

READING THE LAW IN THE OFFICE OF CALVIN FLETCHER: THE APPRENTICESHIP SYSTEM AND THE PRACTICE OF LAW IN FRONTIER INDIANA

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The university law school is a relatively recent innovation, not just in Nevada but throughout much of the United States as well.¹ In this inaugural issue of the Nevada Law Journal, which marks the establishment in 1998 of the Boyd School of Law, the first state-supported and the only existing law school in Nevada, it is fitting that we examine the methods of legal education and entry to the practice of law that preceded the rise of legal education within the university.

Until the latter part of the nineteenth century, the apprenticeship system constituted the dominant mode of preparation for a career in the American practice of law. Yet surprisingly little scholarly attention has been accorded this important institution. Historians and legal scholars have largely ignored such questions as: how did the apprenticeship process actually work, what were its objectives and how well did it achieve them, and how might this history inform contemporary discussions about improving methods of legal education.² This essay seeks to provoke discussion of these and other related, similarly neglected issues by closely examining the workings of the apprenticeship system within the office of one prominent Indianapolis attorney, Calvin Fletcher, who ushered numerous aspiring lawyers into the practice of law during the second quarter of the nineteenth century.

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¹ See LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 608-09 (2d ed.1985) (discussing the rise of the university law school in the latter nineteenth century).

² A rare, well-researched, exception to this rule of inattention is Mark Warren Bailey, *Early Legal Education in the United States: Natural Law Theory and Law as a Moral Science*, 48 J. LEGAL EDUC. 311 (1998).

Fletcher's career is an especially promising vehicle for exploring the apprenticeship system. His service as a master lawyer to many aspiring attorneys over a twenty-year period became an integral part of his own highly successful frontier law practice. We know this thanks to Fletcher's careful preservation of the procession in a detailed diary. It was there he left notes on the progress made by his apprentices, including information about the development of their careers after they left his supervision. In addition, Fletcher's diary provides a record of the curriculum he constructed, his manner (and talent for) instruction, the personal background and ultimate professional accomplishments of his apprentices (including their admission to the bars of various Indiana courts), and the tensions inherent in the apprenticeship system that may have contributed to its ultimate demise.

The picture of the Indiana bar that emerges from these scattered entries contrasts in various ways with what we know about the state of the profession in the more established cities on the eastern seaboard during this same period. Most significantly, Fletcher's diary suggests that the Indiana bar was less protected by artificial economic, social, and geographic barriers to entry than were the bars of the more civilized East. Fletcher's diary also provides insight into the nature of law practice in Indiana at this time, likewise suggesting a contrast between the practice within frontier communities and the cities of the eastern seaboard.³

In addition to exploring for their own sake the historical questions raised by Fletcher's diary, this essay also considers whether this practice holds any contemporary relevance. The final section of this essay suggests ways in which "reading the law" in Fletcher's office, and indeed the rise and fall of the apprenticeship system more generally, might inform current debates concerning legal education and bar admission. That section argues that the history of legal apprenticeship counsels in favor of the trend within American law schools to dedicate more time and resources to clinical legal education and externships, a trend that has been wisely endorsed by the Boyd School of Law. At the same time, the decline of the apprenticeship system suggests the kinds of contributions that university legal education can uniquely make towards improving the bar and the service it provides to the wider community.

The Life and Times of Calvin Fletcher

The early life of Calvin Fletcher is a study in geographic mobility. Born into a Vermont farm family in 1798, Fletcher's early education was at best "scanty," attending school "only intermittently."⁴ At 19 he traveled to the "foot

³ Both of these observations are of potential relevance to a broader, historiographical debate concerning the impact of the "frontier" on America's institutions and identity. These issues are discussed *infra* at the text accompanying notes 64-78.

⁴ 6 THE DICTIONARY OF AMERICAN BIOGRAPHY 464 (Allen Johnson and Dumas Malone eds., 1931) [hereinafter DAB].

of Pennsylvania where he worked as a laborer” briefly.⁵ By the autumn of 1817 he had secured a position teaching school and had entered the Urbana, Ohio law office of James Cooley as an apprentice. Two years later he was admitted to the bar in Richmond, Virginia.⁶ He returned to Ohio and entered a partnership with Cooley, his old mentor. But Fletcher had still another journey to make before he settled for a final time. In 1821, five years after Indiana became the nineteenth State to join the Union,⁷ Fletcher moved to Indianapolis “which had just been made the capital of Indiana, and [he] was the first lawyer to practice” in the growing city.⁸

Calvin Fletcher developed a marketable reputation as Marion County prosecutor and then moved into a comfortable, if unpredictable, private practice that occupied him for the next twenty-two years. In 1845 he was “appointed president of the branch office of the State Bank of Indianapolis,” and so left behind the practice of law.⁹ In that twenty-two year period Fletcher led at least a dozen young law students through the bramble bush of Blackstone’s *Commentaries* and into the legal profession. His exhaustively detailed diary tells us who those young men¹⁰ were, where they came from, what they did to enter the legal profession, and often what became of them. By piecing together their stories we learn about the system of legal apprenticeship, the practice of law, and the developing professional order on the frontier.

Throughout the first half of the nineteenth century virtually all lawyers in the young republic entered the profession after a term as an apprentice to a practicing attorney. The assembly-line university law schools did not gain a foothold until the end of the nineteenth century. And to the extent that any mid-nineteenth century lawyers had studied law formally, a program of study at a private or university law school typically complimented, but did not replace, an apprenticeship.¹¹ The length and rigor of apprenticeship programs were not

⁵ *Id.*

⁶ *Id.* The “1819 [Virginia] code granted the holders of licenses from Kentucky, Maryland, North Carolina, Ohio, Pennsylvania, Tennessee, and the District of Columbia the right to qualify in Virginia’s courts of record without prior examination by a panel of state judges.” E. Lee Shepard, *Breaking into the Profession: Establishing a Law Practice in Antebellum Virginia*, 48 J. S. HIST. 393, 396 (1982).

⁷ See JAMES H. MADISON, *THE INDIANA WAY: A STATE HISTORY* 50-54 (1986) (discussing Indiana’s admission to the Union).

⁸ DAB, *supra* note 5, at 464.

⁹ Although Fletcher remained in Indiana until his death in 1866, his son, Calvin Fletcher, Jr., played a major role in the 1870s migration of Hoosiers to Southern California. For a fascinating account of this adventurous relocation, see James H. Madison, *Taking the Country Barefooted: The Indiana Colony in Southern California*, 69 CA. HIST. 237 (1990).

¹⁰ “No woman practiced law before the 1870s.” FRIEDMAN, *supra* note 1, at 639.

¹¹ For example, although both J.F.D. Lanier and Richard Yates studied law at Transylvania University in Lexington, Kentucky, they also both served as apprentices to practicing attorneys before joining the bar. See Jack Northrup, *The Education of a Western Lawyer*, 12 AM. J. LEGAL HIST. 294, 299 (1968); Michael H. Harris, *The Frontier Lawyer’s Library: Southern Indiana, 1800-1850, as a Test Case*, 16 AM. J. LEGAL HIST. 239, 246 (1972). Some

uniform in all regions; many historians of the West in this period have concluded that as "one progressed westward, requirements for entering legal practice diminished and then practically disappeared."¹² But the idea of the apprenticeship as the dominant mode of legal "training" was not a western innovation.¹³

The apprenticeship system flourished because it benefited both the apprentice and the practitioner. The student desiring to enter the profession needed access to what then passed for a law library in the West¹⁴ and someone to direct the course of his study.¹⁵ Perhaps more importantly he needed to develop a relationship with an established attorney, who could be helpful when it came time to enter the profession.¹⁶ On the other hand the practitioner often acquired a significant fee out of the arrangement¹⁷ and a steady supply of labor.¹⁸ Law

lawyers entered the profession through individual study without the aid of formal legal education or the direct supervision of a practitioner. For example, Thomas Jefferson set out a course of reading to take the place of an apprenticeship in preparing his young cousin for the Virginia bar. Letter from Thomas Jefferson to John Garland Jefferson, (June 11, 1790) *quoted in* W. Hamilton Bryson, *Introduction, in* LEGAL EDUCATION IN VIRGINIA, 1779-1979: A BIOGRAPHICAL APPROACH 25-26 (Bryson ed., 1982). *See also* ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* 3-10 (1983) (providing background on the nature of legal education in America between the Revolutionary War and the mid-nineteenth century); Paul D. Carrington, *The Revolutionary Idea of University Legal Education*, 31 WM. & MARY L. REV. 527 (1990) (discussing legal education at the College of William & Mary in the late eighteenth and early nineteenth centuries).

¹² Northrup, *supra* note 11, at 298.

¹³ Whereas some commentators have suggested that Massachusetts and Philadelphia lawyers resisted the rise of the law school, Hamilton Bryson has argued that in Virginia the notion of studying law at the university received a warm reception from the beginning of the nineteenth century. *Compare* Gerard W. Gawalt, *Massachusetts Legal Education In Transition*, 17 AM. J. LEGAL HIST. 27, 34 (1973); Gary B. Nash, *The Philadelphia Bench and Bar, 1800-1861*, 7 COMPARATIVE STUDIES IN SOCIETY AND HISTORY 203, 207 (1965); Bryson, *supra* note 11, at 22. Nonetheless, all three authors agree that a law school education remained an exception to the rule of training by apprenticeship until the end of the nineteenth century.

¹⁴ Michael Harris has recounted the lengths some Western lawyers had to go to piece together a workable law library. He concludes that law libraries in the offices of established practitioners in Southern Indiana were "sufficient, if not substantial." Harris, *supra* note 11, at 239, 249.

¹⁵ "From the standpoint of education, the most important aspect of an apprenticeship was access to the master's law library and his guidance in reading the law. So all important was [this law library to] the student that then, and still today, studying law as an apprentice or clerk is referred to as reading law." Bryson, *supra* note 11, at 5.

¹⁶ After 1786, in Virginia, a panel of three judges of the Court of Chancery or the General Court examined candidates, but only after he had presented a certificate of good character from the judge of the county in which he lived." Bryson, *supra* note 11, at 13. A well respected lawyer's endorsement helped the candidate obtain that certificate of good character. Moreover then, as now, inexperienced lawyers relied on veterans to teach them the art of successful practice. In Virginia as well as Indiana "given the great potential for embarrassment early in one's career, the alliance of a novice with an experienced practitioner proved of no small value." Shepard, *supra* note 6, at 401.

¹⁷ In Massachusetts in 1829 tuition at Harvard Law School was \$100/year, slightly below the fee that practitioners were required by county bar associations to charge their apprentices.

clerks spent much of their time transcribing legal documents and correspondence in lawyers' offices in New York, Boston, and Indianapolis. In Calvin Fletcher's office, the apprentice also spent days on horseback, delivering messages and payments to surrounding communities both near (Logansport and Pendleton, Indiana) and far (Cincinnati, Ohio). The apprenticeship system prospered in both the East and West because it adapted easily to any climate; an apprentice's labor could be used to meet a variety of needs.

Apprenticeship in the Office of Calvin Fletcher

The Achilles' heel of the apprenticeship system was that an apprentice's education was no better than his master was a teacher. Lawyers were then and are now busy people, and some were more given than others to the role of tutor. Frustrated students recorded in diaries and letters home complaints of inadequate attention.¹⁹ But Calvin Fletcher's students defended his pedagogy, and indicated that he took his teaching obligations seriously. One of Fletcher's most successful apprentices, Simon Yandes, would later recall Fletcher as "full of life, thorough, energetic, and enthusiastic."²⁰ Fletcher required his students to recite a lesson in Blackstone's *Commentaries* roughly once a week. During these sessions Fletcher "was an excellent teacher, always vivacious, and he enlivened recitations by anecdote, history, and personalities."²¹ Fletcher's pedagogical dedication is further evidenced by the success of his students. Many of his students went on to join the Indiana bar and develop thriving practices.

Gawalt, *supra* note 13, at 44.

¹⁸ "Apprenticeship was useful . . . to the lawyers (who in the days before telephones, typewriters, and word processors, Xerox machines, and the like) needed copyists and legmen badly." FRIEDMAN, *supra* note 1, at 318. For reasons discussed in the text accompanying notes 30, 31, I believe that Calvin Fletcher did not charge his students a fee, but simply traded his instruction for their labor.

¹⁹ In 1837 William B. Clarke, then a law student in Virginia, described as "mistaken" the "notion that our eminent lawyers are the best instructors, their business is so extensive that they could not find time to devote to their students if they had the inclination." Letter from William B. Clarke to Robert Beverly, Apr. 12, 1837, Virginia Historical Society, *quoted in* Bryson, *supra* note 11, at 12. And Thomas Jefferson further disparaged legal apprenticeships: "I have ever seen that the services expected in return have been more than the instructions have been worth." Thomas Jefferson, Letter from Thomas Jefferson to John Garland Jefferson, June 11, 1790, in 16 PAPERS OF THOMAS JEFFERSON 480-482 (J.P. BOYD, ed., 1961) *quoted in* Bryson, *supra* note 11, at 25. This tension between the clerk's bifurcated role as student and secretary characterized the apprenticeship system in New England as well. After he had spent two years in the office of the Massachusetts attorney James Putnam, John Adams still felt unable to craft a writ and judged his disability one of "the Disadvantages of Putnam's Insociability and neglect of me." JOHN ADAMS, 1 DIARY OF JOHN ADAMS 63 (Lyman H. Butterfield, et. al. eds., 1964) *quoted in* Gawalt, *supra* note 13, at 32.

²⁰ Simon Yandes, Recollections of Calvin Fletcher as a Lawyer, *quoted in* CALVIN FLETCHER, 1 THE DIARY OF CALVIN FLETCHER 254, n.88 (Gayle Thornbrough ed., Indiana Historical Society, 1972) [hereinafter FLETCHER Vol. 1].

²¹ *Id.*

An apprenticeship in Fletcher's office typically lasted about three years. This average duration was dictated by custom rather than law, and an exceptionally bright or dedicated student might complete the term of study and service ahead of schedule. For example, Daniel Pratt joined the bar after only two years as Fletcher's apprentice.²² In this same time period county bar associations in Massachusetts required a three-year term of apprenticeship for college graduates and from four to seven-year terms for non-college graduates.²³

Fletcher viewed the apprenticeship system as a screening mechanism. Accordingly, he attempted to develop a personal relationship with his students, so to assess better their future promise. He took his responsibility to the Indiana bar seriously and admitted into his office only those young men he had appraised as being capable candidates: "It was [his] habit to make the acquaintance of the boys that were growing up around him, and he was inclined to take hopeful views of their prospects. No other citizen did this to the same extent."²⁴ During the apprenticeship period, he measured the novice's intellect and industry, often assessing the student's progress in brief asides in his diary. He was unenthusiastic about John James Hayden, who was "of dissipated idle habits;" Hayden eventually left Fletcher's office before completing his apprenticeship.²⁵ But Fletcher was more hopeful for Simon Yandes, an apprentice who eventually became one of Fletcher's law partners. On January 24, 1835, Fletcher wrote: "In the eve heard S. Yandes recite. He is a young man of good mind. Bids fair to make a useful man."²⁶ And these judgments were always subject to reconsideration later. An 1841 entry in Fletcher's diary reads: "Told S. Yandes unless he changed his views he could not make a useful & successful lawyer. He seems to dread labor."²⁷

Staying in Calvin Fletcher's good graces often facilitated the completion of one's education. In 1841, Lewis Biles, who had been working and reading law for several months, informed Fletcher that he could not stay the full three years even if the law office continued to furnish his "clothes [] as his mother could not board him & he said he did not think we could do that much for him."²⁸ Fletcher ultimately offered to take him into his home, even though Biles was less than the model apprentice: "It was against my will at first but from circumstances I thought it best for him. He is desponding & sensitive – wants a riddance of such mistaken views. I hope something may be done for him."²⁹ As

²² *Id.* at 277, n.165.

²³ See Gawalt, *supra* note 13, at 31.

²⁴ See FLETCHER, VOL. 1, *supra* note 20.

²⁵ Calvin Fletcher, 2 THE DIARY OF CALVIN FLETCHER 137 (Gayle Thornbrough ed., Indiana Historical Society, 1973) [hereinafter FLETCHER, VOL. 2].

²⁶ *Id.* at 258.

²⁷ *Id.* at 275.

²⁸ *Id.* at 342.

²⁹ *Id.* at 351. Thanks to Fletcher's generous assistance, Lewis Biles completed his apprenticeship and was admitted to bar in the fall of 1842. See *infra* note 51.

this incident suggests, Fletcher did not keep his apprentices at arm's length. Instead he used the term of apprenticeship to evaluate the apprentice's character and determine whether he was a fit candidate for the bar.

Fletcher's response to Biles's predicament also suggests that Fletcher did not charge the apprentice a fee for his instruction, other than to call on the apprentice as a source of labor from time to time. This proposition is further evidenced by an October 18, 1842 letter, by which Napoleon Taylor turned down Calvin Fletcher's offer to provide four-to-five years of unpaid instruction in exchange for two years worth of clerical work.³⁰ During this same period, the bar association in Suffolk County, Massachusetts *required* its member attorneys to charge their apprentices \$150/year, an ample fee considering that the cost of tuition at Harvard was then only \$100/year.³¹

In spite of his good intentions, Fletcher's office suffered from the frailties of the apprenticeship system. As his law practice grew, free labor became increasingly important. Fletcher's apprentices performed many essential tasks. And as the volume of business increased, they spent less time digesting Blackstone and more time lending a hand. First and foremost, an apprentice was a legman. In Indiana in the early nineteenth century, travel was almost exclusively by foot or on horseback, and therefore time consuming and exhausting. Fletcher's diary records numerous journeys apprentices made on his behalf. His students often made relatively short trips to the infant communities growing up around the new state capital.³² These young men occasionally made longer journeys, usually to Cincinnati. Undoubtedly, on more than one occasion an apprentice saved Fletcher a week's ride on muddy roads in the pouring rain.

Fletcher's apprentices also copied letters and documents in an age before copy machines and typewriters. Fletcher worried constantly about being behind on his business correspondence and occasionally enlisted the energies of an apprentice to get him caught up.³³ After Fletcher entered into a partnership with Butler, this clerical work demanded more and more attention: "Mr. Palmer is sick. We must look out for another clerk for our office. Our letter writing and copying will occupy one man."³⁴ The growing pressure to allocate more time to labor and less to reading eventually drove many of Fletcher's apprentices out of the office: "Mr. Palmer has left the office & for awhile is going to devote his whole attention to the study of the law."³⁵ Others removed themselves from the

³⁰ See FLETCHER, VOL. 2, *supra* note 25, at 382, n.9.

³¹ See Gawalt, *supra* note 13, at 34, 44.

³² His students traveled frequently to Decatur, Longansport, Pendleton, etc., as did Fletcher himself when a surrogate was either unavailable or simply would not do.

³³ "Without gloomy fo[r]bodings I wish to commence the business of the week. I wish [to] take up the correspondence in the office with Stevens [a clerk] & carry it thro' & let S.Y.&B. [Simon Yandes & Butler – Fletcher's two law partners at this time] attend to other matters." FLETCHER, VOL. 2, *supra* note 25, at 184.

³⁴ *Id.* at 17.

³⁵ *Id.* at 68.

bustle of the office (and presumably its demands on their time) in order to prepare for the first day of the court's next session, the day on which they could attempt to join the bar: "Simon has cleaned out Bradley's upper room & is going [to] study there . . . Simon has been engaged for the last 18 months in active business & now designs being licensed in the Sup[reme] court at the fall term."³⁶ Throughout his term an apprentice balanced his goals as a part-time student with his duties as a part-time office boy. As the practice in Indiana became more complex and more competitive in the late nineteenth century, the law student sought a more thorough and systematic education than he could achieve between errands and assignments.

A Variety of Backgrounds

Myths about the West in this period relate that lawyers (along with preachers, doctors, politicians, businessmen, and bankers) broke into their careers without the benefits of family wealth and early education, that they were self-made men. Everything was up for grabs and the stakes were high in this world of extreme flux and abundant opportunities. Although there is perhaps more fiction than fact behind these myths, a roll call of Fletcher's apprentices suggest that Massachusetts and Virginia notions of what was necessary to enter the profession made no sense, and hence no difference, in the context of the frontier.

It is unclear how difficult it was for a young man to secure a position in Calvin Fletcher's law office. His diary gives no indication of how many tried and failed (or that any tried and failed). Most of the young men who succeeded did so via personal connections. Typically, Fletcher knew a candidate personally,³⁷ had some connection with the boy's family,³⁸ or the young man came into the office on the strength of a personal recommendation of a well-respected local figure.³⁹ Fletcher occasionally took in a pupil in order to return a favor or maintain an important relationship, even when it was not convenient to do so: "Also Govr. Wallace['s] youngest brother expects to study with us which throws new responsibilities upon us."⁴⁰ But what does seem clear is that Fletcher did not confine his choice of apprentices to a well-defined Indiana social elite, precisely because no such thing existed in the West in the early nineteenth century. Napoleon Taylor was the son of one of Indianapolis's first brick masons.⁴¹ Benjamin Judson was an orphan.⁴² And, as previously noted,

³⁶ See FLETCHER, VOL. 1, *supra* note 20, at 426.

³⁷ See the text accompanying *supra* note 24.

³⁸ For example, Calvin Fletcher knew Simon Yandes's father – a successful merchant – and Frederick Cole's brother, Albert – a Justice of the Peace in Hamilton County. FLETCHER, VOL. 1, *supra* note 20, at 53, 239.

³⁹ George Dunn, a prominent Indiana lawyer and politician, wrote a letter of introduction for Daniel Pratt, who came to Indiana from Maine the year before he sought admission to Fletcher's office. FLETCHER, VOL. 1, *supra* note 20, at 236, n. 29.

⁴⁰ See FLETCHER, VOL. 2, *supra* note 25, at 115-16.

⁴¹ See FLETCHER, VOL. 2, *supra* note 25, at 76, n.16.

Fletcher provided board to Lewis Biles when his family was no longer able to financially support him during his apprenticeship. Apparently Fletcher looked for young men whom he believed to be trustworthy and capable of making a contribution to the profession. It helped if he knew you, but class bias did not act as a bar to opportunity.⁴³ In fact, Fletcher harbored some distrust of young men of advantage: "I gave my brother Stoughton & Mr. Bradley my views as to the prevailing disposition of the merchants & professional men[']s sons getting their living without work – that he who has never submitted to bodily exercise can rarely submit to mental."⁴⁴

Similarly, it appears that some college education was helpful but by no means necessary. A student like Daniel Pratt, the Valedictorian of the 1831 class of Hamilton College in New York, was exceptional.⁴⁵ Other apprentices had some college experience. Andrew Ingram attended "Cincinnati and Athens College a year or two."⁴⁶ For the rest, Fletcher's diary is silent with respect to prior education. Apparently it was not a determinative factor in either accepting an apprentice into the office or in his eventual admission to the bar. This relative indifference to prior education is in dramatic contrast to the significance some east-coast bars attached to a college degree. For example, in Massachusetts, pressure from "the older leaders of the profession" to make a college degree a prerequisite to admission to the bar resulted in more severe apprenticeship requirements for non-college graduates. Thus, among the 2018 lawyers practicing from 1760 to 1840 in Massachusetts, 1409 of them, or nearly 70%, had college degrees.⁴⁷ Similarly, at the beginning of the nineteenth century, 68% of Philadelphia lawyers were college graduates.⁴⁸ Although these eastern jurisdictions stopped short of imposing a college-degree requirement for bar admission, earning a college degree played a greater role in entering the profession in Massachusetts or Philadelphia than in Indiana.⁴⁹

⁴² See FLETCHER, VOL. 1, *supra* note 20, at 292.

⁴³ Professor Gordon's study of the mid-nineteenth-century Kentucky bar also concluded that by the 1840s and 50s, the practice of law was open to men of talent with little or no regard paid to their lineage. See JAMES W. GORDON, *LAWYERS IN POLITICS: MID-NINETEENTH CENTURY KENTUCKY AS A CASE STUDY* 11 (1990) ("The only status the lawyer had was earned, not inherited. And since the American bar was open to men of talent from all social backgrounds, it was dynamic.").

⁴⁴ See FLETCHER, VOL. 1, *supra* note 20, at 458.

⁴⁵ TENTH CONGRESSIONAL DISTRICT, 2 A BIOGRAPHICAL HISTORY OF EMINENT AND SELF-MADE MEN OF THE STATE OF INDIANA, 33-34 (1880) [hereinafter HISTORY].

⁴⁶ See FLETCHER VOL. 1, *supra* note 20, at 26-27, n. 38.

⁴⁷ See Gawalt, *supra* note 13, at 38.

⁴⁸ See Nash, *supra* note 13, at 216.

⁴⁹ Oliver H. Smith, a prominent Indiana attorney from this same period, once observed that the legal apprentice "should have a good, sound English education; he should spell well, read well and write well, and understand the principles of arithmetic and English grammar." By way of illustrating the relative uselessness of other, more formal education, he added: "A fine looking young man called upon me one day, desiring to study law with me. I inquired of him as to his education. He answered, 'I am a graduate of an Eastern College; I understand Latin,

In fact, upon the satisfactory completion of the apprenticeship, admission to the bar came relatively easily to the young men who had read the law in Fletcher's office. Out of all the men Fletcher trained, nothing in his extensive diary suggests that a single one of them was denied entrance to the bar following completion of the apprenticeship.⁵⁰ And Fletcher's diary recounts numerous instances of one of his alumni having been stamped with approval on the first day of the court's term.⁵¹ Admittedly, the exam was enough to scare Fletcher's students into bearing down in the last few months prior to the first session of the court. In anticipation of his bid to join the bar on the first day of the fall term, Yandes ceased work as a clerk in May and occupied "an adjoining room . . . to study law altogether."⁵² But Fletcher recorded no instance of one of his students failing this test.⁵³

Greek and Hebrew; I stood No. 2 in a large class of graduates.' I said, 'Do you spell well?' He answered, 'I presume so, but I never thought much of that.' I said, 'Spell balance.' He spelled it 'ballance.' I said, 'That won't do. Do you read well?' He answered, 'Certainly.' Then read this. He read, 'My name is Norval *on* the Grampian hills.' I said, 'What was his name *off* the Grampian hills? Do you write well?' He answered, 'No, I never could write much; indeed I never tried to learn. Our great men East can scarcely write their names so that they can be read.' I said, 'let me see you write.' He scratched off some caricatures looking like Greek or turkey tracks. 'That is sufficient; your education is too imperfect for a lawyer; the dead languages may be dispensed with, but spelling, reading and writing can not be.'" William Watson Woollen, *Reminiscences of the Early Marion County Bar*, reprinted in VII PUBLICATIONS, INDIANA HISTORICAL SOCIETY 185, 191-92 (1923).

⁵⁰ Then, as now, the legal training itself weeded out many. Biles's request for assistance suggest that others, unable to find such benevolent masters, may have abandoned their ambitions to be lawyers under financial pressures. Others simply decided that the law was not for them. In his entry for June 18, 1839, Fletcher noted that Benjamin Judson was a curious character: "I am anxious for his prosperity but fear his eccentricities will injure him whether they are natural or artificial." FLETCHER, VOL. 2, *supra* note 25, at 100. Apparently his "eccentricities" got the best of him; in December of 1839 he left Fletcher's office to teach school and study theology in Pendleton, Indiana. *Id.* at 126.

⁵¹ For example, we know that Pratt was admitted to the bar on September 28, 1835. FLETCHER, VOL. 2, *supra* note 25, at 326-27. Alanson Stevens was "examined for admission to the bar" in the afternoon of May 28, 1841, and was the following day "Licensed by the Supreme Court." FLETCHER, VOL. 2, *supra* note 25, at 455. And Lewis Biles joined the bar on the first day of the circuit court's fall session in 1842. *Id.* at 455. As in frontier Kansas, in frontier Indiana the standards for admission to the bar were "relatively unstructured and imprecise" and the rigor of the court's oral examination of applicants is ultimately unknowable because "[t]here is no record of questions asked or answers given." C. ROBERT HAYWOOD, *COWTOWN LAWYERS: DODGE CITY AND ITS ATTORNEYS, 1876-1886*, at 49-50 (1988).

⁵² See FLETCHER, VOL. 1, *supra* note 20, at 432.

⁵³ Elizabeth Brown identified two Michigan apprentices who had applied for admission to the bar and were never subsequently added to the roll of attorneys. Elizabeth G. Brown, *The Bar on the Frontier: Wayne County, 1796-1836*, 14 AM. J. LEGAL HIST. 136, 154 (1970). Although none of Fletcher's students failed their bar examinations, Fletcher noted, on the same day Stevens was admitted to the bar, that one Brown, the brother of an Indiana Secretary of State William J. Brown, was denied admission. FLETCHER, VOL. 2, *supra* note 27, at 327. So obviously the examination was not an altogether empty formality. Fletcher's endorsement of a candidate, however, most likely went a long way towards securing his admis-

A student was not required to master all of the law's subtleties before he was permitted to join the bar and begin practice. In the fall of 1841, "Mr. Stevens made some serious mistakes in a declaration which he filed in the U. States C[ircuit] C[ourt]."⁵⁴ Six months later he was admitted to practice. When Daniel Pratt left Fletcher's supervision, Fletcher noted that Pratt was "not as good a lawyer as I think he should be but I trust he will do well."⁵⁵ In the context of early nineteenth century Indiana, no amount of study substituted for experience in the business of winning clients and then winning cases.⁵⁶ When Simon Yandes "returned . . . discouraged" from his first solo effort in Greenfield, Fletcher was neither surprised nor worried:

[Yandes] Said he had not got a single fee while the older lawyers had their hands full of business. This was no more than I expected. No more than right. A long train of service should only purchase such patronage as he desires.⁵⁷

Calvin Fletcher's Indiana was characterized by a remarkable degree of geographic mobility. In a place and time in which everyone is a newcomer, no one is an outsider. As we have seen, Fletcher himself came to Indiana from Ohio and to Ohio from his home state of Vermont. Although some of Fletcher's legal apprentices were natives of Indiana, many others came to the state as unattached young men. None of Fletcher's apprentices were married at the time they worked for him.⁵⁸ Many of the apprentices had traveled to Indianapolis from other parts of the country. Daniel Pratt, who was born in Maine, had attended Hamilton College in New York.⁵⁹ Andrew Ingram followed

sion to the bar.

⁵⁴ See FLETCHER VOL. 2, *supra* note 25, at 26.

⁵⁵ See FLETCHER, VOL. 1, *supra* note 20, at 315.

⁵⁶ Just how "rough and tumble" law practice on the "frontier" was the subject of a neo-Turnerian debate. See Harris, *supra* note 11, at 239. According to the conventional wisdom, consistent with Frederick Jackson Turner's infamous thesis, "Litigation on the frontier was simple, if not crude, and in most places a comprehensive knowledge of the law or special technical training in legal skills was not required and was likely to be of little use to the average lawyer." Paul E. Wilson, *The Early Years: The Bench and Bar Before 1882*, in REQUISITE LEARNING AND GOOD MORAL CHARACTER: A HISTORY OF THE KANSAS BENCH AND BAR 27, 37 (Robert W. Richmond ed., Kansas Bar Association, 1982). Other scholars have challenged these conclusions and have imposed different interpretations on court records. In her "The Bar on a Frontier: Wayne County, 1796-1836," Brown insisted that a careful reading of the documentary evidence established that Wayne County, Michigan lawyers in the early nineteenth century "knew and practiced their craft as competently and advisedly, with as careful a regard for forms and precedents, as their contemporaries practicing law along the eastern seaboard." Brown concluded that the "law practiced on the frontier in Wayne County was not the product of its environment." Brown, *supra* note 53, at 155. See also, Elizabeth G. Brown, *Frontier Justice: Wayne County, 1796-1836*, 16 AM. J. LEGAL HIST. 126-53 (1972). The truth probably lies somewhere between these two extremes.

⁵⁷ See FLETCHER VOL. 2, *supra* note 25, at 152.

⁵⁸ Calvin Fletcher married his first wife Sarah Hill in May of 1821 – after he had completed his apprenticeship and had been admitted to the Virginia bar – the same year he settled in Indianapolis. DAB, *supra* note 4, at 464.

⁵⁹ See HISTORY, *supra* note 45, at 33-34.

Fletcher from Ohio to Indianapolis.⁶⁰ Hugh O'Neal came to Indianapolis with his family as a boy. Although he experimented with California during the gold rush, he eventually returned to Indiana for good.⁶¹ The West welcomed settlers when they were young men seeking their fortunes. Fletcher easily found a niche in Indianapolis. And, in turn, young men from far and near had an equal chance of finding their way into Fletcher's law office and from Fletcher's office into the Indiana bar.⁶²

And these young lawyers remained mobile after they completed their apprenticeship and entered the bar. Many of Fletcher's students migrated to the outlying communities growing up around Indianapolis. Pratt put out his shingle in Longansport, Indiana and stayed there, even though he occasionally considered going after bigger game: "He is a man of talents & talks of leaving his present place and going to St. Louis or Cincinnati."⁶³ Biles transplanted himself to Covington, Indiana. Ingram settled in Lafayette, Indiana, where he was elected prosecutor, developed a private practice, and eventually became a circuit judge.⁶⁴ Others drifted even further away; Alanson Stevens resettled in Tennessee after he left Fletcher's office and was admitted to the Indiana bar. Apparently these other communities offered some relative advantages. By the 1830s it already may have been difficult to break into the profession in Indianapolis.

Frontier Law Practice

The experiences of these young men tell us something about the quality and character of law practice in frontier Indiana. The typical mid-nineteenth century lawyer was a generalist; if he had a successful practice he was involved in anything and everything.⁶⁵ Many western lawyers, Fletcher included, had some experience practicing criminal law.⁶⁶ As his practice developed, Fletcher in-

⁶⁰ See FLETCHER, VOL. 1, *supra* note 20, at 27 n.38.

⁶¹ *Id.* at 192 n.54.

⁶² This openness to the outsider was in contrast to the exclusivity of the practice in the East. In Massachusetts, for example, traveling lawyers met with a cold reception: "Stimulated by an increase in the number of active practitioners, the parochial pride of the members of the county bar associations, and an influx of lawyers from other states each county bar association erected barriers against out-of-state lawyers and against law students who were trained in another state or even another county within Massachusetts." Gawalt, *supra* note 13, at 36.

⁶³ See FLETCHER, VOL. 2, *supra* note 25, at 408.

⁶⁴ See FLETCHER, VOL. 1, *supra* note 20, at 27-28, n.38.

⁶⁵ Professor Friedman had this to say of the Western Lawyers in this period: "They did not bother asking what was or was not fit work for a lawyer. Whatever earned a dollar was fair game." FRIEDMAN, *supra* note 1, at 308.

⁶⁶ Calvin Fletcher served as Marion County prosecutor. He also (unsuccessfully) defended one of the white men accused of murdering a party of peaceful Seneca Indians in the "Massacre of Fall Creek," an event memorialized by Jessamyn West's highly acclaimed work of historical fiction. See JESSAMYN WEST, THE MASSACRE AT FALL CREEK (1975); FLETCHER, VOL. 1, *supra* note 20, at 132 n.3.

creasingly occupied himself and his apprentices with the business of land speculation. Daniel Pratt later recalled that when he started his term in the office, Fletcher “was investing largely in Government lands.”⁶⁷ Fletcher relied on his apprentices to do much of the leg work in this time consuming but lucrative business. On April 20, 1836 “Simon Yandes went to Mrs. McLaughlin[‘s] to help appraise property.”⁶⁸ In February of 1841 Frederick Cole went “to Martinsville to bid in some property expected to be sold on execution.”⁶⁹ And property bought, often with borrowed money, was in short order resold: “We have now to sell out property or loose our debts. Mr. Reynolds has gone to Rockville & Green Castle to look after some property to be sold there.”⁷⁰ At least early in his real-estate career Calvin Fletcher longed for security in a turbulent and unpredictable marketplace. Reflecting on his need to discharge his massive debts in the coming year, on January 1, 1836 Fletcher noted:

I now anticipate sales of real estate to effect this object. In this I may be totally disappointed, if so I shall be hard pressed. The accumulation of property does not make me happy.⁷¹

The other pillar of the Western lawyer’s practice, which similarly fed on the frequent and unpredictable economic cycles, was debt collection.⁷² Fletcher established himself as a leading collector in Indianapolis. This status secured him a lucrative supply of business from Louisville and Cincinnati creditors. Fletcher’s apprentices wore their own trail between his office and these two cities. In a letter to Calvin Fletcher’s son, Daniel Pratt recalled his role in Fletcher’s collections business:

Most of our [Indiana’s] traders made their purchases at Cincinnati or Louisville. Your father sometimes sent me to the former city on horseback with the proceeds of his collections for distribution among the creditor merchants. In one of these years late in the fall when the roads were so deep that it took four days to reach Cincinnati, I took in my saddle bags \$5000 of collections for distribution.⁷³

Fletcher’s solid reputation in the collections business was the product of his swift service and attention to detail. Pratt continued, noting that whenever Fletcher collected a debt he would “promptly remit it with full explanations. It was one of the secrets of his success as a collecting lawyer, and at that time he

⁶⁷ See FLETCHER, VOL. 1, *supra* note 20, at 202 n.78.

⁶⁸ *Id.* at 332.

⁶⁹ See FLETCHER, VOL. 2, *supra* note 25, at 291.

⁷⁰ CALVIN FLETCHER, 3 THE DIARY OF CALVIN FLETCHER 69 (Gayle Thornbrough ed., Indiana Historical Society, 1972) [hereinafter FLETCHER, VOL. 3].

⁷¹ See FLETCHER, VOL. 1, *supra* note 20, at 297.

⁷² Debt collection likewise constituted a significant part of the practice of early California lawyers. See GORDON MORRIS BAKKEN, PRACTICING LAW IN FRONTIER CALIFORNIA 3 (1991) (observing that the early Los Angeles County, California bar “concentrated on the stuff of trade: debt collection and land-title litigation”).

⁷³ Letter to Dr. William B. Fletcher (Oct. 6, 1873), *reprinted in* FLETCHER, VOL. 1, *supra* note 20, at 278 n.166.

almost monopolized the business, and it was the source of much profit . . . [I]n this lucrative branch of the profession he had no rival."⁷⁴

Fletcher's students followed in his footsteps and took advantage of whatever business opportunities existed on the frontier. Some practiced for a few years and then ran for public office. Horatio Harris was serving as an apprentice in Fletcher's office in 1836. In 1843 he won the position of State Auditor.⁷⁵ Others experimented with more eccentric practice areas; Daniel Pratt assisted in treaty negotiations with the Miami Indians, making a tidy profit in the process.⁷⁶

Although Fletcher's graduates struggled to gain a foothold in the practice of law immediately after completing their apprenticeships, many of them achieved success in a relatively short period of time. Simon Yandes initially entered into partnership with Fletcher and Ovid Butler and later shared a healthy practice with one of Indiana's most prominent attorneys, Oliver H. Smith.⁷⁷ On June 1, 1840, less than five years after Daniel Pratt had been admitted to the bar, Calvin Fletcher received a letter from William Palmer, who reported that Pratt was well on his way to building a strong practice.⁷⁸ And by February of 1839, less than ten years after his move to Lafayette, Andrew Ingram's practice was more than he could handle: "He is much pressed with business & wants the assistance of a proper young man. His law business is now worth \$3 or \$4 thousand a year."⁷⁹

⁷⁴ *Id.*

⁷⁵ See FLETCHER, VOL. 1, *supra* note 20, at 295; FLETCHER, VOL. 2, *supra* note 25, at 561. Northrup argues that pecuniary reward "did not come quickly to the western lawyer," and that the skimpy returns from frontier practice "almost compelled" the western lawyer "to become a politician." Northrup, *supra* note 11, at 304-05. See also BAKKEN, *supra* note 71, at 9 (finding that California's nineteenth-century lawyers often sought and held public office because governmental service provided "security as well as opportunity in an increasingly competitive profession"). Although many Indiana lawyers in this period did ultimately turn their efforts to politics, many others developed lasting and financially rewarding careers in the practice of law. Calvin Fletcher exemplifies this latter category. An ardent Whig, he dabbled in local politics, but in 1836 he turned down an invitation to run for Congress, "saying that he preferred to adhere to his profession." DAB, *supra* note 4, 464.

⁷⁶ "I may set my profits down to \$300 or more." FLETCHER, VOL. 2, *supra* note 25, at 44.

⁷⁷ See FLETCHER, VOL. 2, *supra* note 25, at 112. For a brief and colorful biography of Oliver H. Smith, see Woollen, *supra* note 49, at 190-92.

⁷⁸ *Id.* at 189 n.81.

⁷⁹ *Id.* These success stories suggest that it may have been significantly easier to break into the profession in Indiana than in Virginia in this period. "If aspiring lawyers were eager to get to the bar [of Virginia], most discovered that gaining success in the professional world proved to be the greatest challenge of their careers. Having completed their educations, having passed their examinations, and having secured their licenses did not automatically ensure young men of comfortable practices." Shepard, *supra* note 7, at 399. See also M.H. Hoeflich, *Legal Fees in Nineteenth-Century Kansas*, 48 U. KAN. L. REV. 991, 1001 (2000) (concluding that fee schedules suggest that "even in the earliest days of statehood, Kansas may well have suffered from a 'lawyer glut'").

The Rise of the Law School

The apprenticeship system did not last forever. By the end of the nineteenth century the university law school had effectively replaced the apprenticeship as the dominant mode of legal preparation.⁸⁰ Within Fletcher's office, one finds the hint of things to come.

The Indiana bar became more and more crowded during the 22 years in which Fletcher practiced law and trained lawyers in Indianapolis. When Pratt first relocated to Logansport in March of 1836, he was rather pessimistic because he thought there were "too many lawyers at that place."⁸¹ And matters only got worse. By the fall of 1842 Lewis Biles's entrance to the bar led Fletcher to comment: "Our Circuit Court commenced The Cases to be litigated diminish – the lawyers increase."⁸² As the Indiana bar became more competitive, the prestige of a law-school education became more valuable.⁸³

Even in the early nineteenth century lawyers in the West recognized the many virtues of a law-school education.⁸⁴ But a law school was rather hard to come by, and this additional learning was reserved for exceptional cases. Calvin Fletcher held one of his apprentices, Simon Yandes, in particularly high regard. In February of 1836, after the first eight months of Yandes's apprenticeship, Fletcher remarked "[o]f Simon Y. my expectations are great."⁸⁵ Two years later, Yandes decided to attend Harvard Law School—apparently with strong encouragement from Calvin Fletcher: "It has been on my recommendations that he is going & I trust it may prove a blessing to him in future life."⁸⁶ With a letter of introduction written by Justice McClean⁸⁷ in hand, Yandes arrived in Cambridge in September and immediately presented himself "to Judge Story and Mr. Greenleaf (as the students are in the habit of calling them)."⁸⁸

⁸⁰ "Indeed, by 1900 it was quite clear that the law schools would come to dominate legal education. It was clear, too, what kind of school: a law school affiliated with a university, public or private In 1900, thirty-three states had law schools." FRIEDMAN, *supra* note 1, at 606-07. For a highly-acclaimed, recent treatment of the rise of the American law school, see ROBERT B. STEVENS, *supra* note 11.

⁸¹ See FLETCHER, VOL. 1, *supra* note 20, at 317.

⁸² See FLETCHER, VOL. 2, *supra* note 25, at 455.

⁸³ "Law school gave the student a prestige that law-office training could not match." FRIEDMAN, *supra* note 1, at 607.

⁸⁴ See *supra* note 11.

⁸⁵ See FLETCHER, VOL. 1, *supra* note 20, at 308.

⁸⁶ See FLETCHER, VOL. 2, *supra* note 25, at 13.

⁸⁷ No doubt Fletcher helped Yandes obtain this impressive letter of introduction. McClean, who had served on the Supreme Court of Ohio and later became a Justice of the United States Supreme Court, was one of Fletcher's longstanding business associates. See *e.g.* FLETCHER, VOL. 1, *supra* note 20, at 22.

⁸⁸ See FLETCHER, VOL. 2, *supra* note 25, at 35-38, 72-74, 93-96. A total of three letters from Yandes, while at Harvard, are found in Fletcher's Diary. *Id.* at 35-38, 72-74, 93-96. These letters reveal a great deal about the state of the art in law teaching at Harvard and the nature of the profession in this period more generally, issues well beyond the scope of this paper. For example, we learn that Greenleaf's "mind seems to move slower than Judge Story's [sic]

After a year at Harvard, Yandes returned to Indianapolis and entered into a partnership with Calvin Fletcher and Ovid Butler. Yandes swiftly rose to eminence in the profession. He eventually joined into a partnership with venerable lawyer and jurist, Oliver H. Smith. Yandes's Harvard credentials provided him an advantage in an increasingly competitive western legal market. By the end of the nineteenth century, the exception – a law school education – had become the rule in Indiana. The frontier had been tamed.

Relevance of the Apprenticeship to Contemporary Legal Education

Contemporary lawyers and judges frequently bemoan the fact that newly minted law-school graduates are not better prepared for the practical challenges of the first few years of the profession. These complaints have sparked debates within the legal academy about the need for more practice-oriented learning experiences as an alternative to traditional classroom instruction.⁸⁹ These complaints have also prompted reconsideration of the prevailing regime of examination for bar admission.⁹⁰ Fletcher's diaries in particular, and the legal apprenticeship system more generally, provide us with heretofore unexamined raw data about the strengths and weaknesses of past approaches to legal learning that were decidedly more practical in focus. This essay concludes with a few tentative observations about the relevance of the experiences recorded in Fletcher's diaries for present debates about law-school curricula and bar admission.

As to the former, the success of Fletcher's students demonstrates that an apprenticeship in his office prepared many initiates for full and immediate participation in the profession, both in Indianapolis and other, more remote jurisdictions.⁹¹ Indeed, many of Fletcher's students commenced their own solo practices soon after leaving his instruction. The combination of directed reading, weekly tutorials with a skilled practitioner, and labor under the practitio-

and yet it moves with much power." Moreover, Greenleaf was friendly and accessible to his students: "He was kind enough to have me spend an evening at his house; and a very pleasant evening it was." *Id.* at 37. Yandes also noted that his fellow students from the East coast looked down their noses at Western lawyers: "here there is an indistinct, but low estimate of the west. They seem to think that men who could not possibly succeed here, may do very well for the wild west." *Id.* at 93-94. Some things never change. For a discussion of the mid-nineteenth-century curricula of the law schools affiliated with Transylvania University and the University of Louisville, see GORDON, *supra* note 43, at 93-96.

⁸⁹ See M.H. Hoeflich, *Plus Ca Change, Plus C'est La Meme Chose: The Integration of Theory & Practice in Legal Education*, 66 TEMP. L. REV. 123 (1993) (observing that "growing dissatisfaction of many practicing lawyers with the products of traditional legal education" has made "the debate over the extent to which it is desirable and possible to integrate a more practical approach into the predominantly theoretical classroom model" a "'hot' topic[] in legal education" in recent years).

⁹⁰ See generally Beverly Moran, *The Wisconsin Diploma Privilege: Try It, You'll Like It*, 2000 WIS. L. REV. 645.

⁹¹ See the text accompanying *supra* notes 53-63 & 74-78.

ner's supervision – which included drafting (and copying) legal briefs, memoranda, and correspondence – taught the apprentice enough about the provision of legal services to paying clients to allow him to take independent responsibility for client matters upon joining the bar. Nor was the success of Fletcher's graduates transitory. To the contrary, many of his former apprentices enjoyed long and rewarding careers.⁹²

Fletcher's pedagogical success sets a daunting standard for contemporary legal educators, most of whom would readily concede that completion of a course of study at a university law school does not alone prepare most graduates for immediate entry into solo practice.⁹³ This gap between Fletcher's achievements and our own reinforces increasingly widespread sentiment that formal legal education must make opportunities for experiential learning – in the form of law-school clinical education, legal externships, and classroom simulations – available to interested students.⁹⁴ Fortunately, for both Nevada's aspiring lawyers and its more established bench and bar, the Boyd School of Law has from its inception recognized the importance of clinical education, quality externships, and simulation courses, committing substantial resources to their development. It should also be remembered that not all legal apprenticeships were as beneficial as Fletcher's for the apprentice.⁹⁵ To the extent that law schools do look to clinics, externships, and simulations to compliment more traditional classroom instruction, Fletcher's example suggests that the pedagogical success of these programs will depend on a commitment on the part of those in supervisory roles to ensuring that the student's experience is one of learning. In the present, this commitment probably translates into a recognition that the primary purpose of both clinics and externships is educational, rather than the salutary but incidental satisfaction of the community's otherwise unmet needs for legal services.

Fletcher's diaries also hint at the need for a continuing commitment to traditional classroom learning. Even Fletcher, who was unusually dedicated to

⁹² See the text accompanying *supra* notes 74-78.

⁹³ See William R. Trail and William D. Underwood, *The Decline of Professional Legal Training and A Proposal for its Revitalization in Professional Law Schools*, 48 BAYLOR L. REV. 201, 202 (1996) ("Traditionally, university-based law schools have been satisfied with a mission of preparing students to learn to practice law on the job following graduation."); Hoeflich, *supra* note 88, at 123 ("Unfortunately, when most law students graduate they are not ready to practice law but instead are only ready to begin to learn to practice law through the apprenticeship they will experience as associates" in large private law firms.); see also John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 174 (noting that the 1992 ABA REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP concluded that law schools generally fail to prepare graduates for immediate entry into law practice).

⁹⁴ See James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 115-17 (1991).

⁹⁵ See *supra* note 19.

teaching, became increasingly distracted by the demands of his growing practice, and in turn increased his demands on his apprentices' time. Ultimately, many of his students had to take a leave from their apprenticeships to devote themselves to study, and in at least one instance to attend lectures at a university law school.⁹⁶ Then, as now, learning the law required students to commit themselves wholly to academic study for extended periods of time. At its best, traditional classroom study creates and preserves an environment conducive to critical evaluation, and thus a deeper understanding, of our rich constitutional and legal heritage, the existing legal order, and prominent proposals for its reform. This continuation of the methods and goals of the liberal-arts education in the law-school context is essential if lawyers are to continue to fulfill the roles they currently play in both resolving intractable private disputes and shaping public policy.

As to the current concerns about bar examinations, Fletcher's diaries do suggest at least one possible improvement upon the obviously imperfect status quo. Upon completion of an apprenticeship in his office, Fletcher's students, apparently without exception, passed the in-court, oral examination that controlled admission to the bar of frontier Indiana. This record invites both respect for Fletcher's talents as a teacher and some cynicism about the independence of the court's examination of a student who obtained Fletcher's endorsement. Today's state bar organizations would do well to consider making explicit what was implicit in nineteenth-century Indiana. Many of the current concerns about both the adequacy and the fairness of the bar examination would be addressed by permitting candidates for admission to forgo sitting for the examination upon certification by one of a number of pre-identified, well-respected, senior practitioners that the candidate's assistance on a major *pro bono* project demonstrated the candidate's competence to practice law.

Such a certification program would test more than the candidate's knowledge of a mass of rules, most of which the typical practitioner never again has occasion to invoke. Rather, such a program would ensure that the candidate possessed both the requisite skills and judgment to provide quality legal services to the public. Practical impediments and the potential for the bar's self-interested, protectionist abuse of such a highly discretionary standard would guarantee that a certification requirement would never supplant the bar examination altogether. But much good could come from a program that recognized certification as an alternative to examination, at the candidate's election. Fletcher's diaries evidence that even well-established institutions in the East became remarkably malleable in the West. Given Nevada's proud heritage of frontier independence, as well as the dramatic growth of both the State's population and legal profession, the Nevada bar might be uniquely situated to lead the nation in experimentation with such a program.

⁹⁶ See the text accompanying *supra* notes 36, 84-87.

Conclusion

Calvin Fletcher's diary depicts the legal apprenticeship at its best. By all accounts, Fletcher was an able and devoted teacher, who befriended his novices and prepared them well for long, rewarding legal careers in both his adopted home of Indiana and other remote venues. Unlike the bars of the more established, eastern cities, the legal profession in mid-nineteenth-century Indiana was protected by relatively few barriers to entry, making Fletcher's Indianapolis a time and place characterized by relative geographic and social mobility. The life-stories of Fletcher's apprentices also provide insight into the nature of law practice in Indiana at this time. Like many frontier lawyers, Fletcher and his students were legal generalists, whose opportunistic practices drifted towards the monetarily rewarding work of debt collection, supplemented by occasional land speculation. The happy reports of Fletcher's apprentices, evidencing their almost uniform success in a dynamic legal profession, should inspire present-day legal educators to incorporate into the law-school curriculum the best elements of the apprenticeship system, by way of simulation courses, excellent clinical programs, and well-supervised externships with competent practitioners interested in preparing the next generation of lawyers for the challenges of our own era.

Yet Fletcher's diary also foreshadows the decline of the legal apprenticeship by tacitly reflecting some of the institution's most serious failings. For instance, as Fletcher's own law practice grew, so did the less educationally enriching demands on his apprentices' time – forcing a number of them to abandon their apprenticeships so as to devote themselves to full-time study. As it became increasingly apparent that the apprenticeship system could not alone meet the needs of a rapidly growing profession, the law school arose first to supplement, then to afford an alternative to, and ultimately to replace the legal apprenticeship. This evolution is worth remembering because it suggests the *raison d'être* of the university law school – to provide students with an opportunity to focus, free from the endless distractions of legal practice, on acquiring the knowledge and skills necessary to participation in a learned profession. Those of us who teach in law schools, both new and (relatively) old, should not lose sight of this goal as we work to improve upon the efforts of those who have gone before us.