

THE ELEPHANT IN THE ROOM: DEALING WITH FINAL YEAR DISENGAGEMENT

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The adoption of the five-year structure in national law schools has been hailed as a triumph of professionalism that revamped a flailing system of legal education. Despite this, in the final few semesters, especially the ninth and the tenth, complaints of ennui towards learning the law are common in the class in Nalsar—feelings of weariness and discontent towards education, with all anxiety directed towards obtaining employment. Faculty openly declare their difficulty in dealing with a class that is in-attentive and openly uninterested, resorting to minor transgressions of codes of conduct in the classroom as the attendance rule forces all students to attend class.

When attempting to come to terms with crisis in Nalsar, given that its structural set up is extremely different from a law school functioning as part of a large university abroad, situational empathy when found in academic writing about law schools in America is all the more valuable.

James Boyd White describes in his essay a “caricature” of law students in their final year of law school, their attention focussed on getting a job and learning doctrinal material that they think will prepare them in a practical way for the job they are about to enter, resulting in,

“at its worse, a kind of contempt: for the courses, for the theoretical conception of law that their teachers seem to have, and for the intellectual process in which they are themselves engaged”.¹

White then proceeds to describe a reduction of law school education as studying “doctrine in a vacuum” in the final years of law school. He then puts forward varied reasons as to why classes in the final year are marked by passivity or resistance, unconcern or inattention, and a kind of disguised hostility on both sides of the podium.²

This paper considers the idea of the disengaged student in the final year of law school. In order to do so it first explores the concept of educational engagement and the factors that are said to impact it. The paper then probes the veracity of the existence of the disengaged student in law school. In the next section it looks at

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1. White is at pains to note that this caricature need not be representative of all or any law school in particular, but “is widely believed and has enough truth in it, to make it worth our attention, even if only as a cultural artifact; James Boyd White, “Doctrine in a Vacuum: Reflections on What a Law School Ought (And Ought Not) to Be,” 35 *Journal of Legal Education* 155
 2. *ibid.*

whether there are pervasive barriers to engagement that are created and maintained by structural factors in the university and evaluates options that may enthruse engagement among final year law students.

PART 1

A. WHAT IS ENGAGEMENT

Crucial to proceeding further is a definition of what constitutes “engagement”. Surveys that measure engagement, especially in an educational institution, seek to define it not only in terms of the grades that are obtained but also in terms of academic investment, motivation and commitment.³ In this view, engagement encompasses both institutional and personal factors that impact the individual. There are therefore a variety of factors that work individually and in conjunction with each other that affect engagement.

1. FACTORS THAT AFFECT ACADEMIC ENGAGEMENT

Bonita London et. al looking at psychological theories of educational engagement envisage the process of engagement in three levels or layers.⁴ Each of the factors is interlinked and impacts the working of the law school creating as it were, “*a network of potential sources of disengagement, and consequently, windows of opportunities for interventions.*”

The first level at which engagement is explored is the *institutional level* which encompasses the policies, regulations, and formal or informal structures that students have to deal with in the institution. Some of the factors that were identified in this category were grading and evaluation practices, diversity of the academic environment and the availability of limited scholarships and fellowships.

(a) INSTITUTIONAL FACTORS

I. GRADING AND EVALUATION PRACTICES

Grading and evaluation practices are a powerful institutional variable that impacts the level of law students’ engagement. For many students, the institutionally sanctioned grading and ranking procedures create a distinct hierarchy among the students that translates later into potential for success.⁵ As coveted internships, job prospects and even possibilities of higher education are linked to grades, ‘a culture of competition for limited resources can make the goal of collaboration or of engaging

3. Bonita London, Vanessa Anderson, Geraldine Downey, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies To Study Law Student Engagement*, 30 Harv. J. Law & Gender, 389, 392. Available at www.law.harvard.edu/students/orgs/jlg/vol302/389-408_London.pdf

4. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455

5. Duncan Kennedy, *How the Law School Fails: A Polemic*, 1 Yale Rev. L. & Soc. Action 71, 72-73 (1970)

the course material in a deep and reflective process less likely.⁶ This competitive environment may result in students disengaging from a learning-focused approach in favour of an approach that maximizes performance.

II. DIVERSITY

People's perceptions of the world around them are informed by their different backgrounds. Voices from diverse cultures bring to the classroom important and different perspectives.⁷ Studies confirm that "student body diversity promotes learning outcomes, better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals."⁸ The Gurin Report⁹ found that undergraduate "[s]tudents who experienced the most racial and ethnic diversity in classroom settings and informal interactions with peers, showed the greatest engagement in active thinking processes, growth in intellectual engagement and motivation, and growth in intellectual and academic skills." The presence or absence of diversity therefore plays a role in the learning process in the classroom and impacts student engagement.

(b) SITUATIONAL FACTORS

According to London, there are two situational factors that may impact engagement including (1) the pedagogical practices of the professor, and (2) the social culture of the institution¹⁰

I. PEDAGOGICAL PRACTICES

The pedagogical philosophy of professors has long been identified as a key influence on emotions, attitudes, and behaviour— an important socialization agent¹¹— for law students.¹²

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6. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455, 457
 7. Association of American Law Schools, *Statement on Diversity, Equal Opportunity and Affirmative Action*, AALS Handbook: Statements Of Good Practices, available at: http://aals.org/about_handbook_sgp_div.php
 8. Gary Orfield & Dean Whitla, *Diversity and Legal Education: Student Experiences in Leading Law Schools in Diversity Challenged: Evidence On The Impact Of Affirmative Action* 143 (Gary Orfield with Michal Kurlaender eds. 2001)
 9. Amici Brief submitted in *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003) In this report, Professor Gurin analyzed three sources of data: 1) national data collected from over 9,300 students at nearly 200 colleges and universities; 2) survey data collected from over 1300 undergraduate students who entered the University of Michigan in 1990; and 3) data collected from undergraduate students who were enrolled in the Intergroup Relations, Community, and Conflict Program at the University of Michigan; Available at www.wcl.american.edu/journal/genderlaw/11/fata.pdf, last visited 7/16/2008
 10. London describes this as the culture of competition versus collaboration in the institution. Describing it as the social culture has more resonance in the context of Nalsar as it allows a number of different factors to be taken into account.
 11. See generally James M. Henslin, *Sociology: A Down-To-Earth Approach*, (4th Ed) Boston: Allyn and Bacon, 1999
 12. Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession*, 4 Duke J. Gender L. & Pol'y 119, 129 (1997)

Susan Sturm notes that pedagogic philosophy is often the main driving force behind classroom dynamics, the relationships between professors and students, and between students in the course. An important point she makes is that pedagogical practices are not necessarily institutionalized, but are reflective of the individual teaching philosophies of faculty members.¹³ Different teaching styles impact student engagement and investment in each of their classes differently.

A number of writers have drawn attention to the hierarchical nature of law classes in which the professor is the source of all knowledge and the students' role is devoid of power, authority, and feelings of control toward their outcomes. These feelings of powerlessness also contribute towards differing levels of engagement by students in a course.

II. SOCIAL CULTURE OF THE INSTITUTION

Institutional rules and regulations pertaining to grading and seemingly limited 'prizes' at the end such as internships and jobs may result in students feeling like they are in constant competition with peers for the top spots available. While competition may drive some students to increase their efforts and production, it also produces some negative consequences that interfere with certain key goals of education. The competitive environment of legal education may have the unintended effect of creating ruptures in academic efficacy which in turn, compromise the confidence, engagement, and motivation of students.¹⁴

Through a study of intergroup relations and group dynamics, social psychologists Elliot Aronson and Shelley Patnoe proposed that the formation of collaborative work groups in which each member feels valued and respected and contributes to the overall group's success is important in fostering the engagement and investment of all students. Their findings indicate that institutional methods to have more avenues for collaboration would produce greater engagement among students.¹⁵

III. INDIVIDUAL FACTORS

At the personal or individual level there are a variety of issues that impact the engagement of law students. Differences in competence beliefs¹⁶ or their perceptions of their own intelligence and capabilities lead individuals to either withdraw and

13. Susan Sturm, *The Architecture of Inclusion*, 29 Harv. J.L. & Gender 247 (2006).

14. Carol S. Dweck, *Self-theories: Their Role in Motivation, Personality, and Development* 26 (1999).

15. Elliot Aronson & Shelley Patnoe, *The Jigsaw Classroom: Building Cooperation in the Classroom* 9-15 (2d ed. 1997). Study cited in Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455

16. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455,460

disengage when faced with obstacles or re-invest and increase their efforts to cope with difficulties. Research on ‘academic goal endorsement’ and ‘achievement motivation’ provide other models of competence beliefs that similarly impact engagement in law school.¹⁷

One’s social identity and the expectations that one is boxed into by virtue of that identity affect engagement in subtle and not-so subtle ways. Patronizing remarks and attitudes towards female students or members of ethnic groups affect students’ sense of belonging and their involvement in classroom and other activities. As London et al note, for students who are not in the inner circle of inclusion, and who do not feel comfortable within the system, psychological engagement becomes difficult to maintain. The possible fallout of this may be disengagement from the institution, or, in some cases, “dis-identification” with one’s negatively stigmatized group entailing a loss of one’s identity in favour of assimilating into the institutional culture.¹⁸

The above examples are illustrative of a host of factors that work on their own or in consonance with other factors to weave a complex web of variables that maintain levels of engagement and disengagement.

Now that a degree of theoretical comfort has been reached on understanding engagement and the factors that impact it, we seek to verify and understand the phenomenon of disengagement in the context of Nalsar.

UNDERSTANDING DISENGAGEMENT IN NALSAR

At the very outset, there is a need to establish the veracity of the claim that law students in the final year are a disengaged breed. Personal experience in Nalsar certainly confirms the presence of this breed. Of course being a subject of casual banter in the hallways, and a recurring rant over *chai* hardly makes for authoritative view, even if it does, as White describes, represent a set of expectations “against which both faculty and students report that they must struggle.”¹⁹

In order to test the hypothesis a sample survey was carried out among the fifth years. Preliminarily, a focus group consisting of students selected from across the spectrum of the grade point averages in the class, and two faculty members was

17. See example Andrew J. Elliot & Marcy A. Church, A Hierarchical Model of Approach and Avoidance Achievement Motivation, 72 J. Personality & Soc. Psychol. 218, 220-27 (1997); Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455

18. Bonita London et al., *Psychological Theories of Educational Engagement: A Multi-method Approach to Studying Individual Engagement and Institutional Change*, 60 Vand. L. Rev. 455, 464

19. James Boyd White, “Doctrine in a Vacuum: Reflections on What a Law School Ought (And Ought Not) to Be,” 35 *Journal of Legal Education* 155, 156(1986)

questioned as to what indices would constitute academic engagement. The following criteria were generated after discussion:

1. Attentiveness in class
2. Volunteering in class/Raising questions
3. Preparation for class
4. Originality and depth of research attempted in a research paper
5. Following up on class discussions
6. Performance on assessment tasks²⁰

Once a definition of academic engagement as constituting these factors was settled upon given their frequent recurrence with interactions in the focus group, fifth year students were asked as to whether they were academically engaged/involved in learning the law in the classroom. Over 90% of students surveyed replied in the negative.

In the next question, a set of adjectives to describe student attitude towards class was listed. Students were asked to pick what seemed most relevant for them. A blank was left for students to fill in an adjective of choice if either a. Enthusiasm, b. Ennui, c. Apathy or d. Interest did not adequately describe their attitude in class. A third of those surveyed approached the classroom with a sense of ennui and another third with a feeling of apathy. Ten percent said the only reason they were in class was attendance while another ten percent said that the only thing that they got out of the class room was the air conditioning and catching up on gossip with their peers.

On the other hand, the control group composed of second years and a few third years *all* reported to be engaged in the classroom and at least half of those surveyed said they approached the class with interest. Feelings of apathy were prevalent in

20. A similar set of factors were used to gauge academic engagement in survey across American and Canadian law schools. The Law School Survey of Student Engagement 2006 used among others (that are not relevant in the institutional set up of Nalsar) the following factors:

1. Asked questions in class or contributed to class discussions
2. Prepared drafts of an assignment before turning it in
3. Included diverse perspectives in class discussions and papers
4. Coming to class without completing assigned readings or cases
5. Discussed assignments with a faculty member
6. Discussed career choices and options with a faculty member
7. Worked harder than you thought you could to meet faculty standards and expectations
8. Discussed ideas or readings from class with others outside of the classroom

Engaging Legal Education: Moving Beyond The Status Quo, Law School Survey on Student Engagement, Available at http://lsse.iub.edu/2007_Annual_Report/pdf/EMBARGOED__LSSSE_2007_AnnualReport.pdf, last visited 7/16/2008

only about a quarter of those surveyed. Among the remaining persons surveyed a few expressed enthusiasm, while ambivalence accounted for the other respondents.

What was surprising was that when both the groups were given factors that were said to impact educational engagement and were asked to rank them in the order of importance, the results between the control group and the fifth year group were surprisingly similar. Both the groups ranked faculty as the number one factor that affected engagement . (42% of fifth years, and 52% of the control group). About a fifth of both the groups attributed a strong influence on personal beliefs and motivations, while a tenth believed that grading and evaluation practices were most important. Social culture or an atmosphere of learning in the place received little importance with only about 5 percent of those surveyed in both the groups believing it was the most important. The only difference in attitudes came about in the context of the value of diversity , both of people and perspectives in the classroom contributing towards engagement. Double the number of fifth years as compared to the control group believed that diversity was the most important factor that affected involvement/engagement in learning. (about twenty percent and ten percent respectively.)

Limitations of the Survey

An important caveat to be kept in mind is that cross-sectional survey methodologies, that gather information from a population at a given point of time rely on retrospective reporting—students reporting about experiences of engagement over the course of a semester— which can be biased by memory artefacts and psychological reappraisal or reconstruction, all of which interfere with the accurate reporting of one's experiences.²¹

There may also be systematic differences (confounding factors)²² apart from the two groups being in different years that could contribute to the staggering difference in the key question of engagement. These confounding factors could range from the fact that as Nalsar is akin to a total institution there may be a variety of socialisation factors at play that induce a greater degree of disengagement after five years of living in the institution. Or it could merely be attributable to the fact that the survey for the fifth years was handed out during a break between classes and may have been filled in when classes were in progress adding to a sense of detachment from

21. Bonita London, Vanessa Anderson, Geraldine Downey, *Studying Institutional Engagement: Utilizing Social Psychology Research Methodologies To Study Law Student Engagement*, 30 *Harv. J. Law & Gender*, 389, 392. Available at www.law.harvard.edu/students/orgs/jlg/vol302/389-408_London.pdf

22. See generally <http://www.camcode.com/help/basics/confounding.htm> <last visited 7/16/2008> for a basic discussion on confounding factors.

the class while the control group was surveyed in their free time in the library and in the mess.

Notwithstanding these limitations, the survey produced extremely stark results: Over 90 percent of final year students were not engaged in the classroom, while out of the same number of students surveyed in the second and third year, all of them reported to be involved in the classroom. Despite these contrasting results, students believed that the same factors affected their engagement at the beginning and end of law school.

Given the situation of near-complete disengagement in the final year, the next section broadly divides possible responses into four categories.²³

PART II

REACTING TO DISENGAGEMENT IN LAW SCHOOLS

OPTION 1: LET THE ELEPHANT BE

“The system is working fine. Leaving a semester free for recruitment means that students can focus their energies on getting a job even though it obviously disrupts the educational process.”

Sander and Gulati point to this ‘happy charade’ of the final year as a handy institutional arrangement. They link the prevalence of this notion to the theory of legal education that states that law school education serves merely a signaling and symbolic function²⁴ making it convenient and workable for a number of interests: employers, university administrators, and many students and teachers. Through student surveys, they found that a large percentage of students find law school to be excessively theoretical and feel that they could be better prepared to practice law. However, this factor in itself does not cause them to be dissatisfied with their schools. Once the grades have been obtained, and the resumes have been filled – students disengage. Law school they feel has served its primary purpose, and the task now is to find a job and wait out the remainder of school.²⁵

23. The division into categories broadly draws from Sanders and Gulati who suggest dividing up reform measures into 7 broad categories. Sanders, Mitu Gulati, Bob Sockloskie “The Happy Charade: An Empirical Examination of the Third Year of Law School,” 51 *Journal of Legal Education* 235-66 (2001); republished (with extended footnotes) as Chapter 4 of Sherwyn & Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003).

24. According to this view, law schools are most important as signals of prestige that affect future employment prospects, and the different stake holders—the students, administrators and faculty all benefit from this arrangement.

25. Sanders, Mitu Gulati and Bob Sockloskie “The Happy Charade: An Empirical Examination of the Third Year of Law School,” Chapter 4 of Sherwyn & Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003), 186

When the above authors presented a paper at New York University's law school that advocated final year curriculum reform to make it more substantively ambitious and more closely linked to real-world problem-solving, there was adamant opposition from the students.

*"We will be working hard enough next year," they argued. "Let us get our credentials in peace!"*²⁶

Big firms invest little in training so junior associates are forced to either sink or swim and must bill mind-numbing hours on mostly tedious tasks.²⁷ The final year of law school is therefore considered a brief reprieve before the sentence begins.

While engagement at this stage, when there is a basic level of comfort with handling legal materials, is tremendously useful as students will be able to build on and use higher level thinking skills: to apply rules, analyze issues, synthesize doctrines with ease,²⁸ just this factor by itself is unlikely to bring about any change.

OPTION 2: ABOLISH THE FINAL YEAR

The next option is to completely abolish the fifth year and modify the curriculum so there are a greater number of courses that one has to do over the four years. Since the five year model is relatively new in the country and has been seen as a great leap from the three year model in terms of bringing in professionalism and improving the standard of student admissions with competitive entrance exams, a proposal to abolish the fifth year will not be easy. When the five year law schools were contemplated, the curriculum was sought to be structured in a manner that in the first two years of this five-year program, students would take a combination of doctrinal law courses and social science and humanities subjects. During the third and fourth years, the courses would be primarily law subjects, but students would also be asked to enrol in skills-based classes or their choice of different public interest clinics. In the fifth year, students could take electives, but regardless of their selection, there would remain a strong clinic and writing component to these final year courses.²⁹ As the Bar Council of India has the power to regulate the standards of admission and has overall responsibility for the formulation of legal education in India, the proposal would have to be made very seriously there.

26. Mitu Gulati and Bob Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, Chapter 4 of Sherwyn & Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003), 189.

27. Michael Asimow, *Embodiment of Evil: Law Firms in the Movies*, 48 UCLA L. Rev. 1339 (2001).

28. Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 407 (1999).

29. N.R. Madhava Menon, *Changes in the Law Curriculum - A Proposal*, in ALL INDIAN TEACHERS' ASSOCIATION: REPORT OF THE COMMITTEE ON REFORMS IN LEGAL EDUCATION IN THE 1980s, 51 (1979) Jayanth Krishnan, "Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India" <http://ssrn.com/abstract=682341>, 38

Since the system is still very new, and the average age of the National Law Schools that have a joint entrance programme through the Common Law Admission Test is less than ten years³⁰ abolishing the fifth year may not also serve any purpose, but merely push greater disengagement in the fourth year after law school has finished its 'signalling function.'

However, talking about abolition is one way to ensure that reform proposals are discussed, and defending the structure of law schools as they exist now would certainly raise debates over the value and effectiveness and the implementation of the final year curriculum.³¹

OPTION 3 : NEW METHODOLOGIES IN THE CLASSROOM

Given the importance assigned to faculty and teaching practices by students in the survey, it would be worthwhile to evaluate the caricature of the disengaged law student described by James White in the earlier section that heavily alludes to teaching practices as a main cause of the malaise. Despite declarations by faculty about how it is important to merely understand the functioning of rules, what tends to be tested is ones ability to reproduce as many rules and cases as possible in the examination. An anxiety on the part of the professor to finish "portions" and "cover the course" leaves the student with the feeling that all study is merely to crack the final examination making academic engagement of any other kind redundant.

This focus on discrete texts which is challenging and novel in the first few years of law school becomes what White describes as "doctrine in a vacuum" in the final year. Speaking from his experience as a teacher, he describes students cheerfully and passively accepting the teacher as responsible for running the class and '*agree[ing] to praise one teacher and blame another for the performance, as if it were a TV show.*'. This process reduces "good teaching" to getting the material across in an entertaining way and students reduce courses to course outlines to be crammed the day before the exam. Law school, on these terms, trivialises both law and education.

Carol Parker reiterates that this vision of lawyers, trained to think only for a final exam, trivialises legal thought³² so as to suggest that the law is simply the mechanical

30. NLSIU-Bangalore, NALSAR-Hyderabad, NLIU-Bhopal, NUJS-Kolkata, NLU-Jodhpur, HNLU-Raipur and GNLU-Ahmedabad are the Universities that have an agreement to administer the CLAT or the Common Law Admission Test. The average age of these universities is 8.

31. Gulati puts forward the same argument when discussing the abolition of the third year in the American Law School; Sanders, Mitu Gulati and Bob Sockloskie "The Happy Charade: An Empirical Examination of the Third Year of Law School," , Chapter 4 of Sherwyn & Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003),

32. Carol M. Parker, A Liberal Education in Law: Engaging the Legal Imagination Through Research and Writing Beyond the Curriculum . Journal of the Association of Legal Writing Directors, Vol. 1, 2002 Available at SSRN: <http://ssrn.com/abstract=1095529>.

application of rules. Apart from constraining the legal imagination, such learning does little to sustain interest in a topic and reduces learning to a passive exercise.

Legal education then becomes not about thinking like a lawyer, but learning to pass the final exam. The student is placed in a situation where roles and relations are determined where the teacher is seen as the powerful knowledge manipulator and the student is infantilised into a role with no responsibility beyond preparing for a routine examination using the course outline.

Detailed empirical surveys by Gulati, Sander and Sockloskie seemed to suggest that final year law students have a hunger for applying what they have learned in law school to client problem-solving. After analysing data from over eleven law schools across the United States, they concluded that:

*"it does not seem to us that students are simply being negative about their schooling, or that they are simply impatient to graduate so they can start maximizing financial gain. They seem to have a definite agenda that links career goals to serving clients and working on real-world problems, and they dismiss the third year of law school because it does not seem very relevant to that agenda."*³³

The key question that then needs to be asked is how can law school curricula, especially in the final year, be designed to expose students to questions that exemplify the legal mind at work, so as to promote individual engagement in learning and development of expertise in legal thought? Given the existing situation, what minor tweaking and adjusting can be done in the curriculum to awaken fifth year engagement?

Active learning techniques such as applying concepts to real-world problems are effective methods of teaching critical thinking and higher level cognitive skills.³⁴ Through active learning techniques, students learn to construct and not simply receive knowledge.³⁵

33. Sanders, Mitu Gulati and Bob Sockloskie "The Happy Charade: An Empirical Examination of the Third Year of Law School," , Chapter 4 of Sherwyn &Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003), 185

34. Ernest T. Pascarella & Patrick T. Terenzini, *How College Affects Students: A Third Decade Of Research*, Volume 2 (2005); *Engaging Legal Education: Moving Beyond The Status Quo*, Law School Survey on Student Engagement, Available at http://lsse.iub.edu/2007_Annual_Report/pdf/EMBARGOED__LSSSE_2007_Annual_Report.pdf, last visited 7/16/2008

35. Marcia Baxter Magolda, *Creating Contexts For Learning And Self-Authorship* (1999). *Engaging Legal Education: Moving Beyond The Status Quo*, Law School Survey on Student Engagement, Available at http://lsse.iub.edu/2007_Annual_Report/pdf/EMBARGOED__LSSSE_2007_Annual_Report.pdf, last visited 7/16/2008

Simple changes in evaluation techniques may allow for more active leaning. For instance, final year students could be given sets of take-home problem based questions on a regular basis instead of examinations.

Studies also show that the vast majority of students learn more when performance standards require a level of effort greater than what students would ordinarily put forth if left to their own devices.³⁶ This could be achieved by introducing a greater degree of rigour in the syllabus with emphasis on critical reading skills which ought to have been developed earlier, but have still largely been neglected.

Giving a complete choice of subjects in the final year is one move that could motivate greater engagement. Opinions voiced while taking the survey among students in the fifth year were of the view that after one has chosen a career path or at least direction by means of the first job, there is little inclination to study subjects in areas one feels one will never use. Introducing the element of choice automatically could raise the level of engagement one notch due to a higher degree of perceived relevance and responsibility for the choice.

Introducing electives that make the transition from sheltered student life into the world of work easier such as training in etiquette and grooming and other courses with a clear real-world practical focus would also help in removing the general atmosphere of discontent and apathy that prevails in the final year.

However, even if better practices can motivate a large percentage of students to change, the problem seems to be of such a magnitude that minor tweaking may not be enough to help improve levels of engagement.

OPTION 4: THE MEDICAL SCHOOL MODEL

When setting up the National Law School, Madhav Menon's idea was that the five-year law program would be as rigorous as any engineering or medical school curriculum, both of which had the reputation in India for being highly demanding.³⁷

To incorporate vigour into the final year, one possible way is to take the route taken by medical schools and have rigorous clinical legal programmes. In this model, a set number of hours per day are set aside as clinic hours. Observation is interspersed with seminars and readings that prod reflection upon, and deepen understanding of

36. George D. Kuh, Jillian Kinzie, John H. Schuh, Elizabeth J. Whitt, and Associates, *Student Success In College: Creating Conditions That Matter* (2005).

37. He despised the fact that "law . . . [had become] reserved for the rejects from other disciplines and for those who wanted it cheap and with least effort." Excellence In Higher Education, *Education: Some Insights From The National Law School Experience*, by Dr. N.R. Madhava Menon, August 1998, cited in Jayanth Krishnan, "Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India" <http://ssrn.com/abstract=682341>, 38

each day's experience. Using the analogy of medical school, law schools could develop community law practices that allowed final year law students to gain some real-world exposure, while at the same time have intensive seminars and tutorials on the practice and application of law.

Students in the final year could choose from a variety of practice settings, and each practice setting could be complemented by instructional strategies aimed at teaching relevant skills, covering related doctrinal areas, and practicing legal ethics.³⁸ This way, the full range of interests of students could be catered to. Clinics need not be limited to pro bono charitable work, but possibilities of structured externships or secondments with corporate law firms, industries or large trading houses wherein they would study the legal process involved in the establishment of such an organization and their day to day working in terms.³⁹

There are also some fundamental problems with this model: The Advocates Act⁴⁰ strictly forbids students from representing clients and Bar Council of India Rules prohibit full-time faculty from practice and even pro bono litigation. However, as full time lawyers can teach, even without a change in the law, this system could be workable.

This plan is also extremely radical in calling for a complete shift in the working of a final year of law school. It could also work out to be initially expensive to set up training programmes for persons staffing the clinics and to set up the system in general. Still, this option clearly has an advantage over the other options in that it allows a vision of the final year of law school as a climax to a legal education rather than "a lethargic denouement."⁴¹

CONCLUSION

The idea of a five year law school is still very young in India. One main advantage of the system being in its formative years is that it is more open to flexibility and change. The way that the national law schools have been structured, by which they

38. Sanders, Mitu Gulati and Bob Sockloskie "The Happy Charade: An Empirical Examination of the Third Year of Law School," , Chapter 4 of Sherwyn &Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003), 192

39. This idea is actually prescribed by the Bar Council of India in its compulsory clinic paper on Professional Ethics, Accountancy for Lawyers and Bar Bench Relations. See Frank S. Bloch , M. R. K. Prasad, *Institutionalizing A Social Justice Mission For Clinical Legal Education: Cross-National Currents From India And The United States*, 13 CLINICLR 165, Appendix 1

40. The Advocates Act, 1961- see sections 29 and 33 which provide that only enrolled advocates are entitled to practice law

41. Sanders, Mitu Gulati and Bob Sockloskie "The Happy Charade: An Empirical Examination of the Third Year of Law School," , Chapter 4 of Sherwyn &Yelnosky, editors, *NYU Selected Essays on Labor and Employment Law*, volume 2 (2003), 192

The Elephant in the room: Dealing with final year disengagement

are unencumbered by the administrative red-tapism that comes from being just another department at a large university, allows for them to experiment better with changes in the curriculum.

With the issue of fifth year disengagement, the main hurdle is in trying to perceive it as a 'problem'. The signaling theory of law school detailed above provides the perfect excuse behind which students can merrily bide one year of their time at the top of the law school hierarchy before joining the ranks of the law firm as foot soldiers. It is for this reason that fifth year disengagement becomes the proverbial elephant in the room. Everyone knows it exists, but no one wants to do anything about it, or even acknowledge that it is a problem.

This paper details various options that are available to infuse the final year of legal education with more interest and importantly relevance. Moving towards the medical school model may be the best remedy for the malaise of the final year disengagement.