

# SO, WHY DO YOU WANT TO BE A LAWYER? WHAT THE ABA, THE AALS, AND *U.S. NEWS* DON'T KNOW THAT WE DO

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## I. DIFFERENT STROKES

ANYONE thinking of law school inevitably confronts the question, “So, why do you want to be a lawyer?” Admissions applications ask that. Friends ask it. Family members, too. It’s a good question, and a good starting point for understanding what law schools should do.

The first thing the question forces us to confront is the fact that answers differ. Not that there is an endless variety of answers. Many are similar: To help people. To make a difference. To make money. To keep options open. To advance a career in politics, in public service, in business. To help promote a cherished cause. To satisfy intellectual curiosity too broad-ranging, or too tied to practical application of ideas to fit comfortably within other, better-defined academic disciplines. Although it’s a familiar set of answers, it also is a large enough set to compass significant differences among our students.

Students do not, of course, know when they enter school what they will do with their legal training when they leave. Even those of us well along in our professional lives find our views changing, evolving still as to what we truly want to do.

The students’ answers, however, are a starting point in identifying the type of training that is likely to be best suited to the lives they will lead. Their interests provide information relevant to decisions about where to attend school, what to study, and how to prepare for what they expect to do.

Plainly, this is not all of the information needed to chart out a course of study. The point is not that students should be narrowly channeled at the start of their law studies, tracked along the lines of their ideas of what they want in a legal career. Nor is it that students’ different answers mark out completely different sorts of study—that, rightly conceived, law study lacks a central core that all students should master.

Whatever we purport to teach, the most important and most durable teaching in law school is teaching how to think carefully, teaching basic legal reasoning, and teaching modes of inquiry. Little of the specific information we give our students will stick with them. That is true of our very best students as well as our worst. A young colleague of mine tested this proposition by posing a series of hypothetical problems to faculty members that presented basic questions covered in first-year Civil Procedure courses. We did quite well at spotting the issues, at understanding the problems. We were, by and large, miserably off target in getting the answers right. If specific information isn’t retained, the clear implication is that we should take care to understand how best to convey methods training. The faculty’s test also suggests—albeit less clearly—that efforts at conveying specific information

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narrowly targeted to students with particular interests probably involve considerable wasted motion.

But students do differ in interests, in attitudes, in instincts. The same methods of instruction do not work well for everyone, whether we're training students in general, analytical processes or attempting to transfer specific factual information. By the time students are 22 or 24 or 30 years old, much of the difference among them is captured in statements of their own preferences and goals. The student of intellectual curiosity who is pointing toward an academic career (surely not the *only* career for the intellectually curious, but a plausible one) probably does not learn in the same way as the student who is quite pragmatically focused on business. The student who burns with a passion to argue cases to juries probably does not learn best in the same mode as the student intent on a career in tax planning. The student anxious to protect the environment probably will engage more readily and extract lessons more fully from teaching focused on environmental problems than on intellectual property disputes. Perhaps certain basic methods and materials work well for almost everyone, but the key to good teaching is matching instruction to students' particular aptitudes and interests. That is why great teachers spend so much of their time preparing lessons for each new class, even though they know the material well. The art of teaching requires fine-tuning aimed at making the presentation right for *this* group of students.

That also is why, when someone asks you where he or she, or her son or daughter, should go to school, your first response is not an answer but a question: why are you going to law school? what do you want to do? We then give different answers to the question we were asked, depending on the answers to our questions. We recognize that schools differ and that the right school for one person isn't necessarily the right school for everyone. We tell applicants that, too. We tell friends the same thing. We explain to prospective donors that, much as we would love the proffered donation, our school is not the right one for their son or daughter. And we mean it. Which brings me to *U.S. News*.

## II. RANKINGS: USELESS NOISE?

The *U.S. News* organization has been enormously successful in selling magazines with its rankings of schools of all variety. Where law schools are concerned, however, variety is scarcely recognized.

At the outset, unconcern with variety follows from what seems to be a divorce from real concern with serious assessment of the quality of the education law schools provide. The *U.S. News* rankings look at criteria that cannot possibly capture critical aspects of legal education. They do not measure, or even encompass a good proxy for, among other things, the quality of teaching, the scholarly product of a faculty, the mode of instruction, the nature, scope, and organization of the curriculum.

Apart from what is missing entirely from *U.S. News*, the rankings criteria that are used dramatically mislead consumers as to what in fact *is* being measured. Job placement, for instance, is now a ludicrous, self-reported statistic that ignores totally almost anything one should want to know about the way a choice of school affects job prospects. It contains no measure of the quality of jobs obtained, the fields in

which jobs are obtained, the geographic reach of placement opportunities, or even if the jobs have any connection to law. The *U.S. News* methodology counts a counter job at McDonald's the same as a prestigious judicial clerkship, an associate's position at Covington & Burling or Skadden, Arps, or another highly prized, top-flight legal job. A school that has no graduate placed in any law job can rate on this measure *above* a school that places most of its graduates in the most sought-after jobs. Among other reasons, for graduates of the latter school, the likelihood of landing a good law job is apt to be high enough to induce graduates who do not secure a job right away to hold out for one, rather than settle for a less attractive position. None of this is anywhere accounted for in the ranking.

The list of problems with *U.S. News* is long and well-known. The RAND critique of *U.S. News* is devastating. But potential students don't have the same easy access to the RAND study as they do to *U.S. News*. For them, the magazine appears to offer an objective ranking of educational quality. It provides an easily understood mark and places all schools on the same scale.

Unfortunately, this linear ranking not only misleads students about what is being measured and what the measure means—it also undermines the very education it purports to assess. First, because it affects student decisions, schools divert real resources from the task of providing a high-quality education targeted to a particular audience. Instead, those resources go to the newly important task of influencing the school's ranking, which no longer can be expected to be influenced primarily by the real quality of the education offered. Each law school dean (and I'm sure many other faculty members and administrators as well) receives stacks of material letting us know all about developments at every other law school. Though all of us are curious about what others are doing, that curiosity is more than sated for even the most inquisitive education junkie long before one has waded through even a small fraction of the material.

This is an expensive game designed to influence our ranking of other schools when we respond to the annual queries from *U.S. News*. And it seems a worthwhile investment not only because the ranking is influential but also because those who fill in the *U.S. News* survey know so little about the schools they help to rank. A highly placed officer of my university has suggested quite colorfully what the typical respondent is, and is not, likely to know. Suffice it to say, few of these respondents would like to be held to the standards of expertise that *Daubert* adopts for expert testimony in court. But, just as inexperienced testimony makes for "junk science" in litigation, it makes for "junk rankings" in journalism. Only here, there are no controls. So we continue to sell ourselves to one another the way one might sell soap, confident that the average level of knowledge is low enough for such strategies to work. We continue to take resources away from better compensating faculty, from smaller class size, from a richer curriculum, or from any of the myriad better uses that would be made of this money in a world less affected by *U.S. News*.

Second, the magazine encourages all schools to compete along the same lines, to stress the same qualities. For instance, in selecting entering students, schools increasingly attend to the qualities *U.S. News* values in its ranking. These qualities may be the ones that many schools would prize in any event. But schools that would have valued other attributes more highly are penalized now for doing so. And, because here as in so many other aspects of its methodology, *U.S. News*

measures inputs rather than outputs, there is no advantage to being different, to actually using *different* inputs to achieve a better result. So long as real outputs largely vanish from the rankings, as they do with *U.S. News'* evaluation of placement success, schools are encouraged by the ranking process to greater similarity than would be ideal in a non-*U.S. News* world. This leads directly away from what we know would better educate students: a set of more diverse educational opportunities that could be matched to a diverse set of students.

To be sure, *U.S. News* has heard this complaint and has responded by highlighting a few specialized programs. This is laudable. But, like much of the *U.S. News* approach, it also is laughable. It is based on the same sort of information as the basic ranking, with respondents knowing so little about these programs that schools with *no* program for J.D. students in a given specialty will rate highly on the basis of a well-publicized LL.M. program. And school administrations—mine included—recognize that publicity is more effective than other investments in affecting this aspect of *U.S. News*, just as with its broader ranking effort. Many school administrations—mine included—are embarrassed at this diversion of resources, enough to invest a great deal in real improvement rather than in publicity. But we recognize that indulging our embarrassment comes at a price when the rankings issue hits the newsstand.

This broadside is certain to earn me no friends at *U.S. News*. It earns no credit among academicians for new insights. But it accurately depicts a ranking process that misleads consumers, reduces resources available to educate students, and encourages too-great similarity among schools.

### III. REGULATION

All of the major organizations in legal education have united in condemnation of *U.S. News*. Among these are the organization that tests and evaluates would-be students, the Law School Admission Council; the organization representing most law school deans, the American Law Deans Association; and the two primary accrediting bodies for American law schools, the American Bar Association's Section on Legal Education and Admission to the Bar (ABA) and the Association of American Law Schools (AALS).

These last two entities, however, have a great deal in common with *U.S. News*. Both accrediting organizations have pushed hard to make U.S. legal education more homogeneous, to encourage schools to focus on inputs, and to divert resources from their best uses for legal education.

Those, of course, are not the avowed aims of these organizations or of their leadership. Quite the contrary. The leaders of the ABA and AALS have been concerned with improving legal education. They have fought to keep at bay efforts they see as impeding educational quality. And they have fought to assure that the factors they view as important to quality determine which schools are approved to produce applicants for the bar and which are admitted to the fraternity of American law schools.

The reality, however, has been decidedly different from the intent. Legal education still is a competitive business. Schools are not all the same, and we have incentives to trumpet our differences in certain venues. But the impact of ABA and

AALS rules plainly is to make schools *less* different than they otherwise would be. The ABA, for instance, regulates our decisions about how many full-time faculty to use relative to part-time faculty. ABA rules regulate choices respecting the organization of responsibilities for school governance. They restrict what resources to devote to libraries versus other parts of the educational enterprise. They control what activities students can engage in while in school. The AALS regulates school policies respecting the entities that can recruit prospective employees on campus, the composition of faculties and student bodies, and a number of related matters.

Each regulation may well represent what many schools would decide in all events. They may provide reasonable norms of good conduct for most types of legal education and for many types of students. My own biases are that good legal education is far less determined by library space-per-student than by the real quality of instruction; that it is less well measured by the tenure protection provided to clinical faculty than by the jobs obtained by students; that it does not depend critically on faculty control of decisions respecting school administration but does depend on the commitment faculty members make to their students. Those biases are well-known to my fellow deans, shared by some, rejected by others. Fair enough.

Even those who applaud the choices embraced in these regulations should concede, however, that all of these regulations prohibit some choices that would flourish in a less regulated market. If that were not true, there would be no point to them at all. All of these regulations make innovation in legal education more difficult. All of them value certain choices more highly than openness to different choices. All of them make the law school world a less diverse place than it otherwise would be. The regulations represent the conceit that the regulators can tell everyone what type of legal education is right for them—and that the answer is pretty much the same for everyone, regardless of background, of interest, of goals. They represent, in short, the same kind of vision that animates *U.S. News*.

#### IV. DEAN LEADINGS

Just as aspiring law students inevitably are asked why they want to be lawyers, candidates for deanship ineluctably face their own version of that question, “So, why do you want to be a dean?” Descriptions of psychological problems are among the answers one’s associates might offer. So, too, are catalogs of past professional failures, the sort of travails that would drive one to attempt something—anything—new.

These are not, however, the sort of answers expected of someone who would purport to lead a school. If deans are leaders of their institutions (the supposition this symposium asks us to indulge), they—we—should be expected to have some vision of where we want to lead and why it is important to go there. No dean candidate will say, “Because I want to spend countless hours fighting with *U.S. News*,” or “because I long to fill out ABA and AALS forms, to answer their questions about my school’s placement policies or library space.” No dean candidate will answer “because I want to see that we allocate school resources exactly how the ABA tells us we must.” And few will say simply “because I want

to raise our ranking in *U.S. News*," though that will be part of the message many candidates will convey in one form or another.

There is good reason that these answers will not be given. Apart from the absurdity of the ends as desirable goals, all of these answers point to sameness, to doing what is required or expected in any case. Leadership points in the opposite direction. Leadership implies difference. It supposes that the person leading is free to mark out a direction and to head toward it even though others think it wrong-headed. The test of leadership is not only getting folks to follow, but going in a direction that turns out to be better than the route a crowd, wandering on its own, would travel. Not necessarily better for everyone. Not necessarily better if everyone else did the same. But better for some group that is willing to strike out on a different road.

The first roadblock to leadership in legal education, then, is the fact that so many institutional forces in the world of American law schools today press toward sameness, not difference. That is the impact of *U.S. News*, of the ABA, of the AALS. Like it or not, they narrow the scope within which schools can distinguish themselves.

Perhaps it overstates matters to cast this as a circumstance at odds with leadership. Certainly, one can be a leader by changing these institutions, and many law school deans over the years have played important roles in shaping the ABA and AALS, as well as other organizations. Most deans who have played important roles have shared the basic vision of these organizations, but have altered it in some respect, extending it to fit a somewhat different vision of sound legal education or of the way particular organizations should interact with law schools.

Leadership *within* a law school, however—the effort to make a school do something distinctive for legal education, improve the educational product in some manner—is another matter. The triad of institutions mentioned already makes this kind of leadership more difficult.

Yet, for most deans, those three institutions present peripheral, not central, problems. The first reality to confront a dean is the difficulty of actually making a difference, of making one's institution different, given the nature of *internal* constraints. The default rule in any institution is whatever *is*. That default is pretty near conclusive when what *is* also *has been* for a good while. Non-profit institutions are more difficult to move than profit-oriented enterprises, as success does not produce a pool of residual earnings that can be distributed in ways everyone can appreciate. Law schools are not simply garden-variety non-profit institutions. They are non-profit institutions where large numbers of employees have life tenure but also have unlimited "free agency" from day one. They are institutions in which our consumers are also our products. They are part of larger academic institutions often led by people who do not value legal education except so far as it generates financial support for more cherished academic ventures.

These are not insurmountable problems. And they are not ones about which I have standing to complain.

I came to the deanship more than a decade ago believing that legal education needed to change, to become more international, more interdisciplinary, to place more emphasis on the quality of the instruction we offer. I thought that we needed to provide more cumulative learning and more opportunities to study problems in

depth. And I thought that our profession needed to pay more attention to the way the legal system is designed, the problems it generates, the ways it can be improved.

At that time, the changes those views suggested for legal education would not have been well received at many places and no doubt would not have been right for many places. My views on what legal education needed suggested more specialized training opportunities than were then being offered save at one or two schools. They suggested more stress on teaching than “good schools” typically deemed appropriate. They suggested more research efforts than generally were found at schools with an emphasis on teaching and more coordinated research efforts than were common even in research-oriented schools. They suggested more focus on the cost side of the legal system. They suggested increased attention to what our consumers want, to what they need, to what lives they will live—and less attention to what regulatory bodies want.

I have been privileged these past ten years to be dean of an unusual place. It is a place in which the University administration has been supportive, underwriting a transformation of the law school at the expense of resources coveted—and needed—by other parts of the University. It is a place in which faculty members have redoubled their commitment to teaching even while raising their scholarly output. The faculty has supported substantial curricular change, despite considerable initial skepticism about it. Students have pitched in to help alter the tone of what once had been seen as the equivalent of a “brownfield” in terms of the social milieu. Alumni of the school, in addition to being professionally successful, have become prouder and more supportive of the school.

Part of the privilege of my deanship is that the people connected with my school have given me the illusion of leadership. They have allowed me to see our school as striving for a distinctive education. Not as striving for a product radically different from others—that goal would be out of keeping for one who believes that legal education is, in the main, a success—but for a product that is tailored to be right for our students and our location and our history. People have allowed me to take credit for what so many others have done to improve our school, the ultimate illusion of leadership. And they have allowed me as well to spend time complaining about *U.S. News*, the ABA, and the AALS. Here I go again.