TH\\_02\\_Depression.html&sCatHtmlTitle=Top%20Headlines](http://www.calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/May2008&sCatHtmlPath=cbj/2008-05_TH_02_Depression.html&sCatHtmlTitle=Top%20Headlines)> (last visited October 10, 2008).

[FN10]. B. Rogers, "Fighting the Depths: Depression--and Its Consequences-- Among Physicians-in-Training," *The New Physician* 57, no. 6 (2008), at <<http://www.amsa.org/tnp/articles/article.cfx?id=451>> (last visited October 9, 2008).

[FN11]. B. Burke, "If Medical Schools Can Do It, Why Can't We?" *Montana Lawyer* 32 (August 2007): 28-29.

[FN12]. P. Lustbader, "You Are Not in Kansas Anymore: Orientation Programs Can Help Students Fly over the Rainbow," *Washburn Law Journal* 47 (2008): 327-366.

[FN13]. Accreditation Council for Graduate Medical Education, "What Every Medical Student Needs to Know about ACGME," available at <[http://www.acgme.org/acwebsite/medstudent/medst\\_faq.asp](http://www.acgme.org/acwebsite/medstudent/medst_faq.asp)> (last visited October 10, 2008) (residency programs are regulated by a private organization called the Accreditation Council for Graduate Medical Education [ACGME]); History of Medical Education Accreditation, *Accreditation Council for Graduate Medical Education*, available at <[http://www.acgme.org/acWebsite/GME\\_info/HistoryGME.pdf](http://www.acgme.org/acWebsite/GME_info/HistoryGME.pdf)> (last visited October 10, 2008) (the history of graduate medical education in the United States is detailed in this time line).

[FN14]. University of Minnesota, Graduate Medical Education, "Resident Fellow Funding," available at <<http://www.med.umn.edu/gme/directors/finance.html>> (last visited October 26, 2008)

[FN15]. J. Lubell, "Schools Sweating GME funds MedPACK: Indirect Medical Education Pat to P4P," *Modern Healthcare* 38, no. 13 (2008): 12-13.

[FN16]. There are several law schools which require either participation in a clinic, like the University of New Mexico, or a co-op system such as Northeastern University and Drexel University in which students alternate between classroom and real world legal settings

[FN17]. B. McCormack, "Symposium: Looking Forward: The Next Sixty Years of Clinical Legal Education," *Tennessee Law Review* 75 (2008): 251-264, at 252.

[FN18]. The Supreme Court of Ohio, "FAQ for Newly Admitted Attorneys," available at <[http://www.sconet.state.oh.us/Atty\\_Reg/FAQ\\_newAtty.asp](http://www.sconet.state.oh.us/Atty_Reg/FAQ_newAtty.asp)> (last visited October 26, 2008).

[FN19]. M. Christensen, "Equalizing the Mentoring Learning Curve: What's a New Solo Attorney to Do without a Mentor?" (New York: ABA Center for Professional Responsibility, 2007) available at <<http://www.abanet.org/cpr/about/mentoring.pdf>> (last visited October 27, 2008).

[FN20]. W. M. Sullivan, A. Colby, J. W. Wegner, L. Bond, and L. S. Shulman, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Jossey Bass, 2007).

[FN21]. *Id.*, at 4.

[FN22]. *Id.*, at 5.

[FN23]. *Id.*, at 6.

[FN24]. *Id.*

[FN25]. R. A. McKinley, "Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?" *Legal Writing: The Journal of the Legal Writing Institute* 8, no. 1 (2002): 229-255, at 241.

[FN26]. Conversation with Suzanne Graham, M.D., September 7, 2008.

[FN27]. National Institute of Health, "Research and Training Opportunities at the National Institute of Health: The Physician Scientist," available at <<http://www.training.nih.gov/careers/careercenter/mdphd.html>> (last visited October 26, 2008).

[FN28]. Howard Hughes Medical Institute, "Graduate and Medical Education Programs," available at <<http://www.hhmi.org/grants/office/graduate>> (last visited October 26, 2008).

[FN29]. M. K. O'Banion et al., "MD-PhD Training and Careers: A Guide for Potential Applicants, Current Trainees and Advisors," Association of American Medical Colleges' Group on Graduate Research, Education, and Training (GREAT Group) MD-PhD Section, available at <<http://www.aamc.org/members/great/resources/mdphdtrainingandcareers.pdf>> (last visited October 26, 2008).

[FN30]. An exception would be someone with considerable experience in a specific, relatively technical area like

tax or health law or banking.

[FN31]. While some law professors have lucrative consulting practices, the hours that can be devoted to this are limited, and the profits go directly to the law professor--not the institution.

[FN32]. B. Fried, *Law Teaching Placement Guide: How to Get a Job Teaching Law*, 2008-2009, available at <[http://www.law.stanford.edu/experience/careers/ocs/students/careers\\_in\\_law/pdf/SLS\\_teaching\\_placement\\_program.pdf](http://www.law.stanford.edu/experience/careers/ocs/students/careers_in_law/pdf/SLS_teaching_placement_program.pdf)> (last visited October 10, 2008). Stanford's guide to students interested in law teaching advises that "having a PhD in an ancillary field of study" is "increasingly valued in the market."

[FN33]. G. Calabresi, *The Cost of Accidents: A Legal and Economic Analysis* (New Haven: Yale University Press, 1970). Any law student would be lucky to be assigned this very interesting book because it demonstrates the difference between developing a theory of torts compensation and developing a torts action on behalf of an accident victim. The thesis of this essay is that both activities are valuable and both should be part of the law school curriculum.

[FN34]. Association of American Medical Colleges, *Report I: Learning Objectives for Medical School Education*, January 1998, at 3, available at <[http://services.aamc.org/Publications/showfile.cfm?file=version87.pdf&prd\\_id=198&prv\\_id=239&pdf\\_id=87](http://services.aamc.org/Publications/showfile.cfm?file=version87.pdf&prd_id=198&prv_id=239&pdf_id=87)> (last visited October 10, 2008) (hereinafter cited as *Report I*).

[FN35]. *Id.*, at 3.

[FN36]. *Id.*, at 3-4.

[FN37]. H. S. Barrows, *Practice-Based Learning: Problem-Based Learning Applied to Medical Education*, Southern Illinois University School of Medicine, 2000.

[FN38]. J. Cohen-Schotanus, A. M. M. Muijtjens, J. Schönrock-Adema, J. Geertsma, and C. P. M. van der Vleuten, "Effects of Conventional and Problem-Based Learning on Clinical and General Competencies and Career Development," *Medical Education* 42, no. 3 (2008): 256-65.

[FN39]. V. Sutton, *Madden v. Lifecord, Inc.: Case File* (New York: National Institute for Trial Advocacy 2004): 1-133.

[FN40]. Wright State University, Bancroft School of Medicine, "Posters," available at <[www.med.wright.edu/aa/facdev/tbl/posters.htm#8](http://www.med.wright.edu/aa/facdev/tbl/posters.htm#8)> (last visited October 15, 2008).

[FN41]. Baylor College of Medicine, "Team Learning in Medical Education," available at <[http://www.bcm.edu/fac-ed/team\\_learning](http://www.bcm.edu/fac-ed/team_learning)> (last visited October 10, 2008).

[FN42]. The State Bar of California, "Office of Admissions, Online Applications," available at <<http://calbar.xap.com/>> (last visited October 26, 2008).

[FN43]. E. Yoffe, "Playing Doctor: Oh, No! I'm the First Patient These 23 Medical Students Have Ever Examined," *Slate*, July 4, 2007, available at <<http://www.slate.com/id/2169480/>> (last visited October 10, 2008).

[FN44]. Wake Forest University Medical Center, "Medical Students Respond Positively to Simulated Patient Experience," *ScienceDaily*, July 24, 2007, available at <<http://www.sciencedaily.com/releases/2007/07/070723095302.htm>> (last visited October 10, 2008).

[FN45]. K. Barton, P. Mahang, and P. McKellar, "Authentic Fictions: Simulation, Professionalism and Legal Learning," *Clinical Law Review* 14, no. 1 (2007): 143-193, available at <<http://ssrn.com/abstract=1086778>> (last visited October 10, 2008). The article provides a theoretical framework for using simulation in legal education and offers examples from the authors' own experiences, as well as an extensive bibliography.

[FN46]. The Center for Computer Assisted Legal Instruction, "Lesson Category List," available at <<http://w.cali.org/lessoncategory&cat=TRL>> (last visited October 10, 2008).

[FN47]. P. A. Joy and R. R. Kuehn, "The Evolution of ABA Standards for Clinical Faculty," *Tennessee Law Review* 75, (2008): 183-232 (tracing the history of clinical legal education in the United States, with an emphasis on the role of ABA regulation).

[FN48]. Suffolk University Law School, "LPS Faculty Profiles," 2008, available at <<http://law.suffolk.edu/academic/lps/faculty.cfm>> (last visited October 10, 2008). ("The LPS course is directed and taught by full-time, dedicated faculty with vast teaching experience, who are leaders in the national, regional, and local legal writing fields. They are an integral part of the law school and academic associations. In addition, they have a breadth of civil and criminal legal practice experience in large and small firms, the Attorney General's Office and district attorneys' offices, the public defenders offices, and both federal and state judicial clerkships.").

[FN49]. M. H. Weresh, "Form and Substance: Standards for Promotion and Retention of Legal Writing Faculty on Clinical Tenure Track," *Golden Gate University Law Review* 37, (2006): 281-327, at 286-287.

[FN50]. A. C. McGinley, "Discrimination in Our Midst: Law School's Potential Liability for Employment Practices," *UCLA Women's Law Journal* 14, (2005): 1-59, at 7-12 (tracing status of legal practice faculty in American law schools).

[FN51]. L. Trujillo, "Relationship between Law School and the Bar Exam: A Look at Assessment and Student Success," *University of Colorado Law Review* 78, (2007): 69-109, at 70-71.

[FN52]. See Krieger, *supra* note 7, at 265-66 (citing E. Mertz, *The Language of Law School: Learning to Think Like a Lawyer* [Oxford University Press, 2007]: at 95).

[FN53]. Concord Law School, "Benefits of Distance Learning: An Online Law Degree that Works for You--

Anytime, Anywhere,” *available at* <[http:// www.concordlawschool.edu/benefitsof-distance-learning.asp](http://www.concordlawschool.edu/benefitsof-distance-learning.asp)> (last visited October 28, 2008).

[\[FN54\]](#). See *supra* note 4.

[\[FN55\]](#). The Franklin Pierce Law Center, “Daniel Webster Scholar Honors Programs,” *available at* <<http://www.fplc.edu/websterscholar/>> (last visited October 10, 2008).

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