

How Are Law Schools Addressing Major Changes in the Practice of Law and in Accrediting Standards for Legal Education?

by Margaret Ivey Bacigal
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W. Taylor Reveley III, president of the College of William and Mary, introduced the first panel discussion on how law schools are addressing major changes in legal practice and accrediting standards for legal education. He framed the discussion by asking four questions: What have been the major changes in these two aspects of the legal profession in the last generation? To what extent are law schools responding creatively and effectively? Should law schools do more to prepare their graduates to practice law effectively from "day one" and to use their legal training productively in other careers? Noting there are no single answers to these questions, he observed law schools are facing great changes and enormous challenges. He further noted that the education of lawyers is not only the responsibility of law schools but also legal employers, the organized bar, and the courts.

Panelists were Jeffrey A. Brauch, dean of Regent Law School; Davison M. Douglas, dean of William and Mary Law School; Tracy A. Giles, a member of the ABA Section of Legal Education; David C. Landin, of Hunton & Williams; and A. Benjamin Spencer, director of the Frances Lewis Law Center at the Washington and Lee University School of Law.

Presentations

Dean Brauch provided an overview of what law schools are doing to prepare their graduates, and the challenges for law schools. He had three main points:

Legal education has never been better. Although the first year of law school continues to focus on critical thinking and legal analysis using the traditional doctrinal approach, the second and third years of law school incorporate more skills training than in the past. Reasons for this shift include ABA accreditation standards; the bar's need for practice-ready lawyers, particularly as clients are less willing to pay for on-the-job training; and feedback from law graduates. Teaching methodologies have also been adapted to respond to different learning styles. There is more interaction among professors and students, greater use of multi-media, expanded use of preliminary assessments rather than a single exam, and an increase in academic support programs.

Skills training addresses a wide range of practice skills and needs to be preserved. Client counseling, contract drafting, and law practice management are now taught along with traditional negotiation and trial and appellate advocacy courses. Practicums on specific topics allow small groups of students to work with a practitioner to explore issues while developing skills and professional judgment.

Enhanced legal education is expensive and financially sustainable models need to be explored. Over the years, tuition costs have gone up significantly. In the past, readily available student loans helped cover these costs. Law school enrollments went up and new law schools opened. Now, law schools and the profession are facing a period of austerity. High tuition costs are



Panel I addressed major changes in legal practice and accrediting standards for legal education. Panelists (from left to right) were David C. Landin, of Hunton & Williams; Tracy A. Giles, of Giles & Lambert PC and a member of the Council of the ABA Section of Legal Education; Jeffrey A. Brauch, dean of Regent Law School; Davison M. Douglas, dean of William and Mary Law School; and A. Benjamin Spencer, Education Section chair and director of the Frances Lewis Law Center at the Washington and Lee University School of Law. Moderating was W. Taylor Reveley III, Conclave 2012 chair and president of the College of William and Mary.

no longer sustainable. Students are confronted with significant debt loads at a time when there are fewer traditional first-year jobs and salaries are down and likely to remain so. Despite the increased numbers of graduates, bar pass rates largely remain unchanged. The convergence of these factors has led to a significant drop in law school applications nationwide. Fewer applicants mean law schools will either need to reduce class size, thereby reducing tuition dollars, or dig deeper into applicant pools, potentially affecting the quality of the classroom and the profession. To address these issues, law schools may need to lower tuition, have faculty teach more courses leaving less time for scholarship, shorten programs of study, and utilize more adjunct professors and distance learning. Many of these solutions raise accreditation concerns.

Dean Douglas said law schools should be doing more to prepare their graduates to practice law effectively from day one. He offered the following points:

Given the changes in the legal profession, the legal training provided by legal employers is more limited; therefore, law schools are increasingly seeking to fill this gap.

Using a toolbox analogy, Mr. Douglas identified the following tools historically needed by law

students: most important, critical analytical thinking skills; knowledge of basic legal doctrines, regulations, and the statutory system; methods of legal research; analytical and persuasive legal writing (today's students have weaker writing skills than in past); analytical and persuasive oral expression; and elements of professionalism.

New tools needed by law students include: the ability to manage multiple, complex legal problems using a team approach; expanded practical skill sets; a greater degree of business and financial sophistication; the ability to work effec-

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tively with others; and an understanding of the business side of practice.

Although legal education today is more effective and diverse, the challenge is to manage costs. One way would be for law schools to diversify their model of instruction to include more adjunct faculty to teach specialized, practice

courses. While there will continue to be traditional tenure-track professors who engage in research and writing, the use of more adjuncts will create a more holistic approach to education.

Mr. Giles noted that potential law applicants want good information to help them decide whether to attend law school and where. Law students want a good legal education at a reasonable cost. Young lawyers want fulfilling careers. All are eager to learn about professionalism and are looking to law schools and the bar for guidance. While helpful programs exist, Mr. Giles challenged the

If schools shift away from hiring faculty who are productive scholars, they risk lower rankings.

group to think of other ways to reach out, including the expanded use of mentoring programs.

Mr. Landin, focused on the changes in law practice and questioned how these will impact legal education. Highlights from his remarks follow.

There has been a real economic downturn in the legal profession and there is no expectation of a reversion to the old ways of practice.

The relationship between law firms and law students has changed. First-year associate programs have largely been eliminated and second-year programs are more limited, thereby reducing legal training opportunities. Fewer employment offers are being made by firms. More contract positions are being utilized. Starting salaries are lower. Law students are changing. As discussed, they have significant student debt and are facing the elimination of jobs as well as lower-paying jobs. Today's students also frequently lack life experiences that require them to interact with others in a variety of settings.

The relationship between law firms and associates has changed. Performance reviews are more stringent. There are fewer partnership opportunities and the partnership track takes longer. Less mentoring is occurring.

Relationships with clients are changing. Clients will not pay for summer associates' work, and in many cases, for new associates' work. Increasingly, clients try to avoid using lawyers. When advice is sought, it is treated as commodity work and subjected to budgets and cost controls.

Mr. Landin said these changes raise important issues, which he framed in the form of the following questions:

Why do law schools mandate three years for a degree?

Why do law schools fail to offer a sufficient number of sections of courses important to being a good lawyer? (In asking the question, he recognized more courses are now being offered than in the past.)

Why do law schools offer too few practice courses?

Where is judgment and discretion taught? This question was posed to both law schools and practitioners.

Professor Spencer addressed the role accreditation and rankings play in legal education. As historical background, he noted that in 1921 the ABA rejected recommendations supporting continued diversity among law schools which served different populations and practice areas. Instead, the ABA moved to a unitary set of standards applicable to all law schools which included the requirements for a three-year legal education, a library with a certain number of volumes, and a full-time faculty.

Like the ABA, *U.S. News and World Report* (*U.S. News*) also applies a unitary system to rank law schools, unlike its practice with undergraduate institutions. As a result, legal education has focused on input rather than output or what type of student the school is producing. This focus limits experimentation, including the expansion of experiential learning. Highlighted below are some of the obstacles Mr. Spencer identified:

Traditional law school hiring practices are not in sync with the staffing needed to deliver experiential education. Faculty is traditionally hired based on academic credentials and scholarly productivity. Asking these faculty members to teach practice, experience-based courses becomes a challenge; therefore, if law schools are going to continue their commitment to experiential education, they are going to need to rely more heavily on adjuncts. This circles back around to *U.S. News's* rankings. A major factor in the rankings is a school's reputation among peers and practitioners, which is driven by scholarly productivity. If schools shift away from hiring faculty who are productive scholars, they risk lower rankings.

Who cares? Students, alumni, and employers care. Consequently, if employers are serious about experiential education and law schools producing

more practice-ready students, they need to make hiring decisions based upon these criteria rather than a school's prestige. Until this happens, law schools are less likely to pursue more experiential learning programs.

Experiential education in the form of skills courses and clinics is costly given the low faculty-student ratios required. As already noted, tuition costs are already up, with law schools offering far more student services than in the past. These costs are not sustainable when students cannot continue to take out loans, when jobs are contracting, and when existing salaries are lower than in the past.

Mr. Spencer concluded by saying the situation is complex with no simple solutions.

Discussion and Suggestions

Professor Reveley said the two worst things that have happened to law practice are: *The American Lawyer's* publication of profits per partner; and *U.S. News* ranking of law schools, which is largely driven by scholarship, prestige, and an uninformed electorate.

The audience raised numerous points and questions, including:

- More emphasis needs to be placed on teaching legal writing.
- Law students need to understand the importance of context in understanding and solving legal problems, be they related to business, finance, economics, government, international affairs, legislation, or non-profits. Short courses taught by adjuncts were recommended.
- Law schools need to teach students problem solving skills and values.
- How do law schools do more with less?
- If scholarship is to be sacrificed, what do others think of this? Reactions included concern; the role of scholarship may vary depending on the professor and the school's mission; and a broader view of what constitutes scholarship may need to be adopted.
- If there are to be multiple categories of faculty, how will this impact morale and the sense of community, particularly if some members are

perceived as more valuable than others? How will tenure and compensation be handled?

- The importance of alternative dispute resolution was recognized and it was recommended that actual arbitrations take place in law schools so students could observe them.
- Doctrine, skills training, and ethics need to be integrated into courses and not be free-standing.
- Regarding the length of law school, one person observed that three years makes sense if the third year is equivalent to a capstone course where coursework is synthesized with practical experience. Another person predicted that within two decades, law school will only be two years, thereby reducing student costs. Current ABA rules and bar exam coverage pose obstacles to achieving a shorter program of study.

There was a consensus that law schools are doing a good job teaching critical thinking and legal analysis. A recurring theme was that more experiential legal education is needed to help students become "practice ready." Deficits in legal writing, problem solving, and understanding the various contexts within which legal problems arise were concerns. A major issue is how do schools enhance legal education given the unsustainable costs and changes in the legal profession? If more is to be done with less, how will this be accomplished? What changes will be required of law schools? What impact will these changes have on law schools and the profession, particularly

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with regard to faculty, scholarship, budgets, and the number of years students attend law school? What changes will law firms, the ABA, ranking authorities, and the Virginia Board of Bar Examiners have to make if changes are to become a reality?