

CHAPTER 4

The Happy Charade: An Empirical Examination of the Third Year of Law School

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“In the first year of law school, they scare you to death. In the second year, they work you to death. In the third year, they bore you to death.”

—Ancient law school proverb¹

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¹For one reference to this worn but decidedly apt proverb, see Lawrence Deiker, *Letters From Law School: The Life Of A Second-Year Law Student* 23 (2000) (providing

§ 4-1. INTRODUCTION

Three decades ago, a coalition of academics and practitioners mounted a serious effort to do away with—or at least substantially modify—the third year of law school.² Two prestigious commissions sharply criticized the requirement that candidates for the bar attend a full three years of law school.³ Stanford Law School instituted an optional two-year degree in 1969, and an ABA committee on legal education drafted a formal recommendation eliminating the three-year requirement. The tide swelled for a time, but crested and fell on that immovable rock of opposition—the deans of American law schools. A full three years of legal education it was, and so it would remain.⁴

Yet the rumbles of discontent have never really subsided. Students routinely complain about the vapidness of the final year of law school. Many schools have introduced externships—placing students in real-world, though unpaid, trainee positions—to allow a partial escape from conventional legal education. Most have introduced some measure of clinical education, diversifying the traditional curriculum. And scores of scholars, judges, and practitioners have written withering critiques of law school, usually focusing on the latter half of school and usually suggesting fairly fundamental changes.⁵

We add to this pile of scholarship reluctantly, almost inadvertently. In 1998 and 1999 we undertook a multi-school survey of third-year law students. The purposes of our survey—from which we gathered about 1,100 responses at eleven law schools—focused on other issues;⁶ but as we studied our data, we were

an account of law school life after the first year that suggests that the focus of students in the second year is almost exclusively on the task of obtaining a job). For another, see Richard Kahlenberg, *Broken Contract* 159 (1999) (including a chapter on Kahlenberg's 3rd year at Harvard Law School titled "Bore You to Death").

²We are indebted for this history to the excellent recent article by Christopher Cunniffe and to our colleague Bill Klein, who served as associate director of the 1971 Carrington Report on legal education. See Christopher T. Cunniffe, *The Case for the Alternative Third-Year Program*, 61 *Alb. L. Rev.* 85, 91 (2000).

³The first report, directed by Paul Carrington, was funded by the Ford Foundation and published by the AALS in 1971. It was reprinted with the second (1972) report, which was funded by the Carnegie Commission on Higher Education; see Herbert L. Packer & Thomas Ehrlich, *New Directions in Legal Education* (1972).

⁴See Cunniffe, *supra* note 2, at 91.

⁵For recent proposals to reform legal education by prominent commentators, see Richard A. Posner, *The Moral Problematics of Legal Theory* 286–95 (1999) (resuscitating the Carrington report suggestion that the third year of law school be eliminated); John Sexton, *The Law School's Global Presence, The Law School—NYU Law Magazine* 44–71 (Autumn 2000) (reporting on Dean John Sexton's proposals for the globalization of the American law school that are in part a response to the problems with the third year identified by Judge Posner); John Sexton, *Legal Education, Today and Tomorrow*, 3 *Green Bag* 417–24 (Summer 2000) (similar).

⁶We began our survey project with two key goals: aiming to trace the extent and nature of any gender gap in the performance and difficulties men and women experienced

most immediately struck by what seemed at first to be wildly inconsistent student reactions to the third year of law school. Though our data are far from perfect, we concluded that our survey results, along with untapped data collected by the LSAC Bar Passage Study in the early 1990s, provided a unique opportunity to test competing hypotheses on the health of legal education and the viability of the various remedies that have been advanced.

This paper aims to shed, succinctly, some empirical light on long-standing debates about the success of legal education and, in particular, the third-year experience of law students. In section 2 we present three general theories about what is happening in law school, and spin out a series of empirical predictions that would follow from each theory. In section 3 we explain the three sources of survey data we use in our analysis and the strengths and limitations of each. Section 4 weighs each model's predictions against the data, and section 5 assesses a series of proposals for legal reform in light of our empirical results.

§ 4-2. LAW SCHOOL STORIES: THREE VISIONS OF THE LEGAL ACADEMY

§ 4-2(a). The Official Story: Qu'est, C'est Bon

Throughout the twentieth century law schools assumed that their mission was to produce attorneys with a broad understanding of the law.⁷ Legal training might narrow the analytical mind, but it steadfastly sought to give every graduate a broad compass of substance. And indeed bar exams throughout the nation not only are uniform for all takers in a state (covering the sweeping range of subject matter) but have gradually added topics since legal education became universal. Three years of law school was thus, in a sense, almost a curricular necessity. The first year almost always focuses on key traditions in the common law: torts, property, criminal law, and contracts. The second and third years

in law school, and seeking to understand how third-year law students perceived their future careers as lawyers and whether some students self-selected out of parts of the curriculum. See Richard Sander & Kristine Knaplund, *Through the Gender Gap* (unpublished draft, on file with authors); David B. Wilkins & G. Mitu Gulati, *What Law Students Think They Know About Elite Law Firms: Preliminary Results of a Survey of Third-Year Law Students*, 69 U. Cin. L. Rev. 1213 (2001).

⁷On the proposition that the mission of law schools is not only to provide skills training, but also to serve the broader goals of a university education, see, e.g., David R. Barnhizer, *The University Ideal and the American Law School*, 42 Rutgers L. Rev. 109 (1989); Michael J. Graetz & Charles H. Whitebread II, *Monrad Paulsen and the Idea of a University Law School*, 67 Va. L. Rev. 445, 450 (1981); Anthony T. Kronman, *Foreword: Legal Scholarship and Moral Education*, 90 Yale L.J. 955 (1981); George L. Priest, *Social Science Theory and Legal Education: The Law School as University*, 33 J. Legal Educ. 437, 441 (1983).

usually do not require but strongly encourage students to study another eight to ten areas of statutory and procedural law: corporations, family law, constitutional law (typically two courses), evidence, criminal procedure, and so on. Without a third year, students would not only be unable to complete these cornerstone courses; they would be unable to pursue particular subjects of interest through electives.

During the first forty years of the twentieth century, when the requirement for three years of law school spread across the nation, the adoption of the three-year standard was hailed as a triumph of professionalism—a commitment by society to hold the bar to a level of training second only to that of medical professionals.⁸ During that period, the bar requirement that aspirants spend three years in school was thought to be critical; otherwise, schools would compete with one another to offer less onerous training.⁹

Defenders of the status quo can point to many signs that the system is working. Law schools and the legal profession have expanded rapidly over the past forty years.¹⁰ Incomes have risen at the higher echelons of the law, and the stagnation or decline at the lower echelons has been relatively invisible.¹¹ The number of law school applicants has generally risen,¹² (consequently, so has the academic quality of those admitted), and law school alumni are giving to their schools more generously than ever before, a pattern which some view as testimony to practitioners' high regard for the schools.¹³

Moreover, the status quo has shown signs of flexibility and growth. At the height of the early 1970s controversy about eliminating the three-year requirement, many deans argued that law schools were introducing new curricula into the upper

⁸The desire of lawyers to make themselves appear more like their professional colleagues in medicine has been often mentioned as one of the motivators for requiring lawyers to have three years of graduate education. See, e.g., Cunniffe, *supra* note 2, at 110; Paul Carrington, Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s*, 72 Cal. L. Rev. 477, 492 (1984) (book review).

⁹On these fears, see, e.g., Preble Stolz, *The Two Year Law School: The Day the Music Died*, 25 J. Legal Educ. 37, 41–4 (1972).

¹⁰For an excellent account of the growth of the market for lawyers, see Sherwin Rosen, *The Market For Lawyers*, 35 J.L. & Econ. 215 (1992). For more general treatments of developments in the profession, see Richard L. Abel, *American Lawyers* (1989); *Lawyers: A Critical Reader* (Richard L. Abel, ed 1997); Richard Sander & E. Douglas Williams, *Why Are There So Many Lawyers? Perspectives on a Turbulent Market*, 14 Law & Soc. Inquiry 431 (1989).

¹¹See, e.g., William H. Rehnquist, *The State of the Legal Profession*, N.Y. St. B.J., Mar. 1988, at 44; Margaret Cronin Smith, *Overall, Lawyers' Pay Tops Other Professions*, Nat'l L.J., July 10, 1995, at C2.

¹²See George L. Dawson, *The Law School Admission Test Battery*, 34 J. Legal Educ. 388, 389–392 (1984) (describing the growth in the applicant pool and the admissions requirements that schools imposed).

¹³For accounts of recent law school giving, see, e.g., Mark Hansen, *Giving With a Midas Touch: Mega-rich Alumni Open Their Coffers to Help Strapped Law Schools*, 85 A.B.A.J. 18 (1999); Scott Mendintz & John E. Morris, *When Your Alma Mater Comes A-Callin*, *The Am. Law.*, Jan.–Feb. 1996, at 18.

years. Clinical education was being tried seriously at a number of major law schools; new specialized jurisprudences (e.g., critical studies, feminist jurisprudence) were being added to course lists; and many students were incorporating social science study (e.g., in law and economics) into their course work. Certainly, they argued, these innovations needed time, and the protection of the three-year requirement, to have a chance to flourish.¹⁴

Defenders of the status quo might concede that third-year students are less engaged in their course work than first-year students, but they would perceive merely a gradual erosion, not a fundamental shift. The third year, in *The Official Story*, is an integral part of legal education, and current practices are essential to round out student learning and give graduates the broad background they need to be educated professionals.

§ 4-2(b). The Bleak Story

Legal education has never lacked for critics. What is striking, however, is the emergence over the past generation of a consistent pattern in critiques, a story that has been drawn upon and developed by an otherwise heterogeneous group of observers. We call this generalized critique *The Bleak Story*.¹⁵

Under *The Bleak Story*, law school education is excessively theoretical and bears little relation to the real-world practice of law.¹⁶ The primary concern of law teachers is the publication of articles on highly abstract, often obscure topics, regarded as largely useless by practicing lawyers and judges.¹⁷ Under *The Bleak Story*, a wide gulf filled with contempt separates academics and practitioners, and

¹⁴See Stolz, *supra* note 9, at 41.

¹⁵A recent article on law school teaching began with the following sentence:

While, of course, some commentators disagree, there may be good cause to describe law teaching (and consequently legal education) as unhappily impractical, frequently boring, fragmented if not incoherent, ideologically and morally confused, and ultimately damaging in important emotional and even intellectual terms.

Ronald H. Silverman, *Weak Law Teaching*, 9 *Cornell J.L. & Pub. Pol'y* 267 (2000).

¹⁶This complaint about the disjunction between the legal academy and the world of practice is old, supposedly dating back to 1915. But commentators appear to suggest that things are worse than they have ever been. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 *Mich. L. Rev.* 34 (1992); Graham C. Lilly, *Law Schools Without Lawyers*, 81 *Va. L. Rev.* 1421, 1422, 1462–3 (1995); Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Lawyer*, 82 *Minn. L. Rev.* 705 (1998); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy Profession*, 52 *Vand. L. Rev.* 871 (1999).

¹⁷See Mary Ann Glendon, *A Nation Under Lawyers* 175, 223 (1994) (noting that many law faculty have a visible disinclination, if not disdain, for law teaching); Schiltz, *Legal Ethics in Decline*, *supra* note 16, at 705–6 (citing articles making this point).

these attitudes seep into the classroom enough to give students a warped, incomplete, and unsatisfying education.¹⁸ Students enter law school full of enthusiasm and bright with hopes of bringing about changes in society; as their education proceeds, they are disillusioned by what they are taught in school and inexorably shift their hopes from social ideals toward jobs in the corporate sector.¹⁹

The Bleak Story critiques not only the substance of law school teaching, but its process as well. The law school environment is designed to be unpleasant and stressful. Class size, grading schemes, and law review competitions emphasize the establishment of hierarchies rather than the achievement of universal minimum competencies. Schools establish clear pecking orders among students by the end of the first year. The teaching prototype, the Socratic method, often obscures substantive matters, and intimidates and humiliates many students.²⁰ Students

¹⁸On the disdain that law teachers have for law practice, see, e.g., Donald B. Ayer, *Stewardship*, 91 Mich. L. Rev. 2150, 2150–1 (“some academics view law as a subject inherently lacking in interest and ... apparently view law practitioners as several cuts below plumbers in both the intellectual challenge and moral utility of their work”); Carl T. Bogus, *The Death of a Honorable Profession*, 71 Ind. L. J. 911, 945 (1996) (describing the disdain for law practice within the legal academy); Rodney J. Uphoff et al., *Preparing the New Graduate to Practice Law: A View From the Trenches*, 65 U. Cin. L. Rev. 381, 393 (1997) (“Too many law professors evince a hostile attitude towards practitioners and appear disdainful of the actual practice of law.”); Schiltz, *Legal Ethics in Decline*, supra note 16, at 706 (noting that many in the legal academy regard the practice of law as the “province of the brain dead”); Harry T. Edwards, *Growing Malaise*, *Legal Times*, March 2, 1998, at 2. But see David Dow, *The Relevance of Legal Scholarship*, 37 Hous. L. Rev. 329, 333 (2000) (arguing that the fact that some legal scholars do theoretical scholarship that is not directly applicable to the work of judges and practitioners does not mean either that this work lacks relevance or that these scholars “disdain law.”).

¹⁹For a review of the literature on law students that suggests that law students become progressively more disillusioned and conservative and less interested in pro bono work and social reform, see James R.P. Ogloff et al., *More Than “Learning to Think Like a Lawyer:” The Empirical Research on Legal Education*, 34 Creighton L. Rev. 73, 92–6 (2000); see also Robert Granfield, *Making Elite Lawyers: Visions of Law at Harvard and Beyond* 40–2 (1992) (noting that though some students find their law school training as personally and professionally empowering, others continue to reflect a “special sadness” of “those who become increasingly alienated, progressively isolated, and chronically distressed”); Paul Carrington & James J. Conley, *The Alienation of Law Students*, 75 Mich. L. Rev. 887 (1977) (reporting that one in seven law students at Michigan drops out emotionally and intellectually, without formally withdrawing from school); David R. Culp, *Law School: A Mortuary for Poets and Moral Reason*, 16 Campbell L. Rev. 61, 63 (1994) (reporting on studies saying that law school causes a narrowing of interests towards analytical skills and away from social values); Kahlenberg, supra note 1 (explaining Harvard Law School’s role in wringing public-spirited idealism out of students, and replacing it with a resigned acceptance of corporate law jobs).

²⁰On the problems with the current methods used in law school teaching, see, e.g., Maria Ciampi, *A New Dialogue for the Law*, 58 U. Cin. L. Rev. 881, 882–3 (1990) (describing the problems arising as a result of the Socratic method and the unduly competitive nature of law school education); Schiltz, *Legal Ethics in Decline*, supra note 16, at 723 (critiquing the indeterminacy integral to the case method of teaching and arguing that by leaving every position respectable, it destroys a student’s sense of integrity and self-worth and leaves her feeling unmoored with no secure convictions and no identity).

are abnormally unhappy and alienated,²¹ particularly if they are women or minorities.²² Alcoholism and drug abuse are significant problems.²³

Under *The Bleak Story*, the quiet desperation of law students increases as graduation approaches. Resigned to working in corporate law firms, they find the prospect of those jobs—money aside—discouraging. Gone are the golden days of the lawyer-statesman, when lawyers cared about ethics and professionalism.²⁴ Today all that matters is the financial bottom line.²⁵ Big firms invest little in training; junior associates will sink or swim and must, in all events, bill mind-numbing hours on mostly tedious tasks.²⁶ The third year of law school is a brief reprieve before the sentence begins.²⁷

²¹Take, for example, the following statements from Lila C. Coleburn & Julia C. Spring, *Socrates Unbound*, 24 *Law. & Psychol. Rev.* 5 (2000): “Law students sleep little and cry a lot.” *Id.* at 5. “Many law children feel that no one is really there for them, that they are being raised in legal orphanages, grudgingly tended by sadistic inquisitors whose idea of education is to scare them, bore them, or work them to death. *Id.* at 6. “The vast literature of law school discontent focuses primarily on the students’ sense of profound disappointment with the content and structure of law school classes.” *Id.* More specifically, for overviews of the literature on the subject, see Matthew M. Dammeyer & Marina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 *Law. & Hum. Behav.* 55 (1999); Ogloff et al., *supra* note 19, at 121–5. The empirical work most often cited in the voluminous literature on law students and psychological problems is that by Andrew Benjamin and his co-authors. See G. Andrew Benjamin & Bruce D. Sales, *Lawyer Psychopathology: Development, Prevalence, and Intervention*, in *Law and Psychology: The Broadening of the Discipline* 281 (James R.P. Ogloff, ed. 1992); G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 *Am. B. Found. Res. J.* 225 (1986); Stephen B. Shanfield & G. Andrew Benjamin, *Psychiatric Distress in Law Students*, 35 *J. Legal Educ.* 65 (1985).

²²The literature on the extra difficulties that women and minorities face in law school is vast. For a few examples of articles discussing these problems, see Lani Guinier et al., *Becoming Gentlemen: Women, Law School, and Institutional Change*, 143 *U. Pa. L. Rev.* 1, 36 (1994); Cathleen A. Roach, *A River Runs Through it: Tapping into the Informational Stream to Move Students From Isolation to Autonomy*, 36 *Ariz. L. Rev.* 667, 668 (1994); Morrison Torrey et al., *What Every First Year Female Law Student Should Know*, 7 *Colum. J. Gender & L.* 267 (1998); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 *Stan. L. Rev.* 1299 (1988).

²³See Ogloff et al., *supra* note 19, at 123 (describing the literature on the subject).

²⁴On the demise of the lawyer-statesman and the increasing focus on the financial bottom line, see Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993); see also Sol M. Linovitz, *They Betrayed Profession: Lawyering at the End of the Twentieth Century* (1994).

²⁵See, e.g., David Kessler, *Professional Asphyxiation: Why the Legal Profession is Gasping For Breath*, 10 *Geo. J. Legal Ethics* 455, 457–64 (1994).

²⁶See Schiltz, *supra* note 19, at 888–926; see also T. Z. Parza, *The Drudge Report*, *N.Y. Mag.*, June 21, 1999. For a recent review of both the popular and academic material on law firms, see Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 *UCLA L. Rev.* 1339 (2001).

²⁷For a recent articulation of *The Bleak Story* that posits an increased emphasis on clinical education as a solution, see Kirsten Edwards, *Found! The Lost Lawyer*, 70 *Fordham L. Rev.* 37 (2001).

§ 4-2(c). The Signal Story

A third account of law school comes not from critiques of legal education per se, but from economic analyses of the legal profession and attempts to explain the role of law school within the professional system. As with The Bleak Story, there is not a well-recognized Signal Story per se; it is instead our composite of the work of a number of writers with overlapping themes.

In The Signal Story, legal education serves a mostly symbolic and sorting function. Because the number of slots in law schools is limited, the requirement that students attend law school caps the potential number of new attorneys. Law schools are ranked, both informally and in the media. There is a remarkable degree of concurrence among rankings, and quiescence about and complicity by law schools with the most visible system for creating hierarchy, the annual *U.S. News and World Report* rankings. The single matter of school prestige is, for most students, the determining factor in choosing among offers of admission. The law school one enters shapes powerfully one's employment prospects after law school.²⁸

Once law school begins, students come to realize quickly that there are two more all-important signals for which they must compete: first-year grades and membership on the law review. These will determine how well students do in the on-campus interview process during the fall of the second year.²⁹ Overwhelmingly, it is thought, employers rate students on the basis of their school's prestige, their grades, and law review membership (with some minimal screening based on personality).³⁰ The top students are invited for callbacks and extensive courting, while the weak students receive enough rejection letters to paper their bedrooms.

²⁸For discussions of the signal story and the sorting function that law schools serve, see, e.g., Russell Korobkin, In Praise of Law School Rankings: Solutions to Coordination and Collective Action Problems, 77 *Tex. L. Rev.* 403 (1998); Daria Rothmayr, Barriers to Entry: A Market Lock-in Model of Discrimination, 86 *Va. L. Rev.* 727 (2000); David B. Wilkins & G. Mitu Gulati, Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Firms, 84 *Va. L. Rev.* 1581, 1653 (1998).

The classic work on signaling and educational credentials is by Spence. See Michael Spence, Market Signaling (1974); Michael Spence, Job Market Signaling, 87 *Q.J. Econ.* 355, 358 (1973). For a recent application of signaling theory to a variety of law related problems, see Eric A. Posner, *Law and Social Norms* (2000).

²⁹At most elite law schools, employers (predominantly large law firms) pay a fee for the privilege of interviewing students on campus; the employer can interview as many students as it likes, but the school, not the employer, chooses which students the employer will meet. At these schools, interview spots are assigned according to student preferences, with lotteries rationing interviews with the most sought-after employers. At less elite schools, law firms are less likely to pay a fee and usually interview whom they choose. This pattern, of course, is itself testimony to the importance of the law school "signal" to student careers.

³⁰See Wilkins & Gulati, *supra* note 28, at 1654, 1679; David B. Wilkins & G. Mitu Gulati, Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis, 84 *Cal. L. Rev.* 493, 546 (1996).

Remarkably, this intense, climactic hiring process simply determines who will get which clerkships for the summer between the second and third year of law school. Students nonetheless view it as critical because, for so many of them, this second-year clerkship either leads to an offer from the employer for full-time employment after law school or further credentials the student to pursue competing offers from other, comparable employers.³¹

Thus, in *The Signal Story*, what one studies or what grades one makes in the last two years of law school are unimportant because these have virtually no bearing on the job one will get after law school.³² This is not to say that students will resent the length of law school; on the contrary, a perceptive participant in the signaling process realizes that a three-year course of instruction helps confer prestige on the J.D. degree and usefully limits the supply of lawyers. Law students, in this view, are rather cynical but quite content. If they can get into a good law school and do reasonably well in the first year, they are virtually certain to land a job that pays three or four times what they could earn as a mere college graduate. With the hard work out of the way, they can relax in the second half of law school and look forward to jobs that may be demanding but are certainly prestigious and well paid.

Each of the three stories—*The Official Story*, *The Bleak Story*, *The Signal Story*—is coherent on its own terms. From the logic of each story we can infer specific empirical assertions about conditions in law school—in particular, about the attitudes and experiences of law students. These predictions let us test the stories against the survey data we have from a cross-section of schools. The empirical assertions are laid out (in simplified, but easy-to-compare form) in Table 1. Our next task is to explain the data against which we will try to measure each of these descriptions of the law school reality.

§ 4-3. OUR METHODS AND DATA

The survey work we undertook with several colleagues in 1998–99, which underlies this study, had its origins in two other significant efforts during the 1990s to study law student attitudes across a cross-section of law schools. The first and by far the largest effort was the Bar Passage Study funded and overseen by the Law

³¹The timing for judicial clerkships is remarkably similar, with most judges making their hiring decisions early in the job applicant's second year of law school. These judges, like many of the employers, appear to think that a law student's first-year performance provides them with an adequate amount of information to make a hiring decision for two years hence. Put differently, they do not appear to think that information about a student's performance in the second and third year is important enough for them to wait to analyze it.

³²By implication, then, course selection does not matter throughout law school, because the first-year curriculum is generally fixed.

TABLE 1. Empirical Predictions from the Three Law School “Stories”

<i>On this Aspect of Law School:</i>	<i>Student Sentiment Under Each Story Is:</i>		
	<i>Official Story</i>	<i>Bleak Story</i>	<i>Signal Story</i>
How engaged are students with law school?	Very engaged throughout law school	Very engaged in 1st year; disengaged by 3rd year	Very engaged in 1st year, disengaged by 3rd year
Is the 3rd year of law school largely pointless?	No, this is the culmination of legal training	Yes	Yes, but not frustratingly so
Is law school too theoretical?	No	Yes	Yes, but this can be good if it enhances school prestige
Are 3rd-year students satisfied with law school?	Very satisfied	Very dissatisfied	Very satisfied
Are 3rd years satisfied with law faculty?	Very satisfied; faculty treat students as professionals	Very dissatisfied; faculty are condescending and abusive	No strong feelings; faculty treat students as customers engaged in a symbolic process
Are 3rd years optimistic about their careers?	Yes, if economic conditions are good	No, very pessimistic	In general yes, moreso if school is elite and GPA high
Are faculty helpful to students in their careers?	Yes	No, harmful	Faculty benign but largely irrelevant
How serious is racial-, gender- or political conflict among students?	Low	High	Low
How serious is law school depression?	Perhaps higher than outside school, but not a real problem	Very serious problem	Low, except for students with poor performance/no job
How serious is law school stress?	Significant, but not a real problem	Very serious problem	Significant in the 1st year; low by the 3rd year
What are the aspirations of law students?	Varied mix of personal and professional goals	Significant idealism of students in 1st year disappears by 3rd year	Focused on positional goals throughout law school
Are students interested in pro bono work?	Yes, and that interest increases as students learn more	Interested in 1st year; disillusioned and inactive by 3rd year	Generally not; pro bono is irrelevant to career goals

School Admission Council from 1991 to 1997.³³ The principal mission of the BPS was to measure systematically the rate at which law students across the United States successfully completed law school and passed the bar.³⁴ The BPS also sought to understand what factors contributed to rates of success or failure, and it incidentally cast a wide net on various aspects of student experiences in law school. Through a systematic national effort, LSAC secured the cooperation of about 90 percent of all ABA-approved schools and of bar examiners in most states.³⁵ The BPS collected background data, law school performance data, and subsequent bar exam data on more than 22,000 students who entered law school in 1991. The BPS sought to have its entire pool of students complete a survey during the opening weeks of the first year of law school. It then resurveyed a sample of this population (about 7,000 students, including an oversample of minorities) at the beginning of the second and third years of law school. The resurveying was done through student mailboxes, with no obvious biases. Because of the study's careful enlistment of support from law school administrators, and because of its thorough follow-up efforts, the BPS secured generally high participation rates, ranging from 66 to 91 percent on different iterations of its follow-up.³⁶

Despite its superb methods, the BPS has produced very modest dividends. Questions in the surveys tended to range over many subjects, covering little in depth and providing more a descriptive overview of law students and their experiences than an analytical tool for testing specific hypotheses. Linda F. Wightman, then the research director of LSAC, did issue a number of reports based on the data, but these reports have generated little debate in legal academia.³⁷ The use of somewhat idiosyncratic "clusters" to characterize schools and an absence of regression analyses from many of the LSAC studies have made it difficult for other scholars to evaluate study findings. LSAC delayed the release of the BPS data for years and in 1999 destroyed all person-, school-, or state-specific identifiers in the

³³This study is described in Linda F. Wightman, LSAC National Bar Passage Study, LSAC Research Report (Newtown 1998). See also Linda F. Wightman, Are Other Things Essentially Equal? An Empirical Investigation of the Consequences of Including Race as a Factor in Law School Admission, 28 Sw. U.L. Rev. 1 (1998); Linda F. Wightman, The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions, 72 N.Y.U.L. Rev. 1 (1997); Linda F. Wightman, Women in Legal Education: A Comparison of Law School Performance and Law School Experiences of Women and Men, LSAC Research Report (Newtown 1996).

³⁴LSAC was particularly concerned to learn these rates for minority students, who were feared to have (and turned out to have) significantly higher failure rates than their white peers.

³⁵See Linda F. Wightman, User's Guide: LSAC National Longitudinal Data File 1-18 (Newtown, 1999).

³⁶Id.

³⁷See, e.g., Legal Education at the Close of the Twentieth Century: Descriptions and Analyses of Students, Financing, and Professional Expectations and Attitudes, LSAC Research Report (Newtown, 1995); Wightman, Women in Legal Education, *supra* note 33.

database before making a copy of the dataset available for researchers. The BPS is thus at once a tantalizingly rich, yet often frustrating data source.

In 1995 one of the authors of this paper (Sander), along with two co-authors at UCLA, undertook a survey of law students specifically aimed at comparing the performance and experiences of men and women in law school.³⁸ The authors invited all ABA-approved schools to participate, which entailed administering a survey to the entire first-year class during the final weeks of the first semester and compiling a database on characteristics of the school and each member of the first-year class. Forty schools agreed to participate; thirty-one actually administered the survey, and twenty-one eventually provided complete background data on students. The survey instrument asked forty questions over four pages and took about fifteen minutes to complete.³⁹ Nearly all of the participating schools administered the survey in the classroom, usually ending lectures fifteen minutes early on a designated day. Given the project's minuscule budget,⁴⁰ this 1995 survey achieved remarkably high participation rates, ranging from 65 to 90% and averaging 79% across the thirty-one schools, for a total of 5,607 completed responses. Based on interviews with survey administrators, the project coordinators estimate that about two-thirds of the nonrespondents were not in class on the day of administration, and one-third declined to participate. The data compiled from these surveys have been available for analysts since 1998.

In 1997 the present authors sketched out a projected survey of third-year law students loosely based on the methods that had worked well in the 1995 study. Sander was interested in tracking gender disparities in law school performance and experience through the end of law school; Gulati wanted to study the choices law students made as they contemplated their future careers. We solicited input from colleagues at several schools, who gave us feedback on the questions and in some cases assisted us with data collection;⁴¹ and we secured \$30,000 in support funding from LSAC. We approached fifteen schools; eleven agreed to participate in the spring of 1998.⁴² As in the 1995 study, our survey was relatively short—forty questions (with more subparts) over five pages. Pretesters took an average of fifteen minutes to complete it. All participating schools administered the survey during the last two weeks of class in the spring semester of the third year.

At all participating schools save one, survey administrators distributed surveys in law school classes, as in the 1995 study. This approach posed more problems in

³⁸Sander's coauthors were Kris Knaplund, senior lecturer in law, and Kit Winter, a member of the law school's class of 1997.

³⁹A copy of this survey instrument (and the subsequent third-year survey instrument) can be found at the ERG Web site; see <<http://www.law.ucla.edu/erg>>.

⁴⁰We had funding of \$5,500 from the dean of our law school and subsequently got \$34,500 from LSAC for analysis. In contrast, the BPS had a budget in the millions. The success of the 1995 study was overwhelmingly due to the exceptional interest and cooperation of key people at each of the participating schools.

⁴¹These colleagues included Pauline Kim, Deborah Merritt, and David Wilkins.

⁴²Five of the eleven schools did not, for logistical reasons, actually administer the survey until the Spring of 1999.

a study of third-year students than a study of first-years. In the third year there is no specified regimen of classes, so it is difficult to select a group of classes for sampling that will together catch all third-year students. Even more important, third-year students often do not go to class, so they are doubly difficult to capture. Third-year students, one might conjecture, could also be more reluctant to cooperate with a survey process than generally enthusiastic first-year students. The last two problems could be serious for a study, like ours, that is particularly interested in the views of the disaffected.

We dealt with the first problem—finding courses that captured third-years—by identifying courses at each participating school that had large enrollments and a reasonable cross-section of students. For example, at schools where Legal Ethics or Professional Responsibility was taken primarily by third-year students, we distributed the survey in multiple sections of that course. If such courses did not exist, we administered the survey in a range of courses that captured the diversity of the third-year curriculum: business courses as well as public law courses, seminars as well as large classes.⁴³ We dealt with the second problem by largely avoiding survey administration on Fridays, when third-years at many schools are notoriously absent. We addressed the third problem by asking survey administrators at several schools to try to keep track of the proportion of third-year students who were in class but did not complete surveys.⁴⁴ Every survey administrator reported participation rates close to 100%.

Despite our efforts to obtain a representative sample, there is little question that our data are not only imperfect, but significantly skewed. As we will discuss shortly, a very large proportion of third-year students at most schools do not regularly attend class. Attendance in sampled classes was sometimes very high, but often hovered around 50%. In these worst cases, the students who completed our surveys represented that half of the general student population that was in class. It seems likely that this is the half that is more engaged with law school and more satisfied with law school. We know that students in our sample tended to be academically stronger than students not in our sample because for ten of the eleven schools in our sample we have complete data on the law school GPAs of third-year students and can track which students responded to the survey. At every school, the average GPA of students who were in class, and completed the survey, was higher than the average GPA of unsampled students. Overall, the median GPA of those who completed the survey placed them around the 60th percentile for the entire class.

We deal with these problems in three ways. First, we are mindful of it in our analysis, and we remind the reader of the potential bias where it poses particularly

⁴³But note that at no school using the in-class method did we survey classes that even potentially reached 100 percent of the third-year class. This proved too difficult logistically. Our main goal was to at least sample representative pools.

⁴⁴This was difficult, though, because virtually all courses with third-years also have a number of second-year students, who would of course not complete the survey, and it would be hard to keep track of which third-year students left class when surveys were passed out.

important problems. Second, we compare our findings, where possible, with the data from the BPS, which had much higher response rates in its survey of third-year students. Third, we compared our findings for the full sample with those from the one school that used a different method of survey administration. A school we shall call the Omega School of Law distributed the survey to third-year-student mailboxes and gave students repeated reminders to complete and turn in the surveys. Omega secured a participation rate higher than 80% and thus provides some check on the degree of participation bias we might expect from particular findings.

Overall, as will be seen, the data hold up well. Our third-year sample is certainly flawed. But for the analyses and purposes of this study, the data tell a fairly clear story, and that story is consistent with all of the checks we could devise.

§ 4-4. SOME RESULTS

In this section we summarize key findings from our three datasets and test against the data the hypotheses described in section 2. We are trying to trace a coherent story in the results, but we also try to be cautious and balanced, and we realize that survey data are notoriously malleable. On some points, we suspect, one can find data from the survey that support pairs of diametrically opposed claims. We therefore encourage the reader to look more closely at the data by visiting our Web site; there you can find both our questionnaire and frequency distributions for student responses.⁴⁵

§ 4-4(a). The Problem of Disengagement

We suspected at the outset of our study that we would find third-year students not taking law school very seriously, but we underestimated matters considerably. As we said in section 2, our survey design itself mistakenly assumed that most third-year students attend classes scheduled on convenient days (i.e., excluding Fridays) and at convenient times (the middle of the day). They do not. Even under optimal conditions, we estimate that third-year students at many schools attend only around 60 percent of their large classes.⁴⁶

⁴⁵The Web site is <http://www.law.ucla.edu/erg>. Researchers may also access the full database if they contact us and are willing to execute the appropriate confidentiality agreements.

⁴⁶Since most state bars require that students not only earn credits at law school but actually attend a certain minimum number of hours of instruction, many of the graduates who sit for the bar are technically not qualified to do so. Law schools are complicit in this fraud because they routinely certify that students have attended all the hours of course work for which they were scheduled unless they receive affirmative evidence from an instructor that the student has not attended class. In this sense, our use of the term “charade” to describe the third year is more than metaphorical.

Among the third-year students who do attend class, there appears to be little engagement with course work—a complete turnabout, of course, from the intense first year of law school.⁴⁷ The 1995 study on *first-years* found that 60% of them studied more than 30 hours per week outside of class; the median studying time was roughly 33 hours. Among the *third-years* we surveyed, 66% studied less than 20 hours per week, implying a median of about 15 hours. The LSAC data on third-years show a similar pattern. Put somewhat differently, the *median* third-year student studies about as much as a first-year student at the *5th percentile* in the first-year distribution of study time. Seventy percent of first-year students participate in study groups; only 17% of third-year students do. The halving of study time between the first and third year would not be unduly worrisome if we saw evidence that third-years are simply more efficient at study. But our data suggests strongly that reduced study time corresponds directly to reduced preparedness for class.⁴⁸

Even when third-year students go to class, they are usually not prepared. We asked third-years how often “during the last month of your last semester . . . had you completed the assigned reading before class?” Fifty-six percent of the respondents conceded that they prepared for *half or fewer than half* of their classes. Sixty-five percent of first-year students, when asked essentially the same question, responded that they prepared for *all or nearly all* of their classes; less than 10% reported preparing for half or fewer than half of their classes. Again, the median preparation level of third-years corresponds to the 5th percentile of preparation levels among first-years. And, again, we must stress that our third-year respondents were the

TABLE 2. Time Spent Studying Per Week From the First- and Third-Year Surveys

<i>Amount of Time</i>	<i>First-Year Students</i>	<i>Third-Year Students</i>
Less than 20 hours	11.2%	66.9%
20–29 hours	30.8%	22.9%
30–39 hours	32.7%	6.1%
40–49 hours	18.5%	3.5%
50 or more	7.0%	1.9%

TABLE 3. Proportion of Classes For Which You Completed the Assigned Reading

<i>Proportion of Classes</i>	<i>First-Years</i>	<i>Third-Years</i>
All or nearly All	68.8%	22.5%
Most of them	23.6%	21.8%
About half	5.3%	17.2%
Some of them	2.6%	25.7%
None	0.4%	12.8%

⁴⁷See Table 2.

⁴⁸See Table 3.

ones still attending class. We would guess that the level of preparation among students not in class is even lower.

Ironically, most law schools devote the bulk of their teaching resources to upper-level courses. The average third-year class is far smaller than the average first-year class, and of course third-years have far more discretion in choosing which classes they will take. These factors might seem likely to stimulate student interest and participation. But even among those students actually attending class and completing our survey, the frequency with which students volunteer comments in class seems to us remarkably low. Over half of the respondents reported that they rarely (less than once a week) or never volunteered comments. Nor do smaller class sizes seem to lead to more student-faculty interaction; 76% of students reported that they had gone to faculty office hours no more than once or twice during their last semester (for all their classes combined).

The profound disengagement of third-year students is a blow against The Official Story. The third year cannot be the culmination of legal training if almost no one is paying attention. Indeed, when we move from specific questions about each respondent's behavior to ask about more general perceptions of legal education, student reactions cannot be reconciled with The Official Story. In one question we gave students six statements about legal education—some upbeat and some critical—and asked them to indicate which ones they agreed with.⁴⁹ The largest number (43%) agreed with the very strong statement “The third year of law school is largely superfluous.”⁵⁰

Had we spotted this issue before designing the survey, we would have asked more questions about why so many students attach little value to the third year of law school. A related issue, and one we probed a bit, is the question whether law school is too theoretical. Both the 1995 first-year survey and the 1998–99 third-year survey asked students whether they agreed with the statement “Law school teaching is too theoretical and unconcerned with real-life law practice.” Eighteen percent of first-year students, but 43% of third-year students, agreed with this

⁴⁹The six statements, and the percentage agreeing with each, were as follows.

1. There has not been enough clinical training available for students. (26% agree)
2. The third year of law school is largely superfluous. (43%)
3. The school's placement services do a good job of assisting students to achieve their career goals. (32%)
4. The school places too much emphasis on “diversity” in legal education. (17%)
5. The curriculum as a whole does not provide adequate opportunities to develop business skills. (34%)
6. Most of my courses show how legal doctrines work in institutions and real-world settings. (17%)

As throughout the survey, we attempted in this question to balance positive and negative probes and to avoid suggesting that any implicit answer was the “right” one. We would not have predicted in advance that, of these six statements, the second would elicit by far the strongest agreement.

⁵⁰And students who say this tend to act as though they mean it: agreeing with this statement is correlated with preparing less for class.

statement. In the third-year survey we also asked students (in a different question) whether they agreed with essentially the opposite view: “Most of my courses show how legal doctrines work in institutions and real-world settings.” Only 18% of third-years agreed. Although students who thought the third year was largely superfluous also tended to think that law school was too theoretical, a total of 63% of respondents agreed with at least one of these statements.

As noted in section 2, the reforms of legal education in the 1970s were aimed in large part at addressing the disengagement of third-year students and the sense that law school was too disconnected from the real world. Certainly the general patterns we observe suggest that the reforms have not cured the problems. So does some more direct evidence. Students who are enrolled in clinical courses are slightly less likely to see the third year as superfluous (41 to 45%) and slightly more likely to view law school as excessively theoretical (46 to 41%). One might argue from these small differences that, for some fraction of students, clinical courses get students more involved in school while at the same time making their regular courses seem even more theoretical and remote.⁵¹ After all, at most schools even students who maximize opportunities for clinical work will be fortunate to take two clinical courses during their law school years; their experience remains centered on conventional courses. Our data are too fragmentary to really assess whether clinical education has helped make the third year seem more relevant; we do know, however, that at most schools it has not had enough impact to change the basic pattern of disengagement.⁵²

Every one of these findings undercuts The Official Story, at least as it pertains to the final year of law school. Law students in the aggregate are not taking advantage of the opportunities offered to them in the third year. Rather than master the broad sweep of substantive law or take advantage of electives, they are pulling out early, perceiving their third-year courses as unhelpful or irrelevant. Thus far, the evidence is consistent with the two other stories, The Bleak Story and The Signal Story. Both stories posit that third-year students will be disengaged, though for somewhat different reasons—despair and the brutishness of the place, under The Bleak Story; complacency under The Signal Story. Let us turn, then, to the emotional state of third-year students.

§ 4-4(b). Are Third-Years Happy? If So, Why?

According to The Bleak Story, lack of interest in the third year of law school is the natural consequence of an unpleasant, demoralizing environment.

⁵¹Students who have had at least one clinical course report spending a tiny amount more time on course work, though the difference is barely significant statistically. One cannot conclude much from this since many of these students are not taking clinical courses during the period for which they are reporting study time.

⁵²Although this gets ahead of our story, we discuss in section 5 (and provide some support for) the possibility that clinical education makes a difference in student satisfaction and engagement, but only if the clinical program is well-developed and has curricular depth.

Disengagement reflects alienation. For some students, this is no doubt true. But for a large majority of students in our sample, it is not true. We asked, "How satisfied are you with your decision to go to law school?" Forty-eight percent of students said they were very satisfied and another 38% said they were fairly satisfied. Only 5% responded that they would not go to law school "if [they] had it to do over again."

Unlike the earlier survey questions we have discussed, these questions might elicit artificially strong results from our biased sample (students in class). Students who show up might be more satisfied, on average, than all third-year students. The ones skipping class might indeed be alienated. We therefore compare, in Table 4, our results with those from an identical question in the Bar Passage Study, which had high response rates and was not, in any case, administered through classes.⁵³ Although the response options in the two surveys are different, the pattern of sentiment is very similar: students register high levels of satisfaction.

The Bar Passage Study asked in its survey of graduating students a wide range of satisfaction-related questions, and students with a positive view of the academic and classroom environment far outnumbered those with a negative view. When asked to rate the overall quality of faculty instruction, 86% of the BPS respondents were very satisfied or satisfied; 6% were dissatisfied or very dissatisfied. Sixty-five percent of graduates were very satisfied or satisfied with the "quality of overall faculty-student relations;" 12% were dissatisfied or very dissatisfied. Sixty-four percent of the respondents characterized the overall classroom environment of law school as "supportive" or "hospitable;" 8% thought it was "inhospitable" or

TABLE 4. Measuring Levels of Satisfaction in the Third Year of Law School: the 1998–99 Surveys and the Bar Passage Study

<i>The 1998 survey: How Satisfied are You with Your Decision to Attend Law School?</i>		<i>The BPS Survey: How Satisfied are You with Your Decision to Attend Law School?</i>	
<i>Response</i>	<i>% Agreeing</i>	<i>Response</i>	<i>% Agreeing</i>
Very satisfied	48.5	Very satisfied	45.9
Fairly satisfied	37.9	Satisfied	40.6
I have serious doubts about my decision	8.9	Neither satisfied nor dissatisfied	7.2
If I had it to do over, I would not attend law school	5.1	Dissatisfied	5.5
		Very dissatisfied	1.0
	N = 1,049		N = 4,098

⁵³The BPS results also contain a bias in that there was an oversampling of minority students in the follow-up surveys. But this does not cause a problem for our analysis of *The Bleak Story*. According to *The Bleak Story*, an oversampling of minority students should cause satisfaction levels to go down because these are supposedly the most dissatisfied of the students. Hence, the bias in the data would support the conclusion that real satisfaction levels were even higher.

“hostile.” Seventy-nine percent of the respondents agreed that “at least one law school faculty member had a strong positive impact on my intellectual development;” 10% disagreed. These numbers contrast so starkly with *The Bleak Story* as to make it puzzling why this account dominates the literature.

In preparing our own surveys, we eschewed general inquiries into “satisfaction” on the theory that the default answer to such questions is that one is indeed satisfied. In a few parts of our survey, we mixed negative and positive assessments of different parts of the law school experience and asked students to indicate which assessments they agreed with. This approach did, in fact, produce a higher frequency of criticism and an increase in criticism from the first year to the third year.⁵⁴

For each question, third-year students are more negative than first-year students. The drop in Table 5’s second row (students believing the school wants every student to do well) is particularly large, though not very surprising given that the first-year respondents had not yet taken their first set of exams or received their first-semester grades. When we consider the third-year responses alone, there is undeniably a greater adherence to positive than negative views of the law school environment. On their face, these numbers do not support *The Bleak Story* stereotype. These third-year students may be disengaged, but they are generally not alienated.

TABLE 5. Students Agreeing with Selected Assessments of Law School (First-year and Third-year Students Compared)

<i>Survey Statement</i>	<i>Percent of First-Year Respondents Indicating Agreement</i>	<i>Percent of Third-Year Respondents Indicating Agreement</i>
The environment at this law school is unnecessarily competitive	21.7	25.8
I believe that this law school wants to help every student do well	60.3	35.8
The faculty at this law school treat students with respect	71.9	55.2
I believe sexual harassment is a significant problem at this school	1.5	1.1
I believe there is substantial hostility at this school along racial lines	9.1	16.8
I believe there is substantial hostility at this school along political lines	9.6	17.3

⁵⁴See Table 5.

In most versions of *The Bleak Story*, law schools fashion coffins for the idealistic aspirations of entering law students, and law firms nail the coffins shut. Students feel that the only future for which they are being prepared—and the only one from which they can hope to pay back their enormous debts—is the world of the big firm. Students expect brutal hours, inadequate training, and unfulfilling work, with only prestige, a ridiculously large paycheck, and a long-term hope of something better as consolation.

The students in our survey seemed to have a different view of their future. We asked, “How optimistic are you that you will have a satisfying career after law school?” On a five-choice spectrum, 34% of our respondents chose the first option, saying that they were very optimistic; another 45% said they were somewhat optimistic.⁵⁵ In other words, 79% of respondents were on the optimistic side of a five-point scale.⁵⁶

We probed student attitudes and expectations about their early careers with several questions.⁵⁷ When we asked what factors were important *in choosing* their first job after graduation, some of the responses fit the conventional wisdom: only 26% of the respondents said that the long-term career potential of the job was important, and for over half (55%), an important factor in taking the job was the opportunity to earn money and pay off debts. But an even larger proportion (61%) said it had been important to choose a job that was a good place to acquire legal skills. And 50% of those with jobs said that their belief that “I will be treated fairly there” had been an important factor in choosing the job.⁵⁸

Next we asked students what factors they thought would be important *in advancing* at their new jobs. Here we gave the students a set of factors (such as quality of work and quantity of work) and asked them to rank the factors on a 1-to-5 scale of importance where 5 was “very important” and 1 was “irrelevant.” Seventy-eight percent thought that the *quality* of their work would be very important (i.e., the most important factor), while only 31% thought that the *quantity* of work (e.g., hours billed) would be very important.⁵⁹ In a way, these

⁵⁵Of the remaining 21%, about one quarter had not secured jobs—a moderately significant correlation. Note, too, that the optimism levels for both men and women are roughly the same—an odd result given the literature on the difficulties that women have in advancing in corporate law firms.

⁵⁶And the employer category employing the largest fraction of these students (40%) is that of the large and elite firms—the employers who are most often cast as the villains in *The Bleak Story*. For data on the employer breakdowns, see Wilkins & Gulati, *supra* note 6. Indeed, students going to large law firms were somewhat more optimistic about having satisfying careers than other students.

⁵⁷See Table 6.

⁵⁸Our purpose in reporting these particular results is not to deconstruct and analyze student perceptions of the job market; that is the task for a different paper. We report them because these results belie the notion of cynical or despairing students that is so common to the imagery of law school.

⁵⁹The survey asked students to score a variety of factors according to their perceived importance for advancement where they were planning to work. The options were *very*

TABLE 6. Attitudes of Third-Year Students Towards Their Future Jobs From the 1998–99 Survey

<i>Type of Survey Response:</i>	<i>Percent of Respondents</i>
Are “Very Optimistic” or “Somewhat Optimistic” that they will have a satisfying legal career	79
Are “Very Pessimistic” or “Somewhat Pessimistic” that they will have a satisfying legal career	5
<i>When asked what factors were important in selecting their first post-graduate law job, percent selecting:</i>	
“I hope and plan to make my long-term career there”	21
“Good place to acquire legal skills”	51
“Earn money and pay off debts”	46
“I think I will be treated fairly there”	40
<i>When asked how they think various qualities will factor in their success at their first employer, rate at which students selected the following factors as “very important”</i>	
“The quality of my work”	78
“The quantity of my work”	31
“Whether I am perceived as having ‘star’ quality”	23
“Discrimination against me because of my gender or race”	2
“Preferences towards me because of my gender or race”	1
“How much I ‘play ball’ with the firm or employer culture”	12
“Whether I successfully link up with a senior mentor”	19
“My rainmaking potential”	19

are not surprising findings—we would expect, for example, that most people would rank quality above quantity—but each of these specific reactions cuts against the imagery of The Bleak Story. It is quite possible that students are wrong in their perceptions about their future employers. But the important point for purposes of this article is that these graduating law students appear generally optimistic about their future in the profession.

Third-year students’ satisfaction with their decision to go to law school, and their optimism and positive views about their prospective employers, are higher than The Bleak Story projects. Are negative emotions, like stress and depression, correspondingly lower than hypothesized by the story? Our general finding is yes, but some background is needed to avoid being glib about a complex subject.

§ 4-4(b)(i). Depression and Stress

The depression and blue moods that most of us talk about in everyday parlance overlap with clinical depression, but only in part. Naturally, passing periods

important, important, marginal, somewhat irrelevant, and irrelevant. Our sister paper reports on these results in greater detail and breaks out the results according to employer type. See Wilkins & Gulati, *supra* note 6.

of even intense sadness are more common than clinical depression, but drawing clear lines about such intrinsically subjective phenomena is difficult. Psychologists and psychiatrists generally measure clinical depression with one of a few standard batteries of questions that ask about both feelings and behaviors. High scores are associated, but only associated, with actual depression.

We often speak of stress in the same breath as depression, as though the two were intimately linked, but they are of course merely correlated and describe quite different phenomena. Stress is often associated with extreme levels of work and activity, while true depression produces lethargy. Still, both experiences are plausible byproducts of the law school environment. The first year of law school is for most students a uniquely challenging experience, pushing them to an intensity of work they have not known before. But in addition to the academic pressure of doing well—and, for many students, the first-time experience of being surrounded by equally talented peers—law school immerses students in a process of acculturation. What Lani Guinier famously referred to as “Becoming Gentlemen” is in fact part of a larger process in which all students learn a new set of norms and rules that are taught in law school and that students expect to find reflected in the postgraduation professional world. Students encounter these norms in their own ways; for those who feel they are not adapting to the new environment and not fitting in, the process can produce feelings of both stress and depression.

According to *The Bleak Story*, these feelings of stress and depression are pervasive and tend to deepen as law school progresses. In our surveys we attempted some crude measurement of these feelings, drawing on some of the existing psychological tests; but our measures are not at all comparable to clinical diagnoses or even to psychological panel surveys such as the National Comorbidity Survey, which are conducted in person and plumb a much wider array of feelings and symptoms. Still, our measures are useful, we think, for comparisons among different groups of law students and for exploring the links of depression and stress to other law school experiences. Table 7 summarizes comparative data on feelings of depression for first- and third-year students.

As Table 7 shows, reported feelings of depression decline sharply between the first and third year of law school. Our third-year sample bias may understate the overall incidence of these feelings among third-years, but there is little doubt

TABLE 7. “How Often In the Past Week of School Have You Felt Depressed?” Asked of First- and Third-Year Students

<i>Response to Question on How Often the Student has Felt Depressed in the Past Week</i>	<i>First-Year Students</i>	<i>Third-Year Students</i>
Most of the time	11.7	5.1
During a few passing periods	45.8	30.8
Rarely or never	42.5	64.1

that the decline is quite significant in any case.⁶⁰ And indeed, though precise comparisons are difficult, the reported feelings of depression among third-years do not seem out of line with rates reported for the general population.⁶¹

We also asked both first-year and third-year students about specific experiences often linked to depression (e.g., crying frequently, insomnia, difficulty concentrating). Third-year students consistently reported lower rates of these behaviors; but since the questions were asked in slightly different ways, we draw from these results only limited support for our general claim that feelings of depression decline from the first to the third year.

When we asked students about stress, the results for first- and third-year students were virtually identical.⁶² Although both groups of students were asked “how stressful have you found law school?”, the third-year students are, of course, considering the question in the context of a much broader experience (including the experiences of getting grades, competing for journals, and trying to get jobs), so we cannot attach too much weight to this comparison. Still, the similarities across the two cohorts are striking.

TABLE 8. Frequency with Which Students Reported Specific Feelings and Behaviors Asked of First- and Third-Year Students

	<i>First-Year Students</i>	<i>Third-Year Students</i>
Crying	13.5%	6.2%
Difficulty sleeping	38.1%	29.2%
Feelings of violence and aggression	12.1%	9.8%

TABLE 9. How Stressful Have You Found Law School? Asked of First- and Third-Year Students

<i>Proportion of Students Reporting Each of the Following Levels of “Stressfulness of Law School”</i>	<i>First-Year Students</i>	<i>Third-Year Students</i>
Extremely stressful	22.0%	19.9%
Fairly stressful	59.0%	59.8%
Not especially stressful	17.3%	20.2%
Not at all stressful	1.7%	2.1%

⁶⁰If the correlation of nonattendance and depression were as high as .3, this would imply a third-year rate of serious depression of only around 7% (i.e., still significantly less than the first-year rate).

⁶¹Professional definitions vary, but there is some consensus that around 9% of Americans experience clinical depression each year. See National Institute of Mental Health, *Mental Disorders in America* (Washington 2001), available at the NIMH website, <<http://www.nimh.nih.gov/publicat/numbers.clin>>.

⁶²See Table 9.

TABLE 10. “If You Marked ‘Extremely’ or ‘Fairly’ Stressed, How Important were the Following Sources of Stress?” Asked of Third-Year Students

<i>Possible Source of Stress</i>	<i>Percent Indicating That Factor</i>
“Too much work”	45
“Competition for grades”	52
“Worries about jobs”	61
“General law school environment”	41
“Balancing school with outside life”	61
“Financial worries”	51

In our third-year survey (but not our first-year survey), we asked students who described law school as “extremely” or “fairly” stressful to choose from some possible sources of stress. The results are shown in Table 10. What is notable, from the standpoint of testing the Bleak Story, is that students do not single out the law school environment or grade competition as more severe problems than the types of stress any graduate student would normally encounter.

In short, while it is true that law students often experience stress and some symptoms of depression, these feelings are far from pervasive, and feelings of depression diminish substantially as law school progresses. The emotional well-being, satisfaction, and optimism of third law students are all relatively high. None of these results match the Bleak Story.

§ 4-4(b)(ii). Pockets of Bleakness

Our findings thus far might not be inconsistent with The Bleak Story if we suppose that it is primarily the insular groups within law schools that are alienated. Under one common version of the Bleak Story, for example, women are singled out for confrontational or unfair treatment and disproportionately find law school alienating. However, if we compare the overall experiences of women and men, the similarities far outweigh the differences. The proportion of third-year students who are very satisfied with their decision to go to law school is 47.5% for women and 49.1% for men.⁶³ The proportion of third-year students who agree that law faculty treat students with respect is 52.6% for women and 57.5% for men. The proportion of third-years who express optimism about the prospect of a satisfying legal career is 78% for women and 79% for men—a remarkable homogeneity, considering the well-known difficulties women encounter in advancing their legal careers. And although clinical depression is higher for women than for men in the general population, the proportion of third-years who reported feeling depressed most of the time during the week

⁶³In the BPS, it is 45.3% for women and 46.3% for men.

before the survey was 5.4% for women and 4.8% for men—a statistically non-significant result.

But the pockets-of-bleakness theory could be constructed in a different way. There are, after all, some students who regret coming to law school, some students who are badgered by teachers, and some students who perceive law school as a hostile environment. If these negative feelings and experiences resonate recurrently among the same survey respondents that would support The Bleak Story. Alienation might not be pervasive among law students, but it might be pervasive among a subgroup of what we will call gloomy students.

To test this idea, we identified eight variables helpful in identifying student alienation and assigned respondents one point for each gloomy response:

Feels pessimistic about satisfying career (gloomy if the response is not “very” or “somewhat optimistic”)

Feels dissatisfied with law school (gloomy if the respondent has “serious doubts” or regrets choosing law school)

Agrees that law school is unnecessarily competitive

Disagrees that faculty treat students with respect

Believes there is substantial hostility at the school along racial lines

Believes there is substantial hostility at the school along political lines

Reports experiencing “derisive comments” from students after speaking in class

Reports experiencing a “derogatory” response from a teacher after speaking in class

We conducted a factor analysis of how these variables interact. Every one of them proved to be highly and significantly correlated with the others as a group. In other words, students who marked a gloomy response to one question were disproportionately likely to have a gloomy response to the others.⁶⁴ On the basis of this analysis, we classified students who scaled 4 or more on our gloomy index (out of a possible 8) as students substantially alienated. These students make up about 12 percent of all respondents to our survey, but they collectively account for nearly half of all the gloomy responses to those eight questions.

Women, blacks, and Asians are disproportionately represented among the alienated students. But it is important to emphasize that the great majority of women and minority students do not fall into this alienated category. Similarly, the alienated students are even more disengaged than other law students, but this

⁶⁴In technical terms, the factor loadings for the eight variables ranged from .22 to .44, with six of the eight factor loadings higher than .32. The correlations between each dichotomous variable and the general gloominess scale are all higher than .40. The Cronback coefficient Alpha is .51—not a particularly high value, indicating that we have not created a complete measure of alienation, but one quite good for our limited purposes.

does not materially lessen our finding that the general student body is also quite disengaged.⁶⁵

What this last analysis shows, we think, is that The Bleak Story does have a basis in reality. The anecdotes about alienated students are mirrored in responses of the students with high gloomy scores, and their experiences form a pattern, just as in The Bleak Story. These students do have high levels of stress and, in particular, feelings of depression far more commonly than other law students (and probably far more than the general population). And, as The Bleak Story teaches, women and minorities tend to show up more in the alienated ranks.

But this analysis also shows that The Bleak Story is a small part of the overall law school picture. Satisfaction and optimism are high among a large majority of third-year students. The modest gender gaps we reported for the general law school population essentially vanish when we look at the 87% of students who are low on the alienation scale.⁶⁶

TABLE 11. Prevalence of Alienated Students among Third-Year Respondents

	<i>"Alienated" Students as Proportion of Entire Group (%)</i>
Women students	16
Men students	9
Black students	17
Hispanic students	13
Asian students	26
All third-year respondents	12.5

TABLE 12. Some Attitude Comparisons of Alienated and Nonalienated Students

	<i>Percentage of Alienated Students Agreeing</i>	<i>Percentage of Nonalienated Students Agreeing</i>
Do not have a definite job	22	19
Agree the third year is superfluous	55	42
Agree law school is too theoretical	63	40
Have been depressed most of the time over the past week	20	4

⁶⁵See Tables 11 and 12.

⁶⁶For a recent discussion of the literature on this issue, see Jennifer Gerarda Brown, "To Give Them Countenance": The Case For a Women's Law School, 22 Harv. Women's L. J. 1, 2 (1999) (stating, at the outset of the article: "Attending law school has long been an alienating experience for women.").

§ 4-4(c). Scrutinizing the Signal Story

Thus far, only The Signal Story seems capable of explaining both features we have found in the mainstream third-year condition: substantial disengagement from school, but surprisingly high levels of satisfaction with both school and prospective careers. Recall that under The Signal Story students are mostly interested in the prestige and credential their law school can confer upon them. Once they are done competing for admission to school, first-year grades, and law review membership, they have no particular reason to be involved with the law school scene. In this section we will further assess The Signal Story's fit with the facts and look more closely at its implications.

The Signal Story predicts that students believe the determinants of law firm hiring—especially at the big elite firms—are dominated by the hierarchical ranking of schools and students on the basis of easy-to-rank signals such as eliteness of law school attended and grades, not students' substantive knowledge or testimony from faculty about their character or promise. And indeed this seems to be the case. When we asked students, "What criteria do you think a legal employer of the type you plan to work for uses in hiring law graduates?," the three dominant responses were law school grades, eliteness of law school, and personality (47, 40, and 44% of respondents marked these as very important—the highest rank that could be given).⁶⁷ References from faculty were thought very important by only 4% of the sample, and "relevance of courses taken to practice goals" was thought very important by only 10%.⁶⁸ Similarly, when we asked students to identify the most important source of information leading to their job, 34% of those responding identified the on-campus interview process, while only 2% identified law faculty. Finally, few students planned to keep in touch with more than one or two teachers after leaving school. In sum, third-year students appear to regard law faculty, and the courses they teach, as irrelevant to their future.

Just as we asked students to evaluate satisfaction with law school, we asked them how effective they thought their legal education had been in preparing them for their careers. Although, as we have noted, 48% of respondents were very satisfied with law school, only 12% thought school had prepared them very effectively for their careers. While most students are not dissatisfied with the effectiveness of the career preparation that they receive in law school—a majority of students are at least moderately satisfied—there is an apparent contradiction. The Signal Story not only can account for this apparent contradiction, it predicts

⁶⁷As with the earlier questions, we did not find significant gender gaps on the responses to the overwhelming majority of these questions. But there were a few large and interesting gaps. Among the few significant gender gaps was one on the importance attached to personality as a hiring criterion. Women students perceived the candidate's personality as significantly more important than did their male counterparts. For a discussion of the possible implications of this result, see Wilkins and Gulati, *supra* note 6.

⁶⁸These results are reported in detail (and broken down by employer type) in *id.*

it. Students go to law school for ranking and credentialing purposes, with little expectation that they will really be trained for future jobs. Put differently, the lack of effective training does not dismay students because that's not what they expect to get from their law school educations.

§ 4-4(c)(i). The Signal Story and the First Year

If The Signal Story accounts for the disengagement of students during the third year of law school, it also is consistent with the intense activity and anxiety of students during the first year. It is the all-important first year that determines students' positional ranking in the hiring derby that begins in the fall of the second year. As we've said, first-years spend a median of 33 hours per week preparing for class (in addition to time in class), and claim to be prepared nearly 90% of the time. Most of them participate in study groups and participate in class. A remarkable 51% of third-years in our sample report that they competed for membership on the law review, usually by writing a long memo during one of the few breaks in the relentless first year, though they knew only a fraction of participants would succeed. And first-year levels of depression are significantly higher than in the third year.

§ 4-4(c)(ii). Limitations of The Signal Story

Although The Signal Story works better than The Official Story or The Bleak Story in making sense of the behavior and attitudes of law students, it does not explain everything. For instance, The Signal Story predicts that student satisfaction should be positively correlated with how well each student's signal is working—that is, how prestigious a school she attends, how high her grades are, and whether she has landed the job she wants. When we perform multiple regressions to measure factors strongly predictive of third-year satisfaction, we indeed find that high grades and a definite job are predictive of satisfaction—but school eliteness is not.⁶⁹ Four of our participating schools are among those traditionally categorized among the top twenty in eliteness, but students at these schools were no more satisfied than students at the other schools, and in some ways seemed less happy with their schools. This is especially surprising given that many of the students at the

⁶⁹In a regression on the 858 students at 10 schools for whom we have complete information, in which the dependent variable was the four-tier satisfaction question reported in Table 4, higher law school grades were strongly associated with higher satisfaction (t-statistic 6.19), as was having a definite job lined up (t-statistic 7.06). Our three-tier scale of eliteness (top 5, top 20, and all others) was not significant at all (t-statistic $-.19$). LSAT score, standardized for each school, had a weak negative association with satisfaction (t-statistic 1.75). Note, however, that the overall explanatory power of the model was relatively low (adjusted r-squared = .10).

TABLE 13. “Please Indicate How Important Each of the Following Goals were in Motivating ... Your Decision to go to Law School” (In the First-Year Survey) ... You in Your Career” (In the Third-Year Survey)

<i>Goal</i>	<i>Percent of First-Years Who Indicated the Goal was “Very Important” to Their Decision to Attend Law School</i>	<i>Percent of Third-Years Who Indicated the Goal was “Very Important” to “You in Your Career”</i>
Intellectual challenge	44.1	54.3
Desire to help individuals	38.1	45.3
Developing a satisfying career	65.2	75.7
Achieving financial security	40.1	49.4
Becoming influential	17.6	19.1
Desire to change or improve society	32.4	28.7
Defer entry to job market	5.4	N/a

most elite schools consider eliteness/status of law school attended to be the most important hiring criterion that employers apply to them.⁷⁰ Indeed, one of the elite schools had the lowest student satisfaction levels of all our schools.⁷¹

More significantly, The Signal Story seems insufficient, on its terms, to explain the goals and aspirations of law students. The 1995 study asked first-years how important each of seven factors was in deciding to go to law school. In our survey of third-years we asked an almost identical question, inviting respondents to rate the importance of six of these factors as “goals in your career.” Table 13 sets out the percentages of students who ranked a particular goal as very important (i.e., the highest rank) in the first and third year of law school.

These data do not refute The Signal Story. The most widely embraced goal for both first- and third-year students is developing a satisfying career, and half of the third-year students admit that achieving financial security is very important.

But it is not all about career advancement. Intellectual challenge and the desire to help individuals are roughly as important as financial security. And the theme of helping individuals comes up in other contexts. When we asked third-years to indicate how important various types of lawyer work would be to them in shaping their career, two of the activities rated most important were counseling clients and efficiently solving client problems. And pro bono work is surprisingly popular among third-year students: 28% reported doing pro bono work

⁷⁰See Wilkins & Gulati, *supra* note 6.

⁷¹When we deleted it (in order to check whether the numbers for this one school were driving things) eliteness still did not correlate positively with satisfaction.

during the third year as part of their weekly routine. Indeed, third-year students are *twice as likely* as first-year students to regularly pursue pro bono work (28% in the third year, compared with 14% in the first year).⁷²

These patterns suggest that third-year law students have a hunger for applying what they have learned in law school to client problem-solving. This fits well with their critique of law school as too theoretical and disconnected from the real-world practice of law. In other words, it does not seem to us that students are simply being negative about their schooling, or that they are simply impatient to graduate so they can start maximizing financial gain. They seem to have a definite agenda that links career goals to serving clients and working on real-world problems, and they dismiss the third year of law school because it does not seem very relevant to that agenda.

It is also interesting that the one career goal from Table 13 that declines in importance from the first to the third year is the goal of changing and improving society. This might be seen as confirmation of growing cynicism, or as inconsistent with the goal of helping individuals. We suspect, though, that this is mostly a reflection of the realities of law school education and the practice of law. Many students, raised on the legends of people like Thurgood Marshall and cases like *Brown v. Board of Education*, may come into law school hoping to bring about broad social change. Once they learn what the practice of law is about, they revise their broad goal of bringing about social change to the more specific and narrow goal of helping individuals. Perhaps this shift is not inevitable; perhaps law schools should do more to teach policy analysis and strategies for institutional change. But given what most lawyers do and what most law professors teach, the shift from social change to helping individuals seems to us neither surprising nor particularly cynical.

To us, The Signal Story holds up best against the data. Law school operates as a sorting and credentialing mechanism for students. A large percentage of students find law school to be excessively theoretical and feel that they could be better prepared to practice law. But this does not cause them to be dissatisfied with their schools. Once the bulk of the sorting and credentialing takes place—which is largely in the first year—students disengage. Law school has served its primary purpose, and the task now is to find a job and wait out the remainder of school.

The Signal Story must, however, be qualified in two important ways. First, a small portion of the student body is not merely dissatisfied with their legal education, but actually feels significantly alienated from it. For these students, The Bleak Story fits their experiences and frustrations far more accurately than does The Signal Story. Second, many of the satisfied students in the law school mainstream

⁷²Some law schools—including one of the eleven in our third-year sample—actually require that upper-year law students perform pro bono work. Interestingly, we found that pro bono activity by third-years was not statistically different at this school than at others in our sample. Thus, school requirements do not explain the first-to-third-year increase we observe.

appear to be willing and eager to do more in their second and third years (especially the third), if provided with the opportunity to pursue real interests and develop new, client-oriented skills. A significant number of students want more (and better) clinical offerings and business skills training. They also appear eager to help others and are seeking opportunities to do pro bono work. This suggests to us that the upper years of law school could be reformed to be more than the back end of a credentialing process. If our third-year students have free time, want more skills training, and are eager to help individuals, perhaps we can do more to provide them with those opportunities.

§ 4-5. RECASTING LAW SCHOOL?

Suppose a law school is persuaded that our diagnosis of student experiences and perceptions is correct. What reforms might it undertake? In this section we briefly consider some obvious and less obvious initiatives schools could consider. We have not done serious research on most of these proposals, but it seems to us useful to think about the ways that our findings relate to specific reforms of the legal curriculum.⁷³

Option One: Do Nothing

Every law school gives voice to The Official Story, or a close variant of it. This is the stuff of school catalogs and Web sites, of welcoming speeches to matriculating first-years, and of farewell speeches to graduating third-years.⁷⁴ Nor is this pure hypocrisy; The Official Story is quite possibly what many law faculty casually believe about their institutions and their missions as they go about their work day to day.

But to a very large degree the substantive policies of law schools suggest a deeper belief in The Signal Story, and law school deans act in ways that encourage

⁷³There is an extensive literature on proposals to reform legal education. What is missing in much of this literature, however, is a link to rigorous research on what exactly the problems with law school are. For examples of recent reform proposals by some prominent commentators, see Richard A. Posner, *The Problematics of Moral and Legal Theory* 286–95 (1999); Carrie Menkel-Meadow, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, 6 *Harv. Negot. L. Rev.* 97 (2001); Sexton, *The Law School's Global Presence*, *supra* note 5.

⁷⁴The student speeches can sometimes stand in stark contrast to The Official Story. For example, the student speaker at the UCLA law school's 2000 graduation spent a considerable portion of his speech talking about how he and his fellow students had hardly attended any classes in their third year and had to struggle to find "course outlines" to be able to prepare for their exams at the end. While the students laughed uproariously at their classmate's stories about his search for outlines, many of our colleagues were noticeably silent.

students to believe it. Law schools cooperate to an extraordinary extent in the *U.S. News and World Report* ranking system, providing it with detailed information about their operations. In much of contemporary strategic thinking by law deans about budgets, fundraising, and new initiatives, the impact of any change upon the school's ranking looms large. To our knowledge, law schools have made few collective efforts to interfere with the ranking process or to develop an organized institutional response to rankings (as other graduate schools do⁷⁵) by creating an academic entity that conducts school assessments based on criteria that the academic community deems relevant.⁷⁶

Within the law school, institutional design follows closely the needs of The Signal Story. At nearly all schools first-year students follow a fixed curriculum with large classes and either recommended or mandatory curves. Law review competitions are generally conducted either in the spring semester of the first year or during the summer between the first and second year. Even the competition for judicial clerkships, which law deans did for a while struggle to postpone until the fourth semester of law school, has now regressed to the beginning of the third semester.⁷⁷ All of these practices make it easy for legal employers to choose students at the beginning of their second year, on the predominant basis of school ranking and first-year grades. Law schools further facilitate this process by largely turning over the students' third semester of law school to the job-hunting process. For several weeks, at many law schools, there are as many legal employers on campus as faculty, and it is clear, from the change in students' uniforms and schedules, who has their attention. During the latter part of the semester, students go on callbacks to elite firms. The disruption in the educational process is obvious to anyone who teaches in the third semester. More fundamentally, as we

⁷⁵Among science and social science departments, for example, a leading and distinguished approach to ranking came from the National Research Council, *Research-Doctorate Programs in the United States: Continuity and Change*, eds. Marvin L. Goldberger et al. (Washington 1995).

⁷⁶The Association of American Law Schools commissioned a report to examine the validity of the *U.S. News & World Report's* ranking system that was released in 1998. As best we know, the impact of this report has been negligible. For the report, see <<http://www.aals.org/validity.html>>. There have also been some attempts to rank law schools using other measures, such as those by Brian Leiter of the University of Texas at Austin and Thomas E. Brennan, a former justice on the Michigan Supreme Court. Nevertheless, we are confident that it is the *U.S. News* rankings that capture most of the attention of students, academics, and employers. For more on the Leiter and Brennan rankings, see Brian Leiter, *Measuring the Academic Distinction of Law Faculties*, 29 *J. Legal Stud.* 451 (2000); Thomas E. Brennan, *Judging the Law Schools* (East Lansing 1996); see also <<http://www.law.faculty.bleiter>> <<http://www.ilrg.com/rankings>>.

⁷⁷On the topic of judicial clerkships and the selection and application processes, see, e.g., Edward S. Adams, *Market Based Solution to the Judicial Clerkship Selection Process*, 59 *Md. L. Rev.* 129 (2000); Louis F. Oberdorfer & Michael N. Levy, *On Clerkship Selection: A Reply to the Bad Apple*, 101 *Yale L.J.* 1097 (1992) (discussing how many federal judges hire law students after the first year, without seeing their third-semester grades).

have argued, this entire set of institutional arrangements disrupts—by rendering largely irrelevant—the second half of law school.

It seems plausible to us, then, that law school and university administrators largely recognize the degree to which The Signal Story shapes what legal education is about. Indeed, law schools are widely appreciated on most university campuses as profit centers: the large classrooms and high student/faculty ratios make law schools one of the least expensive forms of graduate education, yet one for which (because of student demand) schools can charge premium tuitions. Of course, signaling as a preeminent function of law school goes hand in hand with modest investment in teaching. While it is true that law schools offer many small upper-level courses, their purpose often is to placate faculty and serve their research interests rather than to achieve curricular goals.

Many students, too, may view the happy charade of the third year as a perfectly fine institutional arrangement. When we presented a draft of this paper at the NYU law school, a number of students in the audience were clearly distressed by the suggestion that the third year should be reformed to be more substantively ambitious and more closely linked to real-world problem-solving. These students were forthright in recognizing The Signal Story and adamant in opposing reform. “We will be working hard enough next year,” they argued. “Let us get our credentials in peace!”

The point, of course, is that legal education as a signaling device is convenient and workable for a number of interests—employers, university administrators, and many students and teachers. Even if many acknowledge that a very limited amount of real education is going on, this by itself will not bring about change.

Option Two: Abolish the Third Year

We noted at the outset of this piece the serious movement thirty years ago to abolish the third year of law school.⁷⁸ At the time, there were a number of prominent scholars who advocated making law school a two-year program. One of the key arguments made by defenders of the three-year system was that law schools needed more time to test newly developed clinical and intensive research programs.⁷⁹ The results in this paper suggest that it is time to revisit this question, and to consider whether the critiques made in the 1960s still apply with undiminished force. One could imagine a revamped legal education that had as its core a mandatory two-year degree and a number of postgraduate options in specialized fields (similar to the business school model).

Judging from our results and from informal discussions with students, we suspect that a majority of law students would support abolishing the third year.

⁷⁸See Cunniffe, *supra* note 2, at 91–4.

⁷⁹This most well-known proponent of this argument was Dean Albert Sacks of the Harvard Law School. See *id.* at 93. Dean Abraham Goldstein of Yale also argued in favor of the three-year program, but on the grounds that it was needed to provide students with a broad exposure to the law. See *id.*

Some students would oppose the suggestion because they believe that making law school equivalent in length to business school would erode its value as a credential. Others would oppose abolition because they have serious interests in specific curricular paths—for example, advanced business topics or clinical courses—that require more semester hours.

Regardless of student sentiment, though, law school teachers and administrators are likely to oppose abolition vehemently. Eliminating the third year outright would reduce law school revenues by one-third and, presumably, would reduce faculty sizes by nearly that amount. Moreover, the three-year degree is mandated by ABA accreditation standards and by many state bars. The first-mover problem in any attempt to unilaterally change the current standard would be overwhelming. Assuming that market pressures do not force a change (and they show no sign of doing so), abolition proposals are probably nonstarters.

Still, the idea of abolition is probably one of the best ways of getting schools to seriously consider other reform proposals, such as those discussed below. A debate about abolition might also push defenders of the status quo to better articulate the value they perceive in current third-year curricula. Some readers of drafts of this paper observed that students were in a poor position to judge the value of the third year: practicing lawyers with experience would be more likely to have opinions worth considering. There is something to this, but even if it were true that the disengaged students of today will evolve into grateful alumni, the fact of their disengagement remains. Law schools need to be pushed to at least defend and articulate what they are now trying to accomplish.

Option Three: Reexamine Clinical Education

Schools throughout the nation have launched clinical programs, but there has been little effort to compare these programs or measure their effectiveness. Our limited data suggest that there is quite a bit of variation—that clinical education can be extremely disappointing to students or can be a transforming experience, depending on program quality. We noted in part III that in our national sample students who reported taking clinical courses were not measurably more satisfied than students who did not. But the story is different at some schools. At UCLA, for example, which has a well-regarded clinical program with unusually broad offerings, students who have taken any clinical courses are significantly more satisfied with law school than other students, and they are much less likely to agree that the third year of law school is superfluous. This suggests that clinical education may indeed have the potential to fill much of the third-year void, if schools will only invest more in the depth, evaluation, and comparison of these programs.⁸⁰

⁸⁰Clinical courses, of course, do not have to be litigation oriented. At UCLA, for example, the faculty has recently put in place a Business Law Specialization Program that has a requirement that students take a minimal number of business transactional courses that are referred to as “clinical” and are oriented toward teaching students about the structuring of business deals.

Option Four: Expand Externships

Law school externships are often seen as a step-sibling to clinical course work. Accrediting committees frown on externships, in part because some schools that have adopted them provide so little link between the externship and the extern's legal education. But clearly this need not be the case. Some schools—most notably Northeastern⁸¹—have made substantial efforts to integrate law school with the learning that goes on in the externship. Externships can provide the real-world client contact that our respondents seem so interested in; for law schools they are also financial windfalls—which could be better justified by a school that used the windfall to invest in strong and well-integrated clinical instruction. Externships can also help students to bring real-world problems into their more conventional law classrooms, especially if faculty consciously try to foster such connections.

Option Five: Borrow from the Medical School Model

One of the models for the original clinical programs in law schools was that of medical school. But the law school clinics went only half way (or less) toward the medical model.⁸² A way of expanding upon options three and four is to move the law model closer to that used in medical schools. In other words, instead of abolishing the third year, intensify it.

Medical students spend the first eighteen months of medical school in big required courses: anatomy, physiology, biochemistry, and so on. They then begin a series of increasingly sophisticated and challenging rotations through the departments of a hospital, supervised in small groups by doctors who have faculty appointments but spend much of their time caring for patients. Students are drilled in the complexities of diagnostic medicine and observe, and practice, specific techniques. Observation is interspersed with seminars and readings that prod reflection upon, and deepen understanding of each day's experience.

The first eighteen months of medical school sound remarkably similar to the first year of law school: large classes in basic subjects and the introduction to what is essentially a new way of thinking. But after that introductory portion law school diverges from medical school. In medical school, after the introductory portion, the level of complexity and sophistication increases, and the methods of teaching change. Students begin seeing clients and practicing medicine for real. In law school much of what students receive in years two and three is, conceptually and stylistically, the same thing they experienced in year one. What if, along

⁸¹Northeastern law students have to successfully complete multiple externship quarters—each supervised by a lawyer or a judge—in order to graduate. See Daniel J. Givelber et al., *Learning Through Work: An Empirical Study of Legal Internship*, 45 *J. Legal Educ.* 1 (1995).

⁸²See Jon C. Dubin, *Clinical Design For Social Justice*, 51 *SMU L. Rev.* 1461 (1998). For a recent look towards the medical model as a basis for a reform proposal, see Andrew J. Rothman, *Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Profession Example*, 51 *Rutgers L. Rev.* 1512 (1999).

the lines of medical schools, our law schools developed community law practices, staffed by actual lawyers with some type of academic training and appointment, that provided vehicles for third-year students to practice in real-world settings while at the same time intensively tutoring them on the practice and application of law? Students entering the third year of law school could choose from a variety of practice settings, and each practice setting could be complemented by instructional strategies aimed at teaching relevant skills, covering related doctrinal areas, and practicing legal ethics. The community law practices could stimulate more graduates to organize ongoing practices in neighborhood settings, could establish life-long patterns of pro bono service, and could cover the full range of student interests (e.g., community practices focusing on business skills and counseling for small business and nonprofits).

This idea is as radical (and as costly) as the suggestion of abolishing the third year. Probably its implementation would require public subsidies analogous to those now provided medical education. But if you can seriously consider it for a moment, you will be able to imagine with us a legal education in which the third year is the climax rather than the lethargic denouement.⁸³

Option Six: Bring New Methodologies into Law School Classrooms

Students are bored with the fare that law schools provide them in the third year. Many of the solutions discussed thus far try to remedy boredom through some variation on the clinical theme: bring students up against real clients. But that probably does not address the desires of all students. A different and responsive approach would be to diversify the methodological underpinnings of upper-level lecture courses. Nearly all large law school classes use disputes as their starting points and cases as their units of analysis. Most class time is devoted to the dissection of doctrine and its application to particular facts. As students progress, the subjects change but the methods are largely the same. There are, however, alternatives.

Business schools, for example, deal with some topics that overlap with law school in fundamentally different ways. For one thing, business school courses often set up student teams to pursue collective projects in tandem with the class. For another, business school classes tend to focus on how deals or ventures are set up. Among the questions central to these courses: How are organizations structured?

⁸³The UCLA law school is currently pursuing funding from government sources to establish an “incubator” of community law practices, aimed at providing both curricular settings for student experience and training, and a mechanism for launching new public-serving law practices. The medical-school-type program that we sketch is different from the Rutgers program that keeps in place the existing law school model, but appends a practice component after the three years are completed. See Rothman, *supra* note 83. This difference is, of course, a function of the data that show that law students are largely uninterested in what goes on in the third year of law school.

How are negotiations conducted? How is capital raised? Put differently, the primary perspective is an *ex ante* one.⁸⁴ This is in contrast to the usual law school case method, where the starting point for any analysis is a dispute, and where often little attention is paid to how matters could have been structured to avoid the dispute.

David Wilkins has observed that law schools need to teach their students more about the institutions that they are about to enter. This means courses on the nature of the job market, the structure of firms, the operation of courts, and so on. The Harvard Business School, for example, has a course titled *Power and Influence*.⁸⁵ This kind of course, Wilkins argues, can be both interesting and relevant to law students, if properly tailored.⁸⁶ Succeeding and surviving within most organizations, the argument goes, is at least in part about understanding how power and influence operate. Yet law schools make little or no attempt to teach their students about such matters. Similarly, making effective arguments before a court is not only a function of understanding the formal doctrine, but is also related to understanding the institutional factors (such as workload, expertise, delegation to law clerks, and cognitive biases) that influence the decisions of judges. Matters of legal strategy, court norms, the “real” law in the heads of practicing lawyers—these are all matters that many legal academics study. Unfortunately they seldom teach courses on these subjects. Our guess is that upper-level students, bored with the traditional methods of teaching, would find courses with an explicit institutional focus to be interesting, engaging, and useful.⁸⁷

Another way to reinvigorate traditional curricula is through specialized concentrations. Most schools have some sequenced courses, but the tradition is for each faculty member to offer her courses in splendid isolation from her colleagues. Students who take related courses in a single field often find each teacher covering

⁸⁴Vanderbilt Law School, for example, has set up a series of law-and-business classes that are jointly run by law and business school faculty and use many aspects of the business school teaching model. Early reports on this program from Randall Thomas and Robert Thompson suggest that the third-year students are much more engaged than they are in the traditional upper-level business courses. Along similar lines, Ronald Gilson (Columbia and Stanford), Victor Goldberg (Columbia), William Klein (UCLA), William Allen (NYU), and Eric Zolt (UCLA and Harvard), teach what are often referred to “deals courses” at their respective institutions. These are courses that use the model of teaching students through exposure to a variety of business deals. As with the Vanderbilt courses, the deals courses also borrow much from the business schools in terms of teaching methodologies. And, once again, the courses are reputed to be hugely successful in keeping the attention of third-year law students.

⁸⁵We are aware of similar courses at four other top business schools: *Influence, Power, and Transformational Leadership* at the Wharton School, *Power and Negotiation* at MIT, *Power and Influence in Organizations* at Chicago, and *Power and Politics in Organizations* at Stanford.

⁸⁶Address at the University of Cincinnati Symposium on Corporate Law (March 2001).

⁸⁷A version of this broader perspective has been urged by our colleague Lynn Lopucki. See Lynn Lopucki & Walter O. Weyrauch, *A Theory of Legal Strategy* 49 Duke L.J. 1405 (2000).

overlapping material with colleagues—a sure path to student boredom—or confusing students who lack the building blocks to understand course material. More formalized sequences and curricular programs would make the third year of law school an asset, giving students an opportunity to develop genuine expertise in specific fields.⁸⁸

Option Seven: Reduce Alienation Through Curricular Reform

Thus far our proposals have focused entirely on how law schools can address the problem of disengagement in the third year, in keeping with the major findings and theme of our article. But we also found a core of alienated students in the third year—a Bleak Pocket within law school. How can law schools better educate these students?

Related research we have conducted⁸⁹ as well as many of the bleak narratives in the literature suggest that alienation rises when students find the normative assumptions or the professional socialization process of law school to be too narrow and constricting. This is particularly common among students who come to law school with an interest in social change and encounter a dominant culture focused on big-firm careers and pessimistic about the potential for lawyers to effect social change. At UCLA the introduction of a specialized program in public interest law seems to have significantly changed this dynamic. Students in the program typically have one course each semester (and a variety of outside activities) entirely or largely populated by program students. These courses focus on skills neglected by the mainstream curriculum (e.g., legislative advocacy, community outreach) and feature discussions of how students can relate their interests to the traditional curriculum. The mere existence of an officially sanctioned group of peers has a salutary effect on student attitudes toward law school. Students in the program have tended to be overrepresented on journals (including the main law review) and student government.

Our recommendation is not that every school create a public interest program, but that innovative curricula can help students relate their own interests to the law school environment. By thinking about the student process of acculturation seriously, legal educators can ultimately make their student bodies more cohesive.

§ 4-6. CONCLUSION

Despite some flaws, the data summarized here paint a fairly clear picture of how third-year students experience law school. For most, law school is a partly symbolic,

⁸⁸UCLA Law School has recently put in place three such specialized concentrations: Business Law, Critical Race Theory, and Public Interest.

⁸⁹See Sander & Knaplund, *supra* note 6.

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partly substantive process; the net results are satisfying and lead to optimism about future careers, but the substance of the third year seems remote and largely irrelevant. For a much smaller group but one in which women and minorities are somewhat overrepresented law school fits the oppressive, gloomy picture evoked so often by anecdotes and the narrative literature on legal education. Legal education can and ought to address both of these sets of experiences, and could serve both groups better by reforming the third year. We have sketched out some possible reforms, but these are mere exploratory guesses. What is perhaps most needed now is experimentation and research on which experiments work.



