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Specialization in Law and Business: A Proposal for a JD /“MBL” Curriculum

*Robert J. Rhee**

The curricula of most law schools are not well-suited to train lawyers for advising corporate clients in a sophisticated practice from the get-go, much less pursuing a career in business. This has always been true of a generalist legal education, but this weakness was not seen as a problem until recently. In more bountiful times, law firms trained new lawyers and corporate clients subsidized this training by paying the bill for the services of young associates. True, the typical law school may have a big menu of business law courses, and law students can take as many of these courses as a fourteen to sixteen credit semester may fit in during their meander through the largely unstructured 2L and 3L years. The breath of curricular offerings and student choice are not enough to provide the basic foundation of a sophisticated training in business law and business geared toward meeting the needs of corporate clients. The outcome—starting preparedness for corporate careers—is not as good as it could be. In today’s climate, corporate clients are refusing to over-hire and overpay for this output.¹ The changing practice of clients is a market judgment on the value of legal education’s finished products. This assessment cannot be dismissed by law schools and legal educators. The economic effects of reduced demand are felt by lawyers, law firms, students, and ultimately law schools.² While macroeconomic and

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¹ See Ashby Jones & Joseph Palazzolo, *What's A First-Year Lawyer Worth? Not Much, Say a Growing Number of Corporate Clients Who Refuse to Pay*, WALL ST. J. (Oct. 17, 2011), <http://online.wsj.com/article/SB10001424052970204774604576631360989675324.html> (noting that corporate clients are increasingly refusing to pay for first and second year associates).

² By now, most informed readers know the facts concerning the economic woes of

industry developments determining the demand for lawyer services are outside the control of law schools, the market value of a young lawyer is still largely ours.

In a previous article, I argued that law schools should “teach a little more business and a little less law,”³ and suggested the possibility of “a prepackaged curriculum to obtain in essence a ‘lite’ version of an MBA in a traditional three-year J.D. program.”⁴ In another paper, I said that “even outside of joint degree programs, formal relationships with other graduate schools makes sense in some areas, such as business (corporate law).”⁵ This paper completes these thought fragments by providing the specific details of how one form of a very substantial interdisciplinary program can be structured in a three-year JD program.

The program envisioned is a JD/“MBL,” which is distinguished from the better-known JD/MBA. The acronym “MBL” stands for “masters of business law,” which is simply an idea tag. The moniker can represent a program conferring a supplemental degree in law and business, or more likely a specialized course of study to complete a JD. Either way, the substance of the program is an interdisciplinary program of concentrated study in core transaction-oriented law courses and core business courses. This idea is grounded in personal experience. I have a JD/MBA, and in my prior professions I worked as a lawyer and investment banker for a number of years. This collective experience informs my belief that the most effective education for lawyers serving corporate needs (the specific topic of this symposium) should be interdisciplinary, and that a good education in law and business should prepare a lawyer for alternative careers in business or law.⁶ Career flexibility and the ability to think adaptively are more important than ever as lawyers enter a dynamic and uncertain marketplace.⁷ The following passage in Richard Susskind’s *The End of Lawyers?* is informative:

the legal profession: student job prospects, the historic rise in the cost of legal education and student debt. I forego the customary citations and documentations of these phenomena.

³ Robert J. Rhee, *The Madoff Scandal, Market Regulatory Failure and the Business Education of Lawyers*, 35 J. CORP. L. 363, 363 (2009).

⁴ *Id.* at 390.

⁵ Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives*, 70 MD. L. REV. 310, 337 (2011).

⁶ See generally RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 99–146 (2008) (discussing disruptive legal technologies and alternative legal service businesses that may arise from them).

⁷ I have previously noted: “Lawyers should be equipped for the 21st century world, one where traditional boundaries in the labor market are eroding, where the

This will lead, I claim, to the emergence of what I call ‘legal hybrids’, individuals of multi-disciplinary background, whose training in law will have evolved and will dovetail with a formal education in one or more other disciplines If lawyers want to reinvent themselves and carve out new multi-disciplinary roles that allow them to deliver new value, then their commitment to these neighbouring areas of expertise must be deep and our law schools should be gearing up accordingly. In this way, we will also formally be equipping lawyers of the future with the tools and knowledge to solve business and social problems and not just legal problems.⁸

My proposal of a JD/“MBL” is based on the idea that legal and business educations can be unbundled to the maximum degree permitted within institutional constraints to form a coherent interdisciplinary program of study. These core elements of legal and business educations are: (1) essential training in legal analysis (“thinking like a lawyer”), (2) concentrated study in foundational business law, and (3) basic training in business. This program of study requires all three years of law school, and thus fully justifies the existence of a three-year JD program with respect to an education in business law.⁹

contractual nexuses of firms and their relationships to employees have become less sticky, where workers should consider themselves entrepreneurial factors of valued-added skills, and where the expectations of society, clients, employers, and workers are ever more demanding and dynamic.” Rhee, *supra* note 4, at 381.

⁸ SUSSKIND, *supra* note 6, at 6–7.

⁹ I say “justified” because many commentators have argued that the 3L year is unnecessary, for some students at least. See Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 599, 605 (2012) (citing RICHARD A. POSNER, THE PROBLEMATICS OF MORAL AND LEGAL THEORY 280–95 (1999)); see also Peter Lattman, *N.Y.U. Plans Overhaul of Students’ Third Year*, N.Y. TIMES (Oct. 16, 2012), available at http://dealbook.nytimes.com/2012/10/16/n-y-u-law-plans-overhaul-of-students-third-year/?_r=0 (quoting Larry Kramer, former dean of Stanford Law School, “One of the well-known facts about law school is it never took three years to do what we are doing; it took maybe two years at most, maybe a year-and-a-half”); Daniel B. Rodriguez & Samuel Estreicher, *Make Law Schools Earn a Third Year*, N.Y. TIMES (Jan. 18, 2013), available at <http://www.nytimes.com/2013/01/18/opinion/practicing-law-should-not-mean-living-in-bankruptcy.html> (“As legal scholars, jurists and experienced attorneys have attested for decades, many law students can, with the appropriate course work, learn in the first two years of law school what they need to get started in their legal careers.”) (Rodriguez is the dean of Northwestern University School of Law and Estreicher is a professor of law at NYU School of Law). Certainly, more of the “same old, same old” in terms of randomly selected courses and seminars calls into question whether the direct and indirect costs of an additional year of law school are worth it. There have been some signs that state courts may consider circumventing the ABA imposed three-year requirement. See Karen Sloan, *FDR did fine without a 3L year: New York may let law students once again take the bar exam after two years*, NAT’L L.J. (Jan. 14, 2013), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202584156317&FDR_did_fine_without_a_3L_year_&slretu rn=20130601000247; see generally Estreicher, *supra*; cf. Debra Cassens Weiss, *Arizona Supreme Court OKs Proposal to Allow 3Ls to Take Bar Exam*, A.B.A. J. (Dec. 12, 2012, 9:28 AM), http://www.abajournal.com/news/article/arizona_supreme_court_oks_proposal_to_allow_3ls_to_take_bar_exam/ (noting that the Arizona Supreme Court has approved 3L students to take the bar exam, a proposal that was supported by all three law schools in Arizona). The JD/MBL program cannot be accomplished in two years, and it requires a

At the outset, I caveat the scope of the idea. The issue of training in legal education is larger than just the needs of corporate clients. The recent economic woes of the legal profession and their trickle down effect on law schools have shined a spotlight on the issue of training. Since the career paths of lawyers are so diverse, including lawyers who transition to business and other non-law careers, training and curriculum are not conducive to a one-size-fits-all approach. Different aspirations and career paths may require different curricular pathways, i.e., highly specialized course of study for students whose career goals are clearly set at a relatively early stage. The ideal legal education should be sufficiently flexible to provide training for these different pathways. This paper is not a broad comment about legal education and it must be construed narrowly. This paper only proposes a pathway toward the education and training of corporate lawyers and lawyers who might one day transition to businesspersons, which is the specific subject of this symposium. As I explain below, the number of students who would opt for this program would in the end be small.

I. JUSTIFYING REFORM OF THE BUSINESS LAW CURRICULUM

What is the purpose of a business law curriculum? The obvious answer—to teach business law and to help students achieve their career aspirations—is somewhat hollow due to the reality of the job market and conservatism of the legal academy. When the topic comes up in faculty colloquia and informal discussions, I hear from thoughtful colleagues that one reason why curricular changes are not worth making is because they provide no tangible benefit in hiring. A fair question from the legal professoriate to the professional bar, which has been critical of legal education, would be: “If we change our curriculum, will *you* hire more of our students?” Ask this question the next time a high ranking professional launches into a critique of law schools, and the honest response might be noncommittal foot shuffling. In the dialogue between the academy and the profession, there is some merit to the academic pushback to curricular reform.

Let’s agree that the quality of a business law curriculum probably does not change the competitive dynamics between schools of different statures in terms of hiring practices. Law schools and the legal profession are a part of a rigid hierarchical ordering system based on rankings, reputation, and prestige. The

three-year program. Thus, the program fully justifies a three-year law curriculum for a student aspiring to be a corporate lawyer or lawyer businessperson.

student's employment prospects are subject to three major variables: (1) the stature of the school (prestige enhancement to the firm), (2) the student's grades (quality human capital in the firm), and (3) the overall market demand for corporate lawyers (quantum of human capital needed in the firm). These three factors determine a law student's prospects of obtaining a job in the highly competitive field of corporate practice.

Let's be more concrete about this: If there is only one slot for a law firm job in the corporate field, the student graduating from the #1 school with minimal coursework in business law will most likely get the job over the student from the #41 school¹⁰ with a substantive, rigorous business law curriculum, all other factors being equal. The weight given to the quality of a business law curriculum is not *pari passu* with a law school's stature. Harvard and Yale could provide a concentration in Law & Poetry if they wished, and their graduates would still be hired because pedigree is coveted and because their legal poets would still be smart. The legal profession and law schools are heavily invested in "the pecking order" as validation of the institutional system and as a heuristic for quality.¹¹ It is doubtful that an alternative system of differentiating student candidates by curricula will displace the pecking order relative to schools occupying different rungs of the pecking order.

Given that 90% of all law schools are not elite, if a particular law school changes its curriculum to meet the demand of the profession, will the profession reward the school by hiring more of its students who are said to be better trained in business law than higher ranked schools? Doubtful, the academic status-quoist and the legal profession would correctly answer. Although this relevance challenge is not unfair, it ultimately does not stand up to scrutiny even accepting the quite reasonable underlying

¹⁰ This was the 2013 *U.S. News* ranking of the University of Maryland Francis King Carey School of Law. *Best Law Schools*, U.S. NEWS, <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-law-schools/law-rankings/page+2> (last visited Jun. 30, 2013).

¹¹ Data on BigLaw's hiring practices, available from the *National Law Journal*, make this point clear. I compiled the number of 2012 hires by NLJ 250 firms. The top one through ten law schools placed 1,677 students with BigLaw, which is 48.3% of the graduating class of 3,470 students. The top eleven through twenty law schools placed 985 students, which is 30.8% of the graduating class of 3,200 students. The rest of the schools placed 1,795 students, which is 5.4% of the graduating class of 33,131 students. Another way to look at these data is that of the 4,457 total positions, the top twenty schools took 2,662 jobs (59.7% of jobs available), and the rest took 1,795 jobs (40.3%). The total graduating class figure is slightly lower than the actual 2012 class because some schools did not place a single student with NLJ 250 firms. The essential quality of these ratios do not change much at the margins of which schools belong in the top ten and top twenty, and so I will forego the listing of these schools, which merely serves status-oriented curiosity.

premise that the business law curriculum does not enhance hiring results between schools of markedly different statures.

First of all, hiring is not always a competition between elite and non-elite schools. The quality of business law curricula between schools of relatively equal stature may make a difference at the margin in terms of hiring. As between, say, the #41 and #30 schools, all else being equal, the candidate's training in business law may be a relevant factor in hiring. Since there is always a strong local bias in hiring (e.g., the University of Chicago and Northwestern place many students in the Chicago market even though they are elite national schools), the quality of the curriculum among a few schools in the local market may be a strong factor in local hiring. Outside of the handful of mega-metropolitan markets and DC, the employment market is highly localized. Curricular differences matter in these fields of competition.

Secondly, the curriculum that best serves the needs of the student's career aspirations and the legal profession is worthwhile. This assertion is not based on the ideal of "education for education sake," but is based on the pragmatic concern for professional development and training. While corporate law firms hire from elite schools, they in fact also reach down to other non-elite schools to the extent that their hiring needs are not fully met by elite schools.¹² Even in challenging economic times, the demand has never been so depressed that BigLaw firms only hire the good students of elite schools. Once students are in the door, pedigree matters far less than talent and job performance.

Let's be more concrete about this: If a smart lawyer from the #41 school outperforms the smart lawyer from the #1 school due to better training she had in law school, she will advance further than the weaker performing lawyer with the prettier diploma. Ultimately clients don't pay for pedigree; they pay for results.¹³

¹² See *supra* note 11.

¹³ There is some evidence that pedigree is not a strong indicator of who becomes a partner at BigLaw. See Bill Henderson, *Too Good for BigLaw: The Statistician Edition*, THE LEGAL WHITEBOARD (Mar. 9, 2012), <http://lawprofessors.typepad.com/legalwhiteboard/2012/03/too-good-for-biglaw-the-statistician-edition.html#comments>; Vivian Chen, *Too Good for BigLaw*, THE CAREERIST (Mar. 8, 2012), <http://thecareerist.typepad.com/thecareerist/2012/03/best-second-tier-law-schools-for-big-law.html>. Assuming that the data is valid, there may be a number of reasons why pedigree is not a strong indicator of who becomes a partner. As Professor Henderson hypothesizes in his blog post, one reason (of several) may be that everyone hired at BigLaw is already smart irrespective of pedigree, and the factors that matter in the long-run are work ethics, focus, and natural talent outside of raw smarts (e.g., problem-solving skills, professional empathy, and ability to succeed in business development a.k.a. "rainmaking"), such that pedigree becomes far less of a predictive factor. See Henderson, *supra*.

Pedigree does not ease the supervising lawyer's work; a better trained junior attorney does. Clients want value for the money; supervisors want the best, hassle-free junior professional to handle their assignments. The drivers of performance at the junior level are natural talent, work ethic, and educational training.¹⁴ Assuming we have the same talent and work ethics among junior lawyers of different pedigrees, the difference at the outset is training. These performance measures affect the career trajectory of a junior lawyer in a competitive environment such as the practice of corporate law. Since a proper business law curriculum and training can reduce the on-the-job learning curve and produce better business lawyers, training is an important factor that determines the success and longevity of a career. The quality of a business law curriculum matters for a junior lawyer.

By improving the business law curriculum, law schools will not change the macroeconomic dynamics of the law market and the tectonic forces adversely affecting the legal profession and law schools. But the quality of a business law curriculum will affect the competition among law schools of similar levels in placing students in jobs. This is particularly true in highly localized hiring markets where curricular differentiation should matter to hiring firms, and it will affect the preparedness of students to compete better with their junior peers once at the job irrespective of their educational credentialing. This competitiveness may affect the trajectory of a career and in the long-term affect the reputation of the law school in the local legal market. A strong, interdisciplinary business law curriculum better serves students. These goals are sufficiently worthwhile to rethink the curriculum and how law schools teach business law irrespective of larger forces that are outside the control of law schools.

II. ILLUSTRATION OF THE CURRICULUM PROBLEM

Legal curriculum should matter more than ever in light of the current environment confronting law firms and lawyers. Training must be funded by someone. The typical legal curriculum is inadequate to train corporate lawyers and lawyer businesspersons (such as entrepreneurs, bankers, or corporate executives). I illustrate the point with a hypothetical course load of a responsible student (call her "Jane") who desires to concentrate in business law with the aspiration of working as a

¹⁴ Commentators have suggested that as between law degree pedigree and student grades, the latter was a far better predictor of a lawyer's success. Richard Sander & Jane Bambauer, *The Secret of My Success: How Status, Eliteness, and School Performance Shape Legal Careers*, 9 J. EMPIRICAL LEG. STUD. 893, 893 (2012).

corporate lawyer or perhaps one day transitioning to a career as a businessperson.

The 1L curriculum is fairly similar in most schools, and it emphasizes core common law subjects: constitutional law, civil procedure, and legal writing. Differences among schools are at the margins. Jane's 1L program might look something like this.

Fall 1L		Spring 1L	
Torts	4 cr.	Property	4 cr.
Criminal Law	3 cr.	Contracts	4 cr.
Civil Procedure I	3 cr.	Civil Procedure II	3 cr.
Constitutional Law I	3 cr.	Constitutional Law II	3 cr.
Legal Writing	2 cr.	Legal Research	1 cr.

Although there has been lively discussion of legal curriculum, for the most part the 1L program has escaped criticism, for good reason because there is not that much wrong with it. Students need to learn core common law subjects and the fundamental skill of "thinking like a lawyer." Improvements can only be gained at the margins, e.g., adding courses in legislation, international law, or administrative law on the grounds that these are now core subject areas perhaps.

On the other hand, the upper level curriculum is left mostly to the student's discretion, and this is a problem. In my hypothetical, Jane is a serious student. She avoids taking too many "perspectives" courses, esoteric seminars,¹⁵ and less rigorous or easy grading courses. She takes substantive business law courses, and designs a curriculum that is rigorous, intellectually stimulating, and pedagogically diverse. Jane's curriculum might look something like this (business law courses are noted in *bold italics*).

Fall 2L		Spring 2L	
<i>Business Associations</i>	4 cr.	<i>Securities Regulation</i>	3 cr.
<i>Commercial Law</i>	3 cr.	<i>Mergers & Acquisitions</i>	3 cr.
Evidence	3 cr.	Criminal Procedure	3 cr.
Health Care Policy Seminar	2 cr.	Trial Advocacy	3 cr.
Judicial Externship	2 cr.	Clinic	3 cr.

¹⁵ See Lattman, *supra* note 9 ("While classes like 'Nietzsche and the Law' and 'Voting, Game Theory and the Law' might be intellectually broadening, law schools and their students are beginning to question whether, at \$51,150 a year, a hodgepodge of electives provides sufficient value."); Susannah Moran & Joe Palazzolo, *Are Odd Electives a Waste? Third-Year Law-School Classes Often Delve Into Quirky Territory, Draw Criticism*, WALL ST. J. (Dec. 16, 2012, 7:53 PM), <http://online.wsj.com/article/SB10001424127887324296604578179393345730734.html> (quoting Robert Carangelo, hiring partner at Weil, Gotshal & Manges LLP, "If law schools want to employ the vast majority of graduating students then they should be offering mostly mainstream classes").

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Fall 3L		Spring 3L	
<i>Income Tax</i>	3 cr.	<i>Business Planning</i>	3 cr.
<i>Financial Institute Regulation</i>	3 cr.	<i>Topics in Corporate Governance</i>	2 cr.
Administrative Law	3 cr.	Immigration Law	3 cr.
Professional Responsibility	2 cr.	Law & Philosophy Seminar	2 cr.
International Law	3 cr.	Clinic	3 cr.

This curriculum totals eighty-six credits, and has been thoughtfully designed. There is diversity of courses even as Jane concentrates in business law, and pedagogical diversity with a mix of stand-up, simulation, and clinic courses. However, from the perspective of training corporate lawyers and lawyer businesspersons, this curriculum is less than ideal for the following reasons.

A. Young, unknowledgeable, and inexperienced students

Law schools, law firms, and corporate clients must contend with the problematic fact that the typical student is young and inexperienced. Most do not come to law school with a basic knowledge of business. Their undergraduate majors may have been political science, government, history, philosophy, and English¹⁶—none of which is in any meaningful way related to business. The typical matriculating student is probably 22–24 years old with no work history or life experience beyond college studies.¹⁷ Most students are empty vessels. Much knowledge

¹⁶ See Rhee, *supra* note 4, at 389 n.110 (citing RICHARD A. POSNER, CATASTROPHE: RISK AND RESPONSE 205 (2004); Robert M. Lloyd, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. REV. 667, 680 n.66 (2005)). Only about 12% of entering law students majored in STEM (science, technology, engineering, and mathematics) fields. Another 18% majored in business. Arts, humanities, and social sciences constitute 64% of law students. In the academic year 2002–2003, political science was the most popular undergraduate major by law school applicants (over 15,000), followed by English (6,300), psychology (5,200), and history (4,800). See POSNER, *supra*, at 205; Lloyd, *supra*, at 680 n.66.

¹⁷ In a significant way, law schools have a problem created by the admissions policy. The reason they receive so many young, inexperienced students is fairly obvious. If many of our students had attempted to enter the job force, they would have learned that there are not many well-worn professional career tracks for political science or philosophy majors from well-respected but non-elite colleges. There are formalized professional track positions, such as entry-level management trainee positions at Fortune 500 companies and analyst positions at investment banks, management consulting firms, and Big Four accounting firms. The favored recruiting grounds for these positions are graduates of elite schools, STEM majors, and graduates of well-regarded college business programs. For instance, most major investment banks do not recruit undergraduates for analyst positions beyond the Ivy League and a few other elite schools. Companies in the Mid-Atlantic region would probably recruit undergraduates from the University of Maryland business school, among other schools, because it produces graduates with employable skills. Technology companies would recruit from the University of Illinois, among other schools, because it graduates outstanding engineering students.

This employment landscape means that smart, good students who majored in political science or philosophy from respected but non-elite universities, who want professional white collar careers, must: (1) be entrepreneurial in chartering their professional careers (scrambling to find the small businesses or other institutions with good growth and

must be poured into them in the three years of law school, and I question whether random assortments of knowledge is best for highly focused students with clear career goals (admittedly, this is a small set of law students with programmatic implications that I explain later).

B. Bias in favor of generalist education and a big menu of courses

Even with a concerted effort to structure a business law focus, the typical law school curriculum lacks a critical mass of required substantive courses. Student choice and faculty academic freedom have led to a bias in favor of generalist training. Frequently, students graduate with a hodgepodge of courses in the largely unstructured 2L and 3L years. There is always an opportunity cost of curriculum. With limited credit hours, a generalist training conflicts with the goal of specialist training.

C. Lack of contextualization and connection

Most law school courses and curricula are structured as discrete silos. Knowledge is acquired in discrete doctrines without the student obtaining a sense of how they fit together and how they can be used to solve problems. In the real world, client problems do not necessarily present themselves in discrete issues from discrete doctrines. Not only should each individual course be a coherent body of knowledge, but the curriculum as a whole should be held together by a criterion of core competency in layered sequence of interrelated subjects and skills.

D. No business training

Without doubt, *legal* curricula in no way provides *business* training. Students do not learn basic concepts in accounting,

professional development prospects); (2) accept the fact that climbing the professional ladder may literally mean starting in the company mail room or the sales floor (as many CEOs and corporate executives have); or (3) go to graduate professional schools. Medical schools require significant personal commitment to medicine and an aptitude for science. Arguably, many students who majored in political science or philosophy lack the qualities necessary for entry into medical school, which may explain why they selected political science and philosophy majors in the first place. Business schools require substantial work experience prior to admission. Substantial prior work experience is a barrier for the unemployed, uncommitted, unimaginative or un-venturesome college graduate, or the student who is just caught in a really bad economy. Law school simply requires a good GPA and LSAT score, though most students do not have a really good idea about what most lawyers do or the nature of the profession they seek to enter. For many generations, law school represented the easy default choice for students in these kinds of situations, but the cost-benefit of the default choice have changed significantly resulting in a new set of considerations in light of unattractive economic outcomes and greater informational transparency in the Age of Information.

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corporate finance, economics, management, or strategy. These are core subjects in the curriculum of business schools, but this does not mean that they are irrelevant to lawyers. Probably due to custom, history, and incapability, law schools have assumed that these subjects do not merit a place in the curriculum. However, business law is the area of law practice that *most* requires an interdisciplinary education.

E. No diversity in pedagogy

The typical law school curriculum is not pedagogically diverse in a way that most benefits a corporate lawyer. Classroom courses are taught with casebooks and statute books, and typically in lecture or Socratic method format. The skill of “thinking like a lawyer” is the constant focus, and at a certain point it becomes monochromatic upon reaching the point of pedagogical diminishing returns.¹⁸ Some pedagogical diversity is provided by clinical education and other forms of experiential learning. However, the larger problem of pedagogy is that substantive business and business law concepts are not sufficiently contextualized in complex settings. We should improve the teaching of problem-solving and deal skills.

In light of these issues, let’s consider again Jane’s curricular choices. Her curriculum could have been a part of a typical law school’s business law program. She sought a “balanced” curriculum that includes bar exam subjects and a smattering of diverse subject matters that may have less direct benefits for a business lawyer. The number of business law courses probably exceeds the minimum requirements of many business law programs, but the choices seem a bit random. Also, how would she contextualize the connections among the courses—the connections among Business Associations, Securities Regulation, Commercial Law, Income Tax, Financial Institutions Regulation, Mergers & Acquisitions, and Business Planning? At graduation, it is likely that these subjects are retained as discrete chunks of knowledge in Jane’s memory bank without ever having been put to use in problem solving.

For many law schools, the business law program serves several functions. It is a marketing tool to attract prospective students in the ever-increasing competition for quality students. Hopefully, it is more than a glossy brochure and wall posts on the school’s Facebook page. Independent of quality, students benefit

¹⁸See Lattman, *supra* note 9 (quoting Evan R. Chesler, presiding partner at Cravath, Swain & Moore and trustee of NYU School of Law, “Training lawyers to think like lawyers was once law schools’ entire mission. That doesn’t work anymore.”).

because participation in a business law program signals to potential recruiters that the student has a genuine interest in business. But the most important function of a business law program ought to be steering students toward courses that teach the necessary knowledge and skills. In this regard, the curricula of most law schools can better train students for careers in business law and business.

III. CORPORATE NEEDS AND BUSINESS CAREERS

The business law curricula of the typical law school can be improved by embracing an interdisciplinary approach. Much of the training must be done on the job. This is inevitable since there are limits to what schools can do to provide the practical training done in the workplace. There is simply no substitute for immersion in practice, e.g., the learning that comes from doing a deal from engagement to closing under real conditions cannot be replicated. These immersion experiences provide the steepest part of the learning curve. Clinic is no answer because its most natural functional home is litigation and not business transactions (on this latter point, most law school clinics also tend to provide public service as a core mission and so they are largely unsuitable for training in private business transactions).

While “training” in the educational context is sometimes associated with experiential learning such as clinics and externships, the mantra of “learning by doing” is not particularly relevant to training in schools of corporate lawyers and lawyer businesspersons. Training is not just about developing particular aspects of “doing,” e.g., negotiating, drafting, conducting meetings, organizing work flow, making presentations, etc. Nor is the activity of client interaction, meeting clients in flesh and blood, particularly important to *school* learning.¹⁹ These skills are quite important in the workplace (obviously), but many of them are better developed through actual experience. The primary focus of training in the classroom should be to teach different fields of knowledge that a professional must know. Knowledge and skills are not distinct tools in the professional’s toolbox. At the core of any particular skill—for example, the ability to read and use financial statements—is a body of complex knowledge. A

¹⁹I assume that junior lawyers are well-mannered, have some degree of confidence and humility, and have judgment on subtle social awareness that determines when and to what extent they should be participating in discussion with clients and various other professional settings. This assumption may not hold for some law students who have no work or professional experience. Even in these cases, however, I doubt that education or clinic can provide appropriate training and the young lawyer must learn through experience or plain conversation with supervisors. With respect to the clientele of many clinics, institutional presentation and organizational awareness are less important.

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skilled lawyer should have many fields of knowledge to solve complex business problems.

Let's put the matter to a simple empirical test. Below is a simple quiz of randomly selected concepts that graduating law students should know because these concepts frequently come up on any given corporate or business project. These questions are posed at the most basic level, and some questions are even open-ended with many possible correct answers. There are no highly technical, arcane, or "gotcha" questions, the type of questions that only senior, experienced lawyers with deep expertise in a specific field would be able to answer. The standard of grading this quiz is whether a student can answer most of these questions with *specificity and authority at the most basic level of understanding beyond mere definitional recitals*.

- What are the differences among revenue, operating profit, and net income? What is the book value of equity? What part of the cash flow statement does a capital raising affect? Explain how net income directly connects to the balance sheet.
- What is the difference between market-based valuation measures and a theoretical cash flow valuation? What is the concept of cost of capital?
- What are the essential features and rights of preferred stock? How does preferred stock differ from common stock? What might be some uses of preferred stock?
- What is a bond indenture? How are the rights of bondholders enforced?
- What are some specific methods to determine a buyout in an entity's governing document? For each method mentioned, explain some of its advantages and disadvantages.
- Why does financing a long-term asset like a factory with short-term financing like commercial paper not make sense? How should a long-lived asset be financed?
- What is the difference between a call option, a put option, and a swap? What are the underlying bets? Give a specific example of how derivatives could be used in the market to hedge risk.
- What are some specific factors that a corporation would consider in deciding whether to invest its

capital in a project? What is the primary criterion by which the corporate manager makes this decision?

- What might be some specific contract terms in executive compensation that could mitigate agency costs? What are the drawbacks and limitations of such methods?
- What are some of the fundamental differences among a limited liability company, a limited partnership, and a general partnership? Sketch out profiles of business activities that might be most suitable for these entities and explain how the legal features of these entities would support the activities.
- What are some of the principal factors determining whether an issuer chooses debt or equity when raising capital?
- What are some of the principal factors to consider and issues to resolve in entity formation when two corporations are seeking to engage in a “strategic partnership”?
- What information might you expect to see in a business plan for a young company seeking venture capital funding? What information might you expect to see in a registration statement filed with the SEC and a merger proxy?
- What are representations and warranties in a deal document?
- In a merger or acquisition transaction, what are the respective roles of a lawyer, accountant, and investment banker?
- What are the purposes of a fairness opinion and a solvency opinion? How would lawyers representing the corporation incorporate these opinions in the advice they provide in a transaction?

How would the typical business law student score at the end of three years? In the course of working on different transactions and projects, a business lawyer will acquire by direct learning and osmosis foundational knowledge to answer the above questions (and of course go far beyond this basic level). Clients would expect their business lawyers to have this knowledge, and if a junior lawyer does not even have basic knowledge to understand the situational context, we cannot begrudge the client who refuses to pay. I have little doubt that most of the above concepts might have been mentioned in the classroom at

some point in any given business law curriculum. But the standard is whether the student has some basic level of understanding to inform his work. A student with a JD/MBA will pass this test. So too will a student who takes a heavy load of core business law courses, though she may miss some of the business questions. Beyond this small group of students, it is questionable whether students who profess an interest in practicing business law, but take a big menu approach toward designing her curriculum, will be able to pass the above quiz. When she gets to the firm, she will have much to learn to catch up to others who may have had better training in school.

The skills gap in young business lawyers arises primarily from inadequate coursework and knowledge acquisition during law school. Consider the career paths of corporate lawyers, in-house lawyers, and lawyers who transition to the business side, such as business executives, bankers, consultants, or entrepreneurs. The job functions of this spectrum of professional careers are many and complex. The general JD degree is often touted as providing flexible career options, and this narrative reinforces the default choice of law school by college graduates.²⁰ Career flexibility provided through education may be true for lawyers who go into government or public service, but it is really not true for corporate lawyers and lawyers who transition to business careers.

In fact, I will go further and suggest that, aside from critical thinking skills that can also be obtained from top university undergraduates, there is *nothing* in a general *legal education* (vis-à-vis legal professional experience achieved by an experienced lawyer) that prepares a young law graduate for a career as a corporate executive, an investment banker, a management consultant, or an entrepreneur. The typical law graduate, even at elite law schools, has no skills that would be applicable to investment banking, corporate management, management consulting, or a startup venture. Smart, hardworking junior professionals can be readily hired from top undergraduate campuses, and there would be no uncomfortable issue of whether a twenty-six-year old junior lawyer with a graduate professional degree can cope with the fact that he would occupy the same status as the bright twenty-two-year old

²⁰ See Christopher Edley, Jr., *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 CAL. L. REV. 313, 321 (2012) (suggesting that legal education can train future businesspersons and investment bankers); Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 492 (2004) ("Many [students] choose law school over business school, reasoning that although law school might cost 1/3 more (three years versus two years), the law degree would be more flexible—in the worst case, they might be able to practice law on their own.").

Princeton undergraduate at the entry rung of a business career. Just because the law graduate is a lawyer would not entitle her to occupy a higher rung from the start in light of the fact that she has no business skills at all. Can she put a spreadsheet together on financial projections? Can she quickly learn a complex body of foreign (business) knowledge as autodidacts? Can she analyze an industry and distill the essence in an information memorandum? Can she think strategically? Can she process and coordinate complex workflow? Can she work in teams and manage a cadre of junior professionals? Can she figure “it” out and take the initiative? If not, the junior lawyer must start at the bottom of the rung, and if so, it is more advantageous to hire the smart, hardworking Princeton undergraduate with critical thinking skills because the young lawyer provides no value-added skills and she presents a real human resources problem concerning status and compensation. If one doubts my assertions about the myth of the flexible business career options provided by a general JD *education*, answer this question: How many corporations, investment banks, management consulting firms, Big Four accounting firms, and institutionally funded startups actively recruit at law schools even as law schools produce annual pools of over 40,000 professionally trained recruits?

To properly structure a business law curriculum for careers as corporate lawyers and lawyer businesspersons, we must determine what knowledge and skills should be taught in school.

A. Knowledge of transaction-oriented business law

Careers in corporate law and business are diverse, but at the more sophisticated and demanding end of the spectrum, lawyers are expected to have deep substantive knowledge in complex, difficult-to-master areas of law, such as corporate law, securities regulation, corporate finance, tax, and business planning. They need not be experts in all of these areas, but they should have deep knowledge acquired through formal coursework. Do most business law programs require a broad grounding in corporate law, securities regulation, taxation, corporate finance, and business planning? Some do, but some do not.

B. Knowledge of general business concepts

A career in business law most requires an interdisciplinary training, and ideally some formal education in business. A lawyer does not need an MBA, but coursework in management, strategy, entrepreneurship, management of legal services, accounting, and finance would be *very* helpful. A lawyer with business knowledge and skills would better understand the client’s perspective and

problem. This makes for better lawyering as well as better business development, which is ultimately the most coveted skill. Also, the lawyer can better transition to an alternative business career. Indeed, I have no doubt that a basic understanding of accounting and finance should be required knowledge for most lawyers,²¹ and it is interesting that the Trustees of NYU School of Law have recently recommended that accounting and finance be taught to all 1L students.²²

C. Basic quantitative skills

Law students and lawyers are famously averse to math and quantitative concepts. That a student was a history or philosophy major is no excuse for being incompetent in basic math and quantitative skills necessary to function as a business lawyer. How is a mathematically incompetent lawyer supposed to draft anti-dilution provisions in security instruments, draft financial covenants or regulatory filings such as merger proxies and registration statements containing complex financial data, or understand value and consideration in a merger or acquisition, business plans, strategic decisions, information memoranda, the risks and returns of a large-scale lawsuit, and the economics and structure of financial deals? The mathematically incompetent lawyer has a handicap, and when it is discovered he will be diminished in the eyes of other professionals and clients.

D. Leadership, ethical, and teamwork training

A corporate lawyer or lawyer businessperson must be taught legal ethics, including ethical aspects of advising corporations and working as in-house counsel. Coverage should include not only rules of professional responsibility, but also important statutes that routinely implicate their work, e.g., Sarbanes-Oxley Act, Foreign Corrupt Practices Act. Lawyers should also have

²¹ That business education has broad applicability is increasingly recognized in the legal academy. See Frank H. Wu, *In Praise of Practical Legal Education*, HUFFINGTON POST (Dec. 19, 2012), http://www.huffingtonpost.com/frank-h-wu/praise-of-legal-education_b_2324035.html (noting that “the lawyer who succeeds as a solo practitioner is a lawyer who understands business. In addition to being able to cross-examine a witness and draft a will, a new graduate of law school should be able to, at a minimum, read a balance sheet. Even if their aspiration is to be a civil rights trial lawyer, they will not advance their cause if they cannot determine whether a venture is making money or losing it. After all, they themselves are in business—whether in their own firm or as a member of a larger enterprise”).

²² NEW YORK UNIVERSITY SCHOOL OF LAW BOARD OF TRUSTEES STRATEGY COMMITTEE: REPORT AND RECOMMENDATIONS 10 (Oct. 5, 2012), available at http://www.law.nyu.edu/sites/default/files/ECM_PRO_073917.pdf. If one reviews the list of members of the Board of Trustees Strategy Committee, one will see that these people are highly accomplished in the profession and are the type of people who can provide expert advice on market needs.

leadership skills. I do not mean the romantic notion of the inspirational, charismatic leader of people and organizations (like Barack Obama). My definition of “leadership” is minimal and instrumental: the ability to function in a team environment, to manage workflow and team production, and to communicate necessary information and instructions in furtherance of efficient project management.²³ While “leadership” as just described seems rather easy to grasp in the abstract, mastering “leadership” actually requires substantial skill as well as good judgment on how to make people and processes work. Leadership is developed from experience and training. That is why all quality business schools emphasize “teamwork” to varying degrees. On the other hand, the mere mention of this in a law school faculty meeting would be brushed off as “soft” and “non-academic,” thus meriting no serious consideration of how these skills should be incorporated into the curriculum. However, there is no doubt that students should be exposed to the reality that the business world does not revolve around the work of solitary professionals, but instead organizations are networks of people working together to execute deals in a team environment.

E. Exposure to contextualization and problem-solving

In an unstructured curriculum, there is the risk that in the course of taking many disparate subjects, students see them as discrete doctrines and clusters of knowledge. What is the connection between accounting and finance, corporate finance and securities regulation, business planning and tax, strategy and entrepreneurship, entrepreneurship and business associations? There should be a way in which the necessary packaging of courses around doctrines does not create false walls in perspective. Courses should be offered where business problems are properly contextualized in complex factual milieu and not in discrete legal issues and doctrines as provided in appellate opinions that are then edited further by casebook authors. Students should have opportunities to engage in complex problem solving.

IV. PROBLEM WITH THE JOINT JD/MBA PROGRAM

Some may contend that if a studious law student wants a business education, there is always the option of a joint JD/MBA. Although I am a JD/MBA myself and strongly believe that business lawyers should have some business education, I do not

²³ See generally Robert J. Rhee, *Reflections on Team Production in Professional Schools and the Workplace*, in *LAW AND LEADERSHIP: INTEGRATING LEADERSHIP STUDIES INTO THE LAW SCHOOL CURRICULUM* 213 (Paula Monopoli & Susan McCarty eds., 2013).

readily recommend this path to most of my law students who seek my advice. The compelling logic of a joint JD/MBA completed together as an educational package escapes me. At the most basic level, a joint JD/MBA is very costly. It requires more time, money, and personal commitment, and there is no credentialing necessity to have both degrees in careers in either law or business.²⁴

For a student with the ambition of becoming a business lawyer, the MBA is certainly a useful credential. But knowledge learned in the program can be acquired without the degree and at a fraction of the cost. In terms of employment prospects, it is questionable whether this added credential would offset poor grades (probably not). For a student with the ambition of becoming a businessperson, the JD is simply unnecessary. The vast majority of MBAs enter the workforce in corporations, investment banks, consulting firms, startup firms, and accounting firms without a law degree, and they do perfectly fine. The one distinct advantage of a joint-degree program is that it delays a commitment of career choice for another four years. Upon graduation, a joint-degree student must make a career decision—practice law or do business (it is the rare career in which one can practice law and do business in an institutional setting at the same time).²⁵ But this option comes with a significant price tag. Factoring in costs, a joint degree is not ideal for the vast majority of law students.

The JD/MBA makes much more sense as a way to make a career change. There is no career path for an MBA businessperson to become a lawyer but through a JD program. Likewise, although a JD is often touted as a flexible degree that opens up careers in business, the education is actually not that flexible, as I have suggested above. Seasoned lawyers who made this transition from the law to business side have done so because they were opportunistic or at the right place at the right time, and were sufficiently nimble in professional skills developed over the years of professional practice to make the jump. There are many lawyers who have become CEOs, investment bankers, and entrepreneurs, but for the vast majority of lawyers, the opportunities are really not there. For example,

²⁴See Jeri Zeder, *Jointly Held: A Harvard Program Immerses Students in Legal and Business Training*, HARVARD LAW BULLETIN (Fall 2012) (“Graduates [of the joint JD/MBA program] report that there is no job that requires a JD/MBA.”).

²⁵The career that comes closest is a general counsel of a corporation, who is “as much a general manager of legal services as an actual counselor to management.” JOHN C. COFFEE JR., *GATEKEEPERS: THE PROFESSIONS AND CORPORATE GOVERNANCE* 224 (2006). But even a general counsel does not need an MBA, and I would guess that the vast majority of them in Fortune 500 companies do not have one.

there is no career path for an ordinary government lawyer to become an investment banker but through an MBA program (this was my career path from a lawyer to an investment banker). Even for corporate lawyers working at BigLaw firms, there are very few opportunities to transition to an investment banker, a management consultant, a venture capitalist, or a corporate manager; otherwise, we would have seen mass migrations of lawyers from BigLaw to the business side. Getting the other degree is an entrée into the other profession (even for the typical lawyer educated at the likes of Harvard and Yale law schools), and educational retooling and re-credentialing are the compelling rationale for acquiring a dual JD/MBA.

For the university, the joint JD/MBA is an opportunity to confer more degrees and generate more revenue. The joint degree is also an opportunity for the truly undecided student to delay an important career choice until graduation. However, for the serious student who wants to be a *lawyer*, the joint JD/MBA is a suboptimal expenditure in most cases. Career options are discrete, and one or the other degree is unnecessary when the student must finally choose between a law or business career. Surely the basic elements of business knowledge can be acquired at a far cheaper price than the sticker price tuition of a two-year MBA program, which is a suboptimal commitment of time, effort, and money for the business lawyer.

V. PROPOSAL FOR JD/“MBL”

Students ideally need a concentrated program of study in business law *and* business. I propose a JD/“MBL” program to serve this function. This proposal is based on the Goldilocks principle. A generalist JD program does not teach enough business law and business. A joint JD/MBA teaches too much business at too high a price. A JD/“MBL” is in between. The idea takes the core, relevant component of an MBA program and staples it to a JD.

There is evidence in the marketplace that this type of a program is needed. Some law firms are beginning to partner with business schools to provide “mini-MBA” training programs.²⁶ Among other partnerships, Skadden Arps has teamed with the Harvard Business School²⁷ and Reed Smith has partnered with

²⁶See Alina Dizik, *Law Firms Embrace Business School 101: As Recession Bites, More Attorneys Attend Management Training and Take Mini-MBA Courses*, WALL ST. J., May 20, 2009, at B5.

²⁷Jeremy D. London & Charles F. Smith, *New Training Program Accelerates Associates' Development*, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP (June 20, 2011), <http://www.skadden.com/insights/new-training-program-accelerates-associates->

the Wharton School²⁸ to provide business training for young associates. Senior lawyers and partners are also getting formal management training, which makes much sense since they manage large business enterprises and their legal education would not have prepared them for complex managerial duties. It would be helpful for a lawyer to think from the perspective of a manager (a sort of professional empathy).²⁹ Of course, not all firms do this or have the resources to provide this training, and my guess is that most BigLaw firms do not have formal relationships with business schools. Furthermore, the benefit of learning in a school environment, instead of workplace training, is significant.

Law schools can embrace business training as a core part of the business law curriculum. The essential idea of a JD/“MBL” is to provide law students in a three-year JD program with a concentrated course of study in transaction and corporate oriented business law courses coupled with about a semester’s worth of basic business courses taught at a cooperating business school.³⁰ This program requires three full years of study at law school, an assertion that some contend cannot be said for a generalist education.³¹ Obviously, the big tradeoff is that students must give up most electives to fit in the required courses.

I sketch out the three-year program. In the 1L year, students take a standard regiment of core first-year courses, supplemented by a few business courses. (Courses in **gray** are taught at the law school, and courses in **boxes** are taught in business schools.)

development.

²⁸Terry Carter, *Learning the Business Basics: Pittsburgh Firm Teams with Wharton School to Boost Profile in World Market*, A.B.A. J. (May 28, 2005, 5:58 AM), http://www.abajournal.com/magazine/article/learning_the_business_basics/.

²⁹Obviously, this is a general statement. I do not suggest that empathy with a client intent on doing bad things, such as the case of Enron, is a good thing. My comment is a generality on the adage that lawyers should know their clients.

³⁰My proposal calls for approximately sixteen credits to be taken at the business school, which is about one semester of work. This complies with ABA accreditation standards. According to the ABA, the minimum number of credits for a JD program is eighty-three. Of the 58,000 minutes of instructions, 45,000 must be at the law school. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 304(b) & Interpretations 304-3 and 304-4 (2012). This translates into eighteen credits that can be taken outside of the law school. See Email of Stephanie Giggetts, Assistant Consultant, ABA Section of Legal Education and Admission to the Bar, to Crystal Edwards (Dec. 4, 2012) (on file with the author).

³¹See *supra* note 6.

Fall 1L		Spring 1L	
Torts	4 cr.	Property	4 cr.
Contracts	4 cr.	Civil Procedure I	3 cr.
Criminal Law	3 cr.	Legal Writing	2 cr.
Legislation	2 cr.	Management	2 cr.
Math & Excel Camp	1 cr.	Financial Accounting	3 cr.

The law courses are familiar, and the student is introduced to legal analysis of cases and statutes, thinking like a lawyer, and legal writing. Math and Excel Camp is needed so that law students are prepared to undertake studies in accounting, finance, and economics. Most students who were not STEM majors would need refreshers in arithmetic, algebra, and probabilities, and basic training in Excel spreadsheets. Financial Accounting is introduced in the spring semester. Although the concepts in accounting can be abstract, the math required is basic arithmetic, so the course is a soft quantitative introduction to business. Also, management is introduced to get students to think about business and running a business.

In the 2L year, the student takes a rigorous regiment of core business law subjects, supplemented by business courses in finance, economics, and management.

Fall 2L		Spring 2L	
Corporations	3 cr.	Securities Regulation	3 cr.
Partnerships and LLCs	3 cr.	Corporate Finance Law	3 cr.
Income Tax	3 cr.	Partnership or Corporate Tax	3 cr.
Evidence	3 cr.	Business Communication	1 cr.
Corporate Finance	3 cr.	Litigation & Management	3 cr.
		Managerial Economics	2 cr.

The package of business law courses focuses on corporate advisory and transactional work. The student is introduced to the major business entities (the division between corporations and other limited liability entities), coursework in legal aspects of financing, and taxation of business enterprises. Evidence is a foundational course, a bar subject, and useful knowledge even to corporate lawyers and in-house counsels.

Business courses constitute these courses: (1) Corporate Finance, which is the basic finance course at business schools; (2) Managerial Economics, which teaches principles of micro- and macroeconomics at the most basic level; (3) Business Communications, which teaches students that the written forms

of the legal memorandum and the appellate brief are not suitable in many situations and that professionals communicate ideas in executive summaries, press releases, marketing documents, data summaries, and PowerPoint presentations. I also propose a course in Litigation & Management, which would be a hybrid course that incorporates information on complex litigation (e.g., class and aggregate actions) with management issues (e.g., litigation cost managements methods, litigation financing, litigation business strategy, use of technology, and legal service outsourcing).³² Corporate lawyers, in-house counsels, and legal services managers should all benefit from this course.

By the end of fall 2L (half way through the JD program), previously unknowledgeable and inexperienced students will have a good idea of whether the study of business law and business, and a career as a corporate lawyer or lawyer businessperson, is for them. To successfully complete Math Camp, Financial Accounting, Corporate Finance, Corporations, Partnerships and LLCs, and Income Tax, a student must like the field; otherwise, this gauntlet of courses will be worse than pulling teeth without anesthesia. The program requirements provide sufficient information for students to form reasonable conceptions of the practice of business law and business by the end of their 1L year or fall semester 2L. By this point, many students who may have harbored vague notions that they want to do mergers and acquisitions, corporate law, venture capital, or business transactions work will drop out upon realizing that they like business less than the idea of a business career, and that the academic training required for this professional career is not for them.

In the 3L year, the curriculum broadens to include courses that are important to have as background, such as Administrative Law and Intellectual Property, and several electives.

Fall 3L		Spring 3L	
Administrative Law	3 cr.	Intellectual Property	3 cr.
Professional Responsibility	2 cr.	Corporate Counsel	2 cr.
Electives	2-3 cr.	Electives	4-5 cr.
Business Advising: Early Stage	3 cr.	Business Advising: Mature Stage	3 cr.
Entrepreneurship	2 cr.	Strategy	2 cr.
Leadership & Teamwork	2 cr.		

³² See SUSSKIND, *supra* note 6.

There are two pedagogical goals. First, leadership, teamwork, and professional ethics are taught in several courses, including a first year business school course on the subject. Deals are always done in teams and groups. The corporate structure requires work in groups, teams, units and departments. The business lawyer is no exception. These are considered “soft” skills, but they are important.³³ Corporate Counsel is a course designed to teach the legal aspects of being a general counsel, which may be a career aspiration of many business lawyers.

Second, students take Business Advising over the course of the year, first focusing on early stage businesses and later switching to mature businesses. In these two courses, students learn not a particular doctrine, but instead focus on problem solving. For early stage businesses, students can do problems in entity choice and formation, financing options and securities regulation including aspects of venture capital funding, and business evaluation. They would work with actual documents such as governance agreements, information memoranda related to financing, and financing agreements. For later stage businesses, students can work on problems in mergers and acquisitions, taxation, and corporate financing. Again, case studies would be a vehicle to deliver problems, and the problem would entail working with actual documents and simulated facets of transactions such as negotiations and drafting. There would be no doctrinal boundaries to these problems. Teaching would be done through a mix of simulations, business school case studies, lectures, and traditional legal analysis. Supplementing this focus on the lifecycle of businesses would be standard business school courses in Entrepreneurship and Strategy.

The work of a corporate lawyer is complex because there are many skills and knowledge required to be effective: (1) “thinking like a lawyer”; (2) expertise in core business law; (3) quantitative competence in accounting and finance; (4) general business knowledge; (5) ethics, leadership and teamwork; and (6) business problem solving. The JD/“MBL” program provides different layers of skills and knowledge in a three-year curriculum. The following table summarizes how this is done.

³³ See Debra Cassens Weiss, *Law Firms Embrace Leadership Training, Even If Leadership Isn't the Goal*, A.B.A. J. (Mar. 4, 2008, 11:29 AM) http://www.abajournal.com/news/article/law_firms_embrace_leadership_training_even_if_leadership_isnt_the_goal/ (noting that top law firms have spent significant amounts of money on leadership programs at the Harvard Business School and the Wharton School).

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Capstone and Problem Solving
▪ Business Advising (Early Stage) ▪ Business Advising (Mature Stage)
Ethics, Leadership and Teamwork
▪ Legal Ethics ▪ Corporate Counsel ▪ Leadership & Teamwork
General Business Skills
▪ Management ▪ Entrepreneurship ▪ Strategy ▪ Business Communication ▪ Litigation & Management
Quantitative Skills
▪ Math Camp ▪ Financial Accounting ▪ Corporate Finance ▪ Microeconomics
Business Law
▪ Securities Regulation ▪ Corporate Finance Law ▪ Corporation ▪ Partnerships and LLCs ▪ Income Tax ▪ Entity Tax
"Thinking Like a Lawyer"
▪ Contracts ▪ Torts ▪ Criminal Law ▪ Property ▪ Civil Procedure ▪ Evidence ▪ Administrative Law ▪ Intellectual Property ▪ Legal Writing

This program is rigorous and focused. It requires students to take very difficult substantive courses that should be a part of the corporate lawyer's toolbox. There is little room in the curriculum for "fluff," intellectual digressions, and easy paths toward graduation. The program is also intellectually substantial and pedagogically diverse. It focuses on training for sophisticated professional tasks, and it layers different skills and knowledge in a coherent sequence. At the end of the program, a law student is sufficiently prepared to add value as a junior member of the team and to quickly learn the job with as little start-up cost as possible. Perhaps the young associate may still not be worth \$250 per hour, but she would not be worth \$0 per hour either. In the real world, the start-up cost is always funded by someone—clients, law firms, lawyers, or law schools—and increasingly clients are refusing to fund it. Who will ultimately pay for training?

VI. IMPLEMENTING THE PROGRAM

Since the JD/"MBL" program requires a heavy load of *required* courses, and the law school curriculum is constrained by a certain number of credits, sacrifices must be made to

implement the program. Several dear concepts of legal education must be relinquished.³⁴ The biggest sacrifice is student choice. Students no longer would have substantial discretion to design their own curriculum, which is a hallmark of most 2L and 3L curricula. They would have a limited number of credits for electives, approximately six to eight credits. The bulk of electives would be substituted for requirements. But is this so bad? If the student does not like the heavy requirements, he has the option to not participate. Many students would not have the wherewithal and discipline to focus on the appropriate courses. Student course selection is too often a function of subject need, intellectual interest, scheduling feasibility, perceived teacher quality, ease or difficulty of course, faculty and peer recommendations, and a host of other factors. Frequently, the end result is a mishmash of courses that as a whole may not make much sense—it is neither a deep training in a specialized field nor a serious liberal arts education.

Since there are over 1.5 years of required upper level coursework (approximately sixteen credits of business courses and forty-one credits of upper level law courses), there must be cuts in the traditional law courses. These cuts would come from the electives that students would mostly take in their 2L and 3L years. Electives and student choice impose significant opportunity cost. Students interested in business law careers can do without many electives, some of which are “perspectives” courses, seminars with academic writing projects, clinics, and externships.

If there are not enough credits to squeeze out, six credits of Constitutional Law can be sacrificed. I identify Constitutional Law for instrumental and broader reasons. In most law school curricula, this course is a sacred cow, but it is also true that constitutional law has little relevance to the work of corporate lawyers and businesspersons. In the realm of courses dealing with how government works, Administrative Law is more relevant to the business lawyer since corporations and their lawyers routinely work with agencies. Let me press my point further: if there are only three credits remaining and the choice is between learning constitutional Law or accounting, I would prefer to see the business law student learn and understand accounting. To instill important values of citizenry and public

³⁴I again remind the reader that the scope of the concept here is limited and the ideas here are not generally applicable to the “standard” legal curriculum. I emphasize this caveat because what follows is bound to ruffle some feathers if it is understood as a general comment on curricular reform. Even with this caveat, feathers may be ruffled, but that is the risk of the academic enterprise.

responsibility, I would prefer to see the future corporate lawyer take a course on international human rights, environmental law, corporate social responsibility, or climate change.

The point of this discussion is this: Why does legal education require so many sacred cows such that curricular reform driven internally (faculty initiated) is such a difficult process? The world changes, but legal curriculum does not. At the end of the day, the fabric of civil society and government would not unwind if a few lawyers, seeking to be corporate lawyers or businesspersons, opted out of Constitutional Law and a few other “perspectives” on law in light of the opportunity cost.³⁵ When thinking about curricular sacred cows, we must acknowledge these unassailable facts as sure as death and taxes: curricular choice is zero-sum; one cannot squeeze two credits from one credit; every choice, including the current legal curriculum, comes with opportunity costs.

I do not propose mass slaughter of sacred curricular cows.³⁶ The scope of the proposal is a comment on business law and business education, and is limited to the specific symposium topic. I only propose that selective sacrifices be made to clear a pathway for a limited number of students seeking high specialization needed for clearly defined career objectives. Nevertheless, even these limited sacrifices illustrate why curricular reform is so hard to accomplish in the legal academy. There are strong vested interests and preferences in all of these aspects of today’s legal curriculum including constitutional law, clinics, seminars, student research papers, student choice, big curricular menus, and generalist bias. Law professors tend to have strong opinions on these matters, and some beliefs may be less subject to nuance or caveat than others. Curricular change is

³⁵ An important data point is from perhaps the market leader in terms of legal education. Harvard Law School does not require Constitutional Law in its curriculum, but it does require in its 1L curriculum “a problem solving workshop in which they grapple with real-world challenges involving complex fact patterns and encompassing diverse bodies of law.” See *J.D. Program*, HARVARD LAW SCHOOL, <http://www.law.harvard.edu/academics/degrees/jd/index.html> (last visited Jul. 15, 2013). If any school needs to require Constitutional Law, it would be Harvard. The school graduated eighteen U.S. Supreme Court justices, of which six are currently sitting on the Court. See *Harvard Law School Alumnae/ i Who Became Justices of the Supreme Court of the United States*, HARVARD LAW SCHOOL, <http://www.law.harvard.edu/library/special/research/hls-scotus.html> (last visited Jul. 15, 2013). Yet the school does not seem to take a one-size-fits-all approach. After the 1L curriculum, students have the option to pursue a number of clearly defined curricular pathways toward specialization, which are: Law and Government; Law and Business; International and Comparative Law; Law, Science and Technology; Law and Social Change; Criminal Justice. See *J.D. Program*, *supra*. Clearly, it would be a good idea to include Constitutional Law in the upper level curriculum for some of these tracks, but maybe not for the Law and Business track.

³⁶ At the end of the day, if constitutional law is deemed too sacred in collegial deliberation, perhaps a condensed three-credit version may be a compromise.

always a political exercise in the faculty meeting, and it often touches core beliefs. Imagine the angst-ridden, hand-wringing conversation if one were to propose that Administrative Law or International Law should be a part of the 1L curriculum (“what would be sacrificed?” being the elephant in the room); and now imagine more radical changes put on the agenda in the faculty meeting. Suggesting curricular sacrifices will surely be an uncomfortable conversation at many schools, but these are also surely uncomfortable times for law students, faculties, and administrators. My guess is also that in the medium to long-term, as law schools continue to feel the effects of new market realities and as more outcome-based measures creep into the evaluation of law graduates and law schools, those schools that had the foresight and the strategic thinking to make the necessary adjustments will be standing on firmer foundation.

I also address the question of intellectual mission of law school, which is a big elephant in the room. Some may think that my proposal is too technocratic and diminishes the intellectual development of a lawyer. Without explicitly stating so, intellectual development is sometimes conflated with an education in public law and citizenry, which of course is the nobler side of the legal profession. But some students may choose not to pursue that nobler side, and we cannot begrudge their aspiration and choice, and instead we should serve their legitimate interest in pursuing a career in business law and business.³⁷ Some students may choose to facilitate economic transactions, which serve important societal function on the whole even if the transaction participants are merely seeking gain.

I would disagree with the general tenor of the criticism suggesting that a concentrated study in business law and business does not advance intellectual development, which I think is a red herring and a false argument. A sound business education allows a lawyer to make sense of important aspects of our society, economy and markets, and thus develops a lawyer’s intellect.³⁸ This education takes time and many credit hours. Some aspects of business education, such as finance and strategy, are distilled from important, Nobel Prize-winning academic

³⁷See WORKING PAPER, TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, AMERICAN BAR ASSOCIATION 4 (Aug. 1, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/taskforcecomments/aba_task_force_working_paperdraft_august_2013.authcheckdam.pdf (“But the training of lawyers is not only a public good. *The training of lawyers is also a private good.* Legal education provides those who pursue it with skills, knowledge, and credentials that will enable them to earn a livelihood.”).

³⁸Rhee, *supra* note 4, at 381.

works. A basic course in corporate finance, for example, would cover at least four Nobel ideas: portfolio theory, capital asset pricing model, theories of capital structure, and option pricing. Some basic training in economics is also a useful thing for a lawyer to know. In light of the twin institutions of government and corporations that figure so prominently in our lives, understanding how corporations work on the business side is important. One should not underestimate the intellectual aspect of understanding how complex institutions actually work. The world of business presents deep, difficult social problems. Certainly, the lens of business is just one perspective on the world, but three years is simply not enough time to delve into all things that are the world (nor is four years in a good liberal arts college). The fundamental tradeoff is not intellectual development for technocratic training; it is one of specialization in a field and a generalist education composed of a hodgepodge of courses selected largely by students who know very little about what they need to know. Like all intellectual pursuits, specialization comes with focused study within the constraint of limited time and credits.

I am not a “Pollyanna” with respect to the difficulties of implementing the proposal here. I do not know whether any law school would adopt the proposal here in light of these major difficulties. Perhaps this paper can be seen as a thought piece for how each institution can structure a specialized program for corporate and business careers, perhaps taking pieces here and there and emphasizing core, difficult and technical areas of law and business that has application to the needs of corporate clients. Perhaps also this paper can serve as a discussion starter for thinking about how we should design specific career paths for students who have clearly defined career goals.³⁹ Despite the hurdles to implementing the JD/“MBL,” the program as proposed here makes much sense as the goldilocks middle between a generalist legal education and an expensive joint JD/MBA degree in an era of problematic student debt levels.

³⁹For example, if a student clearly wants to pursue a career in litigation, shouldn't she be required or be strongly encouraged to take courses in Trial Advocacy, Criminal Procedure, Negotiations, Evidence, Insurance Law, Arbitration and Mediation, Complex Litigation, Appellate Practice, Basic Accounting and Finance, Judicial Externship, and Litigation Clinic (plus preferably some package of courses on common causes of action such as Commercial Law, Advanced Torts, White Collar Crime, Employment Law, Intellectual Property, Securities Regulation, and Business Associations)? This package of courses would take up most of 2L and 3L, leaving little room for “fluff,” various “perspectives” on law, and intellectual digressions. Why wouldn't schools require most of these courses for a student who declares a specialization? The answer cannot be that students know better.

Another major issue of implementation is that the program would be large in the beginning and would winnow to a small group in the end. Many law students come to law school with vague ideas on what type of law they want to practice, and many explore business law as a potential default choice.⁴⁰ Many would also want to hedge their career bets. However, students who are not personally committed to the field and the career would quickly drop out of the program after Math Camp (fall 1L), Financial Accounting (spring 1L), or Corporate Finance (fall 2L) at the latest, which would leave them plenty of time to pursue the more traditional generalist program and keep all options open. The program is for focused students with clear career goals, the type of students typically populating competitive MBA programs. For all the difficulties in putting together the program, student demand at the end would be a major issue. If you build it, they may not come—or to be more accurate, they may come in droves and leave in droves.

This phenomenon poses a challenge to implementing the program.⁴¹ This suggests that an early screening mechanism is needed. Perhaps law students should separately apply to the “MBL” during the summer prior to 1L. What would that application process look like? Here, the business school application process might be adapted to identifying clearly directed students. There are several key differences in the application processes. First, business schools require some work experience. There is nothing that can be done about this since law schools do not require experience at all. Except, a relevant work experience by some law students might count favorably in the application. Second, business schools require a battery of personal essays that explore many issues: What are your specific career goals? How would education further one’s career goal? Where do you see yourself in ten years and how do you plan to get there? What was the most challenging work experience so

⁴⁰Other professors have observed similarly. Consider this assessment: “But the more common narrative is for law students to arrive at law school with a vague notion of doing international or environmental law, then meander aimlessly around the curriculum. Eventually, realizing that gainful employment is probably a good idea, they find themselves in a job interview wondering what in the world a bond covenant is. At that point, offering an elective course in accounting and finance is too little, too late.” Victor Fleischer, *The Shift Toward Law School Specialization*, N.Y. TIMES (Oct. 25, 2012, 12:22 PM), <http://dealbook.nytimes.com/2012/10/25/the-shift-toward-law-school-specialization/>.

⁴¹For example, suppose 100 students in an entering class of 200 skip taking Constitutional Law on the thought that they would complete the MBL, but by the end of fall 2L, only fifteen students remain interested in pursuing the program and by the end of the program less than ten students complete it. This may play havoc with the curriculum if these students must now take Constitutional Law in the upper level years. I do not think that these numbers are out of the range of plausibility.

far? What ethical dilemma have you confronted and how did you resolve it? I can attest that writing these essays is no easy matter, and they require a great deal of personal reflection (one cannot crank these things out over a weekend). The application to the “MBL” should require a series of personal essays that would be difficult to meander through or puff absent a certain degree of focus and direction. The prospect of completing this task may be enough to discourage some students from even applying. Third, upon screening the applications, business schools typically interview the group of finalists. This can be done as well in the fall 1L semester. When an application process is in place and the student must go through Math & Excel Camp in fall 1L, these measures should sufficiently screen law students to a small number so that curricular havoc and resource misallocation created by the comings and goings of droves of students would be avoided. In the end, only a small group of 1L students would want to pursue the program, which is ideal from the perspective of the program as well.

If the number of JD students enrolled in the program is too small, a way to increase enrollment to justify the program would be to open up the “MBL” portion of the program to non-JD students. I digress a bit here and discuss my general impression of the economics of law schools and the legal profession. I am not an expert in this field and have not devoted as much scholarly effort as other thoughtful commentators have. However, it seems apparent to me as an informed observer that there is a fundamental change underway in the legal profession initiated by clients demanding efficiencies in the delivery of legal services.⁴² Once new sources of efficiency are found, we do not go back to the old way (for example, we have dispensed with the telegraph, the typewriter, the cassette, and the film loading camera). At the same time, there is greater information flow in our society in the Age of Information, and this information flow delivered at the speed of light has been exceedingly negative on the state of the legal profession, employment prospects, raising tuition and student debt levels. In light of the confluence of these events, the current downward trend of law applicants and enrollment⁴³ may be a process of moving to a new equilibrium for legal education reflecting the adverse macroeconomic trends in the legal profession. Perhaps we are in the midst of a market correction. If these plausible observations and speculation on my

⁴² See Rhee, *supra* note 5, at 320–24.

⁴³ See *Three-Year ABA Volume Comparison*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/lisacresources/data/three-year-volume.asp> (last visited Jul. 15, 2013) (showing the continuing decline in applicants from 2011 to year-to-date 2013).

part are in fact true, law schools should think about being more entrepreneurial in terms of finding new sources of revenue and new opportunities to add value in the delivery of legal education. I realize that my comments here seem so “business like,” but there can be no delusion that law schools are large economic enterprises with cash flows in and out, and are subject to the effects of larger economic forces.

The “MBL” program is an opportunity to expand legal education and to create additional sources of revenue. For example, many schools have LLM programs, and a two-year “MBL” program (instead of the traditional one-year LLM) for foreign lawyers makes sense as an educational value to foreign lawyers and revenue generation to the schools. This type of credentialing in law and business may be particularly appealing to business-oriented law students from East Asian and emerging economies, and some formal training at a business school, perhaps recognized through some non-degree certificate or perhaps even a degree, may have additional cache when these lawyers return to their home countries. Also, the program can be expanded to allow MBA students seeking substantial background in business or regulatory law, and lawyers and businesspersons seeking continued education or “retooling” opportunities to enroll in the “MBL” program. Wouldn’t a non-lawyer regulator or manager of an NGO benefit from some formal training in law and business? The “MBL” program must pay for itself, but it has the potential for revenue generation for law schools that currently face declining enrollment of JD students and perhaps de facto tuition decreases.⁴⁴

Lastly, the proposal for a JD/“MBL” requires institutional commitment and cooperation with a business school. Even if a student had the gumption to take the above coursework, it would not be possible as an individually tailored curriculum. As I have learned, business schools may be reluctant to open up their core first-year program to non-MBA students. This makes the administrative challenge that much more difficult. I have direct experience negotiating with the dean of a business school to allow law students access to core business school courses, and this difficulty should not be underestimated. Naturally, the business school will cooperate only if it is to its advantage. There must be

⁴⁴ See Karen Sloan, *Non-J.D. Candidates Easing the Strain on Law Schools*, NAT’L L.J. (Dec. 21, 2012), http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202582328993&NonJD_candidates_easing_the_strain_on_law_schools_&slreturn=20130626033440 (noting that since 2005, the number of JD students fell by 8% and the number of non-JD students increased by 39%, which has eased the financial strain on law schools due to declining enrollment of JD students).

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quid pro quo for the program to work. Finances and the economics of the program are major issues, and let me address them.

A. Does the program require additional tuition?

Perhaps, and this tuition increase may be necessary to fund the business education. As a business proposition, and especially in a declining and uncertain market in legal education, one would not expect law schools to sacrifice their bottom line in erecting a program. I am not suggesting that tuition increase be made because the law schools can justify it through the promotion of a new glitzy program (those days seem to be drawing to an end fairly quickly with collapsing student application numbers and data suggesting a long-term decline in the interest in law schools). The tuition increase may be needed because there must be a business school partner that will want consideration for the partnership. It is a question of whether the law school or the student takes the hit on this cost.

B. How would a participating business school be compensated for opening up access to their program?

Money is the first answer. Seats in the classroom cost money. A more creative answer might be payment in kind. Many business schools do not have a deep program in legal aspects of business. Business students would benefit greatly from law school courses in business organizations, business planning, taxation, corporate governance, corporate finance, securities regulation, financial institution regulation, and the like. In addition to the pedagogical and training benefits of an interdisciplinary education, the exchange and socialization of law and business students make much sense. A worthy goal is to figure out an arrangement in which law school tuition is not increased.

C. Wouldn't it be simpler and cheaper to just hire business school professors to teach the courses at the law school on a contract basis?

Possibly, but it would be the cheaper, lower quality option and not recommended. There is something to be said for law students to take the same courses with business students and be graded with the same standard. The classroom dynamics will be different with just all law students, and there is the real risk of increased agency cost, i.e., a business school professor hired on a contract basis with an unaffiliated institution would dumb down or otherwise cheapen the course for law students if she taught

the course at the law school exclusively for law students. The benefits of a law student becoming a partial business student in the business school are significant.

D. Is the “MBL” seen as a threat to the business school?

At first glance, this seems like a possibility. An argument might be that it would cannibalize the JD/MBA program. But from a purely business perspective, the MBL is an independent product and a revenue generator. The student market for a JD/MBA is very small,⁴⁵ and the demand may be inelastic to the features of the law school’s program due to some strong personal commitment that resulted in the pursuit of dual degrees. Usually, the commitment to pursue a JD/MBA is done before matriculation and students are generally focused on the joint degree program. On the other hand, the decision to sign up for the “MBL” would be done upon matriculation. In any given law or business school class, only a small handful of students are joint degree students. There is no threat to the business school’s MBA program. The real concern for a business school, as I have learned from some of my discussions with the dean of a business school, would be opportunity cost since a seat in core courses such as Accounting, Corporate Finance, and Management may potentially take away a seat in the MBA program. These issues must be worked out.

E. Can law schools and business schools create a strategic partnership to expand the educational market? In other words, is there a “win-win” financial scenario?

Quite possibly, and this possibility should be explored. The potential market for an MBL would be much bigger than the current partnership represented in the joint JD/MBA. The “MBL” would open up the law market for business schools in a way that the MBA degree to law students would not. Business schools may have opportunities to train foreign lawyers or law students seeking LL.M.s, and make further inroads in the professional training of lawyers and law firms. I would think that the deans of business schools would be very interested in these types of proposals (many business schools have highly profitable executive training and executive MBA programs). The business school would not lose revenue, and the “MBL” could be a natural entry to deliver business education to new markets. In terms of

⁴⁵ Since the JD/MBA program was created at Harvard, the school has graduated 450 people in 43 years. Zeder, *supra* note 24. This is a little more than ten graduates per year. Both the Harvard Law School and the Harvard Business School are the largest schools in their respective fields. Most other schools would have a few students per year.

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the delivery of education, only a partnership between law and business schools can deliver the “MBL” to the legal profession. If there is a possibility to expand the market, the discussion should be had and further analysis be done. This analysis would also require feedback from the profession on whether the product makes sense and how best to implement it. These discussions may lead to further thoughts on how law schools and the profession can partner in a mutually beneficial way to provide training to law students and young professionals.

In summary, that something makes sense does not mean it must always exist per some natural law of markets. A concentrated JD/“MBL” program makes sense, but there are significant barriers to implementation, some of which may not be within the control of law schools and their faculties. The specific issues are unique to each set of institutions within the larger university.

CONCLUSION

Careers as corporate lawyers or lawyer businesspersons require a specialized, interdisciplinary education—a heavy dose of core business law subjects and, ideally, a significant education in business. Based on the goldilocks principle, a JD/“MBL” is just about right in terms of the optimal mix of law and business at the cost of legal education. The program rationale is compelling, but it too is not without cost. Specialized training cannot coexist with generalist education. The cost-benefit works in favor of specialization for students seeking a career path as corporate lawyers or lawyer businesspersons. A crucial part of rational discussion is the plain fact that, quite obviously, all curricular choices, including the current configuration of legal curriculum and its sacred cows, have opportunity costs. These costs are most directly felt by graduating law students and indirectly by the profession as a whole.

