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Academic Libraries and the Crisis in Legal Education

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Today's law schools are threatened by declining enrollments and poor job prospects for graduates. Prominent reformers are exposing dysfunctions within the current system and recommending improvements, but many of these proposals misunderstand academic law libraries and their contributions to student and faculty success. This article examines four possible curricular reforms and suggests ways that law librarians can participate in a comprehensive effort to make legal education more useful.

Introduction

¶1 Legal education in the United States faces an uncertain and potentially grim future. The financial crisis that began to unfold in 2007 precipitated a significant decline in the market for many kinds of legal services, exposing vulnerabilities in the prevailing large law firm business model and structural weaknesses in the larger job market.[1] Over 15,000 people (almost 6000 of them attorneys) were laid off by large law firms between January 2008 and December 2011.[2] These unprecedented

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1. *See* Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 599–604 (2010); NALP, *Class of 2011 Law School Grads Face Worst Job Market Yet—Less Than Half Find Jobs in Private Practice* 1 (2012), http://www.nalp.org/uploads/Classof2011SelectedFindings.pdf.

2. *Layoff Tracker*, LAW SCHUCKS, http://lawshucks.com/layoff-tracker (last visited Apr. 18, 2013) (focusing on layoffs at large law firms only, and excluding whole-firm dissolutions).

layoffs, combined with diminished law firm hiring beginning in 2008, glutted the market and raised formidable barriers for newer law school graduates.[3] The problem is not limited to "Big Law": the economic downturn has affected employment rates throughout the entire legal field.[4] Employment numbers for new attorneys have steadily decreased since 2008;[5] the latest data from the National Association for Law Placement (NALP) indicate that among 2011 graduates who reported their employment status nine months after graduation, only 65.4% held jobs that required bar passage.[6] The percentage for all graduates may be even lower.[7] Recent studies suggest that law firm hiring is unlikely to rebound to pre-2008 levels in the foreseeable future.[8]

¶2 With the sharp downturn in private firm hiring, all sectors of legal employment have become more competitive. Bureau of Labor Statistics figures project approximately 212,000 job openings for lawyers "due to growth and replacement needs" between 2010 and 2020 (fewer than 22,000 annually),[9] which is only a modest percentage of the average annual number of newly minted J.D.s, at least at current levels of matriculation.[10] Moreover, these estimates do not reflect the possibility that many of the legal jobs created between 2010 and 2020 may not be

3. *See* BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 72–73 (2012); *see also* Gerry Shih, *Downturn Dims Prospects Even at Top Law Schools*, N.Y. TIMES, Aug. 26, 2009, at B1. Many firms also deferred the arrival of new graduates to whom they had already made job offers, compounding the job-search challenge for subsequent graduating classes. Maulik Shah, *The Legal Education Bubble: How Law Schools Should Respond to Changes in the Legal Market*, 23 GEO. J. LEGAL ETHICS 843, 850–51 (2010).

4. *See* Drew Combs, *No Place to Hide*, AM. LAW., June 1, 2010, at 70, 70 ("The bottom line: Even with their oft-touted lower leverage and lower billing rates, [AmLaw-rated] Second Hundred firms, as a group, were just as vulnerable to the economic downturn as AmLaw 100 firms were."); Vesselin Mitev, *Small Firms and Solos Feel the Financial Squeeze*, LAW.COM (Apr. 10, 2009), http://www.law.com/jsp/article.jsp?id=1202429790719&Small_Firms_and_Solos_Feel_the_Financial_Squeeze; *Market Trends*, NORTHWESTERN SCH. OF LAW, http://www.law.northwestern.edu/career/markettrends/ (last updated Mar. 2012) ("Small-scale layoffs remain part of the new economy and have occurred in firms on almost every substantial legal market.").

5. Katherine Mangan, *Unemployment Among Recent Law Graduates Is as Bad as It's Ever Been*, CHRON. HIGHER EDUC., June 7, 2012, http://chronicle.com/article/Unemployment-Among-Recent-Law/132189/ (describing how the known percentage of 2011 graduates employed nine months after graduation hit a low of 85.6% and has declined every year since 2008).

6. *Id.*

7. *See* William D. Henderson, *A Blueprint for Change*, 40 PEPPERDINE L. REV. 461, 476 (2013); *see also* Paul Campos, *Served*, NEW REPUBLIC, Apr. 25, 2011, http://www.newrepublic.com/article/87251/law-school-employment-harvard-yale-georgetown (alleging underreporting and misreporting of employment status).

8. *See* TAMANAHA, *supra* note 3, at 169. Indeed, the robust growth of law firms during most of the last decade may have been a departure from longer-term trends. *See* Hildebrandt Consulting LLC & Citi Private Bank, 2013 Client Advisory 2 (Jan. 14, 2013), http://hildebrandtconsult.com/uploads/Citi_Hildebrandt_2013_Client_Advisory.pdf ("[Historical data] suggests that, in fact, the boom years (roughly, 2001–2007) were the aberration, and what we are experiencing now is more characteristic of the legal market before the boom years.").

9. *Employment Projections*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/emp/ep_table_107.htm (last modified Feb. 1, 2012) (table 1.7: Occupational employment and job openings data, projected 2010–20, and worker characteristics, 2010).

10. Am. Bar Ass'n, Lawyer Demographics (2012), http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf, indicates total J.D. enrollment for the academic year 2011–2012 at 146,288 students. If even only one quarter (36,572) of these students graduate annually, supply will continually outstrip demand.

filled by new graduates, but instead by earlier graduates who happened to be unemployed in 2010.[11] This is not to say that there are "too many" lawyers—there is a great unmet need for affordable legal services in the United States.[12] Unfortunately, this need does not directly translate into legal employment, at least not within established private practices.[13]

¶3 One outcome of these patterns has been a rise in the number of new law graduates pursuing solo or small firm practice. Recent figures from NALP show that for law graduates from the class of 2011, 42.9% of private practice jobs were with firms of between two and ten attorneys (an increase of 11.3% since 2008), while the percentage of graduates moving into solo practice has almost doubled in the same time period (rising from 3.3% to 6%).[14] Solo and small firm practice can be extremely challenging for new attorneys, however, and may pose too uncertain of a financial reward to justify a student's investment of time and resources, or the risk of crushing debt. Paul Campos has suggested that solo and small firm practice are "possibly unsustainable forms of self-employment," in part because newly minted attorneys "likely have almost no idea what they are doing, because neither the most basic mechanics of practicing law nor any of the aspects of running one's own small business were covered during the course of their legal education."[15]

¶4 Despite the downturn in the legal market, law schools continued to enroll sizable classes until very recently.[16] However, class sizes for students beginning their studies in the fall of 2012 were dramatically smaller at many schools,[17] and in January 2013, J.D. applications were approaching a thirty-year low.[18] The decrease in incoming tuition dollars has created financial hardship for many law schools and

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11. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 214 (2012).

12. *See* Emily A. Spieler, *The Paradox of Access to Civil Justice: The "Glut" of New Lawyers and the Persistence of Unmet Need*, 44 U. TOL. L. REV. 365 (2013). This is an issue the legal profession has been facing for many years. *See* Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 541–44 (1994).

13. *Cf.* Daniel J. Morrissey, *Saving Legal Education*, 56 J. LEGAL EDUC. 254, 271 (2006) (noting that many lawyers who want to represent clients without much money are discouraged by their own high levels of debt).

14. James Leipold, *The Employment Profile for the Law School Class of 2011 May Represent the "Bottom"—Class Faced Brutal Entry-Level Job Market*, *in* NALP, *supra* note 1, at 1, 3. The most recent ABA statistics indicate that almost half (49%) of all private practitioners worked in solo practice in 2005, a figure that has remained relatively steady for the past twenty-five years, but which does not indicate the relative age or experience level of these practitioners. Am. Bar Ass'n, *supra* note 10.

15. Campos, *supra* note 11, at 201–02.

16. *See* Rebecca R. Ruiz, *Recession Is Pushing Up Law School Applications and Interest in Graduate Studies*, N.Y. TIMES, Jan. 10, 2010, at A18.

17. Press Release, Am. Bar Ass'n, ABA Section of Legal Education Reports Preliminary Fall 2012 First-Year Enrollment Data (Nov. 28, 2012), http://www.abanow.org/2012/11/aba-section-of-legal-education-reports-preliminary-fall-2012-first-year-enrollment-data/ (indicating that 149 ABA-accredited law schools experienced a decrease in enrollment for fall 2012, representing a nine percent decrease from the previous year and a fifteen percent decrease from the all-time high enrollment figures recorded in the fall of 2010). *See also* Joe Palazzolo & Chelsea Phipps, *Law Schools Apply the Brakes*, WALL ST. J., June 11, 2012, at B1 (describing planned class-size reductions at several law schools).

18. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1.

may make it increasingly difficult to maintain the status quo without increasing student tuition and fees. Indeed, the dramatic increase in the cost of legal education has continued apace throughout the economic downturn,[19] while high tuition and increased transparency about employment rates promise to keep enrollments depressed.

¶5 There has been widespread negative media coverage of the challenges faced by law students and new graduates, including strong criticism from commentators inside legal academia.[20] The increased visibility of the problem has likely contributed to further downturns in applications and enrollments. Without intervention, some law schools may be forced to downsize or close.[21]

¶6 It is a positive sign that some legal academics are publicly exposing inefficiencies and dysfunctions within the current system and devising changes that may preserve and improve legal education. But many of the most prominent reform proposals should be disheartening to academic law librarians: our collections and instructional services are either ignored or grouped ignominiously with vanity building projects, bloated administrative budgets, and other sources of wasteful spending. It is clear that many well-intentioned reformers do not appreciate how libraries contribute to the academic and professional success of law students and faculty, or understand the complexities of how library budgets are being spent.

¶7 It is imperative that law librarians participate in the conversation about improving the law school curriculum and outcomes for law graduates. If we do not speak up, we may lose our voice. Many libraries have responded to the current crisis as they have to previous periods of austerity: cutting acquisitions; postponing or cancelling planned renovations, technology upgrades, or program expansions; hiring fewer professional and support staff; and generally trying to do more with less.[22] Many law librarians are also making innovative efforts to maintain high-quality services during this difficult time.[23] Yet students and young alumni who find themselves precariously poised in the new legal marketplace may hold their law schools responsible.[24] Law librarians must demonstrate, to both our schools and our students, that our work is part of the solution, not part of the problem.

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19. *Id.*

20. *See generally* TAMANAHA, *supra* note 3; Campos, *supra* note 11; Henderson, *supra* note 7; Kyle P. McEntee et al., *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. MICH. J.L. REFORM 225 (2012); *see also* Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55 (2012).

21. *See, e.g.*, Debra Cassens Weiss, *Vermont Law School Plans to Downsize Staff; Dean Says Nonlawyer Specialists Will Do More Legal Work*, ABA JOURNAL.COM (Nov. 28, 2012, 8:16 A.M. CDT), http://www.abajournal.com/news/article/vermont_law_school_plans_to_downsize (describing Vermont Law School's decision to offer voluntary buyout packages to staffers in the wake of a $3.3 million budget shortfall).

22. *See generally* Femi Cadmus & Blair Kauffman, *The Recession Mounts the Ivory Tower: How the Lillian Goldman Law Library at Yale Has Met the Challenges Posed by a Declining Economy*, 10 LEGAL INFO. MGMT. 275 (2010); Taylor Fitchett et al., *Law Library Budgets in Hard Times*, 103 LAW LIBR. J. 91, 2011 LAW LIBR. J. 5.

23. *See* Fitchett et al., *supra* note 22, at 100–08, ¶¶ 27–54 (describing strategies used at the University of North Carolina and the University of Virginia).

24. David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1.

¶8 Aside from sacrifice and prudence, how can we as librarians be part of an efficient solution for our institutions and the students we serve? In February 2013, the American Association of Law Libraries (AALL) delivered comments to the American Bar Association (ABA) Task Force on the Future of Legal Education, highlighting how law librarians are well positioned to respond to the challenges of the current crisis.[25] The comments focus on law librarians' skill and expertise in legal research instruction, the need for collaboration with other experiential training programs within the law school, the use of new technologies, and incorporating outcomes assessments into all aspects of the legal curriculum.[26]

¶9 These AALL comments come at a crucial time: if academic law librarians do not actively position themselves as part of this necessary reform effort, there is a real risk that our libraries will be an easy target for ruthless budget cuts. Therefore, we should use this crisis to reassert our value and redirect the focus toward how we can help improve the odds for our graduates. This requires us to take an active interest in the law school reform movement and understand the implications of various reform strategies for our law libraries. We should also ensure that we, as law librarians, are indeed living up to the promise of the AALL statement to the ABA. Academic law libraries will need to hold themselves to the same rigorous accounting as their parent institutions in order to thrive in the "new normal."

The Debate over "Practice-Ready" Training in Law Schools

¶10 The law school crisis has opened a new chapter in a long-standing debate about the purpose of law school: should law school be scholarly, academic, and theoretical, or should it be focused on everyday practice skills? Many of the most urgent voices for reform advocate a dramatic overhaul of the traditional scholarly curriculum in favor of experiential learning and cultivating "practice-ready" graduates.[27]

¶11 In a recent article, William Henderson describes three interrelated factors that affect a law school's viability: a critical mass of prospective students, those students' ability to pay, and attractive professional employment opportunities waiting at the other end.[28] Henderson argues that the last of these three is the most important: when prospective students see that the law holds the promise of an intellectually and financially satisfying future, they will be eager to apply to law

25. Letter from Jean M. Wenger, President, and Kate Hagan, Exec. Dir., Am. Ass'n of Law Libraries, to Hon. Randall T. Shepard, Chair, ABA Task Force on the Future of Legal Educ., and Art Garwin, Deputy Dir., ABA Ctr. for Prof'l Responsibility (Feb. 6, 2013), *available at* http://www.aallnet.org/main-menu/Leadership-Governance/committee/cmte-final-reports/2012-2013/flertf.pdf [hereinafter Wenger & Hagan Letter]. For more on the work of the ABA Task Force, see Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. Times, Feb. 11, 2013, at A11.

26. Wenger & Hagan Letter, *supra* note 25, at 2–3.

27. *See* A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 Wash. & Lee L. Rev. 1949, 1952 n.6 (2012) (citing sources advocating practical training in law schools).

28. Henderson, *supra* note 7, at 466–67.

school.[29] To achieve that future, law schools must train students who are truly competent to counsel and represent clients from day one.[30]

¶12 In this fiercely competitive job market, students should be prepared to provide basic services to clients from the moment they graduate. In the past, "recent graduates of law schools could count on their firms investing in them through a lengthy and exhaustive mentoring process that helped bridge the gap between a law school education and making it possible for them to contribute as productive members of a firm or organization."[31] Unfortunately, the vast majority of students today cannot expect to receive this kind of investment. For one thing, a large percentage of students are not getting hired at law firms at all.[32] And many students who do secure employment are working for small firms that are less likely to dedicate time and resources to training new employees in-house.[33]

¶13 Even larger firms that have traditionally offered the most extensive professional development opportunities for associates are cutting back.[34] Some clients, aware of the lack of practical skills conferred by law schools, are unwilling to pay for inexperienced junior lawyers to work on their legal matters.[35] Firms today "have less capacity to subsidize the on-the-job training of law graduates that they had been expected to provide, revealing deficiencies in the ability of law schools to adequately prepare a sufficient number of their students to handle legal matters for clients."[36] Law schools (or at least non-elite law schools) that graduate students without practical skills are likely to see poor employment outcomes for their recent graduates, causing a further decline in the marketability of their degree programs.[37]

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29. *See id.* at 467.

30. *See* Ruth Anne Robbins, *Law School Grads Should Be 'Client Ready,'* NAT'L L. J., Feb. 18, 2013, at 31.

31. David M. Moss, *Legal Education at the Crossroads*, *in* REFORMING LEGAL EDUCATION 1, 2 (David M. Moss & Debra Moss Curtis eds., 2012).

32. NALP, Class of 2011 Summary Chart (July 2012), http://www.nalp.org/uploads/NatlSummChart_Classof2011.pdf (reporting that only about forty percent of 2011 law school graduates reported working at law firms (17,666 out of 44,495 total graduates)).

33. Just over ten percent of all 2011 law school graduates reported working at firms with more than one hundred attorneys—the kind of firms more likely to offer intensive or elaborate training for new attorneys. *Id.* (reporting 4757 out of 44,495 total graduates). Smaller firms are also less likely to afford attorneys billable hour credit for time spent in training. *See Training, Evaluation, and Professional Development Information Reported in the NALP Directory of Legal Employers*, NALP (Mar. 2012), http://www.nalp.org/0312research (indicating that only 25% of firms of fifty or fewer attorneys permit such "credit," compared with 42.5% of the very largest firms).

34. *See* Thies, *supra* note 1, at 605.

35. Henderson, *supra* note 7, at 462 ("Clients are also refusing to bear the training costs of junior-level lawyers—and with a plentitude of skilled senior lawyers who are unable or unwilling to retire, there is simply no need."); Clark D. Cunningham, *Should American Law Schools Continue to Graduate Lawyers Whom Clients Consider Worthless?*, 70 MD. L. REV. 499, 499 (2011).

36. Spencer, *supra* note 27, at 1955–56 (footnotes omitted).

37. Firms that are hiring may also wish to appraise new attorneys' skills before making a permanent offer of employment. *See* Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1 ("In a sluggish economy, smaller firms are less likely to take a chance on recent grads. . . . Instead, . . . they may hire graduates on a contract or part-time basis before making offers." (quoting Penelope Bryan, dean of Whittier Law School)).

Considering the Purpose of Law School

¶14 Many laypeople assume that the goal of law school is the training of lawyers. Others (for example, many law professors) take the view that law schools are primarily places of scholarship, where "the law can be studied and understood as an academic and intellectual pursuit" rather than places of vocational training.[38] These two views of legal education have been positioned in conflict for generations.[39]

¶15 What is now considered the "traditional" approach to law school is rooted in the work of Christopher Columbus Langdell, dean of Harvard Law School from 1870 to 1895. Langdell believed that law was a science that should be studied by focusing on the primary sources of legal doctrine as articulated in appellate judicial opinions, which we know now as the "case method" of instruction.[40] Firm in the conviction that "law is to be learned almost exclusively from the books in which its principles and precedents are recorded, digested, and explained," Langdell and Harvard president Charles William Eliot praised libraries as the laboratories of legal science.[41] Langdell hired faculty who were academics (rather than practitioners), introduced the Socratic method into his lectures, and advocated the lengthening of the time required to obtain a law degree.[42] After Langdell stepped down from his deanship, his methods quickly spread to other elite law schools, eventually becoming the dominant model in legal education.[43] At the dawn of the twentieth century, the ABA's Section on Legal Education and the Association of American Law Schools (AALS) worked jointly to create the first accreditation standards for law schools, which hewed closely to the approach favored by elite, university-based institutions (like Harvard Law School) and effectively dismantled alternative legal education models.[44]

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38. Spencer, *supra* note 27, at 1957.

39. *See, e.g.*, William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law 91–93 (2007); David R. Brink, *Legal Education for Competence—A Shared Responsibility*, 59 Wash. U. L.Q. 591, 593 (1981).

40. Spencer, *supra* note 27, at 1974. The growth of law school libraries in the early twentieth century can be tied to the ascendency of the case-method approach. "An effective working library" needed a large number of case reporters and statutes, including many in duplicate, for when "an entire class is referred to a particular case, and unless it can be found in duplicate it will be inaccessible to a large number, at the time needed." William R. Johnson, Schooled Lawyers: A Study of the Class of Professional Cultures 128 (1978) (quoting Harry S. Richards, dean of the Wisconsin Law School at the beginning of the twentieth century).

41. Spencer, *supra* note 27, at 1976 (quoting 1 Warren, History of the Harvard Law School and of Early Legal Conditions in America 391–92 (1908)). Ironically, "the case method, in concert with its bibliographical offspring—the casebook—has made library research (and thus the learning of research skills) largely irrelevant in modern legal education." Thomas A. Woxland, *Why Can't Johnny Research? or It All Started with Christopher Columbus Langdell*, 81 Law Libr. J. 451, 456 (1989).

42. Spencer, *supra* note 27, at 1976–78.

43. *Id.* at 1979–80.

44. Tamanaha, *supra* note 3, at 21–25. In the eighteenth and nineteenth centuries, legal education was a grab bag of practices, primarily administered through an apprenticeship model. *See* Spencer, *supra* note 27, at 1961–68; *see also generally* Brian J. Moline, *Early American Legal Education*, 42 Washburn L.J. 775 (2004). In a 1921 report commissioned by the ABA's Section of Legal Education and Admissions to the Bar, a special committee convened by Elihu Root suggested that permitting multiple law school models for different student populations would lead to approval for law schools of low quality. *Report of the Special Committee to the Section of Legal Education and Admissions to the*

¶16 Calls for curricular reform designed to improve the practical training in American law schools were soon heard and have continued intermittently for the past century.[45] In 1935, for example, Columbia law professor (and noted "legal realist") Karl Llewellyn published one of several arguments for more practical and individuated training.[46] Llewellyn posited that a purely academic, philosophical, and historical approach to law would leave students unprepared: "I hold that a lawyer's first job is to be a *lawyer*. I hold that we must teach him, first of all, to make a legal table or a chair that will stand up without a wobble. Ideals without technique are a mess."[47]

¶17 In response to these kinds of critiques, the curriculum has changed in small measures over time. Classes in legal bibliography were encouraged, "grounded in the truth that the case-method school, although it trains a student in the use of cases, gives him little practical assistance in finding them."[48] Legal writing courses were added at some law schools by the mid-twentieth century.[49] Clinical legal training was introduced in the 1960s and expanded quickly.[50] Clinical coursework developed "an emphasis on community service, using legal clinics to provide pro bono access to legal services for low-income clients," but often remained at a distance from the "main doctrinal teaching of the law schools."[51] Clinics were not without their critics, either: a 1972 report from the Carnegie Commission on Higher Education criticized the "anti-intellectual tendency" of some clinical teaching and suggested that clinical opportunities might be just one of many modest experiments to improve legal education overall.[52] In general, skills and lawyering

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Bar of the American Bar Association, 44 ANN. REP. ABA 679, 681–82 (1921). The report "tilted in favor of the national, full-time law schools, to the detriment of night schools and other alternative types of law schools that might have otherwise been able to develop, the latter being schools that non-elites and working class individuals were more likely to be able to attend." Spencer, *supra* note 27, at 1997.

45. *See, e.g.*, Carleton Hunt, *Report of the Committee on Legal Education and Admissions to the Bar*, 2 ANN. REP. ABA 209 (1879); ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921); Jerome Frank, *What Constitutes a Good Legal Education?*, 19 A.B.A. J. 723 (1933); AM. BAR ASS'N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979); AM. BAR ASS'N, SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [hereinafter MACCRATE REPORT]; SULLIVAN ET AL., *supra* note 39.

46. K.N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651 (1935). Llewellyn's critique was aimed at elite law schools such as Harvard, Yale, and his own Columbia: "*Shabby and silly as they are, I know of no schools less shabby or less silly*." *Id.* at 652.

47. *Id.* at 662.

48. REED, *supra* note 45, at 370 n.3. Given that many of the most important print tools for legal research did not exist until the late nineteenth century, formal training in legal bibliography did not previously serve a need of the bar. Woxland, *supra* note 41, at 452.

49. Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48, 69 (2003).

50. *See id.* at 70; Rebecca C. Flanagan, *Leveraging Academic Support Programs for Innovative Teaching Methods Across the Curriculum*, *in* REFORMING LEGAL EDUCATION, *supra* note 31, at 197, 201; Spencer, *supra* note 27, at 2005.

51. SULLIVAN ET AL., *supra* note 39, at 92.

52. HERBERT L. PACKER ET AL., NEW DIRECTIONS IN LEGAL EDUCATION: A REPORT PREPARED FOR THE CARNEGIE COMMISSION ON HIGHER EDUCATION 46 (1972).

courses struggled for acceptance and respect from some faculty colleagues who disfavored their incorporation into "the case method analysis core curriculum."[53]

¶18 At times, this debate has pitted members of the legal academy against one another and against bench and bar.[54] Attorneys have lamented the lack of skills displayed by recent graduates;[55] judges have criticized the preparedness of lawyers[56] as well as the tendency for legal scholarship to bend toward the theoretical and self-referential, rather than contributing useful explanations and commentary on practical doctrinal issues.[57]

¶19 One argument for minimizing the time spent on skills training during law school is that real lawyering is best learned by doing, and that no formal training can equal that provided by the profession itself.[58] As David McGowan has pointed out, however, "the premise that schools may not replicate practical learning precisely does not entail that they may be no better than they are."[59] For schools to eschew this responsibility, they must assume that their graduates will go on to practice under the meaningful supervision of more experienced lawyers who can pre-

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53. Anita L. Morse, *Research, Writing, and Advocacy in the Law School Curriculum*, 75 LAW LIBR. J. 232, 233 (1982).

54. *See* Roger C. Cramton, *The Current State of the Law Curriculum*, 32 J. LEGAL EDUC. 321, 321–22 (1982); *see also* SULLIVAN ET AL., *supra* note 39, at 90–91 (describing the tilting balance of power between academics and practitioners).

55. *See* Henry Jackson Darby, *A Criticism of Our Law Schools*, 12 ILL. L. REV. 342, 342 (1917) ("The law schools fail to train their pupils to do what a lawyer must do before he can safely advise a client, prepare a contract, write a brief, draw a pleading, or try a case—*find the law*."); *see also* Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know* Will *Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLINICAL L. REV. 105, 117–18 (2007). When he was still in private practice and was a bar examiner for Suffolk County, Massachusetts, future Supreme Court Justice Louis Brandeis complained to Dean Langdell that even many Harvard graduates "are but poorly qualified for practice at the bar here according to the standard which has been adopted by the examiners." Letter from Louis D. Brandeis to Christopher Columbus Langdell, Dec. 30, 1889, *reprinted in* 1 LETTERS OF LOUIS D. BRANDEIS 84, 86 (Melvin I. Urofsky & David W. Levy eds., 1971).

56. *See, e.g.*, Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 64 (1992).

57. *See id.* at 42–46; Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 118–19 (2010); Adam Liptak, *Keep the Briefs Brief, Literary Justices Advise*, N.Y. TIMES, May 21, 2011, at A12 (quoting Supreme Court Chief Justice John G. Roberts Jr. as saying "What the academy is doing, as far as I can tell, is largely of no use or interest to people who actually practice law.").

58. *See* SULLIVAN ET AL., *supra* note 39, at 92; *see also* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 176 (1953):

> From what has already been done successfully by the schools, it seems clear that they can go yet further in the inculcation of practical skills. It is not unlikely that they will be able to go all the way in bridging the gap between law study and the practice, but failing that, then they should frankly acknowledge that some other agency or agencies should step in to finish the task. In that event, clinical training through office apprenticeships or internships in connection with legal aid programs might be required after graduation from law school and before admission to the bar.

59. David McGowan, *Making Law School More Useful* 2 (San Diego Legal Studies Paper No. 13-102, 2012), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2181793.

vent new hires from harming their clients and themselves. Unfortunately, this is often not the case.[60]

¶20 What too often goes unacknowledged in conversations on this topic is the extent to which the prestige of the academic institution correlates to graduates' need for "practical" training. As the 2007 Carnegie Report pointed out: "Because there is a tacit expectation that recent graduates from the elite schools will receive careful mentoring as part of [the most prestigious law firms'] staff development, the schools pay scant attention to preparing their students for practice."[61] The relative importance afforded to practice-oriented skills development is often obliquely related to more impolitic questions about law as a form of higher education, and how law students will go on to use their J.D.s.[62] Law schools effectively reproduce divisions within the legal profession at large: elite national schools produce students who tend to work for large firms and represent wealthy corporate clients; locally focused or lower-ranked law schools are more likely to graduate students who work for small firms and serve individual clients.[63] As long as these divisions persist, it does not make sense to pretend that all students are equally likely to end up working for wealthy law firms or securing prestigious clerkships where they will receive meaningful on-the-job training and mentorship.[64] Yet schools that aspire to elite status may be disinclined to reinforce student perceptions that their programs are narrower than students' ambitions.

¶21 In 1982, Roger Cramton observed that law schools are arranged hierarchically, preparing different student cohorts for different legal careers.[65] Yet "[a] con-

60. William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 225 (1996) ("Close supervision by experienced lawyers will provide a safety net for clients. Supervision will only provide a quality legal education to the new lawyer, however, if the supervisor is interested in educating that lawyer. Such an interest is increasingly uncommon.").

61. SULLIVAN ET AL., *supra* note 39, at 89–90.

62. Those who favor a more scholarly model of legal education often focus on the need to instill students with good judgment, discernment, and a broad view of the law suitable for one who may wield significant influence and leadership in the community. In a debate on the necessity of a three-year legal education, Daniel Solove stated: "When we train lawyers, we're training people who will be shaping our society, and I think it is imperative that their legal education be a robust extension of a liberal arts education, not simply a trade school education." Laura I. Appleman & Daniel Solove, *Debate Club—Abolish the Third Year of Law School?*, LEGAL AFFAIRS (Sept. 19–23, 2005), http://legalaffairs.org/webexclusive/debateclub_2yr0905.msp. *See also* James Boyd White, *Law Teachers' Writing*, 91 MICH. L. REV. 1970, 1971 (1993) ("Both lawyers and judges are thus constantly called upon to maintain and reform the central institutions of our society; to do this well is a challenge to every capacity for education and wisdom, for it calls upon every ability that is involved in the creation of sound constitutions, in making wise legislation, in just adjudication."). The Supreme Court has characterized law school as "the training ground for a large number of our Nation's leaders." Grutter v. Bollinger, 539 U.S. 306, 332 (2003).

63. Randolph N. Jonakait, *The Two Hemispheres of Legal Education and the Rise and Fall of Local Law Schools*, 51 N.Y.L. SCH. L. REV. 863, 877 (2006–2007) (citing RONIT DONOVITZER ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 42 (2004)).

64. *Id.* at 886–87 ("[Local law schools'] efforts should not be aimed at getting more students employed by elite law firms. . . . The schools need to focus more on training their students to practice and compete better in the small-firm, personal-client sphere where the majority of their graduates will practice.").

65. Cramton, *supra* note 54, at 324. The generalized division of law practice into two modes (or "hemispheres") dates back even further, although a 1995 study indicated a trend toward a majority

spiracy of silence tends to suppress any frank talk about these familiar differences."[66] To best meet the needs of students at all points in the spectrum, legal education should be diverse. Legal education, however,

> is tyrannized by a paucity of educational models. . . . [T]heir stated aspirations are limited to the models embodied by a handful of elite schools—whether or not these models have any application to the differing situation of the local and regional law schools that produce over two-thirds of American lawyers.[67]

And while many legal skills are crucial for all law students to master, practical skills instruction is most important in schools "that produce lawyers who are unlikely to receive good apprenticeship experiences and must learn on their own."[68] More than thirty years later, these criticisms have not yet been satisfactorily answered by law schools and the ABA.

Curricular Reforms and the Academic Law Library

¶22 Today's most outspoken law school critics have picked up some of these themes—the lack of diversity in legal education models, the outsized influence of elite institutions, and the wide gap between theoretical scholarship and practical hardships—and tied them to the pressing problems of rising tuition and crushing student debt. In the popular and academic press, these critics have suggested sweeping changes, focused on making law school less expensive and more likely to help students attain their professional goals. These can range from increased client-facing experiences to expanded practical skills training to the use of better metrics to assess student competency and pedagogical success.

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of attorneys going into corporate practice. *See* THOMAS D. MORGAN, THE VANISHING AMERICAN LAWYER 110–11 (2010).

66. Cramton, *supra* note 54, at 324.

67. Indeed, the outsized influence of elite law schools continues today, in part because law professors are drawn predominantly from top-tier schools and carry their own experiences of law school into their classrooms. SULLIVAN ET AL., *supra* note 39, at 89 ("[Legal education] is shaped by the practices and attitudes of the elite schools; those practices and attitudes are reinforced through a self-replicating circle of faculty and graduates."); Jonakait, *supra* note 63, at 902–03 ("Various commentators have suggested that law school faculties do not set curricular, teaching, and scholarly priorities from an understanding of what their schools' graduates actually do, or even from the legal profession as a whole. Instead, faculty set a school's course to satisfy the professors' priorities, which are extrapolated from their own experiences.").

68. Cramton, *supra* note 54, at 325. *See also* JOHNSON, *supra* note 40, at 160; SULLIVAN ET AL., *supra* note 39, at 95 ("[T]he most elite levels of the academy do provide extensive direct mentorship for the small number of academic stars likely to go on to teach law, though the purpose of such mentoring is rarely described (or acknowledged) so explicitly. The problem is that little of this kind of close mentoring is typically available for the great majority of future lawyers."). These same biases may be the reason that the current crisis in law schools has only recently come to the fore. As Brian Tamanaha points out, "Before the crash . . . graduates who failed to land lawyer jobs almost entirely came from mid- and lower-ranked schools, destined for the lower hemisphere of law jobs. In an elite-focused legal academy and legal profession, to put it frankly, no one cares about these people or those types of jobs. . . . Only when the problem touched elite graduates and the corporate legal market did we pay attention to the phenomenon." TAMANAHA, *supra* note 3, at 171–72.

¶23 Faculty who specialize in teaching lawyering skills, such as clinicians and those who teach courses in pro bono representation, trial advocacy, alternative dispute resolution, contract drafting, and legal writing, have made great progress toward expanding the prominence and importance of their teaching in law schools, improving the synthesis of theory and practice for many students. These classes instruct students in crucial skills that almost every lawyer draws upon: counseling, drafting, negotiation, and so on. Legal research, however, is often not mentioned as a key skill in need of renewed emphasis or rehabilitation. In part, this may be because legal research was a component of orthodox law school curricula long before other skills-based training was widely accepted, and it is already incorporated into most first-year legal writing programs. Too often, though, legal research is assumed to be something straightforward and nonintellectual that can be easily mastered by new law students thanks to next-generation, web-based search tools.[69] Nonlibrarians may also overestimate the information literacy of incoming law students and assume they need only minimal guidance.[70]

¶24 Not only is this an incorrect assumption, it fails to account for the links between research skills and the metacognitive processes used in other lawyering tasks, such as factual investigation, development of interdisciplinary expertise, and the management of other document-intensive lawyering processes (such as e-discovery or digital due diligence).[71] Good research habits—developing and documenting a methodical research strategy, paying close attention to detail, evaluating value and reliability, and being efficient with one's time and resources—carry over into other areas of daily practice.[72]

¶25 Some prominent voices in legal education reform, however, seem quite unfamiliar with the value represented by law school libraries and librarians. Kyle McEntee, Patrick Lynch, and Derek Tokaz, leaders of the nonprofit legal education policy organization Law School Transparency, have labeled law libraries as among "the 'bells and whistles' of a legal education" that must be eliminated in times of

69. Some commentators have also tied the slump in legal employment with increased access to free or inexpensive sources of legal materials on the Internet. For example, the *New York Times* reported that "[m]any of the reasons that law jobs are disappearing are similar to those for disruptions in other knowledge-based professions, namely the growth of the Internet. Research is faster and easier, requiring fewer lawyers, and is being outsourced to less expensive locales, including West Virginia and overseas. In addition, legal forms are now available online and require training well below a lawyer's to fill them out." Bronner, *supra* note 18. This assumes (among other things) that a significant number of legal matters can be resolved by filling out standard forms or consulting unannotated primary sources, and that such materials are easy for nonlawyers to find and navigate online. Law librarians, especially those who routinely work with the public and pro se patrons, may not agree with these assumptions.

70. *See* Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 Okla. L. Rev. 503, 525–26 (2008).

71. This could also be framed as "learning for transfer," the goal of which is to instill skills and understanding that students are then able to apply independently to a host of new situations. Newton, *supra* note 20, at 91.

72. This awareness has been reflected in AALL's recent comments to the ABA Task Force on the Future of Legal Education. Wenger & Hagan Letter, *supra* note 25, at 2 ("Law librarians, like clinical faculty, teach experiential courses that model problem-solving and move law students towards metacognition.").

budget austerity, along with information technology and career services.[73] Paul Campos addresses law libraries as beneficiaries of out-of-control spending on needless physical plant improvements. "Law libraries," he complains, "grow evermore pharaonic even as the practice of law becomes less book-based, and as, if my own observations are accurate, law students find it less and less necessary or desirable to use these literary labyrinths even as opulent study spaces."[74] Campos argues that "[a]s legal practice continues to move away from requiring lawyers to consult books of any sort, the millions of dollars per year that the typical law school expends on maintaining a comprehensive law library could be reduced to a more rational level of expenditure."[75]

¶26 Campos was likewise dismissive of libraries on his former blog, *Inside the Law School Scam*, riffing that "law library directors . . . are remarkably adept at not noticing that no licensed attorney in the United States has consulted an actual legal book since November 17, 2004."[76] He had previously observed that library operating costs (among other things) have "skyrocketed at the typical law school over the course of the last generation," without citing specific figures.[77] Similarly, Brian Tamanaha argues that "[t]he entire set of rules relating to the law library must be deleted. These rules require law schools to maintain unnecessarily expensive library collections and a large support staff; the book-on-the-shelf library is virtually obsolete in the electronic information age."[78] David Barnhizer has compared law libraries to U.S. steel mills, poised to fall before "far lower cost competitors" who are gaining market share.[79]

¶27 None of these commentators seems to fully appreciate the complexity of the law library budget, particularly the significant cost of *electronic* information, nor do they seem aware that librarians are also dedicated to preserving and making available material that is not yet available or publicly accessible in electronic form.[80] Their comments reflect a widespread misunderstanding that high-quality digital

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73. McEntee et al., *supra* note 20, at 242.

74. Campos, *supra* note 11, at 194–95. Campos's observations appear inconsistent with some of the available data on student library usage (as well as, I believe, with many librarians' personal experiences). *See, e.g.*, Michelle M. Wu & Leslie A. Lee, *An Empirical Study on the Research & Critical Evaluation Skills of Law Students* [11] tbl.5 (Georgetown Law Public Law Research Paper No. 12-067, 2012), *available at* http://ssrn.com/abstract=2079552 (indicating that more than sixty percent of student survey respondents (2171 out of 3497) reported visiting the law library multiple times per week for studying).

75. Campos, *supra* note 11, at 217.

76. Paul Campos, *The Tuition's Too Damn High*, Inside the Law School Scam (Oct. 3, 2012, 7:04 a.m.), http://insidethelawschoolscam.blogspot.com/2012/10/the-tuitions-too-damn-high.html.

77. Paul Campos, *First Steps Toward Reform*, Inside the Law School Scam (Aug. 16, 2011, 6:27 a.m.), http://insidethelawschoolscam.blogspot.com/2011/08/first-steps-toward-reform.html.

78. Tamanaha, *supra* note 3, at 173.

79. David Barnhizer, *Redesigning the American Law School*, 2010 Mich. St. L. Rev. 249, 299. Barnhizer notes, however, that he "absolutely love[s] books and libraries." *Id.*

80. In the acknowledgments to *Failing Law Schools*, Brian Tamanaha specifically thanks a library staffer "for helping me acquire background material from numerous sources." Tamanaha, *supra* note 3, at xvi. Tamanaha's book cites to many older monographs, which are presumably not available in digital format. His critique ignores the costs of professional library staff time, interlibrary loan, and other administrative expenses associated with faculty research support.

legal information is less expensive than it may be in print, and that law libraries are therefore irrelevant.[81] They also disregard law librarians' roles in teaching students, supporting law faculty and administrators, and in some cases serving the public by providing access to valuable legal information. It is imperative that law librarians take the opportunity to set the record straight. This means educating administrators and faculty about how much things really cost and also emphasizing law librarians' contributions that go beyond collection development. In particular, we must stress the contributions that law librarians can make to an evolving and improving pedagogy of legal research instruction.

Pedagogical Issues in Law Librarianship

¶28 The ABA requires law schools to provide some legal research instruction.[82] In addition to the introductory work done in first-year research and writing courses, many law schools also offer advanced or specialty research classes to help improve students' legal research skills and prepare them for practice.[83] These courses are often taught by expert librarians.

¶29 Since the "semantically entrenched" pedagogical debates among law librarians during the late eighties and early nineties,[84] the literature on legal research instruction has moved beyond framing the issue in binary terms and reflects many diverse approaches to improving student learning and retention, including instruction beyond the first year.[85] Many librarians, however, see a continued need to

81. *See* Cadmus & Kauffman, *supra* note 22, at 276 (pointing out that electronic information "is often more expensive than its print equivalents.").

82. Am. Bar Ass'n, 2012–2013 Standards and Rules of Procedure for Approval of Law Schools 19 (2012) (Standard 302(a)(2)) ("A law school shall require that each student receive substantial instruction in . . . legal analysis and reasoning, legal research, problem solving, and oral communication . . . ."). Moreover, the ABA's Model Rules of Professional Conduct require that an attorney provide "competent representation" to her clients, which requires "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Model Rules of Prof'l Conduct R. 1.1 (2012). This language has generally been interpreted to require attorneys to familiarize themselves with the relevant legal information, via legal research, to ensure competent service to clients. *See* Ellie Margolis, *Surfin' Safari—Why Competent Lawyers Should Research on the Web*, 10 Yale J.L. & Tech. 82, 89–91 (2007) (citing cases).

83. *See* Ann Hemmens, *Advanced Legal Research Courses: A Survey of ABA-Accredited Law Schools*, 94 Law Libr. J. 209, 2002 Law Libr. J. 17.

84. *See* Paul Douglas Callister, *Beyond Training: Law Librarianship's Quest for the Pedagogy of Legal Research Education* 95 Law Libr. J. 7, 8, 2003 Law Libr. J. 1, ¶ 1. Callister summarized the debate that took place in the pages of *Law Library Journal* between Christopher G. Wren and Jill Robinson Wren on one side and Robert C. Berring and Kathleen Vanden Heuvel on the other about the best way to teach legal research. *Id.* at 11–20, ¶¶ 8–30.

85. *See generally* Robert C. Berring & Kathleen Vanden Heuvel, *Teaching Advanced Legal Research: Philosophy and Context*, 28 Legal Reference Services Q. 53 (2009) (describing an approach to teaching advanced legal research that emphasizes student-generated learning); Callister, *supra* note 84 (presenting the elements of a pedagogical methodology for teaching legal research, which may be customized to a law school's goals); Matthew C. Cordon, *Beyond Mere Competency: Advanced Legal Research in a Practice-Oriented Curriculum*, 55 Baylor L. Rev. 1 (2003) (describing how advanced legal research is taught at Baylor Law School in view of AALL's recommendations for building core competencies in legal research); Matthew C. Cordon, *Task Mastery in Legal Research Instruction*, 103 Law Libr. J. 395, 2011 Law Libr. J. 25 (advocating the use of the "task mastery" learning structure and motivational system to improve law students' legal research education); Aliza B. Kaplan & Kathleen Darvil, *Think [and Practice] like a Lawyer: Legal Research for the New Millennials*, 8 Legal Comm. &

strengthen or improve the position of legal research in the law school curriculum. Long before the current crisis, there was extensive discussion in the legal and law library literature about the need to improve students' legal research skills before sending them into the workplace.[86] Several commentators focused on law students' and new attorneys' legal research deficiencies as evaluated by legal employers, law librarians, and others who are able to observe such shortcomings in practice.[87]

¶30 Although combined legal research and writing programs have grown in stature and importance since they were first introduced, the legal writing component tends to significantly overshadow legal research. In 2010, eighty-five percent of respondents to an ABA survey on law school curricula reported that legal research and writing were offered as part of a combined course in the first year.[88] Among these law schools, roughly eighty percent devote less than one-third of class time to legal research instruction.[89] When offered as a separate course, legal research is typically allocated only one or two credits.[90] Seventy-five percent of respondents to a 2007–2008 survey of 178 academic law librarians reported that librarians served as guest lecturers in legal research and writing classrooms at their law schools, while coteaching arrangements between librarians and writing faculty, or librarian-led first-year research classes, were less common.[91]

¶31 Meanwhile, advanced legal research and writing courses for upper-level students have become standard at many schools.[92] Among the academic law librar-

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RHETORIC: JALWD 153 (2011) (offering recommendations for tailoring legal research instruction to the "Millennial" generation of law students, including use of multimedia tools, collaborative learning, and integration of research training across the curriculum); Thomas Keefe, *Teaching Legal Research from the Inside Out*, 97 LAW LIBR. J. 117, 2005 LAW LIBR. J. 6 (advocating the incorporation of information science skills in the legal research classroom); Christopher A. Knott, *On Teaching Advanced Legal Research*, 28 LEGAL REFERENCE SERVICES Q. 101 (2009) (describing a hierarchy of outcomes for legal research instruction and suggesting techniques and frameworks for designing an advanced legal research class); Peter C. Schanck, *Mandatory Advanced Legal Research: A Viable Program for Law Schools?*, 92 LAW LIBR. J. 295, 2000 LAW LIBR. J. 26 (describing the adoption of a mandatory advanced legal research program at Marquette University, including specialized one-credit research courses).

86. *See, e.g.*, Kaplan & Darvil, *supra* note 85, at 157–61; Michael J. Lynch, *An Impossible Task but Everybody Has to Do It—Teaching Legal Research in Law Schools*, 89 LAW LIBR. J. 415, 415–16 (1997).

87. *See* Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381, 381–83 (1990) (describing a survey of law firm librarians' impressions of summer clerks and first-year associates at large and mid-sized firms); Patrick Meyer, *Law Firm Legal Research Requirements for New Attorneys*, 101 LAW LIBR. J. 297, 302–07, 2009 LAW LIBR. J. 17, ¶¶ 11–29 (summarizing several law firm surveys). *But see* I. Trotter Hardy, *Why Legal Research Training Is So Bad: A Response to Howland and Lewis*, 41 J. LEGAL EDUC. 221, 222 (1991) (arguing that Howland and Lewis's choice not to study attorneys at small firms suggests that these attorneys are already receiving adequate research instruction in law school for their types of practice).

88. AM. BAR ASS'N, SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, at 52 (Catherine L. Carpenter ed., 2012) [hereinafter SURVEY OF LAW SCHOOL CURRICULA].

89. *Id.* at 61.

90. *Id.* at 53, fig.25. As a separate course, legal research receives fewer credits than any other course, with the exception of some Introduction to Law or Legal Methods courses. *Id.*

91. James G. Durham, *Results of the "Student Services in Academic Law Libraries Survey*," ALL-SIS NEWSL., Summer 2008, at 9, 23, http://www.aallnet.org/sections/all/resources/Newsletter/archives/27-3.pdf.

92. *See* SURVEY OF LAW SCHOOL CURRICULA, *supra* note 88, at 74, fig.60 (noting that between 2002 and 2010, thirty-three schools added an advanced legal research course, and seventeen added an upper-level legal research and writing course).

ians responding to the 2007–2008 survey, seventy-six percent indicated that members of their library staff taught upper-level advanced legal research classes.[93] Law librarians already possess the expertise and skill set needed to respond to the call for more practical training in an efficient way.[94]

¶32 Over time, however, the perception of research skills deficiencies has persisted, and the proposed remedy has changed very little: there should be more time spent on legal research instruction with more librarian involvement. Now would be a good time for law librarians to join the rest of the legal academy by critiquing and improving our niche in the curriculum. How are we measuring our success beyond polling law firm librarians (at a time when so few students are likely to work in large to mid-sized firms)? Are we emphasizing the right topics at the right time? Even if we had all the time and resources we could ask for, could we produce students who are competent to address the research challenges they will actually face in today's legal marketplace? Are we unconsciously biased toward the sources and methods that served us well in the past, certain areas of legal practice, or certain kinds of research? Are we tailoring instruction to emphasize sources that our alumni actually use in practice?

¶33 The readiness and ability to offer training in a key practice skill will be essential to maintaining law librarians' positions in today's reform-minded climate. But to the extent that current practices are viewed as complementary to traditional doctrinal classes and methodologies,[95] they may not keep pace with the larger trends in legal education. If the curriculum as a whole moves toward experiential learning, will the traditional legal research class fall out of step? How can academic law libraries address the needs of students and alumni who face unprecedented challenges as they move into practice without an employer's safety net?

¶34 To use this moment of crisis productively, we should begin by keeping abreast of suggested curricular reforms for law schools as a whole, and understanding how law libraries can provide constructive support to their institutions, however they evolve.

The Potential Impact on Law Libraries of Law School Curricular Reforms

¶35 There is broad consensus that law graduates need more practice-based lawyering skills and better employment outcomes. Each of the alternative models discussed in this section—expanding mandatory experiential learning, adding

93. Durham, *supra* note 91, at 23. A 2000 survey of ABA-accredited law schools found that 72 of 111 responding schools offered upper-level advanced legal research courses. Hemmens, *supra* note 83, at 221, tbl.6.

94. *See* Wenger & Hagan Letter, *supra* note 25, at 2; *see also* Cadmus & Kauffman, *supra* note 22, at 278 (describing how, in the face of significant budget cutbacks, librarians at Yale's Lillian Goldman Law Library continued to offer introductory, advanced, and specialty research classes, while cutting back in other areas).

95. *Cf.* Morse, *supra* note 53, at 253 ("The case method, as modified by materials on social and legislative policy or on law as process, takes away from students' old learning habits about received doctrine and forces the students to participate actively in law-making and law-finding. All participants in the core curriculum should assist in preparing a student in lawyer competency." (footnote omitted)).

practitioner faculty, instituting solo practice incubators, and diversifying law school models (by no means an exhaustive list)—attempts to address these issues. One important reality check is, as always, cost: "At a time when students are struggling to pay their loan debt because the cost of legal education has risen faster than salaries for the vast majority of legal positions, improving legal education threatens to be a costly proposition."[96] Practice-oriented programs can be time intensive, require more instructors (and lower student-faculty ratios), and are generally assumed to be more expensive than the large-section classes that have long been the backbone of law school.[97] This is one area where existing law library staffs can stand out: as AALL pointed out in its comments to the ABA Task Force on the Future of Legal Education, "[t]here is no cost for taking advantage of the skills that law librarians positioned in law schools already possess."[98] Regardless of which reform models (if any) become popular in the near future, law librarians have an important role to play, because legal research remains one of the core factors determining an attorney's efficacy in practice.[99]

Expanding Mandatory Experiential Learning

¶36 Law schools offer many courses under the umbrella designation of a practice skills or lawyering curriculum. These courses "cover a wide range, from research and legal writing in the first year, through trial advocacy and practice negotiation to clinical experience with actual clients."[100] One problem with skills-based and other experiential learning opportunities in law school is that they are not always available to all students, either because they are too resource intensive, or because students simply opt out.[101] Only two percent of U.S. law schools require students to take a clinical course, and only about one-third of students avail themselves of the opportunity.[102]

¶37 Adding or emphasizing experiential learning opportunities in law school speaks directly to the criticism that law students lack the opportunity to appreciate what law is like in real life. The goal of such reforms is to produce graduates who are familiar with the mechanics of client representation and are less dependent on employers for training. One of the most prominent examples of this kind of reformed curriculum is found at the Washington and Lee School of Law, where the third year of law school is now dedicated to mandatory experiential training. Each

96. Flanagan, *supra* note 50, at 205.

97. Sullivan et al., *supra* note 39, at 93–94.

98. Wenger & Hagan Letter, *supra* note 25, at 2.

99. *See* MacCrate Report, *supra* note 45, at 157–63; *see also* Meyer, *supra* note 87, at 301, ¶ 9 (describing importance of legal research in a law firm setting); Marjorie Schultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admissions Decisions*, 36 Law & Soc. Inquiry 620 (2011) (identifying the skills linked to professional competency and analyzing new metrics for evaluating law students).

100. Sullivan et al., *supra* note 39, at 87.

101. Shah, *supra* note 3, at 856; *see also* Sullivan et al., *supra* note 39, at 88 ("In most schools, this leaves direct preparation for practice entirely up to student initiative."). Lack of student initiative is not the only barrier: not all faculty members have "the energy and the mindset to begin the iterative process of building a competency-based curriculum." Henderson, *supra* note 7, at 505.

102. Newton, *supra* note 20, at 92 (citing survey results from 2007–2008).

semester begins with a two-week skills immersion (one for litigation skills, the other for transactional skills); for the rest of the semester, students take clinical or practicum courses.[103] The school has been praised for surpassing its own historical benchmarks, and it enjoys relatively robust numbers of new applicants.[104]

¶38 Such a fundamentally restructured third-year curriculum is likely to consolidate second-year students into larger-scale survey courses (such as evidence, corporations, or trusts) and marginalize smaller seminars and niche courses. Although it is a "skills" course by most measures, a dedicated, stand-alone upper-level legal research course may not fit neatly into an experientially focused curriculum. Students who are enmeshed in a landlord-tenant dispute may be indifferent to learning about sources for international law or trademark searching. Yet at the same time, an experiential curriculum requires students to find and master the law as new problems arise to be solved, as a lawyer would, and therefore is likely to require a greater degree of legal research than would a traditional upper-level survey course.

¶39 The answer is not to eliminate upper-level research instruction, but instead to reposition it to take place at the moment of need—in other words, to dismantle traditional advanced or specialized legal research lectures and replace them with workshops, periodic class visits, small-group tutorials, embedded librarian partnerships, and other collaboration with clinical and practicum faculty, preferably multiple times during a term. This approach addresses a perennial criticism of legal research instruction: that it occurs at times dictated by convention or administrative convenience, instead of at the moment that students are actually receptive and can put the information to meaningful use.[105]

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103. *Washington and Lee's New Third Year Reform*, WASHINGTON & LEE SCH. OF LAW, http://law.wlu.edu/thirdyear (last visited Apr. 23, 2013). The program also requires all third years to do at least forty hours of law-related service and participate in a professionalism program. *Id.* Washington and Lee is not alone in targeting the third year of law school for experimentation. The third year has long been maligned by students, and now by reformers. "The existing reality is that the third year of law school is, at best, a massive underutilization and, at worst, a frivolous waste of time, energy, and money that could be used for more practical training." Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, the Public, and the Legal Profession*, 44 CAL. W. L. REV. 219, 252 (2007) (advocating a third year devoted to clinical and practical training). NYU Law School has also recently announced its intent to remodel the third year of its J.D. programs with a focus on international programming, specialty courses, and external work opportunities. *See* Peter Lattman, *N.Y.U. Law Plans Overhaul of Students' Third Year*, N.Y. TIMES DEALBOOK (Oct. 16, 2012, 6:58 P.M.), http://dealbook.nytimes.com/2012/10/16/n-y-u-law-plans-overhaul-of-students-third-year.

104. Bill Henderson, *Washington & Lee Is Biggest Legal Education Story of 2013*, LEGAL WHITEBOARD (Jan. 29, 2013), http://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education-story-of-2013.html.

105. A common complaint is that legal research instruction in the first year attempts to cover many subjects that students are wholly unfamiliar with and unprepared to actually use until later in their law school careers. Robert C. Berring & Kathleen Vanden Heuvel, *Legal Research: Should Students Learn It or Wing It?*, 81 LAW LIBR. J. 431, 441 (1989) ("Trying to teach systematic research during the first year is trying to teach the wrong people the wrong material at the wrong time."); Bowman, *supra* note 70, at 552 ("Students are not motivated to learn how to research until they do their first summer clerkship and realize the importance of the research skills they learned in their legal research and writing classes. . . . [L]egal research instruction needs to be provided at the 'time of need.'" (footnotes omitted)); Howland & Lewis, *supra* note 87, at 389 (quoting a firm librarian who said "Give the first-years the basics and, for example, don't cover administrative materials until they

¶40 As an alternative to offering advanced legal research classes that aim to cover everything, or even specialty courses that address the specific tools of an individual practice area, law librarians could work closely with experiential faculty to provide tailored tutorials at multiple points during a semester, work one-on-one with students (as a law firm librarian might work with an individual associate facing a research issue),[106] and demonstrate how the skills one uses in legal research—organization, planning, efficiency, and so forth—can be applied to other areas of practice, such as factual investigation, working with nonlegal experts, due diligence, or electronic discovery.[107] Rather than struggle to compare various assessment tools to measure students' mastery of artificial research scenarios (be they "treasure hunts" or more involved hypotheticals), librarians and other faculty could measure student learning by evaluating the quality of their final work product within the larger experiential setting. At the University of Maryland, for example, some upper-level legal research and writing coursework has been developed in collaboration with law school clinical programming, allowing legal research and writing students to learn from active and ongoing legal disputes, rather than constructed hypotheticals.[108] Students appreciate the open-ended nature of the real-life research experience: instead of working on canned problems built around existing splits in case law, students "didn't know what was out there. You could push a little bit further beyond the cases. . . . [You did] all the research that you could possibly do."[109]

¶41 Henderson has also proposed an incremental approach to transforming the law school curriculum by adding experiential training. His "12% solution" begins with

> a summer institute between the 2L and 3L years of law school that is created and staffed by the select group of faculty, alumni, and employers drawn from a law school consortium. What can be accomplished during a ten-week summer program for 3L law students is approximately equivalent to 12% of learning in law school. Although the consortium fac-

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have had administrative law."); Morse, *supra* note 53, at 256–57 ("[Legal research and writing classes] should not attempt to pack into the first-year what rightfully belongs in the advanced curriculum."); Sandra Sadow & Benjamin R. Beede, *Library Instruction in American Law Schools*, 68 LAW LIBR. J. 27, 29 (1975) ("In practice, we have found it to be important to work with students when their attention is on a research project. . . . [S]tudents are not interested in learning how to use indexes and other access tools until they can see very definite reasons to do so."). The omnibus approach to research instruction, in some cases, is very close to what one might expect to see in a library school research course, and not necessarily tailored to serve the distinct needs of future attorneys. *See* Morse, *supra* note 53, at 256 ("[I]s drill work in a myriad of search tools helpful unless a student can relate the material to a research problem? Our approach has been more suitable to the fledgling law librarian, not the fledgling law student.").

106. *See* Vicenç Feliú & Helen Frazer, *Embedded Librarians: Teaching Legal Research as a Lawyering Skill*, 61 J. LEGAL EDUC. 540, 556–59 (2012) (describing a partnership between law librarians and clinicians). Smaller, more focused research interventions also invite the possibility of more frequent interactions between librarians and students, allowing for beneficial repetition and skills building. Bowman, *supra* note 70, at 551.

107. Many lawyers overestimate their facility with e-discovery tools. "A lawyer's experience or competence using existing legal research software such as Westlaw, Lexis, or Google only inspires bogus self-belief in e-discovery search expertise." Ahunanya Anga, *Legal Research in an Electronic Age: Electronic Data Discovery, a Litigation Albatross of Gigantic Proportions*, 9 U.N.H. L. REV. 1, 22 (2010).

108. Michael A. Millemann, *Using Actual Legal Work to Teach Legal Research and Writing*, 4 J. ASS'N LEGAL WRITING DIRS. 9, 10–12 (2007).

109. *Id.* at 14 (quoting a student evaluation discussion; insertion in original).

> ulty would be charged with creating the curriculum, in all likelihood it would be [sic] entail simulations, team-based projects, and other forms of experiential learning. . . .
>
> . . . . This process of building and improving a competency-based curriculum will have to unfold over a period of years. With some early successes, the 12% can be expanded to fit the strategic needs of the schools.[110]

Such a program would be greatly enriched by the participation of law librarians, who could deliver timely, relevant information on specific research issues raised by the legal challenges presented to students.

¶42 There is, naturally, a trade-off: students who learn substantive law "by doing" in experiential classes do not necessarily get the same in-depth exposure as do students who take traditional lectures; similarly, students who learn research skills as they need them will not have the same breadth of perspective on research tools and techniques as do those who take a more traditional legal research class.[111] On the other hand, "[s]horter research assignments in advanced legal research, client counseling, evidence, negotiation, pretrial litigation, and trial practice courses model different kinds of research needed for interviewing, drafting, and questioning."[112] Brent Newton has suggested using "daily practical exercises, such as simulation exercises concerning negotiation and litigation as well as legal research and writing" in the first year to improve skills and doctrinal knowledge.[113] Integrating research training across the curriculum could also help students avoid poor research practices (like falling prey to the search for the "perfect case") by demonstrating that legal research "is not a one-size fits all process."[114] More frequent, relevant exposures to legal research training may also make it clear to law students that librarians are a resource to turn to when confronting a new legal issue and that research is an iterative process that becomes easier with practice.

Adding Practitioner Faculty

¶43 The high salaries and low teaching loads of some tenured faculty are targets for reformers who want to see law schools drastically reduce their tuition.[115] Faculty members hired for their scholarly acumen are also less likely to have lengthy backgrounds in practice, and they may not be as comfortable with teaching

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110. Henderson, *supra* note 7, at 505–06 (footnotes omitted).

111. That said, practicing attorneys do not need to approach legal research as librarians do. *See* Lynch, *supra* note 86, at 419–20 (contrasting the "client-centered research" of attorneys with the scholarly approach used by many law librarians). *See also* Bowman, *supra* note 70, at 535 ("In the real world, attorneys must find the best authority and understand how the rules of law work, but attorneys must also balance a number of competing interests . . . . Attorneys do not have the time to do the 'extensive' research they did during law school . . . . The research is not always 'complete' in the real world, or better yet, 'complete' has a different definition." (footnotes omitted)).

112. Randy Diamond, *Advancing Public Interest Practitioner Research Skills in Legal Education*, 7 N.C. J. L. & TECH. 67, 85 (2005).

113. Newton, *supra* note 20, at 86.

114. Diamond, *supra* note 112, at 84, 85.

115. *See* TAMANAHA, *supra* note 3, at 39–53; Spencer, *supra* note 27, at 2052 ("[T]raditional law faculty members are expensive . . . , as their salaries account for a large share of a law school's budget and tend to be impervious to dramatic reductions." (footnote omitted)).

experiential courses.[116] One proposed solution is to rely more heavily on adjunct faculty drawn from the practicing bar.[117]

¶44 One vision of this approach has been offered by Kyle McEntee, Patrick Lynch, and Derek Tokaz.[118] In their hypothetical "Modular Law School," a higher proportion of classes are taught by adjunct faculty drawn from the practicing bar.[119] Classes might run for a matter of weeks, rather than the traditional semester, giving students exposure to a greater variety of subjects.[120] Shortening each instructor's time commitment per class is also intended to make teaching more appealing to potential adjunct faculty with active practices.[121] In the first year, the authors advocate pairing each standard doctrinal course with a "companion writing lab" taught by an adjunct, preferably an "expert practitioner."[122] It is unlikely, however, that the model puts much value on a librarian's ability to provide expert services or teach legal research—the authors describe libraries among the student services "not necessary to receive a sound legal education."[123] Their hypothetical law school "does not have a physical library, relying instead upon electronic access and strategic partnerships with nearby universities and law firms."[124] Beyond its lack of interest in law libraries, this model poses significant challenges, including quality control and personnel issues.[125] It also contravenes current ABA standards regarding composition of the faculty, as well as AALS bylaws.[126]

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116. Spencer, *supra* note 27, at 2051.

117. Barnhizer, *supra* note 79, at 306–07; Tim Epstein, *Learning to Be a Lawyer from a Lawyer: The Benefits of Adjunct Faculty*, DRI TODAY (Jan. 5, 2012), http://dritoday.org/post/Learning-to-be-a-Lawyer-from-a-Lawyer-The-Benefits-of-Adjunct-Faculty.aspx. Two problems with this suggestion are that it relies on low pay and support for adjunct faculty to maintain cost-effectiveness, and it creates (or exacerbates) a stratified and hierarchical environment in the law school. *See* Newton, *supra* note 20, at 123–24.

118. McEntee et al., *supra* note 20, at 232–51.

119. *Id.* at 235.

120. *Id.* at 234 (envisioning a "semester" that includes only between eight and eleven class meetings).

121. *Id.* at 235.

122. *Id.* at 239–40. It is reasonable to infer that these suggested writing labs would incorporate research training; an alternative configuration proposed in a footnote describes a "generalized introduction to legal writing" as including "library and online research, the Bluebook, and standard legal writing conventions." *Id.* at 240 n.30.

123. *Id.* at 242.

124. *Id.* No mention is made of the prospective cost of electronic access or who will be responsible for managing data subscriptions and the "strategic partnerships" with nearby firms and universities.

125. Erwin Chemerinsky, dean of the UC Irvine School of Law, has criticized overreliance on adjunct faculty, on the grounds that they are generally not as skilled in teaching as are full-time faculty, and that they are less available to students to provide "the substantial learning that occurs outside of the classroom." Erwin Chemerinsky, *You Get What You Pay For in Legal Education*, NAT'L L.J. (ONLINE), July 23, 2012, http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202564055135&You_get_what_you_pay_for_in_legal_education (available only to LexisNexis subscribers).

126. McEntee et al., *supra* note 20, at 247–50 (discussing barriers to their proposal). Current ABA standards require that "A law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of its educational program." AM. BAR ASS'N, *supra* note 82, at 29 (Standard 402). Current ABA rules indicate that a ratio of twenty students to each full-time faculty member is presumed to be in compliance with the standard; a ratio of thirty to one is presumed noncompliant. *Id.* at 31 (Interpretation 402-2).

¶45 There have been other, less drastic visions for increasing practitioner participation in the classroom. David McGowan, for example, has suggested blending academic and practice-oriented perspective by requiring tenured doctrinal faculty to "co-teach one additional two hour course in their chosen field with a practitioner in that field."[127] Outside of a specific reform-minded framework, many law schools have already begun to use greater numbers of adjunct faculty to offer a wider variety of courses. Librarians who work with a variety of practitioner and traditional doctrinal faculty may be able to reach a larger percentage of the student body, and may reach some students multiple times. The benefits of repeated exposure to legal research techniques and sources at the moment of need allow students to learn the law as a lawyer would and, ideally, come away from repeated research experiences with a higher-level approach that they can then apply to novel situations.

¶46 Law librarians are already well positioned to work with practitioner faculty to incorporate legal research instruction at the point of need. Although part-time faculty who do not spend so many hours on campus may not have as much time to collaborate intensively with library staff, increasing communication between the library and these instructors will help librarians respond proactively to students' questions and anticipate their research needs. Building relationships with active practitioners may also help academic law librarians gain some critical perspective on gaps between how research is taught in the classroom and how it is used in an attorney's daily life.[128]

¶47 A law school that is more comfortable seeking and drawing on legal expertise within its community may also be able to expand the scope of information it presents to its students. McGowan has suggested incorporating significantly greater instruction on evidentiary record building and factual investigation into the upper-level law school curriculum, including offering classes taught by "people who make . . . their living tracking down facts" and integrating factual investigations into the legal research classroom.[129] Shifting emphasis to cover more factual research would, he argues, draw academic law libraries closer to their counterparts at law firms, where librarians "focus on factual investigation at least as much as on legal work."[130] Similarly, working closely with practitioners invites librarians to update and expand their teaching of current awareness tools and other nontraditional secondary sources, which may be of great value to graduates working in rapidly developing areas of the law.[131]

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127. McGowan, *supra* note 59, at 25. This is not unlike the practice, used by some librarians who teach advanced legal research classes, of bringing in a local firm or public law librarian to give students perspective on what research is like outside of the law school environment.

128. *See generally* David L. Armond & Shawn G. Nevers, *The Practitioners' Council: Connecting Legal Research Instruction and Current Legal Research Practice*, 103 Law Libr. J. 575, 2011 Law Libr. J. 36.

129. McGowan, *supra* note 59, at 21.

130. *Id. See also* Newton, *supra* note 20, at 96 ("[L]aw schools often fail to appreciate that factual investigation and development is just as or more important of a professional tool for a practicing attorney as legal research.").

131. *See* Diamond, *supra* note 112, at 124 (recommending exposing students to "[t]opical litigation newsletters, verdict reporters, public records and docket files, looseleaf alerts, practice libraries

¶48 For students contemplating solo or small firm practice, business and management skills are invaluable. Law librarians, working with practitioner faculty, can play an important role in educating students on information aspects of practice management, such as the evaluation of information technology and research tools.[132] For example, Debra Moss Curtis works with law librarians as part of her Law Office Management class at Nova Southeastern University's law school to introduce students to the business end of legal research. Classroom discussion explores how law firm information needs are met, including "the combined physical plant/personnel issue of how legal research will be accomplished."[133] The law librarians introduce students to the potentially staggering costs of legal research materials and push them to contemplate the limitations and choices they may face in practice as information consumers.[134]

Instituting Solo Practice Incubators

¶49 In 2007, the City University of New York (CUNY) launched its "Incubator for Justice."[135] This solo practice incubator was designed to train CUNY law graduates in the basic skills of starting and operating their own small firms while simultaneously encouraging their service to underserved legal communities.[136] For eighteen months, the attorneys receive training from more experienced practitioners and enjoy low rents on office space.[137] According to Fred Rooney, one of the project's creators, "We're helping lawyers, and we're providing them with support and professional development skills, but it's all done with the goal of having them set up practices where access to justice is extremely limited."[138]

¶50 Since that time, several similar programs have been launched or announced at law schools across the country.[139] In December 2012, the Cleveland-Marshall College of Law announced plans to launch a solo practice incubator, including the creation of office space within its law library.[140] Some of these programs have a clear

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and other similar resources"). Relying on "traditional legal research avenues (treatises, law reviews, legal encyclopedias, digests, ALR, etc.)" is misguided, because these sources may lag behind current events. *Id.* at 75.

132. *Cf.* Jonakait, *supra* note 63, at 889 ("Local law schools are failing their graduates if they do not offer training in how to use and assess technological advances.").

133. Debra Moss Curtis, *Teaching Law Office Management: Why Law Students Need to Know the Business of Being a Lawyer*, 71 ALB. L. REV. 201, 224 (2008).

134. *Id.*

135. *Community Legal Resource Network*, CUNY SCH. OF LAW, http://www.law.cuny.edu/clrn.html (last visited Apr. 22, 2013).

136. *See id.*

137. Jonathan D. Glater, *Lawyers Learn How to Be Businesslike*, N.Y. TIMES, Jan. 9, 2008, at B6.

138. *Id.*

139. *See* HANOVER RESEARCH, SOLO PRACTICE: OBSTACLES AND RESOURCES 8–10 (2012); Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, Mar. 8, 2013, at A14; Karen Sloan, *Incubators Give Birth to Flocks of Solo Practitioners*, NAT'L L.J., Sept. 5, 2011, at 11 [hereinafter Sloan, *Incubators Give Birth*]; Karen Sloan, *Cleveland Solo Incubator Reflects Students' Choice of Careers*, LAW.COM (Dec. 4, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202580245761&Cleveland_solo_incubator_reflects_students_choice_of_careers_ [hereinafter Sloan, *Cleveland Solo Incubator*]; John J. Farmer Jr., Op-Ed, *To Practice Law, Apprentice First*, N.Y. TIMES, Feb. 18, 2013, at A17.

140. Sloan, *Cleveland Solo Incubator*, *supra* note 139. Unlike many other incubator advocates, Dean Craig Boise "insisted that his school's incubator is not a response to the job market." *Id.*

focus on public interest lawyering (including pro bono and "low bono" services), while others are more hands-off; some integrate formal training in practice management skills, while others offer less structured mentoring, referrals, or other services.[141] The University of Maryland's assistant dean for career development, Dana Morris, made it clear that her school's efforts were directly tied to making new graduates more successful in tough times: "Looking down the line at the economy, we knew we would have more students looking at going solo, and we were looking for ways to creatively meet that need."[142]

¶51 Serving novice solo practitioners in this format will challenge many academic law libraries, but may also bring rewards. Attorneys who are thrust into new or unanticipated situations have both a great need for research resources and a great appreciation for how law libraries can assist them.[143] In a solo or small firm setting, attorneys are more likely to become generalists, working in areas that they never specifically prepared to address.[144] For example, a 2010 law school graduate described his preparation to pursue an unexpected job opportunity with a New Jersey solo practitioner: "'I spent a week down in the Trenton law library reading about bankruptcy as I hadn't taken any bankruptcy classes in law school' he says. 'I thought it was something I could do, something I was relatively interested in.'"[145] When necessity draws young attorneys back to the basics, law librarians are uniquely situated to help.

¶52 Research expertise, however, can only go so far without the resources to back it up. Law libraries that seek to serve recent graduates in a solo practice incubator must be prepared to offer free or affordable access to legal materials. In the past, a well-rounded print collection would have done this job well (even if newer graduates required significant help navigating the books). Today, skyrocketing prices of print sources have made maintaining a complete collection unaffordable for many schools, and harder to justify when so much material is duplicated in subscription databases.

¶53 Some law schools may choose to provide subscription database access or other research resources to incubator attorneys.[146] Alternatively, law librarians

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141. *See* HANOVER RESEARCH, *supra* note 139, at 19–36 (describing programs that are either operating or planned).

142. Sloan, *Incubators Give Birth*, *supra* note 139. A recent survey of a small number of Boston-area solo practitioners found that many chose to enter solo practice out of economic necessity. HANOVER RESEARCH, *supra* note 139, at 47, fig.1.9.

143. *See* HANOVER RESEARCH, *supra* note 139, at 51, fig.1.14.

144. Petra Pasternak, *Large Firm Layoffs Lead to Small Firm Startups*, LAW.COM (Feb. 11, 2009), http://www.law.com/jsp/article.jsp?id=1202428158979&Large_Firm_Layoffs_Lead_to_Small_Firm_Startups&slreturn=20130204164146.

145. Melanie Hicken & Abby Rogers, *12 Faces of the Law School Underemployment Crisis*, BUSINESS INSIDER (Oct. 16, 2012, 10:10 A.M.), http://www.businessinsider.com/law-school-unemployment-crisis-2012-9?op=1 (quoting 2010 law graduate Larry Hardcastle).

146. *Solo and Small Practice Incubator*, IIT CHICAGO-KENT COLLEGE OF LAW, http://www.kentlaw.iit.edu/alumni/solo-and-small-practice-incubator (last visited Apr. 23, 2013) (advertising participant access to Westlaw and LexisNexis). The Cleveland-Marshall incubator program similarly advertises that participants are entitled to library privileges for between eighteen and twenty-four months. Sloan, *Cleveland Solo Incubator*, *supra* note 139. The Florida International University LawBridge program promises participants "access to a variety of online research and reference materials and tools." *LawBridge FAQs*, FLORIDA INT'L UNIV. COLLEGE OF LAW, http://law.fiu.edu/alumni

could route these users to free online resources, subscription databases that are subsidized by local bar associations, subscription tools that are available for on-campus use, or existing print collections. Today's solo and small firm practitioners use tools that are foreign to many law students, such as Casemaker, Fastcase, and PACER, as well as print practice materials.[147] Choosing to support a solo practice incubator project means that the law library has another constituency to consider in its collection development, a constituency whose needs and preferences do not completely overlap with those of faculty and students. Libraries must also consider the extent to which they are willing and able to serve as a resource for alumni and the local bar, given that the economic downturn has forced many small and solo firms to trim or eliminate their legal publications and subscription research tools.[148] Therefore, it is important that the law library be part of any institutional conversation about building and sustaining a solo practice incubator, to ensure that library resources are adequately supported.

Diversifying Law School Models

¶54 The now-standard three-year J.D. program has been roundly criticized since its inception.[149] Brian Tamanaha traces its historical development in his book *Failing Law Schools*, and ultimately attributes the adoption of a third year to the efforts of members of the AALS and the ABA who believed firmly in a scholarly, unified vision of legal education and the profession, and who wished to exclude the part-time, urban, or vocationally oriented law schools that drew primarily from immigrants and the working class.[150] These efforts were "waged in the name of quality control but included significant elements of class, ethnic, and religious bias."[151]

¶55 In a world where legal practice takes many forms, there is no reason why the curricular structure and teaching approaches of all U.S. law schools should march in lockstep.[152] Some of today's reformers have advocated either making the third year of law school optional, for example by allowing students to sit for state bar exams after two years of study,[153] or by lowering the ABA-mandated minimum

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/lawbridge/lawbridge-faqs/ (last visited Apr. 23, 2013) (click on "Will the LawBridge program provide research tools for use by participants?").

147. HANOVER RESEARCH, *supra* note 139, at 50–51, figs. 1.13 and 1.14; *see also* Debora K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources*, 62 ME. L. REV. 473, 484 (2010) (suggesting that law students be exposed to Casemaker and Fastcase).

148. *See* Mitev, *supra* note 4 (quoting a lawyer who cut LexisNexis and Westlaw subscriptions to save money).

149. *See, e.g.*, MORGAN, *supra* note 65, at 213; TAMANAHA, *supra* note 3, at 20–21; Newton, *supra* note 20, at 88–89.

150. TAMANAHA, *supra* note 3, at 21–27.

151. Campos, *supra* note 11, at 219 (citing TAMANAHA, *supra* note 3).

152. *See* Newton, *supra* note 20, at 71–72.

153. In December 2012, the Arizona Supreme Court approved a three-year experimental program to allow third-year law students to sit for the bar exam. Debra Cassens Weiss, *Arizona Supreme Court OKs Proposal to Allow 3Ls to Take Bar Exam*, ABA JOURNAL.COM (Dec. 12, 2012, 9:28 A.M. CDT), http://www.abajournal.com/news/article/arizona_supreme_court_oks_proposal_to_allow_3ls_to_take_bar_exam. A proposal to allow students to take the bar after two years was under consideration in New York State in January 2013. *See* Daniel B. Rodriguez & Samuel Estreicher,

number of hours of classroom instruction.[154] Under less restrictive regulations, Tamanaha argues, law schools will be free to tailor their offerings to meet the needs of the legal education marketplace: "Many law schools will continue to offer tenure, job security, and research support—others will not. Some degree programs will be two years, others will remain at three, with clinical components; some will be heavily doctrinal, others will be skills oriented."[155] What would distinguish such programs from the modified third-year curriculum discussed previously, according to Paul Campos, is cost: "[A]ny meaningful reform in this direction must eliminate the tuition requirement, not merely the third classroom year."[156]

¶56 While allowing third-year students to sit for the bar may have very little impact on law libraries, diversifying law school structures could create an enormous upheaval in every aspect of the academic enterprise. Law schools that chose to stick to the traditional model, including robust support for faculty research, would have less reason to change their practices. Law schools that adopted a less scholarship-intensive model, however, would have very different needs from a library's perspective: collection development decisions would be driven less by faculty research interests and more by lawyering skills and practice-oriented requirements. Librarians might also find themselves called into service more often as teachers, rather than researchers, as part of a heavily practice-oriented curriculum.

Broadening the Research Skill Set

¶57 One key to a successful reform effort will be measuring and improving outcomes for students, rather than the "inputs" that were once understood to compose a high-quality legal education.[157] Outcome measurements can include bar passage rates, postgraduation employment data, and measures of new attorneys' competency in practice. Regardless of whether a law school adopts any of the previously mentioned curricular reforms, or maintains a traditional doctrinal program, this is a good time to reappraise one of the library's main outputs: whether our conventional approaches to research instruction are a good fit for students' postgraduation needs. For example, even if a school does not go so far as to mandate an experiential curriculum, it may still make sense for librarians to pursue an expanded and collaborative approach to upper-level research instruction that addresses research questions at the point of need; seeks multiple, reinforcing opportunities for instruction; and includes a more significant focus on transactional and litigation practice materials.[158]

Op-Ed, *Make Law Schools Earn a Third Year*, N.Y. Times, Jan. 17, 2013, at A27; *see also* Chris Mondics, *Some Advocate a Two-Year Law Degree*, Phila. Inquirer, Mar. 3, 2013, at D1.

154. Tamanaha, *supra* note 3, at 173.

155. *Id.* at 174; *see also* Newton, *supra* note 20, at 72.

156. Campos, *supra* note 11, at 220.

157. *See* Steven C. Bennett, *When Will Law School Change?*, 89 Neb. L. Rev. 87, 123–24 (2010) (using law library volume counts as an example of a traditional "input" measurement).

158. *See, e.g.*, Kaplan & Darvil, *supra* note 85, at 181–84 (discussing ways to integrate legal research training throughout the curriculum); Spencer, *supra* note 27, at 2060 (suggesting an extension of legal research and writing education past the first year, "featuring more extensive simulation training focused on certain areas such as litigation and transactional skills").

¶58 Academic law librarians spend much of their time in service to faculty members and often engage in certain kinds of legal research that are geared toward comprehensive and in-depth examination of legal topics.[159] This kind of research is not exclusive to the academy; it has much in common with the kind of exhaustive research that a large firm associate might do while preparing an important brief or client memo. But it is not always (if ever) practical for the small firm practitioner handling a routine matter or working for a client on a modest budget.[160] As Karl Llewellyn quipped in 1935, "It is true that the 300-page corporate indenture is a part of today's life; it does need attention in the law school. But the old homestead is still being mortgaged. That needs attention too."[161] The "practical" aspect of the training we offer is not self-evident. Merely asserting that more legal research training will help our graduates be more "practice ready" is insufficient; we should instead customize our classes to ensure that students graduate not only able to do basic research, but also to do research in the ways that will best serve their practices and their clients.[162]

¶59 A well-funded law school library may offer students access to and training in Westlaw, LexisNexis, Bloomberg Law, HeinOnline, and many other expensive, subscription-based online research tools, which they can subscribe to at relatively favorable rates, in part because database vendors want to facilitate students' inculcation in the use of their products.[163] But only the largest and wealthiest law firms are able to offer their staff access to the same range of tools (and even then, with a close eye on the running tab).[164] The practices of these firms should be of marginal interest to law school research instructors, because fewer than ten percent of 2011 law graduates secured full-time, long-term positions at firms with more than 250

159. Lynch, *supra* note 86, at 419.

160. *See* Bowman, *supra* note 70, at 535.

161. Llewellyn, *supra* note 46, at 654.

162. *See, e.g.*, Armond & Nevers, *supra* note 128, at 591–92, ¶¶ 60–61 (describing how feedback from practitioners led the authors to provide additional instruction on court rules based on their importance in client-centered legal research).

163. *See* Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 Lewis & Clark L. Rev. 797, 832 (2006) (describing how LexisNexis and Westlaw have offered generous access to law school users, in part because "[i]t helps them in marketing their services to law firms since the vast majority of graduates leave law school with some exposure, if not facility, with their databases."); *cf.* Marilyn R. Walter, *Retaking Control over Teaching Research*, 43 J. Legal Educ. 569, 580–81 (1993) (noting that firm librarians attribute research weaknesses, in part, to "the habits and attitudes that students develop when CALR is free of charge.") (citing a study reported on in Howland & Lewis, *supra* note 87, at 387); *see also generally* Shawn G. Nevers, *Candy, Points, and Highlighters: Why Librarians, Not Vendors, Should Teach CALR to First-Year Students*, 99 Law Libr. J. 757, 2007 Law Libr. J. 46.

164. *See* Arewa, *supra* note 163, at 830 ("LexisNexis and Westlaw services are particularly suited to large law firms that bill clients."); *see also* Deborah K. Hackerson, *Access to Justice Starts in the Library: The Importance of Competent Research Skills and Free/Low-Cost Research Resources*, 62 Me. L. Rev. 473, 481 (2010) ("Many firms limit, or even prohibit, access to Westlaw and LexisNexis for new attorneys"); Laura K. Justiss, *A Survey of Electronic Research Alternatives to LexisNexis and Westlaw in Law Firms*, 103 Law Libr. J. 71, 73, 2011 Law Libr. J. 4, ¶ 9 (describing one firm's policy to limit the use of Westlaw and LexisNexis, in certain circumstances, in favor of lower-cost alternatives).

attorneys.[165] Yet larger firms (and their practices) wield influence far beyond their proportion,[166] including in our legal research classes.

¶60 We should introduce students early on to the most practical research challenges: that they themselves may have to decide what (if any) services they want to subscribe to; how to use the tools available to them through the local bar association; what free or low-cost online sources are the best, and how to appraise them; how to use local or topical practice guides and tools for transactional practice and counseling; where to find reputable forms, dockets, and court rules; how to research people and businesses; and more. Teaching these skills in law school will better prepare students regardless of their ultimate practice destination.

¶61 Now, more than ever, a greater percentage of information "beyond the traditional sources of law is considered relevant to the process of legal research."[167] This requires a rethinking of our traditional "conceptual universe," emphasizing both a broader and a more systematic approach to attorney research.[168] For example, legal practice may demand that practitioners quickly become familiar with nonlegal information—scientific and medical information, statistical data, or company information—as well as general fact-finding techniques. Thomas Morgan notes that

> many lawyers like to brag about their ability to learn things "just in time"—just when and what they need to know to complete a narrow task. If a trial lawyer has a case about a dangerous chemical, for example, he will have to learn as much as practical about the chemical. The lawyer often might not have learned such non-legal knowledge before the case, however, and getting educated efficiently and effectively often proves easier said than done.[169]

To help build such skills, those fortunate enough to be part of a larger university environment should collaborate with non–law library colleagues to train law students to use nonlegal research tools and build competence working with factual investigations and empirical research.

¶62 In his recommendation to integrate factual investigations with legal research, David McGowan predicts that such a proposal will not appeal to law librarians.[170] I would argue that rather than displacing the law librarian's traditional skill set, expanding our view of the legal research curriculum allows librarians to introduce metacognitive aspects of legal research (perhaps even so-called bibliographic skills) into a wider array of law school situations. Increasing students' general information literacy will serve them well in a dynamic and unpredictable legal information environment. Law librarians add value for their students and patrons not only because of their experience working with legal materials, but also

165. Palazzolo, *supra* note 37.

166. *See* Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 722–23 n.42 (1998).

167. Richard A. Danner, *Contemporary and Future Directions in American Legal Research: Responding to the Threat of the Available*, 31 INT'L J. LEGAL INFO. 179, 192 (2003).

168. *See id.*

169. MORGAN, *supra* note 65, at 184–85; *see also* Bowman, *supra* note 70, at 552 (describing Millennial law students as "'just in time' learners" and citing other sources using the term).

170. McGowan, *supra* note 59, at 21.

because they have received *general* training in research techniques and information organization and retrieval.[171]

¶63 Finally, sensitizing students to the practical constraints that shape how they research may also open a door to new opportunities in librarian-student cooperation: students who understand how local law libraries can help them save time and money as practitioners may prioritize this practical skill set and form a new appreciation for libraries in their professional practice. Academic law libraries should make sure their doors are open to alumni who may need access to the library's breadth of resources and their librarians' expertise.

Conclusion

¶64 More than thirty years ago, Anita Morse argued that for law schools to be optimally successful, "[t]he answer must be an integrated effort of all parts of the legal education community to prepare law students in lawyer competency."[172] As law librarians, we cannot passively watch while legal reform efforts are debated and tested in response to the current crisis. Unless we play a visible and integral part in the reform process, our contributions to student success will be marginalized or ignored by those who do not understand our role and our potential. Part of this process requires ensuring that what we have to offer is what the moment calls for—potentially a new paradigm in legal education—and planning ways to adapt to changes in our institutions that may be out of our control. We should envision our libraries as part of a comprehensive effort to make legal education more useful, attractive, and affordable, and in doing so make other stakeholders aware of what they have to lose by cutting libraries and librarians out of the picture.

171. Richard Buckingham, *Thinking like a Librarian: Tips for Better Legal Research*, 12 T.M. Cooley J. Prac. & Clinical L. 1, 1 (2009).

172. Morse, *supra* note 53, at 259.