Keeping up with a Kardashian: Shedding Legal Educations' Vestigial Trade School Anxiety and Replacing the Dated Casebook Method with Modern Case-Based Learning

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I. INTRODUCTION

Fashion media and legal education, rarely the twain shall meet. But with a cover story captioned “The Awakening of Kim Kardashian West,” Vogue magazine splashed an almost surreal lens on Mrs. Kardashian West’s personalized legal education in May 2019.¹ Kardashian West is already a “reality star, business mogul, professional influencer” and recently added the descriptor “aspiring criminal justice lawyer.”² As one commentator noted, she is “best known for forging a television career based solely around her family’s vapid existence as late-stage capitalism’s answer to ancien régime nobility, Kardashian is also the daughter of O.J. Simpson’s lawyer buddy Robert Kardashian.”³


Her rap-star husband, Kanye West, initially teased the media about his wife’s legal studies in September 2018.4

Drawn to legal studies by her advocacy work for criminal-justice reform, Kardashian West recently commenced “reading the law” under the tutelage of two practicing attorneys from a San Francisco law firm.5 Rather than attend a brick and mortar law school, Kardashian West chose to pursue her legal studies via a modernized version of the old-fashioned apprenticeship path, following in the footsteps of the likes of Thomas Jefferson and Abraham Lincoln.6

Not surprisingly, Kardashian West’s legal education is “getting a ton of media coverage . . . “7 Her uncommon path of legal apprenticeship is also gleaning media coverage.8 While uncommon today, in the United States the apprenticeship “practice of ‘reading the law’ dates from the days of Thomas Jefferson . . . .”9 The era of learning the law by apprenticeship gradually waned during the first half of the twentieth century. In 1941, James F. Byrnes became the last Justice appointed to the United States Supreme Court who did not attend law school.10 In 2015, “only three of the 13,084 Californians who took the bar exam . . . were educated through ‘law office study’ . . . .”11 Of these three bar takers, two passed.12 While statistically small, this bar passage rate of two-thirds far eclipsed the 2015 California Bar Examination overall passage rates of 40.1% for February13 and 46.1% for July,14 and ought to cause considerable consternation for the almost two-dozen California accredited, but not American Bar Association (“ABA”)

4. See id.
5. Rao, supra note 2.
6. Id.
8. See, e.g., Van Meter, supra note 1.
10. FAQs - General Information, SUP. CT. U.S., https://www.supremecourt.gov/about/faq_general.aspx (last visited Nov. 18, 2019). Impressively, Justice Byrnes “did not graduate from high school and taught himself law, passing the bar at the age of 23.” Id.
12. Id.
approved, law schools with an abysmal combined first time bar passage rate of twenty-one percent for the July 2015 Bar.\textsuperscript{15}

If Mrs. Kardashian West eventually passes the California bar, she will join a small clique of practicing attorneys who apprenticed by “reading the law” rather than attending a law school. Mrs. Kardashian West will likely become the most notable non-law school alumnus attorney, likely displacing Frank Abagnale, the conman portrayed by Leonardo DiCaprio in the movie \textit{Catch Me if You Can}.\textsuperscript{16} In the interim, Mrs. Kardashian West’s uncommon path to practice is poised to be documented in a two-hour documentary to be called \textit{Kim Kardashian: The Justice Project}, detailing both her legal education and criminal justice work.\textsuperscript{17} Like each facet of her life, the media has closely tracked Mrs. Kardashian West’s legal studies.\textsuperscript{18}

Perhaps Mrs. Kardashian West’s legal studies represent just one random data point. But this data point illustrates an alarming indictment of the legal education academy: The most famous law student of the millennia, perhaps even the most contemporaneously famous law student ever, just issued a vote of no confidence in modern American legal education.\textsuperscript{19} Mrs. Kardashian West just spurned a brick and mortar law school education.\textsuperscript{20} She seemingly gleans no utility in spending the next three years in the classroom engaged in a Socratic discourse to learn to purportedly “think like a lawyer” via the classic casebook method. With an estimated net worth of $370 million, Mrs. Kardashian West could easily pay the tuition at any law school.\textsuperscript{21} Actually, given the current doldrums in legal education, she could easily just buy her own law school.\textsuperscript{22}

Instead, she has chosen to curate her own curriculum seemingly designed to facilitate bar passage and provide a practice-ready legal

\textsuperscript{15} Id. at 1, 5.
\textsuperscript{16} See Rao, \textit{supra} note 2; see also \textit{Catch Me if You Can}, IMDB, https://www.imdb.com/title/tt0264464 (last visited Nov. 18, 2019).
\textsuperscript{17} Zaretsky, \textit{supra} note 7.
\textsuperscript{18} See id.
\textsuperscript{20} See id.
\textsuperscript{21} Megan Friedman & Erica Gonzales, \textit{Here’s How Much Every Member of the Kardashian-Jenner Family Is Worth}, \textit{HARPER’S BAZAAR} (July 15, 2019, 11:16 AM), https://www.harpersbazaar.com/celebrity/latest/a22117965/kardashian-family-net-worth (noting that her wealth mainly inures from “the success of her KKW Beauty line—which has raked in over $100 million in revenue—plus endorsement deals and \textit{Keeping Up with the Kardashians} earnings.”).
\textsuperscript{22} See also Stephanie Francis Ward, \textit{Urge to Merge: Difficult Times for Law Schools Have Prompted Several To Attempt to Be Acquired by Other Schools}, \textit{A.B.A. J.} (July 1, 2019, 12:15 AM), http://www.abajournal.com/magazine/article/urge-to-merge-law-school.
education. While all details of her legal education are not (yet) in the public domain, given Mrs. Kardashian West’s prolific online presence, many details of her legal education are readily known. Apprenticing with a San Francisco firm, Mrs. Kardashian West logs eighteen hours per week of supervised studies under the tutelage of two of the firm’s attorneys. During the first year of her studies, Mrs. Kardashian West’s legal studies focused on the three subjects covered on the California “Baby Bar”: torts, criminal law, and contracts. As she explains, “torts is the most confusing, contracts the most boring, and crim[inal] law I can do in my sleep.”

Echoing a refrain familiar to any first-year law student, she laments “[t]he reading is what really gets me. It’s so time consuming.” Mrs. Kardashian West recently shared a criminal law issue spotter on Instagram, featuring a fictional “Justin Bieber, who, in the world of the hypo, traffics in stolen artwork.” Numerous other fictionalized musicians appeared in the hypo as possible co-conspirators while Donnie Wahlberg appeared as an art thief.

In addition to reading the law and completing hypos, Mrs. Kardashian West’s apprenticeship also includes criminal justice related work. The article in Vogue includes a vignette of one of her lawyer mentors asking Mrs. Kardashian West to help draft a commutation petition before returning to studying torts. So, without spoiling the plot of her documentary, Mrs. Kardashian West’s apprenticeship seems to blend studying black letter law under the tutelage of two practicing attorneys, which results in a formative assessment designed to reinforce and test her burgeoning legal knowledge and real-world practice experience aligned with her personal interest in criminal justice.

In short, her curriculum appears to be efficient, practical, and focused on making her practice ready. This fledgling curriculum contrasts significantly with the long-established legal education academy. Simply, much of the law school curriculum remains

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23. See Rao, supra note 2.
25. Van Meter, supra note 1.
26. Id.
27. Id.
28. Id.
30. Id.
31. Van Meter, supra note 1.
32. Id.
myopically focused on doctrinal casebook courses purportedly inoculating students to “think like a lawyer,” often at the expense of preparing students to actually practice as lawyers. This focus has not proven effective. As other legal educators have noted, “[i]f legal education remains tethered to print and the case method, . . . it remains largely oblivious to the way law is practiced . . .” “Every major study that has been done about legal education for decades has said that law schools do not do enough to give law students the skills that are necessary for the practice of law.” Notably, if successful, Mrs. Kardashian West will pass the California bar without ever taking a doctrinal casebook course. She will never experience this strange vestigial emphasis placed in legal education on doctrine at the expense of practical skills. Instead, Mrs. Kardashian West is learning the law from actual lawyers, rather than academic scholars.

Whether by design or happenstance, the curricular design of Mrs. Kardashian West’s apprenticeship seems to solve this practice ready Achilles’ heel of legal education by balancing learning the black letter law, formative assessment, and an early introduction of practical skills. Mrs. Kardashian West is not alone in questioning the utility and perhaps sensing the deficiencies of traditional law school education. In 2011, a Survey of Law School Engagement revealed that “[f]orty percent of students felt their legal education had contributed only some or very little to their acquisition of job or work-related knowledge and skills.”

Perhaps Mrs. Kardashian West’s legal apprenticeship will prove an anomaly or just a wealthy celebrity’s fleeting folly. Her attention and outsized influence may flitter elsewhere in the next few years. But she

33. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 152. This is a nebulous concept that seems to defy explanation. “It seems like defining what it means to ‘think like a lawyer’ is a bit like defining what constitutes pornography: we may not know how to define it, but we know it when we see it.” Peter T. Wendel, Using Property to Teach Students How to “Think Like a Lawyer:” Whetting Their Appetites and Aptitudes, 46 St. Louis U. L.J. 733, 734 (2002).
34. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 152; see Ronald K.L. Collins & David M. Skover, The Digital Path of the Law, in LEGAL EDUCATION IN THE DIGITAL AGE 13, 14 (Edward Rubin ed., 2012) (discussing the institutional constraints and inertia that perpetuate the casebook method and “why the ghost of Langdell still haunts us.”).
35. Collins & Skover, supra note 34, at 14.
38. See supra notes 5-6 and accompanying text.
39. See supra notes 23-35 and accompanying text.
40. See infra Part III.A.
41. FRUEHWALD, supra note 37, at ix-x (quoting A. Benjamin Spencer, The Law School Critique in Historic Perspective, 69 Wash. & Lee L. Rev. 1949, 2014 (2012)).
also might prove to be a practice ready canary in the coal mine of legal education. Mrs. Kardashian West is “arguably the nation’s most prominent social influencer” capable of commanding $500,000 for a single sponsored Instagram post. Given the global influence of Mrs. Kardashian West’s online presence coupled with her massive enthusiastic audience, if she deems the traditional law school experience superfluous, legal education may need to saddle up for a long overdue, cathartic reconfiguration.

Part II of this Article examines how ongoing changes to the legal industry since the mid-1990s curtailed revenue growth, subduing growth in the number of active attorneys, which coupled with a glut of Baby Boomer practitioners, quashed occupational opportunities for new attorneys since the Great Recession. Part III examines how a wave of disenfranchised recent law school graduates who took to social media, spurring a critical commentary regarding the efficacy of legal education, mounting student loan debt, and poor career prospects for recent graduates, contributing to fewer law school applications, reduced tuition revenue, and a wave of law school closures. Part IV traces the roots of legal education’s dated curricular focus, vestigial trade school anxiety, and aversion to professional training and concludes that legal education is in dire need of revolutionary change. Part V outlines a proposed practice-ready curriculum that melds components of a modern apprenticeship with case-based learning inspired by modern medical school curriculum.

II. THE GREAT RECESSION AND ONGOING CHANGES IN THE LEGAL INDUSTRY DISRUPT THE PRACTICE PROSPECTS OF RECENT LAW SCHOOL GRADUATES

A decade before Mrs. Kardashian West’s nascent interest in practicing law, the Great Recession struck big law. While less dramatic, a swath of changes forced on the legal industry by large corporate customers since the mid-1990s curtailed profitability. With revenues for the legal services sector effectively flat for a sustained period, recent law school graduates found fewer opportunities to enter

42. Weiss, supra note 24.
43. See infra Part II.
44. See infra Part III.
45. See infra Part IV.
46. See infra Part V.
47. See infra notes 52-58 and accompanying text.
48. See infra notes 60-80 and accompanying text.
the practice of law.49 These recent graduates’ practice opportunities were further constrained by a demographic bubble of Baby Boomer attorneys firmly entrenched in law firms, the judiciary, and academia.50 Finding limited employment opportunities, saddled with mounting student loan debt, and poorly prepared to practice law, a cadre of dissatisfied recent graduates took to social media to air their grievances.51

A. The Great Recession Coupled with an Era of Enhanced Client Sophistication, Outsourcing, and Home-Sourcing Wrings Profitability from the Traditional Law Firm Business Model

The 2007–2008 financial crisis walloped big law firms.52 During the boom preceding the crisis, law firms expanded and grew their burgeoning corporate practice groups.53 But as the financial sector soured, law firms drastically reduced their practice groups that serviced the financial sector.54 All told, during 2009, “law firms laid off 12,259 attorneys and staff . . . .”55 Beyond layoffs, several large firms dissolved altogether after the financial crisis: notably Thelen LLP,56 Heller Ehrman LLP,57 and perhaps “most spectacularly[,] the thousand-lawyer New York firm of Dewey & LeBoeuf.”58

49. See infra Part II.B.
50. See infra Part II.C.
51. See infra Part III.
52. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 163; see THOMAS S. CLAY & ERIC A. SEEGER, 2017 LAW FIRMS IN TRANSITION: AN ALTMAN WEIL FLASH SURVEY i, 3 (2017), http://www.altmanweil.com/dir_docs/resource/90D6291D-AB28-4DFD-AC15-DBDEA6C31BE9_document.pdf (finding that sixty-five percent of law firms surveyed in 2017 respond that demand for their firm’s services has not returned to pre-recession levels).
54. MOLITERNO, supra note 53, at 192; Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 164.
58. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 164; Stephen M. Sheppard, The American Legal Profession in the Twenty-First Century, 62 AM. J. COMP. L. SUPP.
Beyond the acute shock of the financial crisis, the Great Recession revealed inefficiencies in the traditional law firm model that proved ripe for disruption due to enhanced corporate client sophistication, rapid technological advances, and increased global competition in the market for legal services. Percolating for decades, these factors continue to force law firms to operate more efficiently.\textsuperscript{59} One primary factor stems from corporate clients increasingly retaining routine legal work in-house and also approaching outside legal work with enhanced cost-consciousness.\textsuperscript{60}

The math underlying this trend is relatively straightforward. Consider the traditional rule of thirds: the time honored metric for calculating law firm salary and expense ratios that divided an attorney’s annual billable hours into thirds, with one-third covering the attorney’s salary, one-third covering the firm’s overhead, and one-third contributed to the firm’s profit.\textsuperscript{61} Not surprisingly, sophisticated clients spied the opportunity to pay wholesale rather than retail for legal services, excising at least the partnership profit from their legal expenses by hiring in-house counsel to handle matters formerly assigned to outside legal counsel. This trend commenced in the late 1990s and continues unabated.\textsuperscript{62}

In addition to retaining routine legal tasks, corporate clients also approach outside legal expenses with enhanced sophistication and cost-consciousness. Corporate legal departments, including insurance companies, increasingly monitor and manage outside counsel.\textsuperscript{63}

\textsuperscript{59} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 164; see James Podgers, \textit{State of the Union}, A.B.A. J., July 2011, at 58, 58 ("The U.S. Legal Profession is going through some heavy turbulence these days: downsizing at larger firms, a more competitive business environment, the growing impact of globalization and technology, and angst about job prospects and debt.").

\textsuperscript{60} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 164-65; see Rebekah Mintzer, 2013 Law Department Metrics Benchmarking Survey, LAW.COM (Nov. 20, 2013, 12:00 AM), https://www.law.com/corpclerun/glw/almID/1202628882558/2013-Law-Department-Metrics-Benchmarking-Survey/?mcode=0&curindex=0&curpage=2; see also Sheppard, supra note 58, at 251 ("Many companies that outsourced the bulk of their legal work have been enlarging their in-house counsel staff, both as a means to manage better their legal affairs and as a means of cutting costs.").


\textsuperscript{62} CLAY & SEEGER, supra at note 52, at iii, 4 (noting that over two-thirds of surveyed law firms “report losing business to corporate law department insourcing”); Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 165.

\textsuperscript{63} See Mintzer, supra note 60. As Lauren Chung, an industry consultant, explains: “There’s
Insurance companies began aggressive cost-cutting campaigns in the mid-1990s.\textsuperscript{64} Insurance companies commonly impose contractual billing guidelines,\textsuperscript{65} require itemized statements, routinely expect discounts,\textsuperscript{66} and subject itemized statements to third-party audits.\textsuperscript{67}

Beyond constricting billable time and expenses, corporate legal departments also increasingly manage spending on outside counsel by replacing the billable hour with alternative fee arrangements,\textsuperscript{68} such as fixed fees for services and even reverse auctions for services.\textsuperscript{69} With reverse auctions, clients invite qualified counsel or firms to bid on a flat fee basis for performing routine legal work.\textsuperscript{70} In the aggregate, corporate clients can wring significant savings from reverse auctions. For example, the annual legal expenses incurred by Fortune 500 companies typically range “from about $20 million to $200 million a year . . .” and reverse auctions can cut fifteen to forty percent from a company’s legal expenses.\textsuperscript{71}

By “in-sourcing” legal work to in-house counsel and decreasing the profitability of routine legal work with billing guidelines, audits, and alternative fee arrangements, sophisticated corporate clients including insurance companies reduced the profitability of a swath of legal work. Beyond wringing cost savings from the routine provision of legal services, technology also facilitates the disaggregation of routine legal services into discrete, fungible, and outsourceable tasks.

Beginning in the mid-1990s, a growing volume of legal services has been outsourced from the United States to various foreign countries.\textsuperscript{72} There exists no consolidated data on outsourcing increasing focus on outside counsel management from retention to billing arrangements, to planning and budgeting, to ongoing evaluation and monitoring of performance of outside counsel.” \textit{Id.}

\begin{itemize}
  \item\textsuperscript{64} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 165-67.
  \item\textsuperscript{65} \textit{Id.} at 168; Debra Baker, \textit{A Grab for the Ball}, A.B.A. J., Apr. 1999, at 42, 43.
  \item\textsuperscript{66} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 168; Mintzer, supra note 60. As one corporate general counsel explained, “I won’t work with a firm unless they agree to a 20 percent across-the-board cut of what their normal fees would be . . .” \textit{Id.}
  \item\textsuperscript{67} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 168; Baker, supra note 65, at 43 (noting that “[c]ompanies also are using independent auditors to scrutinize legal bills . . .”).
  \item\textsuperscript{68} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 169; Mintzer, supra note 60.
  \item\textsuperscript{69} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 169; see Patrick G. Lee, \textit{Pricing Tactic Spooks Lawyers}, \textit{Wall Street J.}, Aug. 2, 2011, at B5, https://www.wsj.com/articles/SB10001424053111904292504576482243557793536 (noting that large companies including eBay Inc., GlaxoSmithKline PLC, and Toyota Motor Corp. have used reverse auctions to significantly reduce legal expenses).
  \item\textsuperscript{70} Dykstra, \textit{Beyond the “Practice Ready” Buzz}, supra dagger note, at 169-70.
  \item\textsuperscript{71} \textit{Id.} at 170; see Lee, supra note 69, at B5.
\end{itemize}
destinations for legal services, but India appears to be the primary destination for outsourced legal services.\textsuperscript{73} Since 2001, the velocity of corporations outsourcing legal services to foreign subsidiaries has accelerated.\textsuperscript{74} "In 2004 alone, 12,000 legal jobs were outsourced abroad . . . ."\textsuperscript{75} Additionally, a growing group of legal-process-outsourcing vendors help American-based corporations and law firms outsource routine legal services both domestically and abroad.\textsuperscript{76} The term "outsourcing" references the use of third parties to provide services in lieu of employees.\textsuperscript{77} Most legal services outsourcing takes the form of either domestic outsourcing or exporting work offshore to third-party contractors or foreign employees of the law firm or the client.\textsuperscript{78} This lower cost of outsourced services inures from lower labor costs: A junior lawyer in India in 2010 earned the equivalent of just over $8000, compared to the six-figure salaries expected by law firm associates in major cities in the United States.\textsuperscript{79}

By one estimate, legal services venders in India and the Philippines employed over 5200 professionals and generated an approximate annual revenue of $300 million in 2010.\textsuperscript{80} Another study placed estimates even higher, noting revenue from "legal outsourcing in India had grown from $146 million . . . (US) in 2006 to $640 million by 2010, and that associated employment had increased from [7,500] to 32,000 over that same time period."\textsuperscript{81} Beyond just India, law firms based in America and

\textsuperscript{73} Council for Trade in Services, \textit{Legal Services: Background Note by the Secretariat}, ¶ 21, WTO Doc. S/C/318 (June 14, 2010), https://docs.wto.org/dol2fe/Pages/FESearchlFES_-S009-DP.aspx?language=E&CatalogueIdList=113629,39951,65042,61918,5291&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

\textsuperscript{74} Dykstra, \textit{Beyond the "Practice Ready" Buzz}, supra dagger note, at 173; see Krishnan, supra note 72, at 2201-02.

\textsuperscript{75} Dykstra, \textit{Beyond the "Practice Ready" Buzz}, supra dagger note, at 173; Krishnan, supra note 72, at 2194.

\textsuperscript{76} Dykstra, \textit{Beyond the "Practice Ready" Buzz}, supra dagger note, at 173; Krishnan, supra note 72, at 2103-04.


\textsuperscript{78} Dykstra, \textit{Beyond the "Practice Ready" Buzz}, supra dagger note, at 173; Gibson, supra note 77, at 48.

\textsuperscript{79} Counsel for Trade in Services, supra note 73, ¶ 25; Dykstra, \textit{Beyond the "Practice Ready" Buzz}, supra dagger note, at 174.


\textsuperscript{81} GEORGE YARROW & CHRISTOPHER DECKER, \textsc{Assessing the Economic Significance}
the United Kingdom also outsource legal services “to Australia, Canada, New Zealand and South Africa to take advantage of the lower costs in those countries and of the benefits of zonal time differences in helping to complete tasks within shorter time periods.”

However, the explosive growth of legal services outsourcing has proven an imperfect elixir in some respects for lowering the cost of legal services in the United States. Some skepticism remains regarding the suitability of many higher value legal services for outsourcing. Moreover, domestic retention of even routine legal tasks by law firms “provides a valuable opportunity to train new lawyers to develop the judgment which provides the basis for the reputation of the top law firms.” Further, law firms may risk tarnished reputations as the trusted law firm-client relationship transforms the lawyer’s role into project managers of a disaggregated group of low-cost contractors sprinkled around the globe. Not surprisingly, legal services outsourcing poses a thicket of potential “ethical challenges, related to confidentiality, disclosure, and billing for the outsourced work.” “Rising costs and growing concerns about the offshoring legal services coincided with the rise of the domestic gig economy, creating a new wave of home-shoring legal services back to the Occident.”

Rising wages in India coupled with soft labor costs in the United States after the Great Recession narrowed the arbitrage opportunity of outsourcing legal services abroad. Following the Great Recession, tough times in the United States “produced a glut of unemployed” law school graduates in the United States. This narrowed India’s advantage as once lower labor costs rose with other costs, such as capital

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82. Yarrow & Decker, supra note 81, at 75; Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 175.
83. Counsel for Trade in Services, supra note 73, ¶24; Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 175-76.
84. Counsel for Trade in Services, supra note 73, ¶24; Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 176.
85. Counsel for Trade in Services, supra note 73, ¶26; Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 176.
86. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 176.
expenses. The diminished labor arbitrage opportunity and challenges of providing American-style legal services abroad are driving a new wave of domestic outsourcing, sometimes referenced as home-sourcing.

These trends in the legal services industry of cost containment, in-sourcing, outsourcing, and rise of the non-traditional provision of legal services, are not apt to abate anytime soon. As the United States Bureau of Labor Statistics job outlook for lawyers reflects these trends and sagely notes:

Demand for legal work is expected to continue as individuals, businesses, and all levels of government require legal services in many areas. Despite this need for legal services, more price competition over the next decade may lead law firms to rethink their project staffing to reduce costs to clients. Clients are expected to cut back on legal expenses by demanding less expensive rates and scrutinizing invoices. Work that was previously assigned to lawyers, such as document review, may now be given to paralegals and legal assistants. Some routine legal work may also be outsourced to other lower-cost legal providers located overseas. Although law firms will continue to be among the largest employers of lawyers, many large corporations are increasing their in-house legal departments to cut costs. For many companies, the high cost of hiring outside counsel lawyers and their support staffs makes it more economical to shift work to their in-house legal department. This will lead to an increase in the demand of lawyers in a variety of settings, such as financial and insurance firms, consulting firms, and healthcare providers.

The success of these trends of cost containment, in-sourcing, outsourcing, and rise of the non-traditional provision of legal services are reflected in the portion of the Gross Domestic Product ("GDP") generated by the legal services sector, which has remained relatively static at mid-1990s levels when adjusted for inflation. Within the

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89. Dykstra, Beyond the “Practice Ready” Buzz, supra dagger note, at 176-77; see Shlachter, supra note 87.
90. Gibson, supra note 77, at 48.
overall GDP, various sectors are independently measured to reflect the contribution of each sector toward the GDP. Legal services are included within the broader category of "Professional, Scientific, and Technical Services," which also includes a wide variety of services such as accounting, architectural, engineering, advertising, and veterinary services. The legal services sector includes attorneys engaged in private practice but omits attorneys employed in government and attorneys employed in other sectors, such as in-house counsel. Therefore, the legal services sector includes the vast majority of attorneys, roughly seventy-five percent of whom are engaged in private practice.

Measurement of the legal services sector is "typically based on the total revenues earned in the sector." In many respects, measuring the legal sector's overall contribution to GDP primarily by revenue short-changes the sector's overall contribution toward the economy. For example, by this measurement, the contribution of legal services is capped at revenue, omitting any contribution for pro bono services or the contribution of legal services toward even an extraordinarily lucrative project. But measuring a services sector by revenue provides a gauge on the growth of that sector, or for the legal services sector, the lack of growth.

Industry" hyperlink; then follow "Real Value Added by Industry (A) (Q)" hyperlink; then follow "Annual" hyperlink; then follow "Next Step" hyperlink).


95. Id. at 461.

96. Id. Of note, within this group, "Offices of Lawyers" is further defined to include "offices of legal practitioners known as lawyers or attorneys . . . primarily engaged in the practice of law. Establishments in this industry may provide expertise in a range or in specific areas of law, such as criminal law, corporate law, family and estate law, patent law, real estate law, or tax law." Id.


98. YARROW & DECKER, supra note 81, at 50 (noting that the GDP estimates for the legal services sector based on revenue "fail to capture the significance of the legal sector in facilitating other sorts of business transactions . . . .").

99. As an example, an assessment of the total value of the Justice & Diversity Center of the Bar Association of San Francisco's legal services to the community placed the annual value of these services for one local bar association at $18,220,639 in 2013. Assessment Finds Justice & Diversity Center's Legal Services Annual Value to San Francisco $18,220,000, B. ASS'N S.F. (Apr. 20, 2015), https://www.sfbars.org/newsroom/2015/20150420.aspx.

100. For example, the GDP contribution of registering what becomes an iconic and enormously profitable trademark will be capped at the attorney's fees billed for the trademark registration.

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Specifically, the Gross Output by industry annual tables reveal that, when adjusted to 2012 dollars to negate the effects of inflation, the Real Gross Output of the Legal Services sector gradually retreated from $323.6 billion in 2008 to $296.5 billion in 2014. This amount climbed a bit to $299.6 billion in 2015 but still remains below the $303.5 billion output of 1999. Further, when adjusted for inflation, the Gross Output of the legal services sector remained less than the sector’s output of $311.3 billion in 2001 for every year from 2009-2018. In contrast, the legal services sector’s parent category of Professional, Scientific, and Business Services grew 70% from $1284.8 billion in 1999 to $1922 billion in 2015. This robust growth occurred despite the apparent drag of the legal services sector. As reflected in Figure 1, the gist is that, when adjusted for inflation, the revenues of the legal services sector remain static at 1990s levels.

Given the static revenues for the legal services sector at 1990s levels when adjusted for inflation, the competition for legal jobs in the legal services sector is apt to continue to be robust. Despite projecting

102. Id. (follow “GDP-by-Industry” hyperlink; then follow “Gross Output by Industry” hyperlink; then follow "Real Gross Output by Industry (A) (Q)" hyperlink; then follow “Annual” hyperlink; then follow “Next Step hyperlink” (explaining that chained 2012 dollar series are calculated as the product of the chain-type quantity index and the 20 current-dollar value of the corresponding series, divided by 100).
103. Id.
104. Id.
105. Id.
106. Id.
107. Id. (follow “chart” hyperlink; then choose both “Professional, scientific, and technical services” and “Legal services” from the list; then follow “Line Chart” hyperlink); see infra Figure 1.
108. See generally OFFICE OF POLICY DEV., U.S. DEP’T OF COMMERCE, SERVICE INDUSTRIES
an optimistic six percent growth rate until 2028 for lawyer employment in the United States.\textsuperscript{109} the U.S. Bureau of Labor Statistics minces no words regarding the job prospects for newly-minted lawyers:

\textit{[C]ompetition for jobs should continue to be strong because more students are graduating from law school each year than there are jobs available. ... Some recent law school graduates who have been unable to find permanent positions turn to temporary staffing firms that place attorneys in short-term jobs.}\textsuperscript{110}

The trends of cost containment, in-sourcing, outsourcing, and rise of the non-traditional provision of legal services, are reflected in anemic growth in revenues for the legal sector.\textsuperscript{111}

B. After a Long Period of Sustained Expansion, Growth in the Number of Active Attorneys Slowed, Reducing the Volume of Recent Graduates Absorbed by the Legal Industry

Following a long period of unprecedented growth from the 1970s until the late 1990s, the legal profession sailed into the doldrums with the new millennia. During the last three decades of the twentieth century, the number of active attorneys in the United States more than tripled from about 326,842 in 1970 to approximately 1,022,426 in 2000.\textsuperscript{112} Since 2000, however, the number of active attorneys anemically rose about 1.8\% per year to 1,315,561 in 2016.\textsuperscript{113} From 2009 to 2019, the number of active attorneys edged up only 1.45\% per year from 1,180,386 to 1,352,027.\textsuperscript{114} Between 2017 and 2018, the number of active attorneys barely rose from 1,335,963 to 1,342,335 representing a tepid growth rate of 0.5\%.\textsuperscript{115} From 2018 to 2019, the number of active

\textsuperscript{109} Occupational Outlook Handbook: Lawyers, supra note 91.
\textsuperscript{110} Id.
\textsuperscript{111} CLAY & SEEGER, supra note 52, at ii ("Decreasing demand for legal services is endemic in the profession.").
\textsuperscript{113} Id.
\textsuperscript{115} Population Survey 1878-2019, supra note 112.
attorneys grew 0.7% from 1,342,335 to 1,352,027.\textsuperscript{116} Basically, following three decades of robust growth, the number of active attorneys has barely crept up during the new millennia.

The slow growth in the number of active attorneys is concerning when juxtaposed against the number of juris doctorates awarded annually. While the number of active attorneys increased by 9692 between 2018 and 2019,\textsuperscript{117} ABA-accredited law schools awarded 34,513 juris doctorate degrees in 2018.\textsuperscript{118} The slow growth of active attorneys of 0.5% between 2017 and 2018 resulted in an additional 6372 active attorneys\textsuperscript{119} compared to the 34,991 Juris Doctorate degrees conferred in 2017.\textsuperscript{120} Of course, many law school graduates do not want to practice law and seek employment in other areas.\textsuperscript{121} Also, a contingent of active attorneys retire or choose to leave the practice of law each year. Nonetheless, the glacial growth in the number of active attorneys will only absorb eighteen percent of the Juris Doctorate recipients in 2018.\textsuperscript{122} This raises concerns about potential overproduction given the historical context.

For example, between 1996 and 1997, the number of active attorneys rose 5.6% from 896,140 to 946,499, an increase of 50,359 active attorneys.\textsuperscript{123} During the same time span, ABA-accredited law schools conferred 41,115 Juris Doctorate degrees.\textsuperscript{124} The 5.6% growth reflected in 1996 proved a bit of an anomaly; nonetheless, during the six-year period from 1995 through 2000, growth in the number of active attorneys averaged 26,140 per annum.\textsuperscript{125} During the same time span, the aggregate number of Juris Doctorates conferred averaged 39,272 per annum.\textsuperscript{126} The gist: annual growth in the number of active attorneys absorbed about two-thirds of the alumni awarded Juris Doctorates over the six-year period encompassing 1995-2000.\textsuperscript{127} In contrast, from 2013

\begin{itemize}
\item \textsuperscript{116} Id.
\item \textsuperscript{117} See id.
\item \textsuperscript{119} See Population Survey 1878-2019, supra note 112.
\item \textsuperscript{120} Legal Education at a Glance: 2018, supra note 118.
\item \textsuperscript{122} See supra notes 117-118 and accompanying text.
\item \textsuperscript{123} Population Survey 1878-2019, supra note 112.
\item \textsuperscript{124} JD. and LL.B Degrees Awarded 1981-2011, AM. BAR ASS'N, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_llb_degrees_awarded.pdf (last visited Nov. 18, 2019).
\item \textsuperscript{125} Population Survey 1878-2019, supra note 112.
\item \textsuperscript{126} See JD. and LL.B Degrees Awarded 1981–2011, supra note 124.
\item \textsuperscript{127} See supra notes 125-26 and accompanying text.
\end{itemize}
through 2018, the growth in active attorneys averaged a modest 16,188 per annum\textsuperscript{128} while an average of 37,404 Juris Doctorates were conferred each year.\textsuperscript{129} So only about forty-three percent of the law school graduates could be absorbed by the growth in active attorneys.\textsuperscript{130} In addition to the slackened absorption of new attorneys by growth in the number of active attorneys, a demographic bubble of established Baby Boomer attorneys may also inhibit job opportunities for newer attorneys.

C. The Demographic Bubble of Established Baby Boomer-Era Attorneys Curtails Career Opportunities for Recent Law School Graduates

Beyond just filling new attorney positions, recent Juris Doctorate recipients also enter active practice by replacing attorneys departing the practice, whether due to retirement or various other reasons. But an aging demographic bubble of practicing attorneys has constrained the ability of new attorneys to both enter and find upward mobility in their careers in the legal industry. Following the Second World War, the Baby Boom commenced in the mid-1940s and continued until the early 1960s. A trailing boom in the ranks of active attorneys followed on the heels of the Baby Boom as the number of active attorneys in the United States more than doubled from 326,842 in 1970 to 846,036 in 1993.\textsuperscript{131} The oldest Baby Boomers began to turn sixty-five in 2011.\textsuperscript{132} Specifically, starting on January 1, 2011, an average of 10,000 Baby Boomers will celebrate their sixty-fifth birthday every single day for almost two decades until 2030.\textsuperscript{133} As a result of this demographic bubble, the average age of practicing attorneys has also increased.\textsuperscript{134} For example, the median age of a licensed attorney in 1980 was thirty-nine but steadily crept up to forty-nine by 2005.\textsuperscript{135} By 2012, about sixty percent of all law firm partners were fifty-five or older, “and by some estimates, a quarter of all practicing attorneys will be 65 or older by [2013].”\textsuperscript{136}

\textsuperscript{128} See Population Survey 1878-2019, supra note 112.

\textsuperscript{129} See JD and LLB Degrees Awarded 1981–2011, supra note 124.

\textsuperscript{130} See supra notes 128-29 and accompanying text.

\textsuperscript{131} Population Survey 1878-2019, supra note 112.


\textsuperscript{133} Id.

\textsuperscript{134} Robert Jessup, The Disappearing Young Attorney, LAW. MUTUAL (June 14, 2016), https://www.lawyersmutualnc.com/blog/the-disappearing-young-attorney.

\textsuperscript{135} Lawyer Demographics: Year 2016, supra note 97.

However, this older contingent of attorneys have not ridden off into the sunset of retirement on schedule.\textsuperscript{137}

Instead, Baby Boomer attorneys continue to practice law because of longer life expectancies and the lingering effects of the Great Recession. A sixty-five year-old attorney has a life expectancy of almost twenty years, and the Great Recession “caused some lawyers to postpone retirement as their nest eggs have dwindled.”\textsuperscript{138} One survey found that amongst managing partners at the top 100 law firms, eighty-five percent hale from the Baby Boom generation and only three percent belong to Generation X, the demographic group consisting of people born following the Baby Boom and lasting until the early 1980s.\textsuperscript{139} Further, at almost “two-thirds of the biggest law firms, partners who are 60 and older control at least one-quarter of the firm’s revenue . . . .”\textsuperscript{140} The ramifications of the Baby Boom demographic bubble to the legal industry exceed just seemingly quashing the career opportunities of younger attorneys.

The business model at most law firms remains focused on the “time-honored business model in which associates climb a ladder to partnership over many years.”\textsuperscript{141} This enduring business model “could lead to a wave of firms splintering when current leaders retire.”\textsuperscript{142} As one director of marketing explains, “[t]he boomers inherited clients and don’t give them up, or the income they generate, until they retire. . . .”\textsuperscript{143} This could foretell future turbulence for law firms, including mergers and outright dissolutions, as retiring Baby Boomer partners discover little of their practices or firms remain to sell.\textsuperscript{144} As one law firm economics commentator notes: “[w]hen the baton is being passed, that may be the time when there are firm breakups with people going different ways . . . .”\textsuperscript{145} Simply, “[t]he planned (or unplanned) succession of Baby Boomer partners is a serious unresolved issue in many law firms.”\textsuperscript{146} To date, law firms have largely failed to strategically plan for

\footnotesize{137. See id. ("Normal retirement remains at 65, the historical retirement age under Social Security.").}

\footnotesize{138. Id.}


\footnotesize{140. Id.}

\footnotesize{141. Id.}

\footnotesize{142. Id.}

\footnotesize{143. Id.}

\footnotesize{144. See id. As noted by Professor William Henderson, “[s]ome law firms could crumble after this generation because they don’t have a lot to sell to the next generation . . . .” Id.}

\footnotesize{145. Id.}

\footnotesize{146. THOMAS S. CLAY & ERIC A. SEEGER, 2015 LAW FIRMS IN TRANSITION: AN ALTMAN
the succession of their Baby Boomer partners.

Specifically, “only 31% percent of firms have a formal succession planning process in place.”\(^{147}\) For the majority of firms, “[t]he economic impact of this failure to plan for succession is imminent.”\(^{148}\) Given the tendency to cling to the status quo prevalent at most law firms, many firms seem apt to not directly address this looming problem.\(^{149}\) At some firms, mandatory retirement policies could provide a partial solution.

Law firms traditionally allowed partners to continue to practice unfettered until they wanted to retire.\(^{150}\) Significantly, law firms have commenced culling older partners, an action unthinkable just a few years ago.\(^{151}\) Many firms have even implemented mandatory retirement policies for partners.\(^{152}\) Mandatory retirement policies gained popularity because “the law profession was changing and required a fresh flow of youthful talent.”\(^{153}\) The underlying rationale for mandatory retirement policies is “that older, less vibrant partners should step aside and let the younger... lawyers take the reins, thus allowing for an orderly succession of firm leadership and the handing off of client relationships to the next generation.”\(^{154}\) Beyond the underlying ageism stereotypes, mandatory retirement policies give rise to some possible disadvantages.

Due to the conceivable disadvantages of mandatory retirement policies such as losing profitable and productive senior partners and the potential for Age Discrimination in Employment Act claims, numerous large firms, including Pillsbury and K&L Gates, have dispensed entirely with mandatory retirement policies.\(^{155}\) However, more than fifty percent of large law firms continue to require mandatory retirement, most commonly at age seventy.\(^{156}\) Rather than mandating outright retirement, some firms mandate a multi-year transitional period culminating in retirement or just convert senior partners to non-equity positions often

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\(^{148}\) Id.

\(^{149}\) Olson, supra note 139 (noting that generally, change at law firms tends to be “limited, tactical and reactive...”).

\(^{150}\) Latourette, supra note 136.


\(^{152}\) Latourette, supra note 136; see McGrath, supra note 151.

\(^{153}\) Latourette, supra note 136. Perhaps ironically, mandatory retirement policies initially gained popularity in the 1980s, presumably to the benefit of Baby Boomer partners. Id.

\(^{154}\) Id.

\(^{155}\) Id.

\(^{156}\) Id.
retitled as senior partner or of senior counsel. But mandatory retirement policies seem to reflect symptoms of the issues that arise from aging Baby Boomer partners at law firms rather than representing a cure-all for these issues. Further, the issues posed by the aging Baby Boom demographic are not confined just to law firms.

Beyond the active practice of law, this demographic bubble also touches academia and the judiciary. One study, *After Tenure: Post-Tenure Law Professors in the United States*, surveyed tenured law professors in 2005–2006. As of 2005, over eighty-nine percent of the respondent tenured professors demographically fell between the ages of forty and sixty-nine years. Just over seventy-four percent of the tenured professors were over the age of fifty years. The average tenured male professor was fifty-seven years while the average tenured female professor was fifty-two years. Not surprisingly, the median salaries for the surveyed law professors increased as the number of years increased following the receipt of tenure. So demographically, the vast majority of tenured law professors hail from the Baby Boom generation, and this group of cohorts receive the highest renumeration amongst tenured professors in legal education.

Regarding the judiciary, generally, the average age of an Article III judge has risen gradually over the last two centuries. But after a peak in 1960, the average age of an active United States district court judge receded until around 1980. Since 1980, the average age of an active United States district court judge has steadily risen. This peak and subsequent rise comport with the demographic bubble of Baby Boomer attorneys entering the judiciary. As of June 1, 2017, the average age of the 570 active United States district court judges was 60.8 years while the median age was 61.3 years. Of these Article III judges, over forty-seven percent or 269 judges fall between the ages of sixty and sixty-six.

157. *Id.*
159. *Id.* at 16.
160. *Id.*
161. *Id.*
162. *Id.* at 27.
164. *Id.*
165. *Id.*
nine. Similarly, as of June 1, 2017, the average age of the 160 active United States circuit court judges was 64.7 years with a median age of 65.3 years. Of these active judges, ninety-four percent, or 140 judges, were over forty-nine years old, and 110 judges were over fifty-nine years old. Thus, the vast majority of Article III judges hail from the Baby Boom generation. So, in the practice of law, academia, and the judiciary, a large demographic bubble of Baby Boomers continues to occupy a significant proportion of the available jobs.

Some propose that the Baby Boom generation entering retirement will yield “millions of lawyers leaving the job field.” This prediction seems a bit overheated but otherwise accurate. However, this generational transfer will likely prove glacial given that an average of 10,000 Baby Boomers will turn sixty-five each day until 2030. So at least during that next couple of decades, Baby Boomers are apt to occupy a significant portion of the premium positions in the legal industry, from law firm partners to members of the judiciary and tenured professors.

The aging demographic of Baby Boomers in the legal industry may help explain the bumpy career path faced by law school graduates during the new millennia, with many newer attorneys either unable to enter the practice or rapidly abandoning the practice of law. For example, one large longitudinal study focused on lawyers who entered the practice around the turn of the millennia. First surveyed in 2003, “about 70% of respondents were working in private law firms, just less than one quarter were working in the public sector, and the small remainder were in business (either practicing law or not).” Seven years later, the same group of lawyers “showed a significant contraction in the private law firm sector, countered by strong growth in the business sector.”

167. Id.
168. Id. at 11.
169. Id.
172. Heimlich, supra note 132.
174. Id. at 26.
175. Id.
Surveyed again at the twelve year milestone, this shift continued with "48.5% of respondents working in the private law firm sector, 28% working in the public sector, and 20% working in business (with another 3.5% indicating working in ‘other’ settings)."

So while newer attorneys may begin practicing with private firms, a large contingent leave private practice within a dozen years of entering the practice.

Nonetheless, the United States Bureau of Labor Statistics projects an optimistic six percent growth rate until 2028, which is similar to the growth rate projected for all occupations. Regardless of this perhaps optimistic projection, job growth and career opportunities for newer attorneys during the new millennia has proven stagnant.

III. RECENT LAW SCHOOL GRADUATES TAKE TO SOCIAL MEDIA, SPURRING A CRITICAL COMMENTARY ABOUT THE EFFICACY OF LEGAL EDUCATION AND THE POOR CAREER PROSPECTS FOR RECENT GRADUATES, CONTRIBUTING TO A DROP IN APPLICATIONS AND A WAVE OF LAW SCHOOL CLOSURES

The Great Recession in 2008 not only "brought about a decrease in legal opportunities," but also heralded "a subsequent precipitous drop in [law school] enrollments . . . ." As noted, the market for legal education began to sour in 2010. Thereafter, law schools experienced a precipitous drop in applications. Over the next five years, law school applications declined by roughly thirty-five percent.

Traditionally, "people often choose to ride out a recession in graduate school." For example, the four recessions since 1980 corresponded with a significant uptick in prospective students taking the Graduate Management Admissions Test. But following the Great Recession, the expected uptick in law school admissions never materialized. Instead, both the volume of law school applications and

176. Id.
179. Chemerinsky, supra note 36, at 218.
180. Id.
182. Id.
183. See infra Part III.A.
the number of incoming first-year students declined as disenchanted recent alumni turned to social media to air their grievances about the inadequacy of their legal education and their poor employment prospects.\footnote{184}{See infra Part III.A.}

\textbf{A. Disenchanted Recent Alumni Turn to Social Media to Share Their Grievances over Student Loan Debt, the Efficacy of Legal Education, and Poor Career Prospects}

The recent alumni of law schools had grown disenchanted, shouldered with mounting student loan debts, well-versed in purportedly thinking like a lawyer but woefully unprepared to pass state bars—let alone practice law—and buffeted by poor job prospects.\footnote{185}{See Chemerinsky, supra note 36, at 219.} Over time, many observers have noted the potential social dangers posed by large groups of unemployed intellectuals.\footnote{186}{Edward Shils, Intellectuals and Responsibility, in The Political Responsibility of Intellectuals 257, 294 (Ian Maclean et al. eds., 1990).} For example, numerous rebellions during Chinese imperial dynasties drew leadership from the ranks of bitter unemployed intellectuals learned in the Confucian classics but unable to obtain their degrees and deemed "superfluous men."\footnote{187}{Id. ("The ferocious rebellions led by Huang Ch’ao in the late Tang dynasty, and its successors in the tenth century, the rebellions in the idle period of the Northern Sung and in the later Ming, and, not least, the Taiping Rebellion of the nineteenth century drew some of their leadership and their bitterness from men who had taken the examination and failed to gain the desired degrees. These were ‘unemployed intellectuals’ trained in Confucian classics and then made into ‘superfluous men.’").} Similarly, "Karl Marx thought that a certain socialist movement... drew its support from lawyers without briefs, physicians without patients, [and] students who specialized in billiards."\footnote{188}{Id. in the wake of the Great Recession, rather than rebellion, socialism, or even taking up billiards, a contingent of unemployed and underemployed recent law school graduates turned to social media to air their grievances and ire regarding both the legal education status quo and the lack of occupational opportunities in the legal services industry.\footnote{189}{Following the Great Recession, an otherwise disaggregated group of recent law school graduates coalesced into a digital community that focused critically on legal education.\footnote{190}{Jordan Weissman, Is Law School a Good Deal After All?, The Atlantic (July 19, 2013), https://www.theatlantic.com/business/archive/2013/07/is-law-school-a-good-deal-after-all/277927.}}}

As one blogger explained in 2013: "Ever since the Great Recession sucked the air out of the legal
industry, an extremely vocal group of writers—myself included—has been trying to warn pretty much any 20-something with an Internet connection to think twice about going to law school.”¹⁹¹ This vocal community blogged and commented on each other’s blogs and offered a scathing rebuke to the oft rosy recruiting picture often painted by law school admissions counselors.¹⁹²

As one blogger noted: “The law school scam-busting blogs have done an immense service by warning people about the risk of attending law school.”¹⁹³ The “SCAMBLOGROLL”¹⁹⁴ grew as the idle ranks of disenfranchised law school graduates struggled after the Great Recession.¹⁹⁵ One anonymous vignette posted in August 2011 exemplifies countless frustrated stories shared on social media by struggling newer attorneys:

Since losing my job it has been a downward spiral. After moving to DC, I took odd jobs with solo practitioners, legal writing companies, and an unpaid “fellowship” on the Hill, and I lived in a depressing basement. In the weeks I wasn’t working, I claimed my meager $400 a week in unemployment. There were days I was quite hungry. . . . Finally, after a stint in doc review (which my friend and I have affectionately dubbed “lawyer sweatshop”), I landed a long-term temporary position at a prominent legal publishing firm. Our contract ends December 31, 2011, at which point I will be unemployed. Again. Though I am incredibly grateful for what I have, I cannot help but wish for more: I have a JD with honors, an LLM from the top tax school in the country, and meaningful work experience. Yet, I cannot land a full-time, permanent job. I am lucky to have health insurance, but I have no time off. No sick time. My work situation is flexible (I can come in late/leave early for an appointment, etc.), but I only get paid for the hours I work. I am very grateful that it is unlikely I will default on my loans—thus far, I have been able to manage my nearly $250,000 debt with IBR and unemployment forbearance.¹⁹⁶

¹⁹¹. Id.
¹⁹². See id.
In earlier recessions, such personal stories likely lurked hidden behind the raw statistics. But this recession proved different because of the digital soapbox accorded by social media via the internet. The visceral personal stories, chatter of frustrations, and chorus of prognostications about the legal industry and legal education percolated and often fomented openly on the internet. 197

This on-going social media critique proved readily assessable, searchable, and even harder to avoid. For example, the Google Trends data for the search term “the law school scam” remained nominal until June 2011. 198 Google Trends indexes data on a scale of 0 to 100, with 100 representing the maximum interest in a search over time. 199 From four in June 2011, search interest in “the law school scam” rapidly accelerated until peaking in January 2013 with a value of 100 and receding back to a mere nine by September 2015. 200 Of note, while some of the more incendiary search terms may have waned, other searches queries, such as “law school debt” 201 and “is law school worth it,” 202 remain relatively consistent, perhaps indicative of ongoing concern by potential law school students about the cost and overall utility of legal education.

Not limited to just unemployed and underemployed law school graduates, 203 the critical commentary about the state of legal education and the occupational prospects for newly minted attorneys quickly grew to include legal education insiders. 204 Soon, the critical commentary of legal education jumped from the fringes of social media into the

197. See supra notes 191-97 and accompanying text.
203. See Chief Constable for the Area, I Seriously Can’t Believe that People Are Going to Unaccredited Schools at This Point, TALES FOURTH-TIER NOTHING (Aug. 17, 2016, 8:45 PM), http://poetryforpants.blogspot.com/2016/08/i-seriously-cant-believe-that-people.html.
mainstream media.\textsuperscript{205} Living in a digital era, this media coverage honed in on law school graduates’ profound discontent with legal education, as one headline extolled: “Only 23% of law school grads say their education was worth the cost.”\textsuperscript{206}

Not surprisingly, given this firestorm negative social and mainstream media coverage, law schools experienced a drop in both applications and incoming first-year law students, rather than the expected boom of students seeking to wait out the recession.\textsuperscript{207} As media coverage focused a critical lens upon legal education, one law school dean even authored a New York Times Op-Ed blaming the media for declining law school applications.\textsuperscript{208} This editorial piece was met with scathing contempt in the blogosphere.\textsuperscript{209} But what ailed legal education went far beyond just a fervor of bad press and chatter on social media.

A Gallup survey of postgraduate degree holders conducted in 2016 queried “4,000 adults who received a postgraduate degree between 2000 and 2015.”\textsuperscript{210} Law school graduates polled the lowest in satisfaction amongst all graduate degree holders.\textsuperscript{211} Less than a quarter of the respondents strongly agreed that law school “was worth the cost” and only twenty percent strongly agreed that law school “prepared me well for life outside of graduate school.”\textsuperscript{212} In contrast, fifty-eight percent of medical school graduates strongly agreed that graduate school “was worth the cost” and fifty percent felt well prepared for life after medical school.\textsuperscript{213}

Given this substantial differential in satisfaction, the author posited that “[w]hile both medical and law degrees are expensive, law degree
holders may be less likely to say their degree was worth the cost because of the weak job market for those with a law degree in recent years.\footnote{214} A lack of practical learning experiences also contributed to the low ratings reported by law school graduates: "[T]hose who received law degrees are also less likely than other postgraduate degree holders to report having had important support and experiential learning opportunities during their graduate programs."\footnote{215} Less than a quarter of law school graduates strongly agreed that their "professors cared about them as a person...."\footnote{216} Taken together, these two low ratings paint a dysfunctional picture of the efficacy and empathy embedded into legal education. Through the lens of retrospection, law school graduates felt their legal education was not worth the cost and that they lacked experiential learning opportunities that would presumably impart the necessary skills to transition into the practice of law.\footnote{217} Further, a supermajority of these graduates did not feel that their professors cared about them.\footnote{218} Small wonder that a cadre of disenfranchised law school graduates, unable to find employment, ill-prepared for the practice of law, and shouldered with significant debt turned to social media to voice critical commentary on legal education.

With a social media spotlight glaringly focused on the troubles lurking in both legal education and the job market for new attorneys, as noted, law school applications precipitously dropped.\footnote{219} In the past, legal education seemed insulated from expected cycles of evolution and revolution.\footnote{220} But as applications dropped and schools competed for a diminishing group of students by discounting tuition, revenues suffered. As profits dried up, legal education would need to at least begin to evolve.\footnote{221}

**B. Law Schools Experienced a Precipitous Drop in Applicants and Enrollment Spurring Increased Competition Amongst Schools**

Spurred by negative social media coverage, escalating tuition, a dated curriculum, and poor job prospects, law school applications
dropped dramatically after 2010.222 Law school applicants climaxed in the Fall of 2004 at over 100,000.223 A gradual recession in applicants began to accelerate in the Fall of 2010.224 Law schools received roughly 87,900 applications in the Fall of 2010 compared to the 54,500 received in the Fall of 2015.225 Over five years, law school applications declined by roughly thirty-eight percent.226

Beyond a decline in the volume of applicants, the number of first-year matriculants grew a bit over the last few years but overall, the law school enrollment cycle remains anemic. The aggregate first-year law school class climaxed in 2010 at 52,488 students before receding to 37,398 in 2017.227 The 38,390 first-year students enrolled in Fall 2018 represented a slight increase of 2.65% over Fall 2017.228 But this volume of first-year law students remains at 1970s levels.229 For example, the 38,390 first-year law students enrolled in Fall 2018 still falls shy of the 39,038 first-year students who enrolled in Fall 1975.230

Not surprisingly, the recent reduction in both law school applications and first-year enrollment negatively affected law schools. The first-year class in Fall 1975 attended 163 ABA accredited law schools231 while the smaller class matriculating in 2018 was distributed amongst 203 ABA accredited law schools.232 In 2018, eighty-one of those 203 law schools reported a decreased first-year enrollment

224. See id.
225. ABA End-of-Year Summaries, supra note 223; see Chemerinsky, supra note 36, at 218.
226. ABA End-of-Year Summaries, supra note 223; see Chemerinsky, supra note 36, at 218.
231. Id.
compared with the prior year.\textsuperscript{233} Perhaps predictably, a wave of enhanced competition to turn admittees into matriculants arose from reduced applications and smaller first-year enrollments.

A recent report issued by the American Association of University Professors concerning academic governance issues at Vermont Law School succinctly describes this new era of competition for students:

[W]ith applications at record lows, law schools began to compete for higher-quality students through tuition discounting—a phenomenon already widespread in the undergraduate context. Law schools began to offer not only larger scholarships to admitted students, but more scholarships to more students. This created a buyer’s market for students, who could then use a scholarship offer at one school to bargain for larger scholarships at other, usually higher-ranked, schools to which they had been admitted. This trend in discounting required many law schools, especially public institutions or those lacking hefty endowments, to lean heavily on their universities to subsidize their efforts to attract the best students, lest they lose the strongest admittees, often to lower-ranked schools offering more generous scholarships. The national trend in law school tuition discounting turned the world of law school admissions upside down; it remains one of the biggest factors in the declining financial health of law schools that once were considered cash cows for their affiliated universities. In legal education, as in higher education more generally, the trend has not abated, and there is little reason to think that it will do so in the near future.\textsuperscript{234}

The precipitous drop in law school enrollment and ensuing competition for students caused considerable financial consternation in legal education. Traditionally, “law schools tended to manage and govern themselves somewhat independently from the universities of which they are a part and thus have been shielded from many of the massive changes in the administration and culture of higher education during the past two decades.”\textsuperscript{235} With enrollment dropping, some universities “forced law school administrations to adopt the tuition- and revenue-driven models that are now so ubiquitous in higher education.”\textsuperscript{236} Typically, these models require that each individual college “generate increased revenues each year in order to secure their budgets for the following year . . . .”\textsuperscript{237} A failure by an individual college

\textsuperscript{233} Id.
\textsuperscript{234} AM. ASS’N OF UNIV. PROFESSORS, supra note 178, at 1-2.
\textsuperscript{235} Id. at 1.
\textsuperscript{236} Id.
\textsuperscript{237} Id.
to increase annual revenue "results in a decreased budget for the following year or the placement of the unit in deficit status." 238

Generally, colleges can increase revenue by "increasing enrollments, obtaining more grant funding, and identifying other 'revenue streams.'"239 Most law schools either do not want to or as a practical matter cannot significantly increase enrollment.240 Thus, law schools must seek other revenue sources that may "take many forms, including development and implementation of non-juris doctor programs aimed at international students, online courses and programs, and various topical certificate programs designed for nonlegal professionals."241

Free-standing law schools that are not associated with any larger university ecosystem "face different and in some instances even greater challenges, in that they are more directly accountable to their governing boards, alumni, faculty, staff, students, and, of course, the public at large."242 But in facing these challenges, "free-standing law schools are similar to other higher education institutions."243 However, as the American Association of University Professors report concerning academic governance issues at Vermont Law School noted: "As is often the case with law schools, however, they are simply a little late to the game."244 Perhaps predictably, a number of law school mergers and outright closures followed on the heels of reduced applications, smaller first-year enrollments, and a heightened competition for smaller cadre of law students.

C. A Wave of Law School Mergers and Closures Followed in the Wake of Reduced Enrollment and Heighted Competition for Prospective Law Students

Just over half a decade after the Great Recession struck big law, amidst lower applications and smaller first-year enrollments, a trickle of law schools began to merge or close. In 2014, Thomas M. Cooley Law School closed its Ann Arbor campus.245 In 2015, "right sizing" arrived in

238. Id.
239. Id.
240. Id.
241. Id.
242. Id at 2.
243. Id.
244. Id.
Minnesota with the merger of Hamline University and William Mitchell College of Law. In 2017, Indiana Tech Law School closed. In the last few years, seven other law schools announced plans to partner, merge, sell, or even give away their schools. To date, the ABA has approved two proposed mergers of stand-alone law schools by universities: the pending acquisition of Michigan State University College of Law by Michigan State University and John Marshall Law School’s acquisition by University of Illinois at Chicago. But not every ailing stand-alone law school can find a university suiter willing to subsidize the on-going operation of a law school.

In 2017, ABA-accredited Whittier Law School and Charlotte School of Law both announced their respective closures, and Valparaiso Law School suspended student admissions. In 2018, Savannah Law School and Valparaiso announced their respective closures. Valparaiso’s closure followed a failed attempt to gift the law school to Middle Tennessee State University. Almost proverbially, the state of legal education had reached the point where a university could not even give away a law school. In late 2018, Arizona Summit Law School detailed plans to close. In Spring 2019, Western State College

248. Ward, supra note 22 (noting as an example, Florida Coastal School of Law’s February 2019 application with the ABA to switch from for-profit to nonprofit status in the hope of seeking affiliation with a nonprofit university).
249. Id.
of Law’s owner, Dream Center Education Holdings, entered into a court ordered receivership. On the cusp of becoming the first ABA-accredited school to cease operations mid-semester, the court ordered that the receiver continue funding operations through the end of Spring semester of 2019.

In May 2019, the ABA withdrew its approval of Thomas Jefferson School of Law. The ABA previously placed the school on probation in November 2017. The School’s California bar passage rate had slumped from 35.09% in 2016 to an abysmal 23.85% in 2018. In comparison, the passage rate on the California bar for ABA-accredited law school graduates was 60.34% in 2018. Absent a successful appeal of this withdrawal, Thomas Jefferson School of Law appears poised to close after implementing a teach-out plan.

Perhaps now more than just a trickle, these mergers and closures over the last five years highlight the fragile state of legal education. Not surprisingly, legal education pundits commenced tea leaf reading to glean what law schools might be next to close, bantering about whether potential students ought to perform enhanced due diligence on the viability of particular law schools, and even contemplating whether “Whittier [l]aw [s]chool [c]losing [i]n other [s]ad story [o]f generational [w]ealth [s]hifting, [w]ith [m]illennial [s]tudents


261. Id.

262. Id.


264. Chung, supra note 264.
IV. THE ROOTS OF CONTEMPORARY LAW SCHOOL AILMENTS LIE IN THE NINETEENTH-CENTURY MIGRATION OF LEGAL TRAINING INTO THE UNIVERSITY ACADEMY

The current state of legal education might seem bewildering to an outside observer. "Law schools do not adequately prepare lawyers for practice."266 In lockstep with higher education on a whole,267 law school tuition escalated resulting in "the nearly 400% increase in law school cost over the last 25 years."268 Yet, despite this significant boost in tuition revenue, law school pedagogy remained "anachronistic and in dire need of updating."269 For decades, every major study about legal education has concluded "that law schools do not do enough to give law students the skills that are necessary for the practice of law."270 Nonetheless, much of the law school curriculum remains myopically focused on doctrinal casebook courses, to the derogation of teaching the practical skills needed for the practice of law, such as "counseling clients, negotiating deals, writing briefs, [and] arguing in courts . . . ."271

As Professor E. Scott Fruehwald explains:

Contemporary legal education is a modified version of the method developed by Christopher Columbus Langdell at Harvard University in the nineteenth century. Characteristics of this method include large classes taught by the Socratic method, appellate cases as the major materials of study, professors being drawn from academia rather than practice, an emphasis on doctrine over practical skills, and evaluation of professors based mainly on their scholarly writings rather than on their teachings. While there have been some modifications in this
method, such as adding legal writing courses and clinics to the law school curriculum, law schools are still focused on teaching doctrine and rewarding scholarship.272

A 2011 New York Times article, entitled “What They Don’t Teach Law Students: Lawyering,” succinctly noted:

Law schools have long emphasized the theoretical over the useful, with classes that are often overstuffed with antiquated distinctions, like the variety of property law in post-feudal England. Professors are rewarded for chin-stroking scholarship, like law review articles with titles like “A Future Foretold: Neo-Aristotelian Praise of Postmodern Legal Theory.”273

Further, lawyering is a subject that many law school professors “know nothing about – by design.”274

Much of the current law school curriculum remains rather dated. Consider contracts, a staple course of the law school curriculum originating in the Langdellian era and still resplendent with aeonian cases like Hadley v. Baxendale, “an 1854 dispute about financial damages caused by the late delivery of a crankshaft to a British miller.”275 Conspicuously rare in the contracts curriculum are “actual contracts, the sort that lawyers need to draft and file.”276 As Edward L. Rubin, the former dean at the Vanderbilt University Law School, explains: “We should be teaching what is really going on in the legal system . . . not what was going on in the 1870s, when much of the legal curriculum was put in place.”277

The legal education academy also discounts practical legal experience for prospective faculty members: “It is widely believed that after lawyers have spent more than eight or nine years practicing, their chances of getting a tenure-track job at law school start to dwindle.”278 As one experienced lawyer and adjunct professor explains, real-world practice experience “can be fatal, because the academy wants people who are not sullied by the practice of law . . . the people who teach at law school, think it is beneath them.”279 One study focused on the hiring

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272. Fruehwald, supra note 37, at ix-x (internal citations omitted).
274. Id.
275. Id.
276. Id.
277. Id.
278. Id.
279. Id.
practices of top-tier law schools in the new millennia “found that the median amount of practical experience was one year, and that nearly half of faculty members had never practiced law for a single day.”280 This void of practice experience inhibits the ability of law schools to integrate practical lawyering skills into core law school courses.

With limited, dated, or absolutely no practice experience, many law professors are poorly positioned to integrate practice ready skills into the classroom and default to reverberation, simply teaching what they were taught. While serving as a Dean of Vanderbilt Law School, Professor Rubin discovered this ingrained resistance to change during a failed bid to retool the curriculum of the first-year contracts course: “Some members of the faculty got a little overstressed by all the change . . . Planning a new course, you have to move out of your comfort zone a little in terms of teaching.”281 Further, Professor Rubin encountered another problem in legal education: “[T]here are few incentives for law professors to excel at teaching.”282

The void of practical lawyering skills in the law school curriculum is not lost on the consumers of legal education. In 2011, a Survey of Law School Engagement revealed that “[f]orty percent of students felt their legal education had contributed only some or very little to their acquisition of job or work-related knowledge and skills.”283 But legal education remains insulated from market dynamics by self-regulation.284

A. Self-Regulation of Legal Education by the American Bar Association Forestalls and Tempers Evolution in Legal Education

For almost a century, the ABA has dictated the “minimum educational standards for American law schools, granting accreditation to those schools that complied with them, and denying it to those that did not.”285 The United States Department of Education recognizes the

280. Id.
281. Id.
282. Id.
283. FRUEHWALD, supra note 37, at ix-x (quoting Spencer, supra note 41, at 2014).
284. See infra Part IV.A.
285. Marina Lao, Discrediting Accreditation?: Antitrust and Legal Education, 79 WASH. U. L.Q. 1035, 1035 (2001); see Standards Archives, A.B.A., https://www.americanbar.org/groups/legal_education/resources/standards/standards_archives (last visited Nov. 18, 2019) (“In 1921, the American Bar Association promulgated its first Standards for Legal Education. At the same time, the ABA began to publish a list of ABA-approved law schools that met the ABA Standards.”). Specifically, the Council of the American Bar Association Section of Legal Education and Admissions to the Bar promulgates the standards, but this council is referred to therein as the “ABA.” See Schools Seeking ABA Approval, A.B.A., https://www.americanbar.org/groups/legal_education/accreditation/schools-seeking-aba-approval (last visited Nov. 18, 2019).
ABA "as the accrediting agency for J.D. programs in the United States."\(^{286}\) While the ABA cannot compel that law schools seek its regulatory approval,\(^{287}\) for most law schools, ABA accreditation remains imperative for two reasons. First, "ABA accreditation is critical for the existence of most law schools because, in over forty states, only graduates from ABA-accredited law schools are entitled to sit for the bar examination."\(^{288}\) Secondly, the United States Department of Education recognizes the ABA "as the sole accrediting body for law schools, which enables students at the accredited schools to obtain federal financial assistance for their education."\(^{289}\)

Given that prospective students forgo both the opportunity to practice in many states and federal financial assistance, it is not surprising that ABA accreditation remains the gold standard of legal education in the United States. Presently, the ABA has accredited 203 law schools, with one of those law schools being provisionally approved.\(^{290}\) In contrast, only thirty-one law schools operate without ABA accreditation in the United States.\(^{291}\) This hegemony over legal education yields many benefits for both students and law schools, including compliance with detailed "Standards and Rules of Procedure for Approval of Law Schools with which law schools must comply to be ABA-approved."\(^{292}\) The standards include detailed "requirements for providing a sound program of legal education."\(^{293}\) Almost every aspect of the law school experience is defined and regulated by these standards, most notably, the standards governing a law school's program of

\(^{286}\) Schools Seeking ABA Approval, supra note 286 ("Under Title 34, Chapter VI, Part 602 of the Code of Federal Regulations, the Council of the ABA Section of Legal Education and Admissions to the Bar . . . is recognized by the United States Department of Education . . . as the accrediting agency for programs that lead to the J.D. degree.").

\(^{287}\) Lao, supra note 286, at 1066.

\(^{288}\) Id. at 1035. But see AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS: 2019, 9-10 (Judith A. Gunderson & Claire J. Guback eds., 2019), http://www.ncbex.org/pdfviewer/?file=%2Fassets%2FB aBarAdmissionGuide%2FNCBCE-CompGuide-2019.pdf. For example, the Law School Admission Council forewarns prospective law students: “Before you enroll in a law school not approved by the ABA, you should research the bar-admission limitations of obtaining a degree from the school and enroll only if it is clear that the school will provide adequate legal training.” Non-ABA-Approved Law Schools, LSAC, https://www.lsac.org/choosing-law-school/find-law-school/non-aba-approved-law-schools (last visited Nov. 18, 2019).

\(^{289}\) Lao, supra note 286, at 1035 n.2 (citing Complaint at 3, United States v. Am. Bar Ass’n, No. 95-CV-01211 (D.D.C. June 27, 1995)).

\(^{290}\) ABA-Approved Law Schools, A.B.A., https://www.americanbar.org/groups/legal_educatio n/resources/aba_approved_law_schools (last visited Nov. 18, 2019).

\(^{291}\) Non-ABA-Approved Law Schools, supra note 288.

\(^{292}\) Schools Seeking ABA Approval, supra note 286.

\(^{293}\) Id.
legal education.294

But while compliance with these standards insures consistently a “sound” program of legal education, the standards also reflect an ingrained uniformity and stasis in many aspects of legal education. The legal education academy has proven impressively resistant to systemic change despite over a century of scathing criticism.295 The history of adopting learning outcomes highlights this resistance to any change beyond a glacial pace.

As an example, the ABA adopted student learning outcomes standards in 2017.296 The ABA’s decision to “focus on student learning outcomes is the most significant change in law school accreditation standards in decades.”297 One legal education insider dubbed the proposed changes “revolutionary.”298 “Another commentator called the movement from focusing solely on input measures to outcomes measures a ‘paradigm shift.’”299 But that learning outcomes might be deemed “revolutionary” or a “paradigm shift” reveals the fossilized state


295. Spencer, supra note 41, at 1984 (quoting Wm. G. Hammond et al., Report on the Committee of Legal Education, 13 ANN. REP. A.B.A. 327, 330 (1890)) (“The defects of the present method may be summed up, we think, in one very familiar antithesis: they do not educate, they only instruct. . . . In office study, the daily participation in actual business gave the student at least some empiric training. . . . Our law schools, as usually conducted, offer nothing. Most of them do not, in their plan of study, seem ever to recognize the need. It is fortunate for them and for their pupils alike that the training thus omitted may be supplied in the early years of practice, at least to a very considerable extent.”); see, e.g., AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 17 n.11 (1992) (the “MacCrate Report”); AM. BAR ASS’N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 14-18 (1979) (the “Crampton Committee Report”); ALBERT J. Harno, Legal Education in the United States 147 (1953) (noting the sizable gap between law school learning and the practical skills required for the practice of law); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 89-91 (2007) (the “Carnegie Report”).


of legal education.

Learning outcomes originated during the Industrial Revolution, outlined in John Franklin Bobbitt’s influential publication The Curriculum in 1918. Bobbitt’s approach to curriculum planning borrowed heavily from developing principles of scientific management and sought to define objectives in order to design a curriculum constructed to enable attainment of these objectives. At the university level, since the late 1990s, regional accreditation organizations “have all moved from an input-based, prescriptive system of accreditation to an outcome-based system of accreditation . . .” Simply, outside of legal education, learning outcomes seem ubiquitous.

One 2008 ABA study included “an extensive analysis of how outcomes measures are used by other accreditation bodies, including those for medicine, dentistry, veterinary medicine, pharmacy, psychology, teacher education, engineering, accounting, and architecture.” This study concluded that retooling ABA Accreditation Standards to focus on learning outcomes “would be a long overdue course correction.”

Given the ubiquitous nature of learning outcomes in higher education, that they might be deemed “revolutionary” in legal education indicates the needlessly static state of legal education. Further, the slow path preceding the adoption of learning outcomes by the ABA reveals the stultified nature of legal education.

As a consequence, the otherwise expected phases of evolution and revolution seem tempered or even quashed in legal education. Normally, the pace of evolution and revolution quickens in fast-growing industries and slackens in slow-growing and mature industries. However, “[e]volution can also be prolonged, and revolutions delayed, when profits come easily.” But as profits dry up, expect evolution and

300. See generally FRANKLIN BOBBITT, THE CURRICULUM 285 (1918) (“Our professional vision must be greatly in advance of our practice. We shall move forward only step by step with feet on solid earth; but we must be able to see far beyond our immediate next steps in order that they be taken in the right direction.”).
304. Id. (citing HERTZ ET AL, supra note 302, at 2).
305. See generally Greiner, supra note 220, at 40 (discussing the stages of organizational development).
306. Id.
307. Id.
revolution.\(^{308}\) In particular, “[r]evolutions seem to be much more severe and difficult to resolve when the market environment is poor.”\(^ {309}\) While the adoption of learning outcomes may not be revolutionary, at least this change seems at least evolutionary and likely hastened by the reckoning in legal education forced by lower enrollments and declining revenue. Even so, law schools continue to cling largely to an antiquated curriculum rather than teaching practical skills in part because the nineteenth-century migration of legal education from apprenticeship to the university imparted a lasting trade school anxiety on legal education.\(^ {310}\)

B. The Migration of Legal Education into Universities in the Late-Nineteenth-Century Imparted a Vestigial Trade School Anxiety and Lasting Bias Against Professional Training

The aversion to vocational training in legal education traces back to the mid-nineteenth century, a time when most legal education remained predominantly practical.\(^ {311}\) At the time, prospective attorneys paid to apprentice with seasoned practitioners. Also called “law readers,” these apprentices would read Blackstone’s Commentaries, manuscript legal documents in an age before typewriters and copy machines, and observe the practice of law.\(^ {312}\) For hundreds of years, reading the law remained the predominant form of legal education in America, just as “Thomas Jefferson, who became a lawyer in the 1760s after many hours reading the Virginia code under the tutelage of a prominent lawyer and legislator, George Wythe.”\(^ {313}\)

The curricular migration of legal education away from apprenticeships seemed to track the rise of a middle-class desire to get ahead through structured education and a willingness to pay tuition. Legal education by apprenticeship also waned following the invention of the typewriter, which alleviated the need for literate apprentices to manuscript documents in law offices. But foremost, the increasingly complex tasks lawyers faced faced amidst a rapidly expanding Industrial

\(^{308}\) Id.
\(^{309}\) Id.
\(^{310}\) Segal, supra note 273.
\(^{311}\) Id.
Revolution seemed to necessitate a more homogenous, formalized, and elevated format for legal education.

The Industrial Revolution left no corner of American society untouched. In relatively short order, a world long accustomed to incremental change accelerated, becoming ever more connected, complex, and yes, industrialized. The modern format of the law school gelled at the frothy zenith of the Industrial Revolution in the latter half of the nineteenth century. This seismic shift in both the locus and focus of legal education dramatically changed the course of legal education in America. The migration into the university setting was not limited to just legal education but included the reformation of universities in response to the proliferation of rapidly evolving and even novel professions in American society during the Industrial Age. 314

But legal education did not receive a warm welcome in the nineteenth-century American university academy. 315 At that time, the university viewed itself as a seminal hub for science and scholarship. 316 As such, the encroachment of new professions such as accountancy and law into the academy was not accepted with open arms. 317 For example, economist Thorstein Veblen 318 penned a scathing indictment titled The Higher Learning in America rebuking the expansion of the university environment to include professions. 319 Veblen minced no words on the addition of legal education in the modern university: “[L]aw school[s] belong in the modern university no more than a school of fencing or dancing.” 320 Veblen taught at both the University of Chicago and Stanford in the 1890s and early twentieth century, giving him a front row seat to the rapidly changing university culture. 321

314. Nathan Glazer, The Schools of the Minor Professions, 12 MINERVA 346, 346 (1974) (discussing the hierarchy of the professions in academia and proliferation of new occupations in Western Society and noting: “[i]n the past, the activities which foreshadowed these occupations were learned through experience of practice and the guidance of experienced persons.”).


316. Id. at 15.

317. See id. at 154-55.

318. Daniel Aaron, Thorstein Veblen: Moralist and Rhetorician, 7 ANTIQUIC REV. 381, 381 (1947) (describing Veblen as “[i]rascible, dour and sardonic,” and noting that he lived “precariously along the fringes of the American university world he anatomized so mercilessly, Veblen remained during his lifetime a kind of academic rogue, admired by an increasing number of discriminating disciples but never winning the kudos handed out to his less able but more circumspect colleagues.”).


320. Id. at 211.

Oft described with epithets of adjectives, Veblen was considered "[i]rascible, dour, and sardonic—living precariously along the fringes of the American university world he anatomized so mercilessly, Veblen remained during his lifetime a kind of academic rogue . . ."322 In 1899, Veblen published The Theory of the Leisure Class, perhaps the most comprehensive tract ever penned on the confluences of affluence, social pretense, and snobbery.323 This work of scholarship proved an unexpected sensation, as "overnight the book became the vade mecum of the intelligentsia of the day."324 "Veblen, in his brocaded prose, embroidered the thesis that the leisure class advertised its superiority through conspicuous expenditure—blatant or subtle—and that its own hallmark—leisure itself—was also enjoyed the more fully by being dangled before the eyes of the public."325 The book inserted terms including "conspicuous consumption," "pecuniary emulation," and "conspicuous waste" into the popular lexicon.326

Some portions of the book may seem more applicable to "society at the end of the last century—at the height of the gilded age of American capitalism—but more is wonderfully relevant to modern affluence."327 Perhaps Veblen's "wonderfully relevant" blueprint might offer insights for Mrs. Kardashian West and her role in modern society. But more relevant to this Article, the last chapter of The Theory of the Leisure Class is titled "The Higher Learning as an Expression of the Pecuniary Culture" and preludes to his later essay The Higher Learning in America.328

Veblen started the essay that became The Higher Learning in America in 1904, his initial subtitle for the text revealed his seething disdain: "A Study in Total Depravity."329 By the time the book appeared in print in 1918, the tone of the subtitle subduced a bit to "A Memorandum on the Conduct of Universities by Business Men."330 The final sub-title perhaps giving “the reader a clearer sense of the contents,

322. Aaron, supra note 318, at 381.
325. Id. at 229-30. Six decades after the publication of The Theory of the Leisure Class, economist John Kenneth Galbraith noted that the book "brilliantly and truthfully illuminates the effect of wealth on behavior. No one who has read this book ever again sees the consumption of goods in the same light." Galbraith, supra note 323.
326. Galbraith, supra note 323.
327. Id.
328. Id.
329. McLemee, supra note 321.
330. Id.
albeit at a considerable loss in piquancy."\textsuperscript{331} Veblen was not alone in articulating concerns about the rapidly changing modern university, an entire genre of contemporaneous critical commentary emerged, dubbed "the professors' literature of protest."\textsuperscript{332}

Veblen believed that legal education should not be part of the modern university.\textsuperscript{333} He theorized that for the good of both institutions, universities and professional schools, such as law schools, ought to remain separate.\textsuperscript{334} Veblen viewed the function of the university as sort of a petri dish dedicated to pure science and scholarship at odds with the practical training conducted in professional schools to inculcate "business principles and pecuniary gain."\textsuperscript{335} A century later, while tempting to dismiss Veblen as a bitter "ubiquitous troll," some elements of his critique of the inclusion of legal education in the modern university continue to resonate, leaving a lasting imprint on the former and now seem somewhat prophetic.

In particular, the criticism lobbed by Veblen and others left legal education with a lasting, deeply-ingrained trade school anxiety and ancillary bias against professional training. As one law professor explains, "[I]aw school has a kind of intellectual inferiority complex, and it's built into the idea of law school itself," and thus law school professors are part of a profession and part of a university. So [they're] always worried that other parts of the academy are going to look down on us and say: "You're just a trade school, like those schools that advertise on late-night TV. You don't write dissertations. You don't write articles that nobody reads." And the response of law school professors is to say: "That's not true. We do all of that. We're scholars, just

\textsuperscript{331} Id.
\textsuperscript{332} Id.
\textsuperscript{333} Veblen, supra note 315, at 154-55. Perhaps some of Veblen's vitriol directed toward legal education spilled over from his personal antipathy against the law, cultured by a childhood incident in which a land speculator legally swindled Veblen's hard working, agrarian father. Gilbert Geis, Thorstein Veblen on Legal Education, 10 J. LEGAL EDUC. 62, 62-63 (1957) (noting Veblen's "bias against the practice and teaching of the law crops up again and again in his writings, like a ubiquitous troll."). Geis also observed that Veblen oft buried noteworthy comments deep in footnotes, including as an example: "American law and procedure have taken shape under the hand of legislatures and courts which have habitually and as a matter of course been made up of investors and lawyers ... an arrangement such as to serve the convenience and profit of these two classes of persons,—such as to increase the cost, volume, uncertainty and intricacy of litigation." Id. at 63 (quoting Thorstein Veblen, Absentee Ownership and Business Enterprise in Modern Times: The Case of America 12 (Beacon Press 1967) (1924)).
\textsuperscript{334} Geis, supra note 333, at 63-64.
\textsuperscript{335} Id. at 63-64 (citing Veblen, supra note 315, at 35).
Veblen both fueled and foresaw this trade school anxiety, fearing that professional school faculty immersed in academia would feel compelled to engage in research “to court a special appearance of scholarship” in their disciplines and to culture “a degree of pedantry and sophistication; whereby it is hoped to give these schools and their work some scientific and scholarly prestige...” Veblen’s concerns about legal scholarship mirror many of the complaints leveled by modern critics. These complaints include a perceived lack of discipline and that legal scholarship seems “overly argumentative, political, or, most generally, too ‘normative’ by which is meant simply that its aim is to state what the law should be, as well as what the law is.” Thus, critics assert that legal scholarship “lacks true scholarship’s defining goal of uncovering subtle and interesting truths through the pursuit of knowledge within the discipline of a recognized academic field.”

While perhaps a little unduly biased, Veblen makes a prophetic point given the outsized resourcing currently devoted by legal education to scholarship coupled with the questionable utility of vast swaths of legal scholarship outside the law school bubble. More than 600 law reviews across the United States publish roughly 10,000 articles annually. Current legal scholarship is critiqued for being both too vocational or unscientific by contemporary academic critics while also being considered too academic by the bench and bar.

Critics from the bench and bar complain that legal scholarship has become too academic and detached from “clarifying the law or suggesting pathways for the law to follow.” As such, legal scholarship, is “of scant use to the practicing lawyer, and even less helpful for the sitting judge.” As one commentator notes, the few useful “law review articles are vastly outnumbered, it appears, by head-

336. Segal, supra note 273.
337. VEBLEN, supra note 315, at 23.
339. Id.
340. Id.
341. Segal, supra note 273.
342. West & Citron, supra note 338, at 1 (noting specifically that academic critics fault legal scholarship being too professional, normative, lacking discipline, and the absence of peer review).
343. Id. at 7 (“[T]he complaint lodged by the Bar and... prominent members of the Bench... that legal scholarship is too academic, faddish, and impractical, so that even if it is scholarship, and even if it remotely about ‘law’ in some esoteric sense, it is not particularly legal?”).
344. Id.
345. Id.
scrathers."  The law faculties of our universities now produce a formidable quantity of scholarship intended mainly to be read by other scholars rather than by lawyers and judges."  Chief Justice John G. Roberts Jr. has challenged the utility of legal scholarship: "Pick up a copy of any law review . . . and the first article is likely to be, you know, the influence of Immanuel Kant on evidentiary approaches in 18th-century Bulgaria, or something, which I’m sure was of great interest to the academic that wrote it, but isn’t of much help to the bar." As one law review article empirically noted in 2005, "around 40 percent of law review articles in the LexisNexis database had never been cited in cases or in other law review articles."  

Nonetheless, *U.S. News and World Report* is gearing up to expand its Best Law Schools rankings by including a new ranking that evaluates "the scholarly impact of law schools" based on "indicators that measure its faculty’s productivity and impact using citations, publications and other bibliometric measures." This new ranking will likely heighten the focus on scholarship as a badge of prestige within legal education. No doubt this ranking would have rankled Veblen, who might have addressed it with his sardonic and mordant sarcastic ire:

Doubtless this pursuit of scholarly prestige is commonly successful to the extent that it produces the desired conviction of awe in the vulgar, who do not know the difference; but all this make-believe scholarship, however successfully staged, is not what these schools are designed for; or at least it is not what is expected of them, nor is it what they can do best and most efficiently.

But Veblen’s critique of legal education in the university extended beyond casting a critical eye toward legal scholarship.

In addition to his anxiety over scholarship, Veblen also sagely noted that professional schools, including law schools, seemed to migrate increasingly toward autonomy and independence within the overall university culture. Veblen’s prediction proved accurate, considering the historic tendency of law schools to manage themselves

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346. *Id.*
349. *Id.*
351. VEblEN, *supra* note 315, at 32.
somewhat autonomously from their affiliated universities.\textsuperscript{353} Veblen viewed this distinct and independent culture as an indication that law schools ought to dispense with their university affiliations, which he opined were retained only due to an “anxiety . . . to secure some degree of scholarly authentication through such a formal connection.”\textsuperscript{354}

But Veblen’s dream of a divorce decree separating law schools and universities never came to pass. However, the criticism from the likes of Veblen continues to cast a long shadow over legal education in the form of a vestigial trade school anxiety and ancillary bias against professional training. Given the reluctance within the legal education academy to change at more than a glacial pace, revolutionary change to the legal academy seems unlikely.\textsuperscript{355} But perhaps if the social media spotlight remains unflinchingly focused on the troubles lurking in legal education and the job prospects for new attorneys,\textsuperscript{356} and law schools continue to compete for a diminishing group of students by discounting tuition,\textsuperscript{357} legal education will begin to evolve.

V. THE SOLUTION TO THE PRACTICAL SHORTFALLS OF MODERN LEGAL EDUCATION LIE IN MELDING THE TRADITIONAL APPRENTICESHIP MODEL WITH MODERN MEDICAL SCHOOL CURRICULA

Given the on-going disruption of the legal industry, it is incumbent on legal education to better prepare our future alumni to not just think like lawyers, but to practice like lawyers. To prioritize practice skills, legal education needs to jettison both its vestigial trade school anxiety and its ingrained bias against professional training and reimagine the law school curricula. A new law school curriculum could meld components of a modern version of the traditional apprenticeship model with analogues from the modern medical school curricula. It could blend studying black letter law with real or at least realistic legal work.

To outline the gist of this proposed vertically integrated law school curriculum: trade the antiquated doctrinal casebooks courses with modern case-based learning. The goal is to create a cognitive apprenticeship. The siloed casebook courses would be replaced with curriculum capsules, consisting of discrete web-based e-learning, live lectures, or mixed modality content designed to efficiently familiarize students with the legal framework of areas of the law relevant to the coursework for the

\textsuperscript{353} VERMONT LAW SCHOOL, supra note 178, at 1.
\textsuperscript{354} Geis, supra note 333, at 65 (citing VEBLEN, supra note 315, at 30).
\textsuperscript{355} See supra Part IV.A.
\textsuperscript{356} See supra Part III.A.
\textsuperscript{357} See supra Part III.B.
semester. With this familiarity, first-year law students apply this knowledge with either clinical work or case-based learning scenarios that incorporate, expand, and formatively assess the subject matter covered in the capsules. This process would continue through the first two years of law school, followed by a third year of clinical and elective coursework.

This proposed curriculum is inspired by modern medical school curricula. Traditionally, medical students attended to lectures on discrete subjects before finishing with clinical practice for on-the-job training.\footnote{358} But medical education is changing in response to the realization of the "importance of including clinical work early and . . . the mixing of basic and clinical sciences as vertical integration."\footnote{359} The use of clinical cases for teaching is referred to as case-based learning ("CBL").\footnote{360} "The goal of CBL is to prepare students for clinical practice, through the use of authentic clinical cases. It links theory to practice, through the application of knowledge to the cases, using inquiry-based learning methods."\footnote{361}

While variously defined, CBL is a form of active learning, which uses "a clinical case, a problem or question to be solved, and a stated set of learning objectives with a measured outcome."\footnote{362} Now used worldwide across multiple fields of medicine and healthcare, CBL may vary, but includes two consistent components. First, advance preparation by the learner followed by the use of an authentic case "as a stimulant for learning."\footnote{363} Thus, CBL matches "clinical cases in health care-related fields to a body of knowledge in that field, in order to improve clinical performance, attitudes, or teamwork."\footnote{364} "This type of learning has been shown to enhance clinical knowledge, improve teamwork, improve clinical skills, improve practice behavior, and improve patient outcomes."\footnote{365} Advantages of CBL "include providing relevance to the
adult learner, allowing the teacher more input into the direction of learning, and inducing learning on a deeper level."366 Deeper learning is "learning that goes beyond simple identification of correct answers and is more aligned with either evidence of critical thinking or changes in behavior and generalizability of learning to new cases."367 Given these advantages, CBL appears the perfect format for a new law school curriculum. Despite varying definitions, there are two consistent components of CBL: first, advanced study and preparation; and second, clinical cases that serve as "a stimulant for learning."368 Both of these components appear amenable to adaptation for legal education.

The framework for advanced study and preparation could be provided by curriculum capsules. These could consist of web-based e-learning or live lectures designed to efficiently familiarize students with the black letter law relevant to the clinical cases that would follow during the semester. For eighteenth- and nineteenth-century apprentices, Blackstone’s Commentaries provided an accessible resource distilling the common law of England.369 For modern legal studies, rather than self-directed black letter law readings, the substantive material could be covered in condensed subject matter capsules spread throughout the first two years of law school, consisting of online cached lectures, outlines, and study materials. To condense the subject matter, the capsules could omit the antiquated and superfluous. This approach might resemble the format and content of portions of an online bar review course. The goal being to efficiently familiarize student with framework of black letter law relevant to the case-based exercises covered each semester. The subject matter capsules would include a formative feedback to ensure that students obtain a baseline of knowledge of the basic law.

As an example, consider Johns Hopkins Medical’s Genes to Society ("G2S") curriculum for medical students.370 G2S integrates formal clinical experience throughout medical school and spreads "coursework in physiology, genetics and the like . . . out across all four years instead of being concentrated in the first two . . . ."371 In part, this curriculum

366. Id.

367. Id. at 44.

368. Id. at 47.

369. See generally WILLIAM C. SPRAGUE, BLACKSTONE’S COMMENTARIES: ABRIDGED (9th ed. 1915) (covering the rights of persons, rights of things, private wrongs, and public wrongs in four volumes respectively).


371. Id.
reflects the reality that core medical school subjects had far exceeded what could be taught in even yearlong lecture courses, so the school sought "to shift the medical school paradigm from 'teaching' to 'learning,' a subtle . . . switch that will encourage students to think rigorously, independently and about individuality."\(^{372}\) This new curriculum seeks to impart the basic principles needed by medical students to "understand a scientific journal article and let them learn the rest on their own."\(^{373}\)

Similarly, as part of a new law school curriculum, condensed subject matter capsules would cover a framework of black letter law to give context to the legal issues arising as the cases unfold, which will often spur additional research by students during the course of the case. At its best, education teaches "knowing what to do when you don't know."\(^{374}\) Beyond introducing the framework of black letter law, the subject matter capsules will facilitate the development of an adaptive skill set designed to foster intellectual curiosity and continual self-learning.

With the framework provided by subject matter capsules in place, students would commence case-based learning. Ideally, this case-based learning would consist of real legal work, just as Mrs. Kardashian West's apprenticeship includes actual criminal justice work.\(^{375}\) As another example, Chicago-Kent College of Law recently commenced an early-specialization track dubbed "1L Your Way" that allows students to defer a required first-year course in order to participate in a first-year clinical course.\(^{376}\) But integrating real-world clinical work into the first year of law school could prove administratively problematic and may not be scalable. Foremost, the sequencing and relevancy of pending real-world legal issues may not mesh with curricular needs of students during a single semester course. As such, realistic case-based scenarios could provide an optimal, scalable option for case-based learning.

Basically, the case-based scenarios would expose students to relevant legal issues loosely based on issues arising in actual legal cases. This case-based learning draws inspiration from the curriculum of forward-thinking medical schools like Cooper Medical School of Rowan University.

\(^{372}\) Id.

\(^{373}\) Id.

\(^{374}\) MICHAEL LEWIS, THE UNDOING PROJECT: A FRIENDSHIP THAT CHANGED OUR MINDS 140 (2017) (quoting an influential student comment to Nobel Prize-winning psychology Professor Daniel Kahneman).

\(^{375}\) Van Meter, supra note 1.

\(^{376}\) 1L Your Way Program, CHI.-KENT C.L., https://www.kentlaw.iit.edu/academics/jd-program/1l-your-way-program (last visited Nov. 18, 2019).
During their first two years at Cooper, students only have about six hours of lectures a week. The rest of their time is spent in small groups where they work together to solve fictitious patient cases meant to mimic a real-life scenario. The students not only work together to determine the diagnosis and best treatment for the patient, but social determinants of health are also addressed.

For legal education, the case-based problems would incorporate issues grounded in the preceding subject matter capsules. For example, after completing the torts, civil procedure, and contracts subject matter capsules, students might receive a memorandum from a senior partner outlining a fictional client's dispute with a former employee accompanied by a few key documents related to the dispute. Working collaboratively, the students would focus on case evaluation, perhaps researching and evaluating the various contract and tort issues potentially raised by the client's dispute. Thereafter, students might generate an objective memorandum detailing the client's various possible tort and contract claims. Using their civil procedure skills, students could produce pleadings and engage in discovery and pre-trial motion practice. Much of this formative assessment could be live-graded, peer reviewed, and include feedback that incorporates model answers and uses real-world examples. As an example, students might watch a video deposition, with the objections to the form of a question muted, so that students could test their burgeoning evidence skills by interposing their own objections. Students might discuss their specific objections to the form of particular questions and then listen to and critique the actual practitioner's real-time objections.

The role of faculty instruction during the case-based scenarios provides the core of the cognitive apprenticeship. "The content of instruction in cognitive apprenticeship is the knowledge that an expert possesses and demonstrates to students." The expert is the faculty member supervising the case-based learning. The faculty member will use a variety of teaching methods, including modeling the process of

378. Susan M. Williams, Putting Case-Based Instruction into Context: Examples from Legal and Medical Education, 2 J. LEARNING SCI 367, 371 (1992) (noting four categories of content of instruction: "Domain knowledge consists of the facts, procedures, and concepts that are necessary to solve problems. . . . Heuristic strategies, or 'tricks of the trade,' are general procedures that are helpful in solving problems. . . . Control strategies are the metacognitive processes that a problem solver uses to monitor and regulate the course of problem solving. . . . Learning strategies are procedures for acquiring new knowledge when the knowledge available is not adequate for problem solving.")
solving problems, coaching by observing students and providing real-time feedback, and scaffolding, providing sufficient assistance that gradually fades away, as students independently perform tasks.\textsuperscript{379} Regarding scaffolding, rather than a sage on a stage, the faculty member gradually recedes into more of an elf on a shelf. This instruction using multiple teaching techniques forms the core of the cognitive apprenticeship of case-based learning.

The proposed case-based learning format would transcend traditional siloed subject matter areas and facilitate deep learning. Such a learning experience that utilizes simulated legal cases and the guidance of a professor would induce a deeper level of student learning by inducing critical thinking skills. After two years of case-based learning, fictional problem-based learning transitions to real-world clinical experiences for the third year of law school.

VI. CONCLUSION

As the legal industry evolves, legal education must do the same. Mrs. Kardashian West’s choice to pursue her legal studies via a modernized version of apprenticeship rather than by attending law school represents an alarming vote of no confidence in the efficacy of current legal education. Simply, legal education remains needlessly static despite decades of harsh criticism and the heightened velocity of change that has enveloped the legal industry. Over the last two decades, the traditional law firm model proved ripe for disruption, curtailing both revenue growth and job opportunities for new attorneys.\textsuperscript{380} Following the Great Recession, a wave of disenfranchised law school graduates took to social media, spurring a critical commentary regarding the efficacy of legal education and poor career prospects for recent graduates.\textsuperscript{381} This critical commentary contributed to a precipitous drop in law school applications, a subsequent wave of law school closures, and yielded only incremental changes to legal education.\textsuperscript{382} But with legal education in dire need of revolutionary change, legal schools must shed their vestigial trade school anxiety and adopt a practice-ready curriculum. This new curriculum could meld components of a modern apprenticeship with case-based learning.\textsuperscript{383}

\begin{thebibliography}{9999}
\bibitem{379} Id. at 371-72.
\bibitem{380} See supra Part II.
\bibitem{381} See supra Part III.A.
\bibitem{382} See supra Part III.B-IV.
\bibitem{383} See supra Part V.
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