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At a Crossroads: Where the Indigent Defense Crisis and the Legal Education Crisis Intersect

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At a Crossroads:

Where the Indigent Defense Crisis

and the Legal Education Crisis Intersect

by Heather Perry Baxter*

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INTRO

More than fifty years ago, the Supreme Court of United States found that the Sixth Amendment guaranteed a right to counsel to criminal defendants who could not afford one.¹ But, for many, that right is illusory. There are several reasons this promise remains unfulfilled, including waning budgets for defense counsel² and over-criminalization.³ Whatever the reason, the fact remains that many indigent are left without effective assistance of counsel, and many without lawyers at all.⁴ Meanwhile, law schools find themselves in the middle of a crisis because their graduates are unable to find jobs in this changing legal market,⁵ and these market conditions have led to the lowest applications to law school in thirty years.⁶ Even more frustratingly for both law schools and indigent defendants needing legal advice, a decline in law students presages a sharp decline in the number of practicing lawyers in the coming years.⁷ With fewer lawyers overall, it is logical to presume the number of public interest lawyers will also decline exponentially.⁸ In the meantime, there is no reason to

1. *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963) (holding that states were required to provide free counsel to indigent criminal defendants under the Fourteenth Amendment Due Process clause).

2. See Heather Baxter, *Gideon's Ghost: Providing the Sixth Amendment Right to Counsel in Times of Budgetary Crisis*, 2010 MICH. ST. L. REV. 341 (2010).

3. Roger A. Fairfax, Jr., *Searching for Solutions to the Indigent Defense Crisis in the Broader Criminal Justice Reform Agenda*, 122 YALE L.J. 2316 (2013).

4. Stephen B. Bright & Sia M. Sanneh, *Fifty Years of Defiance And Resistance After Gideon v. Wainwright*, 122 YALE L. J. 2150, 2152 (2013).

5. See Robin L. Barton, *Where Did All the Lawyers Go?*, THE CRIME REPORT, (Dec. 24, 2013 8:33 AM), <http://www.thecrimereport.org/viewpoints/2013-12-where-did-all-the-lawyers-go>; see also Maura Dolan, *Law School Graduates Aren't Finding Much On The Employment Docket*, L.A. TIMES (Apr. 01, 2013), <http://articles.latimes.com/2013/apr/01/local/la-me-law-grads-20130402>

6. In 2014, 37,924 new students began law school. This is the lowest enrollment since 1987. *ABA Section of Legal Education Reports 2014 Law School Enrollment Data*, AM. BAR ASS'N, (Dec. 16, 2014), http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_section_of_legal.html [hereinafter *ABA 2014 Law School Enrollment Data*]. However, there is reason to believe that the numbers are going back up. *Total LSATS Administered—Counts & Percent Increases By Admin & Year*, LSAC, <http://www.lsac.org/lsacresources/data/lsats-administered> (last visited Apr. 15, 2016). Some believe it will be easier to get into law school. Steve Schwartz, *Number of LSAT Test-Takers Increased in February 2015*, LSAT Blog: Ace the LSAT, (March 13, 2015, 2:54 PM), <http://lsatblog.blogspot.com/2015/03/number-lsat-test-takers-increased-february-2015.html>.

7. Adam Cohen, *Is There a 'Lawyer Bubble'?*, TIME, (May 7, 2013), <http://ideas.time.com/2013/05/07/is-there-a-lawyer-bubble/>. It must be said that there are plenty of people who believe this is a good thing because fewer lawyers are going to be needed in the future as many of the things done by lawyers can now be done by others. See Marilyn Cavicchia, *Law Professor Bill Henderson Shares 'Blueprint for Change' With Bar Communicators*, 39 BAR LEADER 3 (Jan. – Feb. 2015), http://www.americanbar.org/publications/bar_leader/2014-15/january-february/law-professor-bill-henderson-shares-blueprint-for-change-with-bar-communicators.html.

8. Barton, *supra* note 6.

believe the number of indigent defendants is going to decrease.⁹ Accordingly, such a decline in public interest lawyers will likely leave even more indigent people without lawyers.¹⁰

This Article proposes a solution that could help alleviate both the indigent defense crisis, as well as the law school crisis. It will highlight the irony of scholars claiming that we have too many lawyers and not enough legal jobs, while the indigent often are left without effective representation.¹¹ This Article proposes how law schools can help solve both problems by expanding clinical programs and creating in-house law firms that would represent indigent criminal defendants. Part I discusses the indigent defense crisis and highlights the overburdened public defender system, as well as the failing attempts to decrease the caseload of public defenders. Part II discusses the current dilemma law schools face with declining enrollment and the pressure to create “practice-ready” lawyers. Finally, Part III sets out a model for law schools to create a system allowing students to gain valuable practical experience that would also pave the way for better access to justice for many of our country’s most vulnerable defendants.

I. INDIGENT DEFENSE CRISIS

Although many causes have been proffered for the indigent defense crisis, most scholars would agree that *Gideon*’s promise has never been fulfilled.¹² From over-incarceration to overburdened public defenders, the need for a robust public defense system has never been higher. But criminal representation for the poor has never been a priority in this country, and despite the Supreme Court’s “watershed”¹³ decision in 1963, too many people are still represented by inexperienced, inadequate, and underpaid attorneys.¹⁴ Many

9. Thomas Giovanni & Roopal Patel, Brennan Ctr. for Justice, *Gideon at 50: Three Reforms to Revive the Right to Counsel* 3 (2013), available at http://www.brennancenter.org/sites/default/files/publications/Gideon_Report_040913.pdf.

10. Barton, *supra* note 6.

11. Emily A. Spieler, *The Paradox of Access to Civil Justice: the “Glut” of New Lawyers and the Persistence of Unmet Need*, 44 U. Tol. L. Rev. 365 (2013).

12. See Erwin Chemerinsky, *Lessons from Gideon*, 122 Yale L.J. 2676, 2679 (2013).

13. *Id.* at 2679–80.

14. 150 CONG. REC. S11, 613 (daily ed. Nov. 19, 2004) (Statement of Sen. Leahy); Chemerinsky, *supra* note 13, at 2680. Stephen Hanlon, who is the Chair of the ABA’s Indigent Defense Advisory Group for the Standing Committee on Legal Aid and Indigent Defendants, refers to this lack of funding as a fifty-year deal that was brokered when *Gideon* was decided. Stephen F. Hanlon, *The Gideon Decision: Constitutional Mandate or Empty Promise?*, 52:32 UNIV. OF LOUISVILLE L. REV. 32 (2013). The “deal” is:

Legislatures and other public funders would grossly underfund public defender organizations. Public defenders thus faced with grossly excessive caseloads would then triage these scarce resources, pushing more resources to more serious cases, but providing the illusion of a lawyer for thousands of clients with less serious charges, including

scholars argue that *Gideon* was an unfunded mandate at the time it was decided, and the legislatures have yet to fulfill this ruling after fifty years.¹⁵ Due to massive caseloads, public defenders have tried to refuse new cases, even going as far as bringing lawsuits against the states.¹⁶ This Section will highlight the excessive caseload problem of the public defenders and explain why the current attempts at solutions are not working.

A. *Reasons for the Current Indigent Defense Crisis*

While *Gideon*'s promise has never been fully realized in the last fifty years, the burgeoning prison population, the recent economic downturn, and slashed budgets for public defenders in recent years certainly worsens the crisis.¹⁷ At the time *Gideon* was decided, there were approximately 217,000 people incarcerated.¹⁸ Today, there are close to 2.3 million people in prison.¹⁹ Approximately 1 of every four American adults has been convicted of a crime.²⁰ Even more startling, although the country's population makes up only five percent of the global population, twenty-five percent of the global prisoner population is incarcerated in the United States.²¹ In fact, one of out every one hundred persons is behind bars in this country.²² As a direct result of this increased number of people being arrested and incarcerated, public defenders are overburdened.²³ They are simply given too many cases to carry and not

misdemeanors and even felonies, in a "meet 'em and plead 'em" assembly line system of justice.

Id. at 32.

15. Erwin Chemerinsky, Symposium on State Court Funding: Keynote Address, 100 KY. L.J. 743, 748 (2011).

16. See discussion *infra* notes 42-61.

17. Baxter, *supra* note 3, at 351-54, 382-84.

18. GIOVANNI & PATEL, *supra* note 10, at 3. Some of the reasons for over incarceration include the War on Drugs and imposition of mandatory minimum sentences. KAREN HOUPPERT, CHASING GIDEON ix-x (2013). See also, PEW CTR ON THE STATES, ONE IN 100: BEHIND BARS IN AMERICA 5 (2008), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/onein100pdf.pdf.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. See *id.* See also JUSTICE POLICY INST., SYSTEM OVERLOAD: THE COSTS OF UNDER-RESOURCING PUBLIC DEFENSE 18 (July 2011), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/system_overload_final.pdf; Though beyond the scope of this article, some scholars have opined that overburdened public defenders cost the system more by increasing incarceration. Due to poor public defense, people are unnecessarily incarcerated due to:

1. More pretrial detention for people who do not need it;
2. increased pressure to plead guilty;
3. wrongful convictions and other errors;

enough funding to support their caseloads.²⁴ In fact, in a study conducted in 2010, the United States Department of Justice reported that almost eighty percent²⁵ of state public defender offices exceeded the nationally recognized workload standards.²⁶ Furthermore, from 1999 through 2007, the study showed that although staffing increased by around four percent, the amount of indigent cases increased by twenty percent.²⁷

In Missouri, a recent study of the defender system revealed the alarmingly small amount of time defenders were spending on each case. Despite the forty-seven hours needed for effective assistance in a felony case, the study found that the defenders were spending just nine hours per case.²⁸ And misdemeanors only received an average of two hours per case, while they should have received close to 12.²⁹ Even worse, another study conducted in 2009 by the National Association of Criminal Defense Lawyers found that lawyers in New Orleans were only able to spend about seven minutes per case. These studies confirm what most advocates already know: the caseloads are getting bigger while the number of lawyers who represent the indigent is getting smaller.

So what do these burgeoning caseloads mean to the indigent defendants who depend on public defenders to represent them? At best, it means that the public defenders are unable to investigate their cases properly—that they are

4. excessive and inappropriate sentences that fail to take into account the unique circumstances of the case; and
5. increased barriers to successful re-entry into the community.”

Id.

24. Baxter, *supra* note 3, at 349, 350, 353–56; GIOVANNI & PATEL *supra* note 10, at 3.

25. LYNN LANGTON & DONALD FAROLE, U.S. DEP’T OF JUSTICE, STATE PUB. DEFENDER PROGRAMS, 2007, 3, 12 (Sept. 2010), *available at* <http://www.bjs.gov/content/pub/pdf/spdp07.pdf>. (stating that fifteen of the nineteen reporting state programs exceeded the maximum recommended limit of felony or misdemeanor cases per attorney).

26. *See Standards for the Defense: Workload of Public Defender*, NAT’L LEGAL AID & DEFENDER ASS’N, http://www.nlada.org/Defender/Defender_Standards/Standards_For_The_Defense#thirteentwelve (last visited Sept. 1, 2015), which recommend the following:

Standard 13.12 Workload of Public Defenders

The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25.

Id.

27. LANGTON & FAROLE *supra* note 26, at 18.

28. RUBINBROWN, AMERICAN BAR ASS’N, THE MISSOURI PROJECT: A STUDY OF THE MISSOURI PUB. DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS 6, 15 (June 2014), *available at* http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/lsc_laid_5c_the_missouri_project_report.authcheckdam.pdf.

29. *Id.*

not looking to see if there is the possibility of an alibi, additional mitigating circumstances, suppression of evidence, or some reason to have the case dismissed.³⁰ At worst, it means that innocent people are going to jail because they lack proper representation.³¹

The steep standard to prove ineffective assistance of counsel also prevents indigent defendants from challenging the adequacy of their representation.³² Under the *Strickland v. Washington*³³ test, the burden is on the defendant to show not only that his attorney was incompetent, but also that the attorney's incompetence was the reason the defendant was convicted—an almost impossible task.³⁴ Therefore, this remedy for ineffective assistance provides no real relief, but rather breeds a culture where routine ineffectiveness is acceptable and expected in the criminal justice system. This continuous cycle of inadequate representation creates the wrong impression for new lawyers who are taught to believe this “assembly line”³⁵ justice is the norm.³⁶

Furthermore, in addition to depriving the indigent of their Sixth Amendment rights, this crisis disproportionately affects people of color.³⁷ In fact, statistics show that African-American men are six times more likely to be incarcerated than white men.³⁸ Men of color are also more likely to be wrongfully convicted. Sixty-four percent of people who are exonerated following a rape conviction, for example, are Black, but African Americans only represent 12 percent of the national population.³⁹ Therefore, the public defense crisis implicates not only socio-economic disparity but also racial justice in the United States, as well.

30. Baxter, *supra* note 3, at 352.

31. Robert P. Mosteller, *Protecting the Innocent: Part of the Solution for Inadequate Funding for Defenders, Not a Panacea for Targeting Justice*, 75 MO. L. REV. 931, 933 (2010) (arguing that the systemic problem of reduction in funds decreases the possibility of protecting the innocent from wrongful conviction).

32. See *Strickland v. Washington*, 466 U.S. 668 (1984); Chemerinsky, *supra* note 13, at 2688–89.

33. *Strickland*, 466 U.S. at 687.

34. *Id.*; Chemerinsky, *supra* note 13 at 2688–89.

35. Cara H. Drinan, *Getting Real About Gideon: The Next Fifty Years of Enforcing The Right To Counsel*, 70 WASH. & LEE L. REV. 1309, 1311 (2013).

36. Erik Eckholm, *Public Defenders, Bolstered by Work Analysis and Rulings, Push Back Against a Tide of Cases*, N.Y. TIMES (Feb. 18, 2014), http://www.nytimes.com/2014/02/19/us/public-defenders-turn-to-lawmakers-to-try-to-ease-caseloads.html?rref=todayspaper&module=Ribbon&version=origin®ion=Header&action=click&contentCollection=Today%E2%80%99s%20Paper&pgtype=article&_r=0.

37. JUSTICE POLICY INST., *supra* note 24, at 24; see also Charles J. Ogletree, *An Essay on the New Public Defender for the 21st Century*, 58 LAW & CONTEMP. PROBS. 81 (1995). This is, of course, beyond the scope of this article, but it should nonetheless be noted.

38. NAACP, CRIMINAL JUSTICE FACT SHEET, <http://www.naACP.org/pages/criminal-justice-fact-sheet> (last visited April 15, 2016).

39. JUSTICE POLICY INST., *supra* note 24, at 25.

B. Searching for solutions within the profession is not working

One way that public defenders have been struggling against the crisis is through litigation.⁴⁰ Two public defender offices have even found recent success in the courts and been granted leave to refuse cases. In Florida, the Miami-Dade County Public Defender's Office [hereinafter PD-11] filed a lawsuit asking the trial court to "appoint other counsel in unappointed non-capital felony cases."⁴¹ PD-11 claimed the caseloads of its attorneys were so excessive that they were not able to meet the needs of their clients, and therefore wanted the court to grant leave for the office to refuse all "C" (third-degree) felonies.⁴² The trial court agreed with PD-11 and ordered that all "C" felonies would be assigned to the Office of Criminal Conflict and Civil Regional Counsel for the Third District.⁴³ In so finding, the trial court held that the PD-11 caseload was "excessive by any reasonable standard."⁴⁴ The intermediate appellate court reversed this ruling, however, finding that an aggregate withdrawal based on a conflict of interest was inappropriate because section Fla. Stat. § 27.5303 specifically prohibited such a withdrawal.⁴⁵ In

40. Drinan, *supra* note 36, at 1331.

41. See Motion to Appoint Other Counsel in Unappointed Noncapital Felony Cases Due to Conflict of Interest, Florida v. Munoz, No. F08-2314 (Fla. Miami-Dade County Ct. June 24, 2008), available at http://www.pdmiami.com/ExcessiveWorkload/Motion_to_Appoint_Other_Counsel_Certificate_of_Conflict-Oscar_Munoz.pdf [hereinafter Motion to Appoint Other Counsel]. The Eleventh Circuit referred to here is Florida's state court system.

42. In Florida, third degree felonies are those that do not exceed a term of imprisonment of five years. FLA. STAT. § 775.082(4)(b)-(d) (2010). In its motion, PD-11 claimed a budget cut of \$2.48 million in fiscal year 07-08 seriously undermined its ability to represent its clients. Motion to Appoint Other Counsel, *supra* note 42, at 2. The office was not able to fill positions, and had a high turnover rate with overworked and underpaid attorneys jumping ship. *Id.* The complaint also asserted that taking on new cases would pose a conflict of interest regarding its existing clients, because any additional defendants would prevent attorneys from providing effective assistance of counsel to their current clients. *Id.* at 2-3, 5.

43. L. Jay Jackson, *Miami-Dade's Overburdened PD Office May Decline New Clients*, *Florida Court Says*, ABA JOURNAL (Oct. 1, 2013, 08:50 AM), <http://www.abajournal.com/magazine/article/miami-dades-overburdened-pds-office-may-decline-new-clients-florida-court-s>

44. Florida v. Pub. Defender, 12 So. 3d 798, 801 (Fla. Dist. Ct. App. 2009).

45. *Id.* at 803-05 (citing FLA. STAT. § 27.5303 (2007)). FLA. STAT. § 27.5303(1)(a) reads, in pertinent part, as follows:

If, at any time during the representation of two or more defendants, a public defender determines that the interests of those accused are so adverse or hostile that they cannot all be counseled by the public defender or his or her staff without conflict of interest then the public defender shall file a motion to withdraw and move the court to appoint other counsel.

The statute goes on to read: "In no case shall the court approve a withdrawal by the public defender or criminal conflict and civil regional counsel based solely upon inadequacy of funding or excess workload of the public defender or regional counsel." § 27.5303(1)(d). In determining whether there is a conflict of interest, the statute gives this guidance:

reversing the trial court, the Third District Court of Appeal found that there was no evidence that the caseload was “excessive by any reasonable standard.”⁴⁶ According to the Third District, the trial court should determine the effectiveness of an attorney on a case-by-case basis.⁴⁷

In the meantime, the PD-11 office sought another avenue of attack. Since the previous Third District opinion required motions to withdraw to be filed on a case-by-case basis, one assistant public defender in PD-11 filed a motion to withdraw and to declare the previously mentioned statute, section 27.5303, unconstitutional.⁴⁸ PD-11 was able to obtain a favorable ruling in the trial court; yet once again, the Third District Court of Appeal reversed the trial court’s order that allowed the assistant public defender to withdraw from the case.⁴⁹ Additionally, it certified the following question as one of great public importance:

Whether section 27.5303(1)(d), Florida Statutes (2007), which prohibits a trial court from granting a motion for withdrawal by a public defender based on “conflicts arising from underfunding, excessive caseload or the prospective inability to adequately represent a client,” is unconstitutional as a violation of an indigent client’s right to effective assistance of counsel and access to the courts, and a violation of the separation of powers mandated by Article II, section 3 of the Florida Constitution as legislative interference with the judiciary’s inherent authority to provide counsel and the Supreme Court’s exclusive control over the ethical rules governing lawyer conflicts of interest?⁵⁰

In July 2013, the Florida Supreme Court finally released its long awaited opinion in the case and found that, although section 27.5303 was not a violation

In determining whether or not there is a conflict of interest, the public defender or regional counsel shall apply the standards contained in the Uniform Standards for Use in Conflict of Interest Cases found in appendix C to the Final Report of the Article V Indigent Services Advisory Board dated January 6, 2004.

§ 27.5303(1)(e). According to the statute, the Third District opined, a public defender is not permitted to withdraw based merely on inadequate funding. *Pub. Defender*, 12 So. 3d at 801–03.

46. *Pub. Defender*, 12 So. 3d at 801–02.

47. *Id.*

48. Assistant Pub. Defender’s Motion to Withdraw and to Declare Section 27.5303(1)(D), Florida Statutes, Unconstitutional, *State v. Bowens*, No. F09-019364 (Fla. Miami-Dade County Ct. Aug. 3, 2009) available at http://www.pdmiami.com/ExcessiveWorkload/Filed_08-03-09_Motion_to_Withdraw.pdf [hereinafter Assistant Pub. Defender’s Motion to Withdraw].

49. *State v. Bowens*, 39 So. 3d 479, 482 (Fla. Dist. Ct. App. 2010). The Third District agreed with the trial court that a showing of actual prejudice could allow for judicial relief, but found that such prejudice was not present in this case. The court held that merely needing to file a continuance did not “rise to the threshold level of actual prejudice.” Therefore, the conflict here was merely “speculative.” *Id.* at 481.

50. *Id.* at 482.

of separation of powers, the public defenders could move to withdraw under the statute when excessive caseloads create a system-wide problem, rather than addressing the problem on a “piecemeal case-by-case basis.”⁵¹ Although the public defenders were undoubtedly wishing for a repudiation of section 27.5303, the court’s opinion does allow for the withdrawal from cases based on excessive caseloads—something that was not possible before the opinion.⁵²

In Missouri, a similar controversy arose. In that state, an administrative rule promulgated by Missouri’s Public Defender Commission allows each district to maintain maximum caseloads.⁵³ Pursuant to this rule, several Missouri public defenders’ offices began declining new cases when they had reached a maximum for the month.⁵⁴ In July 2010, Jared Blacksher applied for a public defender in Christian County, Missouri.⁵⁵ Despite the fact that the public defender’s office in Christian County had declared itself “of limited availability” pursuant to the administrative regulation,⁵⁶ the trial court judge appointed the public defender’s office to represent Mr. Blacksher anyway.⁵⁷ The Missouri Public Defender Commission then challenged the trial judge’s ruling and the case went up to the Missouri Supreme Court, which held that that the trial court violated 18 CSR 10-4.010 and exceeded its authority by appointing the public defenders’ office to represent Mr. Blacksher.⁵⁸ According to the high court, “a judge may not appoint counsel when the judge is aware that, for whatever reason, counsel is unable to provide effective representation to a defendant.”⁵⁹

51. Pub. Defender, Eleventh Judicial Circuit of Fla. v. State, 115 So. 3d 261, 274 (Fla. 2013).

52. *Id.* It should be noted that despite this “victory,” Miami public defenders have yet to actually refuse cases. Eckholm, *supra* note 37.

53. MO. CODE REGS. ANN. tit. 18, § 10-4.010 (2008). Missouri’s Public Defender Commission promulgated this rule “with the express purpose of ensuring ‘that cases assigned to the Missouri state public defender system result in representation that effectively protects the constitutional and statutory rights of the accused.’” State ex rel. Mo. Pub. Defender Comm’n v. Waters, 370 S.W. 3d 592, (Mo. 2012) (quoting MO. CODE REGS. ANN. tit 18, § 10-4.010 (2008)).

54. Judge J. Miles Sweeny, *Report of the Special Master, MSPD v. Hon. John Waters and Hon. Mark Orr*, No. SC91150, available at http://www.stltoday.com/pdf_cf153220-3eda-11e0-b344-0017a4a78c22.html. The public defenders believed that an earlier Missouri Supreme Court opinion, State ex rel. Missouri Pub. Defender Comm’n v. Pratte, 298 S.W.3d 870, 890 (Mo. 2009), gave them the right to do this. *Public Defender Commission Adopts Rule to Limit Availability of Overloaded Offices to Take on More Cases*, MO STATE PUB. DEFENDER (Nov. 2, 2007), <http://www.publicdefender.mo.gov/Newsfeed/20071102.htm>. [hereinafter *Commission Adopts Rule*]

55. Sweeny, *supra* note 55, at 1.

56. See 18 MO. CODE REGS. ANN. 10-4.010 (2008); see also Sweeny, *supra* note 55; *Commission Adopts Rule*, *supra* note 55 (explaining the procedure to allow individual public defenders’ offices to declare themselves “of limited availability”).

57. Sweeny, *supra* note 55, at 2.

58. State ex rel. Missouri Pub. Defender Comm’n v. Waters, 370 S.W.3d 592, 597–98 (Mo. 2012).

59. *Id.* at 607.

For many, these two opinions appeared to be a victory, but it is not clear what real relief they bring. While it is true that these lawsuits helped bring recognition to the crisis, it is questionable whether this “systemic litigation”⁶⁰ is the best use of resources. In fact, this type of solution leaves much unsolved and may produce greater problems. While it is true that the public defenders need relief, if public defenders refuse to take cases, many poor defendants are left without skilled lawyers.⁶¹ While these public defender offices suffer from excessive caseloads, high turnover, and low salaries, they still represent the best chance for many people to receive an adequate defense.⁶² Numerous studies confirm that public defenders obtain better outcomes for their clients than do assigned counsel.⁶³ Thus, if public defenders’ offices are not being funded properly and must to turn away indigent clients, these defendants lose their best chance at competent representation.

II. LAW SCHOOL CRISIS

Meanwhile, it is no secret that the law school bubble burst in the recession, and many news reports lament that it has become increasingly difficult for law grads to find jobs.⁶⁴ This certainly has impacted prospective law students—applications to law schools have declined more than 30 percent in the last several years.⁶⁵ Some of the decline in law school applications might be attributed to the sense that law school is a bad investment. Scholars such as Paul Campos claim that the cost of legal education has skyrocketed due to “drastic declines in student-faculty ratios, large increases in faculty compensation, the creation and development of clinical legal education, the expansion of administrative staffs, and expensive capital construction

60. See Drinan, *supra* note 36, at 1330–31.

61. See Bright & Sanneh, *supra* note 5, at 2152.

62. Thomas H. Cohen, *Who’s Better At Defending Criminals? Does the Type of Defense Attorney Matter in Terms of Producing Favorable Case Outcomes* 32 (2011), available at SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1876474; see also Cyn Yamashiro, *Juvenile Injustice: \$350 to Defend a Child*, L. A. TIMES (July 29, 2013), <http://articles.latimes.com/2013/jul/29/opinion/la-oe-yamashiro-juvenile-appointed-attorneys-20130729>.

63. Cohen, *supra* note 63, at 32; Yamashiro, *supra* note 63.

64. See, e.g., Paul M. Barrett, *The Case Against Law School*, BUSINESS WEEK (Apr. 1, 2013), <http://www.businessweek.com/articles/2013-04-01/the-case-against-law-school>; Elizabeth Lesly Stevens, *Will Law School Students Have Jobs After They Graduate?*, WASHINGTON POST (Nov. 1, 2012), http://www.washingtonpost.com/lifestyle/magazine/will-law-school-students-have-jobs-after-they-graduate/2012/10/31/f9916726-0f30-11e2-bd1a-b868e65d57eb_story.html; Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES (July 15, 2012), http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html?_r=0; see also Mallory Sofastaii, *Headed to Law School? Lower Your Expectations*, PBS NEWSHOUR (May 15, 2013, 12:10 PM), <http://www.pbs.org/newshour/rundown/headed-to-law-school-lower-your-expectations/>.

65. This data is taken directly from the Law School Admission Council’s reports, published on its website at <http://www.lsac.org/lscresources/data/lvac-volume-summary> (last visited Aug. 16, 2015).

projects.”⁶⁶ At the same time, the amount of spent on legal services in our economy has decreased by as much as thirty-two percent.⁶⁷ According to Campos, “[t]hese two trends are not mutually sustainable.”⁶⁸ Law schools find themselves on the precipice of change, and where they go from here will have drastic effects on the future of law. This section addresses the challenges law schools are facing in this era of declining applicants, declining jobs, and the pressure to produce “practice ready” lawyers.

A. Fewer Jobs

Scholars, bloggers, journalists all have pontificated in the last several years that there are many more lawyers than there are jobs for lawyers, and there are as many theories as to why as there are articles.⁶⁹ In his now famous essay, *A Blueprint for Change*, Professor Bill Henderson opines that “technology or a better-designed process is reducing the need for expensive, artisan-trained lawyers.”⁷⁰ As a result, there are simply fewer lawyers needed

66. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 183 (2012); see also BRIAN TAMANAHA, FAILING LAW SCHOOLS 139 (2012).

67. Campos, *supra* note 67, at 179.

68. *Id.* at 178. Professor Campos offers as a solution returning to the student faculty ratios of the past. He claims that it is improbable “that the legal education received by a majority of attorneys practicing in American today was unacceptably inadequate.” *Id.* at 216. Further, he says that reverting back to the days of old will require “little or no sacrifice of educational quality.” *Id.* at 217. Professor Campos is wrong. Part of the new legal landscape is that law firms do not want to have to train new lawyers, and clients aren’t willing to pay for this training. See William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 462 (2013). Additionally, there are many reports indicating that the days of old should be left there. See WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUNDATION, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 186, 194–200 (2009), available at http://archive.carnegiefoundation.org/pdfs/elibrary/elibrary_pdf_632.pdf [hereinafter THE CARNEGIE REPORT]. Particularly today, when law firms are expecting law students to be ready to begin practice immediately, it becomes clear that the paper chase method of legal education does not prepare students practically to be lawyers. Only through the expansion of clinics have we begun to actually train students to be lawyers, not just legal thinkers. See generally Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57 (2009); see also Erwin Chemerinsky & Carrie Menkel-Meadow, *Don’t Skimp on Legal Training*, N.Y. TIMES (Apr. 14, 2014), http://www.nytimes.com/2014/04/15/opinion/dont-skimp-on-legal-training.html?_r=0.

69. See, e.g., Henderson, *supra* note 69.

70. *Id.* at 479. Another opinion comes from Steven Harper, who argues in his book, “The Lawyer Bubble,” that many of the layoffs that occurred during the recession were not about trying to save law firms. Instead, these layoffs were about “trying to preserve equity partners’ million-dollar incomes for the upcoming year and beyond.” STEVEN J. HARPER, THE LAWYER BUBBLE: A PROFESSION IN CRISIS 125 (2013). As more proof of this hypothesis, a recent study found that “despite only modest demand growth, flat to slightly declining productivity, and continuing pressure on realization, law firms did see a modest improvement in profits per partner during 2014.” GEORGETOWN LAW CTR. FOR THE STUDY OF THE LEGAL PROFESSION, 2015 REPORT ON THE STATE OF THE LEGAL MARKET 6 (2015), available at <http://www.law.georgetown.edu/academics/centers-institutes/legal-profession/upload/FINAL-Report-1-7-15.pdf>.

in today's economy.⁷¹ Whatever the reason, many scholars claim there will not be enough jobs for the most recent law school graduates. According to the United States Bureau of Labor Statistics, there will be 73,600 new lawyer jobs created⁷² from 2010 to 2020.⁷³ By 2013, however, 132,757 new lawyers have already entered the market.⁷⁴ Taking into consideration declining enrollment,⁷⁵ some have predicted that by 2020, 300,000 more grads will join those 59,157 in a hunt for jobs that, statistically, are not to be found.⁷⁶

B. Cost of Law School

Adding to the burden of attending law school is the increase in law school tuition. There is no doubt that the cost of attending law school has risen dramatically in the last 30 years.⁷⁷ In 1985, attending a private law school cost an average of \$7,526.00 in tuition and fees. In 2012, however, the average private school law student paid more than \$40,000.⁷⁸ Though the overall cost of attending a state school is lower, the tuition there has actually increased at a higher ratio. Students paying out of state tuition at a state school saw their costs rise from \$4,724.00 in 1985 to \$36,202.00 in 2012, which is a more than 600 percent increase.⁷⁹

71. HARPER, *supra* note 71, at 125. Not all scholars share the same views of Professors Henderson and Campos. There is at least one scholar who believes this pessimism is unfounded. Professor Renè Reich-Graefe, for instance, has argued that the “most robust legal market that ever existed in this country” is yet to be. *See* Renè Reich-Graefe, *Keep Calm and Carry On*, 27 GEO. J. LEGAL ETHICS 55, 66 (2014). According to Professor Reich-Graefe, the legal market is poised for an explosion of legal jobs due to lawyers retiring and population growth in the United States. *Id.* at 62-67. Professor Reich-Graefe further predicts that the demand for legal skills will increase given the anticipated surge in inheritance and wealth transfer needs, as Baby Boomers plan and pass on their estates. He forecasts that this demand not only will restore the legal jobs that seem to be declining, but will place current and future law students “at the threshold of the most robust legal market that ever existed in this country.” *Id.* at 66. Nevertheless, an increase in demand for legal services involved in generational wealth transfer does nothing to provide additional legal representation for indigent defendants.

72. C. Brett Lockard & Michael Wolf, *Occupational Employment Projections to 2020*, MONTHLY LABOR REV. 84, 94 (Jan. 2012).

73. Stevens, *supra* note 65.

74. *Id.*

75. ABA 2014 Law School Enrollment Data, *supra* note 7.

76. Stevens, *supra* note 65. *But see*, Reich-Graefe, *supra* note 72 (claiming that the legal market is poised for a rebound).

77. AM. BAR ASS'N, LAW SCHOOL TUITION 1985-2012, available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/l_s_tuition.authcheckdam.pdf; *see also* HARPER, *supra* note 71, at 9.

78. AM. BAR ASS'N, LAW SCHOOL TUITION, *supra* note 78. This is an increase of more than 400 percent.

79. *See id.* Interestingly enough, the median tuition went down from 2010 to 2012.

Many law school deans and presidents have argued that this increase in tuition is due largely to market demands in our capitalistic society.⁸⁰ In fact, there are still more people applying to law school than there are seats in first year classes.⁸¹ And there is no doubt that the cost of operating law schools has become more expensive with a turn towards more clinical and skills education,⁸² but most would argue that this is a necessity with today's changing legal landscape.⁸³ Furthermore, there are some who would argue that the increase in law school tuition is part and parcel with the increase in college tuition as a whole. In fact, one could argue law school tuition inflation has risen less sharply, as the cost of going to college has increased more than 1000% since 1978.⁸⁴ Still other scholars blame technology for a rise in higher education costs.⁸⁵ Whatever the reason, the debt load for practicing attorneys has become staggering: eighty-five percent of graduates carried an average of \$100,000 of law school debt.⁸⁶ Faced with a declining job market and less demand for legal services, many have decided that law school is simply not a good investment.⁸⁷

80. HARPER, *supra* note 71, at 9. However, Professor Campos argues that these market trends cannot continue. See Campos, *supra* note 67. He also has argued that educational costs have surged due the increase in administrative staff at law schools. Paul F. Campos, *The Real Reason College Tuition Costs So Much*, N.Y. TIMES (April 4, 2015), <http://www.nytimes.com/2015/04/05/opinion/sunday/the-real-reason-college-tuition-costs-so-much.html>.

81. *End-of-Year Summary: ABA (Applicants, Applications & Admissions), LSATS, Credential Assembly Service, LSAC*, <http://www.lsac.org/lsacresources/data/lsac-volume-summary> (last visited Aug. 16, 2015) [hereinafter LSAC *End-of-Year Summary*]. In 2014, which is right in the middle of the "crisis," more than 55,000 people applied to law school while only 43,500 were admitted.

82. James Huffman, *Law Schools: Reform or Go Bust*, NEWSWEEK (Feb. 20, 2015 4:51pm), <http://www.newsweek.com/law-schools-reform-or-go-bust-308339>.

83. Ed Finkel, *Training a New Breed of Lawyers*, 43 STUDENT LAWYER 3 (Nov. 2014), http://www.americanbar.org/publications/student_lawyer/2014-15/november/training_new_breed_lawyers.html. There are other reasons, of course, for this vast increase in tuition, one of which is the government's willingness to lend the money to students. HARPER, *supra* note 71, at 10. See also, Lucille A. Jewel, *Tales of A Fourth Tier Nothing, A Response to Brian Tamanaha's Failing Law Schools*, 38 J. LEGAL PROF. 125, 144 (2013).

84. Andrew Rossi, *The Price of College Has Increased 1120 Percent Since 1978, So is it Worth it?*, THE DAILY BEAST (Jan. 24, 2014, 5:46 AM), <http://www.thedailybeast.com/articles/2014/01/24/the-price-of-college-has-increased-1120-percent-since-1978-so-is-it-worth-it.html>. This is not to say that the rising cost of legal education should be ignored, but rather that law schools should stop looking at legal education as a business, and focus on the core principle of creating well-educated lawyers. Additionally, law schools should consider giving more need-based scholarships to students, rather than scholarships merely based on higher LSAT scores. Chemerinsky & Menkel-Meadow, *supra* note 69.

85. ROBERT B. ARCHIBALD & DAVID H. FELDMAN, *WHY DOES COLLEGE COST SO MUCH?* 50-62 (2011). In their book, Archibald and Feldman argue that "colleges and universities react to technological advancement by changing what they do instead of by reducing the cost of producing the same service." *Id.* at 63. This then drives up the cost of tuition and fees.

86. HARPER, *supra* note 71, at 4.

87. *Id.*

C. Fewer Applicants

All of the media exposure to this crisis has had the expected effect: fewer people are applying to law school. Approximately 87,900 students applied to attend law school in the fall of 2010.⁸⁸ For the prospective entering class of 2013, however, that number had dropped to 59,400, a more than 30 percent decline.⁸⁹ While that sharp decrease may represent a sensible response by applicants to market conditions, it does not bode well for law schools as an economic matter.

To be fair, there are some scholars who believe the law school crisis is reaching its end as heralded by the 2015-16 increase in the Law School Admissions Test (LSAT) administrations.⁹⁰ Interestingly, there is also evidence to believe a different type of student body is choosing law school⁹¹ – a group that some may argue are not as traditionally equipped for success in a space like law school.⁹² Regardless, if law school applications are again on the rise, it is even more important that law schools adapt to a different way of educating their students and our future lawyers.

D. Practice Ready lawyers?

In the wake of this “law school crisis,” law schools are under pressure to create heuristic learning procedures that will produce practice ready attorneys who can compete in the marketplace for a scarce number of jobs.⁹³ This is

88. LSAC *End-of-Year Summary*, *supra* note 82.

89. *Id.*

90. *Id.*

91. For example, there is evidence that recent law school applicants have lower LSAT scores than in previous years. See Timothy Connor, *Fewer Students Applying to Law Schools Nationally*, THE DARTMOUTH (Feb. 9, 2015), <http://thedartmouth.com/2015/02/09/fewer-students-applying-to-law-schools-nationally/>; see also Jordan Weissmann, *The Wrong People Have Stopped Applying to Law School*, THE ATLANTIC (Apr. 10, 2012), <http://www.theatlantic.com/business/archive/2012/04/the-wrong-people-have-stopped-applying-to-law-school/255685/>; Robert Steinbuch, *Why Decline in Bar Passage Means It's Time to Re-evaluate Admissions Standards*, THE NATIONAL JURIST (Apr. 14, 2014), <http://www.nationaljurist.com/content/why-decline-bar-passage-means-its-time-re-evaluate-admissions-standards>.

92. While some studies show that LSAT scores are a good predictor of success in law school, see, e.g. LISA ANTHONY STILWELL ET AL., LAW SCHOOL ADMISSION COUNCIL, PREDICTIVE VALIDITY OF THE LSAT: A NATIONAL SUMMARY OF THE 2009 AND 2010 LSAT CORRELATION STUDIES 1 (2011), available at [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-11-02.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-11-02.pdf), it must be noted that there is much evidence that the LSAT is a biased exam that cannot generally be regarded as an indicator of anything except privilege. See, e.g. Richard Delgado, *Official Elitism or Institutional Self-Interest? 10 Reasons Why the UC-Davis Should Abandon the LSAT (and Why Other Good Law Schools Should Follow Suit)*, 34 U.C. DAVIS L. REV. 593, 600-02.

93. See THE CARNEGIE REPORT, *supra* note 69; see also ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION (2007); see also NEW YORK STATE BAR ASSOCIATION, REPORT OF THE TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 11 (April 2, 2011) [hereinafter NYSBA REPORT].

coupled with the pressure to ensure that their students can pass a bar exam.⁹⁴ Recent bar passage rates indicate that schools are struggling with the latter.⁹⁵ Additionally, a recent survey conducted by BarBri illustrates the contrast between how those affiliated with law schools view the skills sets of current students and recent graduates with how those in the legal practice perceive the skills of recent graduates.⁹⁶ For instance, only 57 percent of the people who hire law school graduates would rate those graduates as “effective legal writers.” On the other hand, eighty-two percent of 3L law students would rate themselves in that category.⁹⁷ Following the same trend, only fifty-six percent of the practicing attorneys surveyed believe that recent law school graduates are prepared to practice law, while seventy-six percent of 3L law students believe they are prepared.⁹⁸ And closer to the law students, law professors clearly have an inflated view of their graduates, with close to seventy percent of the law professors surveyed claiming that their graduates were ready to practice law upon graduation.⁹⁹ Faculty and practicing attorneys did agree that writing was the most important skill for recent law graduates, but that ended the similarities between which skills each group found important.¹⁰⁰ For instance, while twenty-seven percent of law professors found other skills such as “critical thinking, analytical skills, work ethic, etc.,” to be important, only eleven percent of practicing attorneys placed value on those skills.¹⁰¹ And while eighteen percent of attorneys found legal research to be important, only

94. In the midst of this crisis, examiners are adding more subjects to an already overcrowded bar exam. For example, in 2014 the National Council of Bar Examiners – the agency that administers the Multistate Bar Exam – added Civil Procedure as a seventh subject to the Multistate Bar. Joe Palazzolo, *The Bar Exam Is About to Get Harder*, WALL STREET JOURNAL (Mar. 7, 2013, 1:32 PM), <http://blogs.wsj.com/law/2013/03/07/the-bar-exam-is-about-to-get-harder/?mod=WSJBlog>. Florida has also increased its breadth of coverage. *What’s Tested on the Bar Exam Modified*, THE FLORIDA BAR (July 1, 2010), https://www.floridabar.org/DIVCOM/JN/JNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/c3fb7c51c30df942852577490043ddab!OpenDocument&Highlight=0,bar,exam,changes*.

95. The 2014 and 2015 bar exam results are some of the worst we have seen in recent years. Jacob Gershman, *Scores on this Year’s Bar Exam May be the Worst in Decades*, THE WALL STREET JOURNAL (Sep. 18, 2015, 12:22pm), <http://blogs.wsj.com/law/2015/09/18/scores-on-this-years-bar-exam-may-be-the-worst-in-decades/>. The head of the National Conference of Bar Examiners stated publicly that these poor results were the fault of the law schools for admitting less able students and not preparing them well. Natalie Kitroeff, *Are Lawyers Getting Dumber?*, BLOOMBERG BUSINESS (August 20, 2015), <http://www.bloomberg.com/news/features/2015-08-20/are-lawyers-getting-dumber->

96. To conduct this survey, BarBri interviewed current law students, law faculty, and practicing attorneys. THE BARBRI GROUP, 2014 STATE OF THE LEGAL FIELD SURVEY 2 (Mar. 5, 2015), available at http://www.thebarbrigroup.com/files/white-papers/220173_bar_research-summary_1502_v09.pdf[hereinafter BARBRI SURVEY].

97. *Id.* at 6.

98. *Id.* at 4.

99. *Id.*

100. *Id.* at 5.

101. *Id.*

four percent of faculty put value in that skill.¹⁰² These stark differences illustrate the deep disconnect between what is being taught in law schools and what is actually needed in the practice of law.

Pressure also comes from the American Bar Association (“ABA”), which is the accrediting agency for American law schools. In 2014, the ABA passed new rules requiring each law student to complete six hours of “experiential” learning coursework.¹⁰³ Under the prior rules, schools were encouraged to

102. *Id.*

103. AM.BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2014-2015 STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2014) [hereinafter ABA STANDARDS 2014]. This new rule goes into effect in the academic year 2016-2017. ABA Standard 303 reads as follows:

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(3) one or more experiential course(s) **totaling at least six credit hours**. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in natureFalse (emphasis added)

The ABA further defines what a simulation course or law clinic would be in standard 304:

Standard 304. SIMULATION COURSES AND LAW CLINICS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member,

(b) A law clinic provides substantial lawyering experience that (1) involves one or more actual clients, False

Finally, a field placement is defined in Standard 305:

Standard 305. FIELD PLACEMENTS AND OTHER STUDY OUTSIDE THE CLASSROOM

(e) A field placement program shall include:

(1) a clear statement of its goals and methods, and a demonstrated relationship between those goals and methods and the program in operation;

(2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

(3) a clearly articulated method of evaluating each student’s academic performance involving both a faculty member and the site supervisor;

(4) a method for selecting, training, evaluating, and communicating with site supervisors;

(5) for field placements that award three or more credit hours, regular contact between the faculty supervisor or law school administrator and the site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work;

(6) a requirement that each student has successfully completed instruction equivalent to 28 credit hours toward the J.D. degree before participation in the field placement program; and

provide such opportunities, but there was no precise number of credit hours required.¹⁰⁴ Some commentators were actually pushing to increase this requirement to 15 hours,¹⁰⁵ but the ABA eventually compromised with 6 hours. This new rule stems, in part, from the Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education.¹⁰⁶ In this report, the Task Force highly recommended that law schools focus more on experiential learning.¹⁰⁷

California has taken this even further. In 2012, the State Bar Board of Trustees ordered a Task Force “to examine whether the State Bar should develop a regulatory requirement for a pre-admission competency skills training program, and if so, propose such a program to the Supreme Court.”¹⁰⁸ In its Report, the California Task Force recommended, among other things, to require each applicant to the California Bar to complete 15 “units” of “experiential training.”¹⁰⁹ These units of experiential training could be fulfilled

(7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student may earn three or more credit hours in a field placement program, the opportunity for student reflection must be provided contemporaneously.

(f) A law school that has a field placement program shall develop, publish, and communicate to students and site supervisors a statement that describes the educational objectives of the program.

Id.

104. Am. Bar Ass’n Section of Legal Educ. & Admission to the Bar, Managing Director’s Guidance Memo: Standards 303(a), 303(b), & 304.2 (Mar. 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf.

105. Mark Hansen, *Clinical Law Profs Solicit ABA Legal Ed Council to Require 15 Credit Hours In Practice-Based Courses*, ABA Journal, (Jul. 2, 2013, 8:56 PM), http://www.abajournal.com/news/article/CLEA_15_credit_hours_accreditation_aba_section

106. Am. Bar Ass’n Task Force on the Future of Legal Educ., Report and Recommendations 3 (Jan. 2014), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force_authcheckdam.pdf.

107. *Id.* at 3, 26. “The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice-preparation opportunities for students. Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.” *Id.* at 3.

108. The State Bar of California, 2014 Public Comment (2014), <http://www.calbar.ca.gov/AboutUs/PublicComment/Archives/2014PublicComment/201411.aspx>.

109. See State Bar of California, Admissions Regulation Reform: Phase I Final Report 15 (June 24, 2013), available at http://www.calbar.ca.gov/Portals/0/documents/publicComment/2013/2013_StateBarTaskForceReportFINALAPPROVED6-11-13.pdf. It is worth noting that Task Force also recognized the tension between moving toward increased experiential learning and challenges with bar passage rates, writing “[i]f we are going to expect more practice-based learning at the law school level,

in myriad ways, including legal clinics, externships and even coursework that simulates live-client experiences.¹¹⁰ The Report was adopted by the State Bar Board of Trustees on Oct. 12, 2013, and the Task Force began Phase II of its work, which was to develop rules for the implementation of the above recommendations.¹¹¹ That Phase was completed in a final report issued on September 25, 2014.¹¹² As a result, in 2017 the California Bar will require the 15 “units” of experiential training in all law schools.

These changes can help create more practice-ready graduates, but they also require many law schools to reevaluate how they have been educating their students for nearly two centuries. In preparation for these new requirements, many law schools are revamping their curriculum, adding more simulation and practice preparation courses, as well as clinical experiences.¹¹³ As can be expected, some law schools and scholars are welcoming these changes,¹¹⁴ while others are holding fast to the traditional means of legal education.¹¹⁵

One suggestion for solving the law school crisis comes from Professor Brian Tamanaha, who proposes eliminating the last year of law school in the lower-tiered law schools and replacing it with a year of apprenticeships.¹¹⁶ He

then we too should be open to ‘seriously examin[ing] our assumptions about the Bar Exam’¹¹⁷ *Id.* at 11.

110. *Id.* This Task Force also recommended a requirement for 50 hours of Pro Bono/Reduced-Fee Legal Services to be completed by the end of the applicant’s first year of licensure, as well as a 10 hour competency training requirement. *Id.* at 25.

111. 2014 Public Comment, *supra* note 109.

112. State Bar of California, Task Force on Admissions Regulation Reform: Phase II Final Report, (Sept. 25, 2014), http://www.calbar.ca.gov/portals/0/documents/bog/bot_ExecDir/2014_TFARRPhaseIIFinalReport_092514.pdf. [hereinafter CA Task Force Phase II Report]

113. Thomas H. Bienert, *Changes in the Training of Lawyers Opportunity for the OCBA to Assist*, Orange County Bar Ass’n (June, 2014), <http://www.ocbar.org/AllNews/NewsView/tabid/66/ArticleId/1322/June-2014-Changes-in-the-Training-of-Lawyers-Brings-Opportunity-for-the-OCBA-to-Assist.aspx>.

114. See, e.g., *Denver to Offer Experiential Training Program*, The Nat’l Jurist (June 11, 2013), <http://www.nationaljurist.com/content/denver-offer-experiential-training-program>; see also *UConn School of Law Adopts Practice Based Learning Requirement for Students*, U. of Conn. (Nov. 29, 2012), <http://www.law.uconn.edu/about/press-room/uconn-school-law-adopts-practice-based-learning-requirement-students>; *New UVA Clinic Provides Legal Advice to Business Students*, The Nat’l Jurist (Sept. 26, 2012), <http://www.nationaljurist.com/content/new-uva-clinic-provides-legal-advice-business-students>; *Cooley’s Ann Arbor Campus to Open Immigrant Rights and Civil Advocacy Clinic*, W. Mich. U. (Dec. 13, 2011), http://www.cooley.edu/news/2011/121311_immigrant_rights_clinic_professor_eyster.html; *Brooklyn Adds Military Externship Program*, The Nat’l Jurist (May 10, 2011), <http://www.nationaljurist.com/content/brooklyn-adds-military-externship-program>; *Catholic Announces Clemency Clinic*, The Nat’l Jurist (Mar. 5, 2013), <http://www.nationaljurist.com/content/catholic-announces-clemency-clinic>.

115. Tony Mauro, *Scalia’s Remarks on Law School Renew Legal Education Debate*, Nat’l L. J. (May 23, 2014), <http://www.nationallawjournal.com/legaltimes/id=1202656574527/Scalias-Remarks-on-Law-School-Renew-Legal-Education-Debate?sreturn=20150802193954>.

116. Tamanaha, *supra* note 67, at 172–173; but see, Jewel, *supra* note 84, at 159.

argues that clinical programs, which are popular in the third year of law school, are costly “artificial practice settings” inferior to actual practice settings.¹¹⁷ But this idea of a two-tier system was rejected in the past and has been criticized as elitist.¹¹⁸ Such a system could re-enforce the hierarchical structure in the legal profession, in which the lawyers trained at elite institutions represent the rich and the “fourth tier” lawyers represent the underprivileged and those who cannot pay for representation.¹¹⁹

III. THE INTERSECTION

As these crises continue down their paths, the question becomes whether they intersect with one another in a way that could help alleviate or even eliminate both. One solution that has some traction is the implementation of incubator programs at many law schools.¹²⁰ The ABA defines incubator as “models that enable newly-admitted lawyers to acquire the range of skills necessary to launch successful practices.”¹²¹ Incubators can be a helpful starting point, but by themselves are not enough to combat the large numbers of indigent defendants without lawyers.¹²² What this Article proposes marries the benefits of an actual practice setting in the third year of law school with the advantages of an incubator. This section will address incubators and the innovative techniques that are being used around the country to help prepare law students and then will address the proposal to incorporate a criminal defense clinic at each law school that can work hand in hand with an incubator.

A. Incubators

In the last several years, incubators have soared into the limelight. Although the incubators are as varied as the law schools that house them, the general model is one where recent graduates work together in an office, usually housed in space provided by the law school, providing services to the underprivileged.¹²³ The first incubator, which some call the “alpha incubator,”

117. See Tamanaha, *supra* note 67, at 173.

118. See Tamanaha, *supra* note 67, at 20–27; see also Jewel, *supra* note 84, at 159.

119. Jewel, *supra* note 84, at 134 (citing Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *Buff. L. Rev.* 1155, 1155 (2008)).

120. Mike Stetz, *Incubators are Taking Off*, *The Nat'l Jurist* 15 (March 2015), http://www.americanbar.org/content/dam/aba/administrative/delivery_legal_services/ls_del_national_jurist_3-15_incubators_article.authcheckdam.pdf.

121. *Incubator/Residency Programs*, Am. Bar Ass'n, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main.html (last visited August, 15, 2015).

122. See *infra* Section III. A.

123. See, e.g., Kirsten Mickelwait, *Bay Area Legal Incubator Mentors New Lawyers to Narrow Justice Gap*, *Berkeley Law* (July 29, 2015), <https://www.law.berkeley.edu/article/bay-area-legal-incubator-mentors-new-lawYERS-to-narrow-justice-gap>. The Bay Area Legal Incubator in California will be operational in 2016 and is a collaboration between Volunteer Legal Services

was started at CUNY in 2007.¹²⁴ The program recently expanded to take on 10-20 participants in the Court Square Law Project, all of whom, all of whom commit to representing low and moderate income clients in exchange for office space and mentoring.¹²⁵

Since CUNY began its initial program, the ABA has begun tracking the different incubators emerging across the country.¹²⁶ The directory, found on the ABA's website, profiles more than fifty programs now in existence, with more on the way.¹²⁷ The programs described in the ABA's database range anywhere from the modest to the comprehensive. For instance, the ASU Alumni Law Group at Arizona State University, Sandra Day O'Connor College of Law, provides its participants with a wide range of resources.¹²⁸ This program is free-standing, and is "funded through donations and contributions from the Sandra Day O'Connor College of Law Alumni Association."¹²⁹ This incubator operates like a non-profit law firm¹³⁰ that provides legal services to the "underserved" population.¹³¹ Associates in the program come from ASU and spend one to a maximum of three years there.¹³² While in the program, they are provided free office space, a stipend, mentoring, and opportunities to shadow practicing lawyers.¹³³ They are also given "assistance and training with practice management issues," "free or subsidized CLE programming," and "free or subsidized malpractice insurance."¹³⁴ Further, the participants are provided with networking opportunities, including both online and in person networking, "programming on client development," "case referrals," "pro bono opportunities," and "legal research resources."¹³⁵ Additionally, the incubator

Corporation, Bay Area law schools, the Alameda County Bar Association, the Alameda County Law Library, and legal services providers.

124. *Incubator/Residency Programs*, *supra* note 122.

125. Court Square Law Project, <http://www.courtsquarelaw.org/what-we-do-1/> (last visited April 18, 2016); *see also Incubator/Residency Program Profiles, Court Square Law Project*, Am. Bar Ass'n, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles.html#courtsquare

126. *See Incubator/Residency Directory*, Am. Bar Ass'n, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_directory.html (last visited April 16, 2016). There are 54 programs currently, including three international programs. *Id.*

127. *Id.*

128. *Incubator/Residency Program Profiles, ASU Alumni Law Group*, Am. Bar Ass'n, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles.html?cq_ck=1425594085817#asu (last visited April 16, 2016).

129. *See id.* They also have "independently compensated" staff, as well, including "seven full-time equivalent employees." *Id.*

130. *Mission Statement*, ASU Alumni Law Group, <http://asualumnilawgroup.org/mission-statement/> (last visited Aug. 18, 2015).

131. *See Incubator/Residency Program Profiles, ASU Alumni Law Group*, *supra* note 129.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

pays the bar dues for the participants, provides typical firm overhead expenses such as a computer, printer and copier, and each participant receives health insurance.¹³⁶

Contrast this with the Resident Association Mentoring Program (RAMP) at Benjamin N. Cardozo School of Law. The purpose of this program, according to the ABA website, is to “place recent graduates in full-time associate or legal counsel positions in law firms or in-house legal departments for one year, with supportive training provided by the law school.”¹³⁷ This program is funded entirely by the law firm or in-house legal department, which pays the participant a \$40,000-\$45,000 salary.¹³⁸ The law school provides mentoring and training for the “Resident Associates,” and provides monthly meetings for participants to talk about their experiences; however, the participants are not considered part of a collective firm or group.¹³⁹

Looking at the other incubators now in existence, twenty provide free office space while another twenty-three provide some sort of subsidized office space.¹⁴⁰ Most programs provide some sort of mentoring and networking opportunities, while only nineteen provide free or subsidized malpractice insurance.¹⁴¹ Only eighteen provide a subsidy for the participants, but almost all of them provide “assistance and training with practice management issues.”¹⁴²

Collation of Resources provided by different Incubators on ABA website

Resources offered by Incubators	Number of Incubators offering resource
Free office space	20
Subsidized office space	23
A stipend or other financial contribution	18
Mentoring on substantive legal issues	48

136. *Id.*

137. *Resident Associate Mentor Program (RAMP)*, Benjamin N. Cardozo School of Law, <http://www.cardozo.yu.edu/RAMP> (last visited Aug. 18, 2015).

138. *See id.*

139. *See id.*

140. *Incubator/ Residency Program Profiles*, Am. Bar Ass’n, http://www.americanbar.org/groups/delivery_legal_services/initiatives_awards/program_main/program_profiles.html. (last visited April 16, 2016).

141. *Id.*

142. *Id.*

Opportunities to shadow lawyers	36
Assistance and training with practice management issues	45
Free or subsidized CLE programming	39
Free or subsidized malpractice insurance	19
Online networking	27
In-person networking	45
Programming on client development	39
Case referrals	38
Pro bono opportunities	39
Legal research resources	36
Other resources	22

*As of August 2, 2015.

Other resources include: auditing a course; computer, printers, copiers and other overhead; speakers; medical benefits; case management; training; full-time supervision; discounts on overhead, etc.¹⁴³

While many of the programs offer pro bono opportunities, most of the incubators are designed to help “low bono” clients, meaning they serve a population that is not considered indigent, but for whom traditional attorneys’ fees are too expensive.¹⁴⁴ Additionally, many of the opportunities are for a very limited number of graduates.¹⁴⁵ As a whole, incubators are a great start, but do not go far enough to impact the public defense crisis in a dramatic way given their small scale and varied areas of focus. In particular, since many are aimed at “low-bono” clients,¹⁴⁶ these programs do not reach the most vulnerable populations or provide a meaningful right to counsel for indigent people.¹⁴⁷

143. *Id.*

144. *Id.*

145. *Id.*

146. Kathryn Alfisi, *Above the Guidelines*, Wash. Lawyer, (Sept. 2013), <http://www.dcbbar.org/bar-resources/publications/washington-lawyer/articles/september-2013-lowbono.cfm>

147.. The focus on “low-bono” clients assumes that those who qualify for free assistance from public defenders or legal aid organizations receive that assistance at an adequate level of representation. That is not the reality, as explained in Section I.

B. Proposal for Law School Clinics serving the Indigent Criminal Defendant

As discussed above, incubators have been traditionally used to target the under-represented—those who cannot afford attorneys, but who do not qualify as “indigent.” This Article, however, proposes that each law school house a clinic for the *indigent* criminal defendant. And it goes even further by requiring that each student be required to volunteer at least some time in the clinic. While incubators are a good beginning to help ensure access to justice, it will require a drastic measure such as this proposal to make the Constitutional mandate of *Gideon* a reality for many of our country’s most vulnerable. That is not to say that incubators should be abandoned. In fact, this plan suggests that the most successful model will be where a law school houses both an incubator program and a clinical program, and allows the two to work hand in hand.

To begin, there are many law schools that already have some type of criminal defense clinic.¹⁴⁸ Similar to those clinics, this proposal anticipates that the clients serviced in these clinics would be co-defendants who have conflicted out of the public defender’s office or those defendants who are charged with lesser crimes, such as misdemeanors or third-degree felonies.¹⁴⁹ However, this proposal would require all students at a law school to participate in the clinic. Though it appears drastic at first glance, the plan presupposes that there would be, of course, differing levels of involvement. Some of the most motivated students, who perhaps wish to pursue a career in criminal law, would spend an entire semester working in the clinic for credit. On the other hand, those who may not be comfortable with the hands-on representation of a criminal defendant could work on a legal research and writing project, and there would be varying opportunities in between. Some students could help with client intake, while some may provide litigation support. There would be, however, a minimum amount of volunteer hours required to graduate. This graduation requirement would ensure that every law student in the school would be contributing in some way to the defense of a criminal client.

For those schools that do not have a criminal defense clinic, this might appear, at first glance, to be a costly endeavor. Arguably, one of the biggest expenses would likely be the salary for a full-time clinical professor to supervise the students, as well as possible costs to redesign space appropriate for a clinic. One way to cut down on these costs could be to find a current

148. See, e.g., *Clinical Legal Education: Criminal Defense*, Fordham University, http://www.fordham.edu/info/23926/criminal_defense (last visited August 24, 2015); *Criminal Defense Clinic*, Stanford Law School, <https://www.law.stanford.edu/organizations/clinics/criminal-defense-clinic> (last visited August 24, 2015); *Criminal Justice Clinic*, Yale Law School, <https://www.law.yale.edu/studying-law-yale/clinical-and-experiential-learning/our-clinics/new-haven-legal-assistance-clinic> (last visited April 16, 2016).

149. See discussion within *supra* notes 42-60.

professor to supervise the clinic.¹⁵⁰ Due to declining enrollment, some schools are faced with a larger number of faculty positions than necessary.¹⁵¹ To combat this excess of faculty, some schools have offered voluntary separation offers,¹⁵² some have terminated positions,¹⁵³ and others are just shuffling resources.¹⁵⁴ Asking a professor to take over a criminal defense clinic would fall under the latter category. While undoubtedly most law schools will have to bear some of these costs, there are other avenues to explore for funding, such as grants from counties and states.¹⁵⁵ Depending on the size of the law school and the number of indigent people served, states might be motivated to help offset the costs.¹⁵⁶ Furthermore, if the criminal clinic is combined with an incubator, some of the costs may be offset with rent paid by attorneys. Eventually, the program could evolve into being run mostly by attorneys who work in the incubator, with one supervising professor who performs primarily administrative functions. Further, those students who work full-time in the clinic as certified legal interns could be given preference to be chosen as a participant in the incubator program, encouraging students to choose to work full-time in the clinic.

The most obvious beneficiaries of this proposal are the indigent defendants who would be afforded free and competent counsel through the work of students supervised by law professors and staff attorneys. Most importantly, defendants would obtain counsel with sufficient time and resources to devote to individual cases. Assuming only 35,000¹⁵⁷ students matriculate each year, and each of those students help at least one indigent defendant in his or her three years of law school, more than 12,000 indigent defendants would be helped every year through this program. That is 12,000 fewer indigent clients on public defenders' caseloads. Because misdemeanor

150. See, e.g., Megan Pospychala, *Entrepreneurship Clinic Coming to Marquette University Law School*, Fox 6 Now (Dec. 15, 2014 2:59 PM), <http://fox6now.com/2014/12/15/entrepreneurship-clinic-coming-to-marquette-university-law-school>

151. See, e.g., Alicia Albertson, *New England Law Downsizing Enrollment, Faculty Size*, The Nat'l Jurist, (Nov. 11, 2013), <http://www.nationaljurist.com/content/new-england-law-downsizing-enrollment-faculty-size>.

152. *Id.*

153. RJ Wolcott, *Cooley Law School Enrollment Drops 52%*, Detroit Free Press, (Aug. 16, 2015, 11:02 PM), <http://www.freep.com/story/news/local/michigan/2015/08/16/cooley-law-school-enrollment-sinks/31824515/>.

154. *Albertson*, *supra* note 152.

155. See *Funding Sources: Funding State by State*, The Grantsmanship Center, <http://www.tgci.com/funding-sources> (last visited August 24, 2015).

156. Law school clinics could provide the opportunity for additional grant sources, since schools and states could apply for federal grants. See *id.* Additionally, widespread exposure to indigent defense could induce future law graduates to increase private pro bono representation through their future firms, relieving state-funded systems.

157. In 2014, which is predicted to be the worst of the declining enrollment, there were 37,924 students who began law school. *ABA 2014 Law School Enrollment Data*, *supra* note 7. As such, the calculations above are very conservative.

cases are one of the biggest burdens on public defenders' caseloads,¹⁵⁸ misdemeanor defendants will benefit specifically from the increased time and attention to their cases, challenging the "meet-'em-and-plead-'em" reality of many misdemeanor courts.

Another beneficiary of this program would be the law students themselves. The students would gain practical experience, making them better prepared when they graduate.¹⁵⁹ Hands-on experience with clients and the chance to appear in court as a certified law student are valuable opportunities during law school for example.¹⁶⁰ Even students who want to pursue civil matters would benefit from the experience of client interaction, courtroom appearances, and legal research. This experiential learning will help to fulfill the ABA requirement and the requirements being implemented across the states.¹⁶¹ Beyond the training they will receive, however, participation could help instill a culture of pro bono service.¹⁶² Many students might not have thought about being a public defender, but their experience in a criminal defense clinic might open another career path. And even if they do not choose the public defense track, it might encourage the student to pursue pro bono when he or she graduates.¹⁶³ As long as our legal system depends on private pro bono representation to help close the justice gap, encouraging a pro bono culture among law school graduates is essential.

Lastly, even though there may be some initial capital outlay, such a program can ultimately benefit a law school that chooses to implement it. As the new ABA requirements loom, schools will have to make some permanent changes. The schools must demonstrate that they are providing "substantial

158. *Baxter, supra* note 3, at 385. These likely would be the majority of cases assigned to the Criminal Defense Clinics

159. Sara K. Rankin, *The Fully Formed Lawyer: Why Law Schools Should Require Public Service to Better Prepare Students for Private Practice*, 17 *Chap. L. Rev.* 17, 23 (2013). Rankin writes, "[h]ands-on experience provides the best training in core practical skills." *Id.*

160. Most states have a procedure whereby law students can be certified to appear in court. For instance, in Florida the state supreme court oversees the process, pursuant to the Student Practice Rule in the Rules of the Florida Bar. The Florida Bar, Chapter 11. Rules Governing the Law School Practice Program (2016), available at [https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/7D2109F923DFB91385256B29004BEC33/\\$FILE/RRTFB%20Chapter%2011.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/7D2109F923DFB91385256B29004BEC33/$FILE/RRTFB%20Chapter%2011.pdf?OpenElement).

161. Indiana, New York, New Jersey, and Ohio currently condition bar admission upon experiential learning in law school. Gavin Broady, *Calif. Real-World Training Rules May Spark National Trend*, *Law 360*, (Jan. 9, 2015, 6:09 PM), <http://www.law360.com/articles/594258/calif-real-world-training-rules-may-spark-national-trend>. Additionally, with California implementing an experiential learning requirement shortly, see CA Task Force Phase II Report, *supra* note 113, at 6, more states will likely follow suit.

162. See Douglas L. Colbert, *Clinical Professors' Professional Responsibility: Preparing Law Students to Embrace Pro Bono*, 18 *Geo. J. on Poverty L. & Pol'y* 309, 334 (2011); see also Sandefur & Selbin, *supra* note 69, at 57.

163. "Clinical education presents the ideal opportunity for teaching students the ethical duty to achieve access to justice. It has taken a century to understand that we must teach students both legal skills and social justice values." Colbert, *supra* note 163, at 334.

opportunities” for law students, and requiring students to work in an indigent criminal clinic would satisfy this new standard.¹⁶⁴ Additionally, if law school enrollment continues its downward trend, law schools will likely be presented with more faculty and space than needed. It makes sense for law schools to channel those resources into making permanent changes that will benefit not only their students, but many indigent people currently denied effective counsel, and which could have a lasting effect on the future of the legal profession.

Although this article explains and explores the societal benefits of this proposal, the simple philosophy of fairness and distributive justice could be justification on its own.¹⁶⁵ Under distributive justice theory,¹⁶⁶ providing free lawyers to those who cannot afford them makes perfect sense.¹⁶⁷ But that practice is breaking down, and the distribution of resources amongst indigent defendants is not equal.¹⁶⁸ Under a theory of distributive justice, society has a duty to combat this inequality, and law schools – the institutions that train our future lawyers and instill notions of justice – are especially well equipped for the task.

Critics of this plan may argue that the implementation of such a program would alleviate political pressure on the states to fund the public defender offices at adequate levels. But this program is not intended to replace a public defender system in a state—it is merely meant to complement such a scheme given the system as it stands. The clients served by law school clinics would be those who normally would be assigned a private panel attorney due to conflicts or the less serious nature of the crime. Thus, the need for public defender funding would not decrease, but the amount of attention each public defender would be able to devote to his or her client – particularly for the more complicated cases – would increase. With smaller caseloads, the public defenders would have time to properly investigate and prepare each case.

164. ABA Standards 2014, *supra* note 104.

165. “Distributive justice, although not a formal part of our foundational documents, serves as a prominent pre-condition for making our Constitution work.” C.M.A. McCauliff, *Didn’t Your Mother Teach You to Share?: Wealth, Lobbying and Distributive Justice in the Wake of the Economic Crisis*, 62 Rutgers L. Rev. 383, 387 (2010).

166. Distributive justice theory arises from John Rawls, *A Theory of Justice* (1971). According to Rawls, the two guiding principles of a just society are that (1) all people have the equal right to the liberties and benefits of society; and (2) socially imposed inequalities must be equally distributed so that no one is blocked from opportunity. *See generally* Rawls, *A Theory of Justice*.

167. *See id.* at 226 (applying these two principles to critique a legal and political system where “[d]isparities in the distribution of property and wealth far exceed what is compatible with political equality.”)

168. *See supra* Part I.

CONCLUSION

When discussing the economic crisis, President Obama's former chief of staff, Rahm Emanuel stated: "[y]ou never let a serious crisis go to waste. And what I mean by that, it's an opportunity to do things you think you could not do before."¹⁶⁹ It is clear that indigent defense is in a crisis and that legal education is at a crossroads. Law schools can go one way, which might be the self-preserving safe route, by downsizing and continuing to ignore the need for legal services for the poor. Or they can choose another path that intersects with the indigent defense crisis and helps strengthen this honorable profession.

The legal profession has changed dramatically and is continuing to change.¹⁷⁰ With this new landscape, a new attitude should take hold. It is a different law practice than it was thirty, even twenty years ago, and it is time to reevaluate what it means to be a lawyer. In Florida, lawyers swear an oath that they "will never reject. . .the cause of the defenseless or oppressed."¹⁷¹ And all lawyers should be familiar with the Preamble to the Model Rules of Professional Conduct, which reminds us we are "public citizen[s] having special responsibility for the quality of justice."¹⁷² It is time we acted like those citizens of justice we have sworn to be.

169. Gerald F. Seib, *In Crisis, Opportunity for Obama*, The Wall Street Journal (Nov. 21, 2008, 12:01 AM), <http://www.wsj.com/articles/SB122721278056345271>.

170. Jon M. Garon, *Legal Education in Disruption: The Headwinds and Tailwinds of Technology*, 45 Conn. L. Rev. 1165, 1166 (2013).

171. In re: Oath of Admission to the Florida Bar, No. SC11-1702 3 (Fla. 2011), available at <http://www.floridasupremecourt.org/decisions/2011/sc11-1702.pdf>.

172. *Model Rules of Professional Conduct: Preamble and Scope*, Am. Bar. Ass'n, available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html).