

# FROM STUDENTS TO LAWYERS: JOINT VENTURES IN LEGAL LEARNING FOR THE ACADEMY, BENCH, AND BAR

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## INTRODUCTION

The present decade has featured a renewed dialogue among the three principal elements of the legal profession: practicing lawyers, judges, and law teachers. This dialogue has proceeded in a more purposeful way than has sometimes been the case in the past,<sup>1</sup> though it is still all too easy for these discussions to meander from elevated, polite exchanges that lead nowhere to acrimonious ones that lead to frigid relationships. I believe that the time committed to the present efforts will reward the profession in the long run.

Sometimes, both polite declarations and caustic ones seem necessary precursors to more fruitful debate.<sup>2</sup> The recent Indiana Conclave on Legal Education began on notes that were so cerebral and positive and gentle that I doubted anything really neat was going to happen. The ice finally broke in late afternoon, however, when one of our friends from the academy explained to the lawyer next to her why practitioners were not more often used as instructors by saying, “You know, we’re really committed at our law school to quality and some of these adjuncts that we managed to recruit come in unprepared, or sometimes they don’t come at all.” He replied tartly, “Well, you’re the guys who are hiring all these professors with esoteric educations and no experience practicing. Just what does quality mean to you, anyway?”<sup>3</sup> This exchange reminded me of a line

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1. The debate concerning how law schools, practitioners, and courts should interact is not a new one. See Learned Hand, *Have the Bench and Bar Anything to Contribute to the Teaching of Law?*, 24 MICH. L. REV. 466 (1926).

2. The line between vigorous dialogue and simple name-calling is often a matter of maintaining mutual respect among the parties. In a recent speech at the University of Virginia School of Law addressing the possibility of a mutually beneficial partnership between law schools and the bench, Associate Justice Ruth Bader Ginsburg noted that discussion is most productive if the participants “are honest and careful, and do not, as Learned Hand said of the lazy judge, attempt to ‘win the game by sweeping [opposing chess pieces] off the table.’” Associate Justice Ruth Bader Ginsburg, *On the Interdependence of Law Schools and Law Courts*, 83 VA. L. REV. 829, 832 (quoting New York Chief Judge Judith Kaye (quoting Learned Hand, *Mr. Justice Cardozo*, 52 HARV. L. REV. 361, 362 (1939))).

3. Judge Harry T. Edwards has explored the sometimes disparate views held by the academy and the bar in regard to the purpose of legal education. He has also considered how the current schism may affect the legal profession in the future. Edwards summarizes his position in the following manner:

[M]any law schools—especially the so-called “elite” ones—have abandoned their

from the musical *1776*. In the course of debating what ought to be said and what might be left unsaid in the Declaration of Independence, John Adams turns to one of his fellows and says, "This is a revolution, dammit! We're going to have to offend *somebody!*"<sup>4</sup>

The foregoing exchange did for Indiana's conclave what the practitioners and the academicians on the American Bar Association's "MacCrate Task Force" accomplished on a larger scale.<sup>5</sup> It highlighted some of the touchy debates that persist between the practitioner and the academy, as well as inside the academy itself. For example, the MacCrate Report and the ensuing discussions have rendered a little more visible the tensions between traditional, tenured faculty and non-traditional, non-tenured clinical faculty; these faculty groups do not necessarily have a unity of interest concerning the shape of modern American legal education. It has also made more evident an interesting fissure inside the academy between the "top" schools (and if *U.S. News* does not really know who they are,<sup>6</sup> they know who they are<sup>7</sup>) and the rest of humanity, which is to say most of us.

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proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy. Many law firms have also abandoned their place, by pursuing profit above all else. While the schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground—ethical practice—has been deserted by both. This disjunction calls into question our status as an honorable profession.

Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992); see also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993); Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561 (1994).

4. SHERMAN EDWARDS, *1776: A MUSICAL PLAY* sc. 7 (The Viking Press 1970).

5. Formally known as The Task Force on Law Schools and the Profession: Narrowing the Gap, the group functioned as part of the Association's Section of Legal Education and Admissions to the Bar. See AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUC. AND ADMISSION TO THE BAR, THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MacCrate Report]. The authors of the MacCrate Report included several knowledgeable representatives from the academy. Professor Peter W. Martin and Associate Dean Peter A. Winograd acted as the Task Force's two vice chairpersons. Professor J. Michael Norwood served as Reporter. Membership on the Task Force included nearly equal distributions of representatives from the bar, bench, and academy. *Id.* at v.

6. See Terry Carter, *Rankled by the Rankings*, A.B.A. J., Mar. 1998, at 46, 46 (reporting that the Law School Admission Council had sent mailings to more than 70,000 law school applicants which criticized law school ranking generally and *U.S. News and World Report's* ranking methodology in particular).

7. See, e.g., Letter from Pamela G. Gann, Dean of Duke Law School, sent only to the deans of Yale, Harvard, Cornell, Pennsylvania, New York University, Columbia, Georgetown, Chicago, Northwestern, Stanford, Berkeley, UCLA, and Michigan (Apr. 13, 1993) (commenting on accreditation standards) (on file with author).

The MacCrate Report has provoked some remarkable public debates. My own favorite was the consternation about whether to add to the American Bar Association standards for accrediting law schools a declaration that part of a law school's purpose should be to prepare students to participate effectively in the legal profession.<sup>8</sup> While that proposal was pending, there was a flurry of letters from law deans explaining why it was a really bad idea.<sup>9</sup> It occurred to me that a codicil to the new version of the standard might be in order, requiring all law deans having written such letters to include them in the recruitment materials provided to potential applicants.

Ultimately, the central contribution of the MacCrate Report has been to help all of us view "legal education" as something that does not conclude with law school graduation but rather continues well thereafter. Whether we do it through the law-school admissions process, through law instruction in school, through the bar admissions process, or through continuing legal education, we should view lawyer education as a lifelong continuum in which various players take principal roles at different moments but which, in fact, ought to be one long and useful venture.

At any rate, the MacCrate debate has very constructively propelled forward the conclave movement, meetings between bar associations, law schools, and the judiciary about the future of legal education.<sup>10</sup> While there is a communication benefit simply from the time these estates have spent together, it seems to me that in our state we already have a remarkably good set of connections between bench, bar and academy.<sup>11</sup> They are not structured very purposefully, but they exist across a wide range of law school activities and judicial and bar events. As a result, when you gather together five or six dozen people who would like to talk

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8. Taking up one of the most straightforward of the MacCrate suggestions, the Illinois State Bar Association submitted to the ABA House of Delegates a resolution adding new language as follows: "A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar *and to prepare them to participate effectively in the legal profession.*" AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 301(a) (1997) (emphasis added).

9. The dean of a distinguished law school wrote:

The proposed amendment is framed in such a way as to make it difficult to disagree with it, although I do so nevertheless. Given its genesis in the MacCrate Report, I can draw no other conclusion than that it is a general provision by which the "skills" emphasis of that report would be imported in the accreditation rule.

Letter from Randall P. Bezannson, Dean, Washington and Lee University School of Law, to James P. White (April 19, 1993) (on file with author).

10. See William R. Rakes, *Conclaves on Legal Education: Catalyst for Improvement of the Profession*, 72 NOTRE DAME L. REV. 1119 (1997).

11. The most difficult bridges to maintain are those between the academy and the rest of the profession. As former Dean Donald J. Weidner has said, "Because of the tremendous gap between academic lawyers and practicing lawyers, an affirmative action program to integrate law faculties into the profession will be required." Donald J. Weidner, *The Crises of Legal Education: A Wake-Up Call for Faculty*, 47 J. LEGAL EDUC. 92, 103 (1997).

about educating lawyers, most people who walk in the door know a reasonably high percentage of the other players. This is obviously a tremendous advantage in seeking to identify what one might do constructively and collectively. For these purposes, Indiana is a really nice size. It is large enough to have substantial resources, but small enough so that the people interested in various topics have a head start of knowing each other and knowing what their interests are.

I suggest that the central question the conclaves seek to explore can be stated in about eighteen words: Do we believe that the education of law students and of lawyers is what it needs to be? The equally simple, thoughtful answer to that is: Mostly, yes, but not completely.

Many practitioners have reacted to this question by focusing on the work of law schools. "Well, of course the schools don't do what they need to do." There are a number of ways in which this dialogue proceeds, but let me recite a common one.

Schools: "We're doing a lot better than we used to do, and we're doing better than all you know."

Bar: "Oh, I didn't know that, and I'm glad, but it's not enough."

Schools: "Yes, we agree it's not enough, but we can't do any more unless there's additional money."

With respect to the financial rebuttal in this exchange, I am not persuaded yet to take the answer as a full and complete defense. Still, in the course of these discussions, we non-academics learn some very important things. First of all, most practitioners have no idea how common it is for universities to siphon off money generated by law schools.

The fact that the law school can be a university cash cow never dawned on me until about four years ago, when the University of Bridgeport was in danger of closing its doors. Bridgeport was a substantial university in Connecticut whose enrollment had fallen from something like eleven thousand to just three or four thousand. In this state of near-collapse, the university literally put itself on the auction block, saying: "Who would like to buy us and run a university with these facilities?"

It soon became apparent that among Bridgeport's assets about the only thing for which there was a real market was the law school. This was true even though the law school itself was in distress. The level of its distress was demonstrated by the task confronting the eventual new owners, who ran the school in Bridgeport's facilities for a while: replacing some 275 burned-out light bulbs in the school's relatively small building.<sup>12</sup> The reason the school had value was partially because it had the capacity to generate cash. There are a good many places in this country where universities treat their law schools as that sort of asset. Until quite recently, for example, George Washington University siphoned

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12. The new "owner" is Quinnipiac College in Hamden, Connecticut. The school now operates a greatly improved program from a handsome new building in Hamden.

off forty percent of its law school's revenue, a practice President Stephen J. Trachtenberg defended by saying: "You can't have a great law school unless it's part of a great university."<sup>13</sup> We practitioners do not have the faintest idea of the extent to which these practices siphon off revenue from legal education and limit the ability of law schools to build better programs.<sup>14</sup>

We practitioners also have relatively little understanding of the dynamic of the market in which law schools compete for faculty. This market is a very real constraint on their ability to change. For all the fury that is expended over university tenure systems, it seems likely that even if the law school accreditation system abandoned the standards on job protection, the competition for professors is so fierce and the attractiveness of tenure is so central to the market that schools would largely continue their current practices.

The same market forces constrain a school's ability to generate more hours of instruction. In assessing the schools' claims of insufficient faculty to expand clinics, for example, it is tempting to say: "It should be easy to add to the teaching capacities of the school. Why don't you add just three teaching hours a week for every member of the law faculty?"<sup>15</sup> The mathematics of this is sound, but the economics is not. The law firm equivalent of such an edict would be: "For the coming year, the management committee plans to pay everybody exactly what we were paying last year, but all partners and associates will be expected to bill 2,500 hours instead of 2,000." Law firm managers making such an announcement would either be swept out of office in the ensuing revolt or trampled in the stampede of partners departing for other firms. Law schools face very similar constraints.

Having said all that, I remain skeptical of the common declaration of law school managers: "No, we cannot do more of the practice-oriented instruction the bar requests without some new money." Such a response passes over an important issue: Where is the school presently committing its resources, and why? In other words, one can acknowledge the existence of constraints and still question the choices made about deployment of existing educational resources. Some practitioners are skeptical of the response because they see course catalogs littered with "Law and X" courses that surely represent low student-teacher ratios. Other practitioners are skeptical about the present deployment of law school resources because they find the scholarly product of faculties to be arcane. Make no mistake, I believe that law faculty contribute new intellectual capital to

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13. Katherine S. Mangan, *An Unfair 'Tax'? Law and Business Schools Object to Bailing Out Medical Centers*, THE CHRON. OF HIGHER EDUC., May 15, 1998, at A43, A44 (stating that under pressure from ABA, the university agreed to scale down its tax to 25% by 2003).

14. See James P. White, *Legal Education in the Era of Change: Law School Autonomy*, 1987 DUKE L. J. 292, 304 n.46 (1987) (quoting former AALS President and then Dean of the University of Miami Soia Mentschikoff's statement that "the temptation to use the funds generated by the law school enrollment to pay for the college becomes almost irresistible." 1974 AALS PROCEEDINGS-ANN. MEETING pt. 2, at 70).

15. The chairman of the Ways and Means Committee of the Indiana House of Representatives made such a suggestion.

the work we do as practitioners. Still, it is telling that the most widely read law journal in the country is not the *Harvard Law Review* or any other faculty-oriented publication, but rather *The Business Lawyer*.<sup>16</sup> It is written by business lawyers and edited by business lawyers.

To be sure, Dean John Sexton has made a powerful and enlightening argument for what he calls "courses of context."<sup>17</sup> Still, most practitioners would say such courses are relatively less useful than trial practice instruction when viewed from a different sort of context—the daily representation of clients. The professional judgment reached by practitioners on such matters lead them to be skeptical about the allocation of time, money, and energy by the schools.

Though I obviously share some of that skepticism, it is still easier for me to identify actions that the bench and the bar can take than it is for me to think of things that schools can do.<sup>18</sup> I list five here as a contribution to the discussion. Four of those are largely projects for the bench and bar, and one of them is mostly for the law schools.

### I. PRE-LAW COUNSELING

We all know that colleges try to teach interested undergraduates a little something about the law school experience and the legal profession through pre-law counseling or orientation. We know that in a few colleges that effort is very good, and we also know that in a few colleges it is abysmal.

Improving the knowledge base for college seniors (or, for that matter, building a better orientation system for first-year law students) should be a relatively straightforward proposition for the academy and the profession. A modest amount of time and money would help pre-law students make sound decisions and help new law students figure out how to approach this new

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16. *The Business Lawyer* is a publication of the ABA Section of Business Law. A comparison of circulation numbers quickly proves the point: The current circulation of *The Business Lawyer* is approximately 54,000 while *The Harvard Law Review*'s and *The University of Pennsylvania Law Review*'s current subscription numbers are 5454 and 1408 respectively. Telephone interview by John Kenley with Sue Daily, Members Services and Marketing Manager of the *Business Lawyer* (Mar. 26, 1998); telephone interview by John Kenley with Dennis O'Brien, Office Manager of the *Harvard Law Review* (Mar. 26, 1998); telephone interview by John Kenley, law clerk to Chief Justice of Indiana Randall T. Shepard, with Dan West, Senior Office Assistant of the *University of Pennsylvania Law Review* (Mar. 25, 1998).

17. See Bill Brooks, *Conclave on Legal Education: John Sexton on Behalf of the Situation Method*, RES GESTAE, Apr. 1997, at 31, 31; see also John E. Sexton, *The Preconditions of Professionalism: Legal Education for the Twenty-First Century*, 52 MONT. L. REV. 331 (1991).

18. And yet it seems to me that we ought to expect the academy to say something like, "Yes, I'm not doing such-and-such now or I'm not doing enough of it now, but I have some ideas about how I might." A discussion that proceeds on a basis of good faith and fair contribution ought to be one that moves beyond declaring, "Here's how I have managed to change," and proceeds promptly to, "Here's how I think I might yet change."

endeavor.<sup>19</sup>

The best orientation at my law school was connected to the library. I may remember it especially well because the head librarian was a fellow who told really great stories while he was explaining how the library worked. They did not take attendance, but absolutely everybody went anyhow, because we were like sponges in those first few months at law school. New law students do not typically brush up against judges or lawyers until much later in their student careers. The academy and our profession could make a lot of difference for both 1Ls and pre-1Ls without spending much money.

## II. TRIAL PRACTICE COURSES

It ought to be possible for every student to take trial practice or other clinical courses. Widespread resistance to this proposition by law schools led the ABA simply to require that every school offer such opportunities, with the explicit understanding that a school need not accommodate every student who wanted to participate.<sup>20</sup>

The schools' objections were many. I name one for purposes of argument: "There are people going through my law school who have no use for practice training because they will end up as transactional lawyers or in-house counsel, or in some other capacity where these skills are not central to their work." All well and good. I submit, however, that it is quite another matter to say, "I have students in my school who know they need skills training, want to take it, and cannot."<sup>21</sup> I say to my friends in the academy: this simply will not wash.

Dean Sexton described an integrated system in which schools make it possible for all the students who want practice experiences to have the chance, with the help of practitioners. It would be an important thing for us to do. There are fewer than one-hundred fifty full-time law professors in our state. By contrast, there are 16,000 practitioners holding Indiana law licenses. You need

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19. The Georgia Chief Justice's Commission on Professionalism, created in 1989, has specifically designated law school orientation as a time when soon-to-be lawyers are to receive training in aspects of professionalism. See STATE BAR OF GEORGIA HANDBOOK 110-12 (1995-1996). The Commission's larger mandate is "to promote professionalism among Georgia's lawyers . . . [by providing] sustained attention and assistance to the task of ensuring that the practice of law remains a high calling, enlisted in the service of client and public good." *Id.* at 112. The A.B.A. Standing Committee on Professionalism awarded the Commission an E. Smyth Gambrell Professionalism Award in 1993 for its work. Cindy Collins, *Temple, Queen's Bench Among Winners of ABA Professionalism Awards*, LAW, HIRING & TRAINING REP., Oct. 1993, at 12.

20. AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS Standard 302(d) (1997) ("A law school shall offer live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students.").

21. In the Indiana conclave, a law faculty member said that these are extremely popular courses and always oversubscribed, which is another way of saying there are students who want to do it, who think they need it, and cannot get it.

not tap much of that lawyer-power to produce a very dramatically large set of willing and capable hands.<sup>22</sup>

### III. TRAINING FOR YOUNG LAWYERS

There ought to be more opportunity for brand-new lawyers to receive practical training at the beginning of their legal careers. In this respect, Indiana's rules on continuing legal education send absolutely the wrong message: that all Indiana lawyers need ongoing education except new lawyers.<sup>23</sup> During their early years as practitioners, young lawyers ought to be directed to "Bridge the Gap" with trial practice courses or some form of NITA-style (National Institute of Trial Advocacy) education.<sup>24</sup>

22. The University of Wisconsin is currently engaged in applying many of the ideas I've discussed in Part II. See Ralph M. Cagle, *Teaching Practice Skills in Law School: The University of Wisconsin Experience*, BAR EXAMINER, Feb. 1998, at 6-14; see also Joanne Martin & Bryant G. Garth, *Clinical Education as a Bridge Between Law School and Practice: Mitigating the Misery*, 1 CLINICAL L. REV. 443, 447-48 (1994); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981).

23. IND. ADMIS. & DISC. R. 29 (3)(b). The fact that many lawyers present at the conclave felt that the three-year exemption should be repealed did not go unnoticed by young lawyers themselves. Jeff Hawkins, the 1997-98 Indiana State Bar Association's Young Lawyers Section Chair, reported at length on proposals voiced at the conclave. Hawkins noted that the concern for young lawyers is not whether the exemption will be repealed, but what sensitivity will be employed to help new lawyers comply with and benefit from the expected new requirements. Jeff R. Hawkins, *The Times—They Are a Changin'*, YLS - NETWORK: IND. STATE B. ASS'N YOUNG LAW. SEC. COMMUNIQUE, Spring 1998, at 1-2.

24. See, e.g., S.C. APP. CT. R. 403:

(a) An attorney, although admitted to practice, may not appear alone in the actual conduct and trial of a case until a certificate has been filed with the Clerk of the Supreme Court showing the attorney has had eleven (11) trial experiences. The certificate shall state the name of the proceeding, the dates and the tribunals involved and shall be attested to by the respective judge, master, referee or hearing officer. A trial experience is defined as:

(1) actual participation in a full trial in a South Carolina tribunal under the direct supervision of a member of the South Carolina Bar; or

(2) observation of an entire contested testimonial-type hearing in a South Carolina tribunal. Should the hearing conclude prior to a final decision by the trier of fact, it shall be sufficient if one party has completed the presentation of its case.

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(c) Trial experiences may be had any time after completion of one-half ( ½ ) of the credit



This, too, is something that the bar and the judiciary could decide to do that would solve a piece of the problem we all identify. Devising the right formula and finding the money would be relatively easy. The target audience is small, and there are plenty of models. I think we would be a better profession if we put such a program in place.

#### IV. BAR PERFORMANCE TESTING

The notion of “performance” was used by John Sexton in an intriguing way when he described “situational” instruction. He had a rather different way of describing what such techniques are all about—you want to teach a student to *do*, as best you can, based on what lawyers mostly end up *doing*. The profession’s bar examiners have not traditionally tested a student’s facility for “doing.”

Instead, we have tended to replicate what contracts teachers and torts teachers and procedure teachers do: we give another written test on the law of contracts. We do not test bar applicants on the broader facility for tackling a given problem and trying to solve it with a given set of tools. It is what we lawyers mostly do all day.

There is now available for the first time in the world of bar examinations a vehicle for testing a student’s capacity to solve problems. It is a new product of the National Conference of Bar Examiners called the Multistate Performance Test.<sup>25</sup> A few states agreed to pioneer this test just last year; and its adoption in other jurisdictions is proceeding rapidly.<sup>26</sup> If we in the bench and bar mean what

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hours needed for law school graduation. An attorney who has practiced law in another state, territory or the District of Columbia for three (3) years at the time the attorney is admitted to practice law in South Carolina need not comply with the trial experience requirement if satisfactory proof of equivalent experience in the other jurisdiction is submitted to the Clerk of the Supreme Court.

25. See Hulett H. Askew, *Why Georgia Adopted Performance Testing*, BAR EXAMINER, Feb. 1998, at 30-35. Joseph D. Harbaugh, *Examining Lawyers’ Skills*, BAR EXAMINER, Nov. 1990, at 9; see also Lawrence M. Grosberg, *Should We Test for Interpersonal Lawyering Skills?*, 2 CLINICAL L. REV. 349 (1996) (arguing that performance testing offers a valid technique to test legal skills currently omitted from most states’ bar examinations).

26. California, Alaska and Colorado used some form of performance testing at the time the MacCrate Task Force examined the matter. See MacCrate Report, *supra* note 5, at 280-82. Georgia, New Mexico, and Virginia were the first three states to experiment with performance testing in concert with the National Conference of Bar Examiners (NCBE) and the American College of Testing. Cindy Collins, *Extra Credit Section on Bar Exam Targets Practical Skills*, LAW, HIRING & TRAINING REP., Jan. 1994, at 7, 8. The Multistate Performance Tests (MPT) eventually devised by the NCBE were first administered in February 1997 in Georgia, Hawaii, Iowa, and Missouri. Askew, *supra* note 25, at 30, 31. Four other jurisdictions joined the program in July of 1997: Colorado, the District of Columbia, Nevada, and New Mexico. *Id.* Five more were scheduled to administer the MPT in February of 1998: Illinois, Mississippi, Oregon, Texas, and West Virginia. *Id.* The states of Idaho and North Dakota, as well as Guam and the Republic of Palau have announced they will add the MPT to their bar examinations. *Id.* The test is awaiting

we say about the relative importance of imbuing law students and new lawyers with this broader facility, than we ought to test for it. Applicants should have to demonstrate a little talent for solving legal problems before we turn them loose on clients.

## V. BETTER CLE

It has now been ten years since the Indiana Supreme Court adopted a rule on mandatory continuing legal education.<sup>27</sup> One of the premises of the rule we adopted was that it would entail a relatively light form of regulation.<sup>28</sup>

Because of that policy, the structure has operated as a relatively open set of choices offered to lawyer-consumers without much in the way of regulatory control. As with pre-law orientation, there is a great deal of continuing legal education that is really good, and there is some that is plain embarrassing. The standards under which those courses are accredited reflect a light touch. The benefit of modest regulation is thought to be that everybody can play the game—little bar associations and big ones, proprietary organizations, large providers like ICLEF and the city bars. This ought to multiply the choices and drive down costs.

On the other hand, we have not done a very serious job of assuring that the enormous investment we all make every year in continuing legal education pays off as well as it ought to. If you add up the time that lawyers and judges spend complying with the rules on continuing legal education, either by spending time away from billable hours or by writing checks for the cost of doing so, it is apparent that Indiana lawyers and judges spend at least \$20 million a year on continuing legal education. And we afford our CLE commission only a modest capacity to assure that that \$20 million is well spent.

There is no doubt that we could build better standards for continuing legal education in our state.

## CONCLUSION

The Indiana legal community doubtless has the capacity to implement these five ideas—or for that matter a different set of five better ones. This capacity is one of the happy facts about our state. And I think there's every reason to believe that the spirit that brought lawyers, judges, and educators together in the recent conclave can cause things to happen. It was the sort of spirit described in 1928 by Benjamin Cardozo, then serving as the Chief Judge of the New York Court of Appeals, in a graduation speech to the very first class at St. John's University School of Law, now one of the finest schools in the country.

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final approval in Alabama, Minnesota, Pennsylvania, and South Dakota. *Id.*

27. IND. ADMIS. & DISC. R. 29.

28. This is not easy to maintain, by the way, because people are always at your door saying, "Well, why don't you make everybody take at least two hours of this or at least one hour of that." This is what everybody ought to have to do." Those we mostly resist, although not always.

[The law] is what you and I are making it. That is the heavy burden of our calling, but that is also its unfading glory. . . . As I look into your faces, I figure to myself what it will mean, in days to come, to the profession of the law if you and those to follow you out of this school will think worthily and highly of this great vocation of your choice. What a spiritual power you will then be in the age-old fellowship you are to enter! What a leavening force you will become in this great conglomerate bar of ours, moved as it is, at times, by the ferment of high thoughts and fine ideals, and yet at times in danger of becoming sodden and inert by reason of that very mass which might make it so irresistible a power for good! How it lies within you to uplift what is low, to erase what is false, to redeem what has been lost, till all the world shall see, and seeing shall understand, that union of scholar's thought, the mystic's yearning, the knight's ardor, and the hero's passion, which is still, in truest moments of self-expression, the spirit of the bar!<sup>29</sup>

May this always be the spirit in which our bar convenes.

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29. Benjamin N. Cardozo, *Our Lady of the Common Law*, 13 ST. JOHN'S L. REV. 231, 239, 241 (1939).

