THE FUTURE OF LEGAL EDUCATION

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ABOUT ten years ago, when I first considered going into law school deaning, I thought the job involved being a leader in the legal education field. I thought being a dean would be a good idea because I had definite ideas about curriculum and the position would allow me to put those ideas into effect. In keeping with this impression, I soon discovered that one of the most important parts of the dean search process is the presentation of the candidate's vision to the faculty. If dean candidates title these talks, I expect that they usually call them something like "Legal Education in the Twenty-First Century" or "The Future of Legal Education." The idea of these presentations is that the faculty really cares about what dean candidates think about curriculum, teaching methods, and the like.

Silly me. I had a lot more influence over curriculum development when I was a faculty member, could serve on the curriculum committee, and vote at faculty meetings. Deaning, I have discovered, is about fundraising, management, budgets, and administration of the departments that keep the law school running: admissions, career services, supportive services, and, let us not forget, the development department. It is about making sure that faculty members have secretaries, summer research money, and travel budgets. It is about dealing with student complaints, and, sometimes, mediating between an unhappy student and a faculty member. It is about doing one's part as a member of the central administration and making sure that the provost and the president know all the wonderful things that are happening in the law school. It is, above all, about marketing.

At public schools, we have always marketed our school for the legislature, Board of Regents, or whoever holds the purse strings. However, we are also marketing the school to our alumni and members of the community, without whose support we can no longer survive, at least not in any comfort.[1] Even at public schools, we are increasingly marketing our schools to applicants, both because of the smaller number of applicants (actually, the number has gone back up a bit, but not to the point it was before the sharp decline in the mid-nineties) and because of increasing competition for the "best" students (that is, those whose entering credentials will raise our status in *U.S. News & World Report*).

When I interviewed at Wayne State in the spring of 1998, I was told I would have two major jobs to do over the next several years: build a new addition and raise the money to pay for it, or the bulk of it, at any rate. I did that. We moved into the new building in the fall of 2000 and the renovation of the old building was completed by January, 2001.[2] It took much more of my time than I had imagined. Do you have any idea how long it takes to decide, for example, which is the best looking and

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1. When alumni ask me why a public school has to engage in fundraising, I ask them whether they plan to live exclusively on social security when they retire. That usually does it.

2. I will not tell you about the things that are still not working right, or the punch list of unfinished items.

most comfortable chair for the conference rooms, offices, auditorium, and seminar rooms?[3] Then there are the carpet samples, fabrics, and paint colors, all of which must be chosen in committee so that every constituent group is represented in the decision-making process. None of this starts, in fact, until after the basic design is done, during which one discovers that the various people and groups who *must* be side-by-side cannot possibly be, and those that should not under any circumstance be adjacent must be. Between the design phase and the decisions regarding furnishings comes something called "value engineering," about which the less said, the better.

The fundraising took much of whatever time was left. Wayne State is not a wealthy school, and we have a small development department (essentially two professionals, an information officer, and two support staff). We started out with a goal of eight million dollars. As the money came in, we increased that target, and we recently concluded the campaign at almost nineteen million dollars, counting a substantial challenge grant from the Kresge Foundation. The Kresge grant was a wonderful help, even if it did cause any number of people any number of sleepless nights while we counted down to the date by which we had promised to raise what frequently looked like an impossible amount of money. Truth to tell, we could not have done it without a fabulous volunteer chair of the fundraising committee.

Thus, as I enter my fourth year as dean, I finally have time to review my presentation of three years ago, think about where legal education is going, and revise everything I said then in light of my experience since. I am enormously grateful to Professor William Richman and the editors of this symposium for giving me the chance to reflect on issues (and express my opinions on issues) that I wish arose more often in the course of a deanship.

First of all, law school today is enormously different than it was only thirty years ago, when I was about to start at Wayne State. Christopher Columbus Langdell had decreed the Socratic method and the content of the curriculum at Harvard in the late nineteenth century, and it was essentially unchanged. Some schools offered constitutional law in the first year, and others put it off. Some gave grades that counted halfway through the first year, and some did not. Most schools had some kind of clinical program, a big change, and perhaps the only big change from Langdell's day, but there was little in the way of skills classes. Most students took more or less the same classes after the first year (corporations, evidence, tax, trusts and estates) even if they were nominally electives, and most classes were still taught to large groups in lecture halls using the so-called Socratic method. The major exception in my experience was the business planning course that Alan Schenk and Steve Schulman co-taught (extraordinary, right there) using a problem method.

And today? Law schools offer an array of electives, seminars, and skills courses. Most have established any number of joint degree programs, allowing law students simultaneously to acquire not only professional degrees like MBAs, but also degrees in the humanities and social sciences.[4] The first year curriculum still includes torts, property, contracts, and civil procedure at most schools (although not all), but the

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3. As I asked my associate dean, rhetorically needless to say, as we moved our tushes from one potential chair to the next, "Is this why I got a Ph.D.?"

4. For example, Wayne State offers joint degrees in history, political science, and economics.

number of hours allotted for each course varies considerably, and some schools even allow first year students to take an elective or two. Legal research and writing has expanded considerably from the one or two hours it generally occupied thirty years ago and now frequently includes drafting exercises along with, or instead of, the traditional memoranda and briefs.

Law school education is also increasingly global. While most of us have not achieved the international faculty and programs of NYU, many schools offer their students summer courses abroad along with foreign experiences during the year. Also, more faculty of American law schools are teaching abroad at the same time that professors from Europe, Asia, Africa, and Latin America are visiting (sometimes on a regular basis) at U.S. law schools.

Finally, but not by any means least important, we are getting more different from each other. We are no longer all Harvard wannabes. Some niche schools have tailored their entire curriculum to fit the type of legal education that the school provides—Northeastern and CUNY Law Schools are prime examples of this kind of niche school. Others have established specialties, such as intellectual property at Franklin Pierce and environmental law at Vermont Law School. While not every student takes courses in the specialty, many are drawn to that particular school because of the field in which they wish to practice.

I think and hope that this trend will continue. After all, I did not pick my undergraduate college solely because of the price or location. Nor did I choose it because it was the "best" (read highest ranked in *U.S. News*) that I could get into. I picked it because the kind of students it attracted and the curriculum it offered were more appealing to me than any other college I could imagine attending. On the other hand, I picked Wayne State largely because I was, at that time in my life, geographically bound. I only applied to two schools, Wayne and Michigan, and Wayne was willing to accommodate my schedule as the mother of two very young children, while Michigan was not. With apologies to the dean at my sister state school down the road, I do not believe the education I got at Wayne differed very much, if at all, from what I would have gotten there, other than, of course, a more prestigious name to put behind my degree.

If I have one major criticism of legal education today, it is that we are trying to do too much, just as thirty years ago I think we did not do enough. That is, we are still trying to teach our students "how to think like a lawyer," using the basic doctrinal building blocks of the legal system—torts, criminal law contracts, property, and procedure. We expect our students to pass the bar, and so we also provide basic bar courses like corporations and trusts and estates.

However, we expect our students (or perhaps this is what they expect) to be prepared to practice law when they get out. In three years, we expect to provide not only the basics but also advanced courses in areas that students wish to become experts, such as intellectual property, employment law, and environmental law (all of which barely existed when I was in law school). We expect them to learn to write well, or at least passably, and many schools now provide, if not require, writing experiences after the first year. We encourage them to take skills classes, do internships, and participate in clinics. Indeed, following the publication of the

MacCrate Report,[5] most law schools rushed to add skills courses and skills components to classroom courses, but we did not remove anything.

If that were not enough, because we recognize the increasing globalization of the practice of law, we encourage them to spend time overseas or, at the very least, to take classes in international law, the European community, or international business transactions. The number of summer study abroad programs has increased exponentially, as have semester abroad and foreign exchange programs for both students and faculty.

Finally, add to all that the number of hours our students spend working, both over the summer and during the school year, because they feel they need the experience, they want to get a foot in the door at a law firm, and, perhaps most important, they need the money (I won't even begin to talk about the increase in the cost of legal education over the last thirty years). Luckily, it is usually the associate dean who has to figure out how to offer all of the courses students want to take in a semester during the hours they are willing to spend at the law school, while, at the same time, accommodating faculty scheduling needs.

I am not suggesting that we return to the bad old days before clinics, skills training, and specialization. I think law school today is infinitely more interesting than it was when I went. I particularly approve of the smaller class sizes that result from both skills training and advanced classes (although this is one of the reasons why legal education has gotten more expensive). I believe that many of these trends will continue. Faculty members enjoy teaching classes in their areas of expertise and students enjoy taking them. Perhaps it is by offering more interesting teaching loads that we can continue to attract the best and the brightest into teaching, even as the gap between salaries in private practice and the academy continues to widen. In order to attract students, not to mention the attention of those who fill out the ratings forms for *U.S. News*, schools will continue to distinguish themselves from the pack and will become, I suspect, increasingly different as time goes by

One way to deal with the proliferation of courses and material to be covered is to increase the credit hours required for graduation. Some people have suggested adding a year of skills training to the existing curriculum. Another possibility, and one I have advocated myself, is to require students to do internships after they graduate. In both Britain and Canada, law graduates are required to serve some kind of apprenticeship (it differs in both type and length in Britain, depending on whether one intends to be a barrister or solicitor) before setting out in practice on one's own. In the United States, to the contrary, a foolhardy soul who has graduated from law school in May, taken the bar exam in July, and been admitted to the bar in November can open an office on December 1 with no supervision or further training, and, in some states, not even an obligation to participate in continuing legal education. The percentage of students from the less prestigious law schools who go into solo or small practice, often with members of their own class, is truly staggering.

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5. *See* Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development–An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR (Robert MacCrate ed.).

On the other hand, given the cost of legal education, the support for adding a year is not likely to be great, certainly among the students who will foot the bill. Therefore, let me suggest a more radical proposal, one I have never heard discussed (and, indeed, something I had never considered until I sat down to write this essay). With few exceptions (CUNY again comes to mind), the first year of law school education is incredibly uniform. Some schools put constitutional law in the first year and some do not. The number of hours allotted to torts can vary from three to six, but the basic content is more than similar. I am not quite sure why these basic courses need to be taught in law school, as opposed to undergraduate school, except that we have always done it that way At least we have for the last hundred years or so. In Europe, on the other hand, law is taught as an undergraduate specialty, as is history, politics, and engineering.

I am not suggesting we move all of legal education back into the colleges, just the first year. Rather than telling our applicants that they can major in anything they want (although political science, English, and history have been favored by some law professors, while others think that math or business provide good preparation), perhaps we should instead encourage our undergraduates to major in law, taking contracts, torts and property before they even get here, along with basic legal research and writing. A number of schools have established what are sometimes called three/three programs, allowing law students to begin their studies after three years of college. In effect, the first year of law school serves as the student's undergraduate major. They do not, however, spend more time in law study as a result, which is essentially what I am suggesting.

What are the potential objections to this proposal? Well, for one thing, not everyone who majors in pre-law, as we might call it, will get into law school. But then, not everyone who majors in pre-med gets into medical school. Those who study the basic law courses as undergraduates and who either are not admitted to law school or decide that is not what they want to do can become paralegals, go into criminal justice, or go to business school, among other things. Alternatively, they may become reporters for NPR and cover the Supreme Court (which is the only job, other than being a professor and a dean, that I have ever *really* wanted).

There is, of course, the conceit that only those who teach in law school know how to teach law courses, and that only the best graduates of the best schools are really fit to go into teaching. This is, in some ways, an odd argument. Those of us who teach law did not necessarily have one day more education than law graduates who go into practice. Most of us receive no training whatsoever for the teaching role. Even those of us who obtained LL.Ms usually did so to receive further education in a specialty, or to upgrade a J.D. that was not quite snappy enough to warrant a teaching job. By contrast, those who teach history or English to undergraduates have spent years getting a Ph.D., during which they almost invariably served as teaching assistants, with responsibility for grading or teaching part or all of a course, ideally under the supervision of an experienced teacher.

The other argument that has been made is that only those who went through law school training in the Socratic method, and excelled at it, are qualified to teach the next generation. The first assumption behind that argument, however, is that we are still doing the Socratic method and that it is still (or ever was, for that matter) a desirable way to teach. The second assumption is that only the top graduates of the

top law schools are qualified to use the Socratic method. Nonetheless, any number of my colleagues who entered teaching around the time I did, when law schools were expanding and there was a great need for faculty, freely admit that we would be unlikely to land a law school teaching job today Perhaps those law school graduates who would like to teach, but are unable to get law school teaching jobs in today's market, could be the ones to take on the undergraduate teaching in the basic courses, leaving the advanced and specialized classes to the law schools.

What I am proposing would not be an easy change to make. Undergraduate schools would have to be persuaded to offer the basic law courses, and law schools would have to be persuaded to allow their students advanced credit for those courses. Perhaps it would be necessary to offer two tracks in law schools for a while, one for those who had already taken the current first year courses and one for those who had not. I am not even sure I care whether anyone finds this idea intriguing enough to take on as a crusade. It has been such a treat to talk about the big picture of legal education for a change, as opposed to whether there is enough money left in the travel budget for faculty member X to attend a conference in Transylvania. Nonetheless, I do believe that over the next several years, we need to begin thinking about ways that law schools can achieve all of their various goals within the confines of the three-year program.