

Conclusion: The Road Ahead

This document contains proposed solutions to many of the problems with legal education in the United States. Three principles of best practices are particularly important:

1. The school is committed to preparing its students to practice law effectively and responsibly in the contexts they are likely to encounter as new lawyers.
2. The school clearly articulates its educational goals.
3. The school regularly evaluates the program of instruction to determine if it is effective in preparing students for the practice of law.

Adherence to these principles is essential for improving our system of legal education. It is unlikely that any real progress can be made until legal educators declare what they are trying to do and evaluate how well they are succeeding.

While one may fairly disagree with some of our proposals or conclude that other alternatives would be more effective or viable, one cannot change the fact that our system of legal education has severe deficiencies. Law schools are not adequately preparing most students for practice, and licensing authorities are not adequately protecting clients from unprepared new lawyers.

The resistance of the legal academy to change is so well-entrenched that we hesitated to undertake this project. Some thought it would be a total waste of time or, at best, an academic exercise. “The likelihood of coherent and productive change is not great. Law teachers are amazingly good at denial and at perceiving the world in ways they prefer regardless of how it really is.”⁸⁷¹ The authors of the Carnegie Foundation’s report concluded that, although “[l]aw schools have been sent stern messages about these issues for decades,”⁸⁷²

efforts to improve legal education have been more piecemeal than comprehensive. Few schools have made the overall practices and effects of their educational effort a subject for serious study. Too few have attempted to address these issues on a systematic basis. This relative lack of responsiveness by the law schools, taken as a group, to the well-reasoned pleas of the national bar antedates our investigation.⁸⁷³

Why have legal educators consistently resisted change for so many years? The reasons have included pressures to conform to norms brought about by hiring, retention, promotion, and tenure practices that value scholarship over teaching; limited textbook options; economics of large class teaching; and an accreditation process that encourages conformity with the norm.⁸⁷⁴ Additional barriers to change have included inertia, faculty autonomy, and the narrow, unquestioned, and damaging paradigm that teaching students to think like lawyers is what

⁸⁷¹ David Barnhizer, *An Essay on Strategies for Facilitating Learning 7* (June 2006), Cleveland-Marshall Legal Studies Paper No. 06-127, *available at* SSRN: <http://ssrn.com/abstract=906638>.

⁸⁷² SULLIVAN ET AL., *supra* note 7, at 242.

⁸⁷³ *Id.* at 243.

⁸⁷⁴ Schwartz, *supra* note 396, at 360-62.

legal education is all about. John Mudd made the following comments about the impediments to reform that existed in 1988:

The first [barrier to change] is the law school counterpart to the physics principle that a body at rest tends to stay at rest. Complex organizations like law schools are bound by institutional inertia. We do not move swiftly in any direction, and it is difficult to begin movement at all. When we initiated a process of change at our school, I sometimes felt like a few of us were trying to push a parked boxcar. To borrow another metaphor, it is helpful to keep in mind that turning a battleship requires more time and energy than turning a speedboat, and law schools are more like battleships than speedboats.

Another factor inhibiting movement is faculty autonomy, the tradition under which individual professors determine the content of their courses. Roger Cramton calls this the Lone Ranger theory of legal education. A generation ago Karl Llewellyn noted that each law professor “loves his baby, thinks his darling more important than any other darling, works out his gospel, and argues, fights, and sometimes intrigues for more hours per semester to spread the Perfect Word. . . . Still it is not good doctrine that ‘What is fun for the law professor is good for the country.’” In law schools we are often confronted with something approaching a paralytic democracy. There is just enough diffusion of power to prevent movement on matters that encompass major portions of the academic program.

Another barrier to change is our inherited ideology, the view that thinking like a lawyer is what legal education is all about. As a former logic teacher, I would not for a moment suggest that we do anything but promote careful, critical thinking in law schools. Nevertheless, we perform a disservice to our schools and our students if we substitute a time-worn phrase for a careful examination of our educational goals. . . . It has been said that a change in world view changes the world viewed. I offer a corollary: intransigence in thinking results in intransigence in action. We must guard against the tendency to accept uncritically someone else’s statement of our educational purpose.⁸⁷⁵

We do not know the extent to which the impediments described by Mudd still exist. We do expect it will be difficult to motivate some law teachers to change their attitudes and practices. Traditions die hard, even traditions that are clearly out of step with best practices.

Most law schools have been faculty-centered, not student-centered, and the law faculties have controlled what they taught and how they taught it. Law teachers in the United States are reasonably well paid, have relatively light teaching loads (9 to 12 credit hours per year), have little contact with students outside of class, grade on the basis of one final exam at the end of the semester (an exam that individual

⁸⁷⁵ John O. Mudd, Remarks at the ABA Section of Legal Education and Admissions to the Bar’s National Conference on Legal Education for a Changing Profession 68, Mar. 25, 1988.

teachers prepare and grade with no oversight), and have their summers off, often with stipends to write law review articles. There has been little accountability, especially after a law teacher receives tenure (typically in the sixth year of teaching). There have been very few incentives to engage in curricular innovations or to develop excellent teaching skills.

For the reasons outlined above, Michael Schwartz fears that “[l]aw professors not only have no incentive to change their teaching methods, they have no incentive to change at all.”⁸⁷⁶ While this may be true of some law teachers, we know it is not true of all law teachers. We learned during this project that many academics understand the need for change and see the potential that exists today for significantly improving the quality of legal education. A growing body of scholarship acknowledges the shortcomings of legal education and proposes new approaches for educating law students. Evidence of this is apparent in the large number of citations in this document to materials that were published just before, or since, our project was initiated in 2001, in addition to numerous documents that were shared with us before they were published.

Although the challenges to implementing best practices for legal education are quite significant, we are hopeful that progress will be made. The need is great.

Developing a more balanced and integrated legal education that can address more of the needs of the legal profession than the current model seems highly desirable on its merits. However, as we have seen, there are major obstacles such a development will have to overcome. A trade-off between higher costs and greater educational effectiveness is one. Resistance to change in a largely successful and comfortable academic enterprise is another. However, in all movements for innovation, champions and leaders are essential factors in determining whether or not a possibility becomes realized. Here, the developing network of faculty and deans concerned with improving legal education is a key resource waiting to be developed and put to good use.

We believe that it is well worth the effort. The calling of legal educators is a high one. It is to prepare future professionals with enough understanding, skill, and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens’ loyalty. That is to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.⁸⁷⁷

It will take many leaders to change legal education. As John Mudd wrote, “[c]hange has been described as the process of modifying the culture of an organization and leadership as the moving force in creating and shaping a new culture.”⁸⁷⁸ Leadership may come from people outside of law schools who have a responsibility to protect the public’s interest such as chief justices, bar examiners,

⁸⁷⁶ Schwartz, *supra* note 396, at 360-62.

⁸⁷⁷ SULLIVAN ET AL., *supra* note 7, at 261.

⁸⁷⁸ John O. Mudd, *Academic Change in Law Schools*, 29 GONZ. L. REV. 29, 73 (1993/94) (citing EDGAR H. SHEIN, ORGANIZATIONAL CULTURE AND LEADERSHIP 317 (1985)).

accrediting bodies, legislators, and alumni who see our new graduates in practice and truly understand the need to improve their preparation for practice.

Leadership from within law schools is essential, however, and there are signs that it may be emerging. There are growing numbers of talented people in law schools who care about the quality of their teaching and the success and satisfaction of their students. They are engaging in innovative and positive work that may eventually transform legal education. Perhaps something in this document will encourage more law teachers to reexamine their assumptions and traditions about legal education and become leaders for change, and perhaps law school deans will support and reward them for doing so.

It may turn out that Harvard Law School will lead the way out of the quagmire that it inadvertently led legal education into 130 years ago. Elena Kagan appointed a curriculum review committee when she became Dean of Harvard Law School in 2003 and charged it with rethinking how the law is taught in America.⁸⁷⁹ The committee recommended changes that would “push students to take a more practical, problem-solving approach to the law beginning in their first year The changes are meant to prepare graduates better for the modern legal world”⁸⁸⁰

In the Spring of 2006, the Harvard Law School faculty approved changes in the second- and third-year programs of study, then unanimously approved changes to the first-year course offerings in October, 2006.⁸⁸¹ Three new courses were added to the first-year curriculum, including a course focusing on problem-solving. To make room for the new courses, the school reduced the amount of time that students will spend studying the five traditional doctrinal courses – contracts, torts, property, civil procedure, and criminal law. The program of instruction in the second and third years is designed to provide the students with expanded opportunities for clinical work, internships, and study abroad. The changes to Harvard’s curriculum “reflect a belief that problem-solving exercises should be a critical component of legal education and that hands-on training should be central to many students’ law school experience.”⁸⁸² While Harvard’s actions do not approach the more fundamental changes called for in this document, they are steps in the right direction.

If legal educators can find a way to move forward together and build a system of legal education that respects appropriate traditions and embraces sound educational practices, perhaps we can realize the outcomes envisioned in the following paragraph.

[T]he Socratic method will give way to a more collaborative mode of learning between faculty and students, just as appellate

⁸⁷⁹ Marcella Bombardieri, *Harvard Law Dean’s Goal is a Revolution*, THE BOSTON GLOBE, Sept. 21, 2003, http://boston.com/news/local/articles/2003/09/21/law_deans_goal_is_a_revolution/. See also, Beth Potier, *Big Plans Highlight Elena Kagan’s 2L*, HARVARD UNIVERSITY GAZETTE, Sept. 16, 2004, <http://hno.harvard.edu/gazette/2004/09.16/03-kagan.html>.

⁸⁸⁰ Sacha Pfeiffer, THE BOSTON GLOBE, *Mired in Past, Law Schools in U.S. Rethink Role*, INTERNATIONAL DAILY TRIBUNE (Paris), May 10, 2006, <http://www.iht.com/articles/2006/05/10/business/harvard.php>. See also Sephanie Frances Ward, *A Push For Problem-Solving: As Harvard Ponders, Others Embrace Change in Law School Approach*, ABA JOURNAL EREPORT, May 26, 2006, <http://abanet.org/journal/ereport/my26harvard.html>.

⁸⁸¹ Rethinking Langdell, HARVARD LAW TODAY 5 (December, 2006).

⁸⁸² *Id.*

case analysis will be replaced by case studies and a greater number of simulation exercises in substantive law courses. Law schools will treat the teaching of essential lawyering skills and professional values as part of the core curriculum, and law faculty will coordinate what is taught throughout the entire curriculum to insure that students have sufficient opportunities to acquire and develop the skills and values they will need as twenty-first century practitioners.⁸⁸³

The Clinical Legal Education Association (CLEA) intends to continue working with other organizations and individuals to encourage and support efforts to implement changes that are consistent with the proposals in this document. CLEA welcomes all the help it can get.

⁸⁸³ Barry et al., *supra* note 283, at 72.