"Our profession demands engagement, ownership of work and responsibility for our clients."

Dean's Column

BY DEAN JOHN VALERY WHITE

ON CHALLENGES FOR LEGAL EDUCATION

Over the past several months a number of particularly prominent news stories on legal education have appeared. These stories raise questions about legal education that few outside the legal academy have considered until now. These questions – about changes to legal education and law practice over the last decade – have been debated in the legal academy for some time now. However, these issues have taken on a new urgency as a consequence of shifts in the profession and the persistently difficult job market for new law graduates brought on by the 2008 economic crash. Legal education is facing a number of broad challenges as the profession evolves, as applicants become more nationally and regionally focused and as students have been asked to bear heavier costs. Consequently, more pointed questions have been raised about how we teach law in the United States, the quality of consumer information available to applicants and the rising cost of obtaining a law degree. At the Boyd School of Law, our early and heavy focus on skills and professionalism training has put us ahead of the curve on some of these issues, but we are not immune to overall trends. Like other law schools we will need to be agile in responding to rapid developments in the profession and meeting the needs of our students.

Transformation in Legal Education

In generations past, most law students attended nearby law schools whose admissions standards were not rigorous. A significant portion of those students were excluded after the first year and had no hope of returning to law school. Fortunately, law schools were inexpensive and so the student's investment risk was small. Law professors taught enormous classes and law schools had student to faculty ratios of 20 or 30 to one. States commonly subsidized at least 90 percent of public law school costs and the high student-faculty ratios kept private law school costs reasonable. Law schools provided few, if any, placement services and often had bare-bones admissions and student support offices. Few practice skills were taught in institutions with neither clinical or service programs nor professionalism instruction.

Today, all of this has changed. Law school applicants shop for the best law schools with most applicants hoping to put themselves in a position to work for "big law" – i.e., the largest 100 or so law firms that work on large corporate deals and pay high starting salaries. Of course, those firms' starting salaries have increased dramatically in the last 20 years, a development that has been widely reported. As their size and geographic reach grew, these law firms expanded the number of law schools from which they hired, driving a nationalization and regionalization of legal education as more and more law students set their sights on jobs with those firms. The main consequence of these changes is that any law school that hoped to continue in the "old way" saw its applicant pool deteriorate, the quality of its students plunge and its reason for being called into question. Big law reshaped the professional landscape for which law schools provided students, much as it reshaped the mores and pay scales of other law offices in the profession.

Legal education today focuses on recruiting the strongest students, imparting the traditional rigorous analytic ability for which law school is well known and teaching skills and professional mores necessary for young lawyers. This transformation is for the better; however, it requires much lower student to faculty ratios, dedicated faculty focused on skills and clinical education and a sophisticated recruitment and admissions process. For this reason alone law school costs have increased. In the meantime, states have sharply decreased or eliminated subsidies for legal education, and competitive pressures between law schools for students and

faculty have driven up costs as well. The law school that seeks to offer low-cost, no-frills education (that is, no skills training or experiential learning), with easy admissions and high academic attrition ("look to the left; look to the right..."), will attract only the weakest applicants, many of whom will struggle with the bar exam and most of whom will face daunting job prospects.

Lurking in the background is the distorting pressure of rankings, particularly the *U.S. News Ranking of Law Schools*. The influence of *US News* is rooted in the lack of easily understandable consumer information for applicants who, no longer content to automatically attend the local law school, aspire for admissions to schools across the country or at least across their region of the country. For the majority of law students interested in securing a job at "big law" firms, a high ranking in *US News'* annual publication operates as a proxy for access to those jobs. For those applicants who are intent on practicing in their hometown or in a smaller practice, the *US News* ranking is given similar weight; their desire to understand the implications of choosing a local law school has created a demand among these applicants for an evaluation of the now 200 ABA-accredited law schools. The problem arises because the *US News* formula focuses on attributes of elite, private law schools. Law schools' efforts to do well in that ranking drive the cost of legal education up, even for law schools dedicated to quality but with a decidedly different mission. Nonetheless, law schools cannot ignore *US News* since applicants are sensitive to slight changes in position and other law school constituents are unforgiving of sagging rankings.

The Shock of 2008 and its Aftermath

As difficult as these challenges are for law schools, the economic troubles that have crippled the economy have had multiple distorting effects on legal education. Most notably, the job market for law graduates has been extremely tough. Job market constraints first took the form of retracted and frozen offers at many law firms. This created a bottleneck of 2008 graduates who expected to begin work around the time of the market crash and of 2007 graduates who were finishing their clerkships. Both saw jobs delayed or, even worse, eliminated. Members of subsequent graduating classes sought to extend clerkships, if they were lucky enough to secure them, as there were few jobs open to recent graduates, particularly in the larger legal employment markets where "big law" jobs are concentrated. Indeed, the initial difficulties in the job market were most pronounced in "big law" firms. And, because many law schools had built their reputations on their ability to place students in precisely those firms, their placement rates dropped precipitously. In short order, their graduates began applying at places they had not considered before: smaller firms, smaller cities and public employment. There was a downward pressure on scarce jobs as former candidates for "big law" jobs pushed formerly attractive candidates for other jobs into the unemployment lines. On top of this, streamlining at many firms put many experienced lawyers on the job market as well.

Unsurprisingly, graduates of the lowest-rated law schools have had the hardest time securing employment. It is not a coincidence that most of the students featured in recent news coverage are graduates of those schools. However, the difficulties have not been limited to those schools. Graduates in the middle and bottom of all law school classes suddenly found it difficult to obtain legal employment, with attorney jobs taking longer to secure and starting salaries decreasing. The scope of the tough job market has called attention to the way the American Bar Association and the National Association of Law Placement which have collected data on employment. The ABA has recently implemented changes to the collection of that data, but some want more. The concerns over employment data have been heightened because law school costs so much more today than it did during the last significant recession in the early 1980s. And both of those concerns have given force to criticisms about the American approach to legal education that have been circulating for years. Principal among these criticisms is a concern that law schools do not do enough to teach skills necessary to the practice of law. From its inception Boyd has emphasized skills training and professionalism, along with a rigorous analytic training. These concerns about job placement and proposals for reform of legal education will push many schools to duplicate what we already do at Boyd. But it will likely push legal education further, demanding that we make changes too.

In the face of these debates it is necessary to point out that the American approach to legal education is the envy of most of the world. Indeed, it is our effectiveness that creates some of the issues currently being discussed. In much of the world, legal education is part of a consolidated undergraduate/professional degree program. Though typical graduates obtain their degree in five years, only a small percentage of them will ever practice law and then only after a long apprenticeship, post-graduate courses and examinations. Most graduates will have no opportunity to ever become licensed to practice law and will be forced to pursue other professions. The American approach – professional education after undergraduate studies – prepares students to enter the profession and receive training. The problem, in recent years especially, has been the growing inability of even larger law practices to provide cost effective training to new lawyers and the high costs of law schools doing so. To be blunt: skills training is the truly expensive part of legal education and that cost must be borne by someone. Until recently it has been mostly borne by employers – and therefore their clients.

Law schools have been taking on greater and more complicated roles in training law graduates in

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skills needed for practice. However, one insurmountable obstacle remains: our graduates practice in a wide variety of contexts, with very different skill requirements and with skill requirements that can change rapidly when the economy shifts and technology changes. What many employers really want when they talk about skills are interpersonal abilities: communication skills, good judgment and the ability to understand complicated problems. Law schools have traditionally focused on these broad skills, and have done so effectively and efficiently. And while we do much more today in training our students in specifically legal skills, we continue to focus on improving communication skills and exposing students to the weight of responsibility attendant to representing clients. It is simply not possible for law schools to anticipate changes in the profession that the profession itself cannot predict, teach the relevant skills to our students and ensure that the profession will not change again, rendering the training of our students for that professional niche superfluous. Instead, law schools have rightly come to focus on the general skills needed for practice while continuing to emphasize building students' analytic abilities so they can rapidly learn new practice areas as the economy dictates. We will need to do more, an imperative that will require considerable creativity if we are to do so without further driving up costs. What should be clear is that this is a significant challenge with no simple answers.

Where we go from here

It is certain that the profession is in the midst of a structural change, particularly insofar as large law firms are concerned. This change will definitely affect legal education and accelerate changes that have been underway for some time. There will be effects that we have not yet seen. The current discussion is a necessary step to the creative process that will eventually guide these changes. However, we know certain kinds of reforms are suboptimal.

Recently, a pair of law professors suggested that law schools launch their own law firms, into which students would be required to practice for a year or two, prior to graduation. It seems they believe that this law school-law firm could take on basic cases that the practicing bar neglects. This proposal, a super-clinic, has gotten lots of circulation but it seems flawed in many respects. Apart from actively competing with the bar to provide legal services (and possibly driving down the rates for basic services), the model seems to be a very poor way to train attorneys for practices distinct from retail civil litigation and the transactions such a firm would necessarily undertake.

Some would have law schools create extensive, second-class teaching positions dedicated to skills training; however, it is unclear that students would benefit from a cadre of instructors whose topics, like them, are relegated to second-class status. Nor is it clear how an institution would benefit from this kind of stratification or how research faculty could justify their existence in the face of it. It seems to be an attack on tenure – a topic that can be debated – but with few actual benefits for improved legal education. Indeed, if the focus is solely on expanding the skills courses offered at law schools – without creating that second-class faculty – it is unclear how law school costs would not rise, given the small classes needed to provide such training and the larger faculty needed to staff those classes.

Others would have law schools reduced to two years. As a long time federal jurisdiction teacher, I cannot understand the logic of this recommendation. There are a number of courses crucial to training attorneys for the twists and turns of a long career which are best suited to the third year – for my taste, federal jurisdiction and conflict of laws, chief among them – that would be lost in such a modification. For students interested in important but complicated specialty areas – intellectual property, tax and environmental law come to mind – the compact curriculum would make it difficult to get even a cursory exposure to these topics. This is a change that we could offer only if law schools were to seriously specialize, offering degrees in, say, family law, that permitted its graduates to take only a family law bar and practice only in that area. And while it is true that most attorneys spend the bulk of their careers in just one area, few attorneys begin in that area immediately upon graduation. Not only would students have to choose their professional path before they chose a law school, most students would have to move hundreds of miles away to attend a school that offered their desired specialty. More substantially, it is not clear that so early and narrowly specialized an attorney would be a good attorney.

A modification of the two-year idea would dedicate the third year to clinical and externship education. This is a more reasonable approach, not least of which because it permits capstone instruction in important areas of law while permitting law schools to teach more skills in the existing three-year framework. A sharp division, with all clinical and skills instruction only in the third year, seems unnecessarily rigid, however. The Boyd School of Law already permits a version of this approach for our students through our rigorous clinical program and our extensive pro bono and externship placements. Combined with our substantial writing and advocacy offerings in our Lawyering Process Program, our students get a great exposure to the basic skills they will need as attorneys. I am certain that we will continue to modify these programs to meet the evolving needs in the bar.

As the job market for law graduates improves many of the concerns related to job reporting, the regionalization of legal education, and the role *US News* rankings and the data utilized by that magazine are likely to subside. Though the issues underlying the concerns will remain, their force will be reduced. The questions about how legal education operates will likely remain vibrant. Since the *McCrate Report* (1992) and especially since the *Carnegie Report*

(2007), legal educators and others interested in legal education have worked to develop curricula reforms that improve delivery of legal education and skills training. This two-decade-long process has produced a number of innovations – early and extended writing and advocacy skills instruction, experiential learning and ADR training throughout the curriculum – and has seen the expanded adoption of proven programs; virtually all law schools now have live client clinics, for example. In recent years, law schools have developed more radical curricula reform, such as required clinical courses, structured externship placements in the third year and comprehensive simulation projects incorporating classroom instruction, drafting and client counseling built around projects drawn from practice. This process is necessarily slow – we should be careful not to experiment on our students, after all – but is showing promising results as schools share ideas and work to implement them without increasing costs.

These are tough times. Ultimately, the difficulties of our profession have underscored that it is a profession. As such, it demands dedication, the accumulation of skills and a lifetime of learning. If we are lucky, these times will emphasize that our profession has never offered "jobs" in the sense many had come to imagine. There is no *JOB* with a cool office and high salary for someone just moving papers around. Our profession demands engagement, ownership of work and responsibility for our clients. We train our students in these qualities; although, like everyone in these tough times, we must strive to become even better at doing so. ■

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