

## SERVING THE MOST IMPORTANT CONSTITUENCY: OUR GRADUATES' CLIENTS

*Suellyn Scarnecchia\**

PEOPLE sometimes ask me how my background as a clinical professor affects my work as a dean. There are probably many ways that the growing number of clinician deans, as a group, experience and handle the job uniquely. In this essay, I want to concentrate on the way in which my own work as a litigator for over twenty years, including fifteen years as a clinical supervisor of law students, affects my view of a law school's responsibilities.

I recently participated in the second commencement ceremony of my deanship. What a beautiful event on a sunny day in Albuquerque! As the students proceeded across the outdoor stage, I shook their hands and hooded them. As I experienced their happiness and relief at completing a rigorous legal education, a nagging question kept coming to mind: "Are they really ready?" I had been trying to deal with the same question for years as I watched my clinical students graduate from the University of Michigan Law School, but the question felt more urgent in my new role as dean.

I question whether the students are prepared, not because I doubt the quality of classroom or clinical instruction they receive at the University of New Mexico or at the University of Michigan, but because the students' success is still measured on their "passing grades" in the classroom and completion of a set of tasks in clinic. The students are not deemed successful because they have demonstrated a set of competencies that we have consciously identified as adequately preparing them for the practice of law.

I would be the first to agree with the many deans who have described one of the biggest challenges of the job as balancing the interests of our many constituencies: faculty, students, staff, alumni, central administration, trustees, the bench, the bar, etc. Yet, rarely do I hear anyone describe the difficulties of serving the group I believe to be our most important constituency: our graduates' clients. Why? Well, they're so quiet. They are not constantly making appointments to meet with us to discuss the quality of representation they received from our former students.

Indeed, there may be some among our alumni who will give us gentle pushes in the direction of improving one part of the curriculum or the other (for example, "your students need more exposure to international law, to transactional work, to motion practice, etc.). And, the ABA, as well as state and local bars, are not hesitant to urge us to improve our teaching of ethics and professionalism, for instance. But, those are the pressures we feel from other lawyers, who have been trained in the same way we are training our students. What if the clients formed an organization and told us what they really thought?

So, how does my background as a clinician affect my role as dean? It gives me credibility with colleagues, students, and alumni when I say that we need to make

---

\* Dean and Professor of Law, University of New Mexico School of Law.

changes so that our students are properly trained to serve clients. I will often say out loud that I think we should do something on behalf of our graduates' future clients—that the clients are our true and most important constituency. I have some credibility around this because I have represented clients for so many years and because I have experienced how a law student represents a client, which is not always a pretty picture. I have a sense of how far they need to go to be competent.

This is not to say that my concern about clients is at all exclusive to me or to someone with a clinical background. We all recognize the real responsibility we hold to the individuals and organizations that our students will serve in the future. It is just not very easy to keep our eyes on that ultimate constituency because the others are so loud, immediate, and present. It is fairly easy, I have experienced, to begin to believe that I am running a school that exists for the education of my students—no more, no less. If they learn a lot, we have done our job. To try accurately to match the knowledge and skills they will need to practice law with their knowledge and skills at graduation is more demanding and is not necessarily our tradition.

Before I became a dean, I served on the Clinical Legal Education Association's Best Practices Task Force. We decided to take on the task of educating ourselves, and others, about the actual competencies law students should acquire and of defining the best teaching practices that would help students achieve those competencies. The leaders of the effort envisioned an iterative process, calling on expertise from the legal education community, practicing bar, and public.<sup>1</sup> In the initial discussions of the creation of a Best Practices document, we were fully aware of the pressure the U.S. Department of Education had placed on other higher education accrediting bodies to evaluate programs using outcome-based criteria. We felt it possible, if not likely, that law schools would be under the same scrutiny and would need to respond with our own version of outcome-based curricula and assessment.<sup>2</sup>

The adoption of outcome-based curricula and assessment is inevitable for U.S. law schools. We can be dragged kicking and screaming into it, or we can plan for this shift of focus now. The change is inevitable because of the acceptance in nearly every other field of the thesis that higher education programs should be assessed based on a student's achievement of pre-determined competencies, with medical education leagues ahead of us. It is inevitable because of national and state political pressure to trade financial support of higher education for greater accountability, which typically takes the form of a requirement that students be tested for pre-determined competencies. It is inevitable because enough of us within legal education realize that a voluntary move toward greater accountability to students, funders, and, most importantly, the clients of our graduates is a worthwhile and belated effort.

This shift to an outcome-based curriculum and assessment process is not necessarily a major shift. This essay is not an indictment of modern legal education. We are graduating knowledgeable and skilled professionals who serve

---

1. That work has progressed, and the current version of the Best Practices document can be found at <http://professionalism.law.sc.edu/news.cfm>.

2. See the Best Practices draft for a full discussion of outcome-based planning and assessment.

their clients well. Certainly, the legal market gives us some feedback about how well or poorly our graduates are performing. The shift in focus, however, may lead to new courses, different testing methods, or a change in the bar examination. It is unlikely to mean a revolution in legal education. It is likely to lead all of us to plan our curriculum and evaluation methods more critically, consistently, and with a greater focus on our students' ability to serve clients upon graduation.

Why do I feel so strongly that our work will become consciously outcome-based in the near future? The evidence is everywhere. Here are a few observations and anecdotes that inform my view.

1. *We Need to Be Able to Demonstrate Our Students' Skills to Employers*

How many of us can guarantee to employers that every student in our graduating class has acquired a set of basic competencies? It depends on the set of competencies, doesn't it? Are we all sure what the set of competencies should be for our students? And, a pet peeve of mine: it is not good enough to say that we can guarantee competency in the top 10% or even top half of our class. We must give all students the competencies that their future clients have reason to expect. Their employers have the same right to expect at least a set of minimum competencies from all of our graduates. We are not running an undergraduate program that will divide our graduates into those who get into the best graduate or professional schools and those who will not. Our programs are a vital step in the licensing process for practicing law. All of our graduates need to be competent to practice law, whether they decide to or not.

2. *The Student Who Couldn't Write a Paper*

At UNM, we require students to complete a major writing project in order to graduate. Two full-time faculty members must approve the completed paper. The faculty imposed this requirement as an outcome-based assessment tool, with the understanding that we will not graduate a student who is not capable of significant legal analysis and who cannot communicate the analysis in a well-written paper. Fair enough. Why was it then that this May, one of the faculty readers found that a student's paper could not be approved, and worse, that the student did not seem to have basic analysis and writing skills? One can argue that our system worked well to identify a student who had not yet achieved competencies that we knew were vital, but we learned of the student's weaknesses too late. In a good, outcome-based system, the student would not have been able to proceed to the last semester without a better handle on these vital skills.

3. *"My Dad Told Me I Had to Take Remedies, but it Conflicts with Clinic."*

A student recently sent me this note, raising the question: what curricular choices are really essential? Too often, our students are selecting their courses based on word of mouth. With no real direction from the law school, they tend to look for courses that complement their outside work schedules, or that treat the subjects covered on the bar exam, or that someone described as "essential." Informed by a

consciously outcome-based agenda, we might better advise our students' course selection. We might also eliminate many of the content-based aspects of the bar exam and concentrate more closely on a student's analytical, problem solving, and communication skills (if the bar exam survives—see below).

#### 4. *"Cultural Competency" Assessment and the Medical School*

I recently met with a woman from the UNM Medical School. She is chairing a committee responsible for designing the criteria for evaluating a doctor's cultural competency and for describing the best practices for teaching cultural competency to medical students. There are members of the UNM law school faculty who consciously teach about culturally competent practice, including me, but we do not have any method for assessing the students' exposure to the concepts and related skills that can improve their ability to serve clients from a variety of cultures. Do we know whether our work with the students on developing cultural competence really helps them improve? Not necessarily. With outcome-based curriculum planning and assessment, we should know that, before graduation, our students learned about cultural competency and were able to demonstrate related skills and knowledge. The folks at the medical school are already attempting to make this happen for future doctors.

#### 5. *Law Practice Management*

I often hear from alumni that the greatest help we could give our students would be to teach them how to run a law practice. After all, they say, our graduates will often join small firms, even practice alone (see below), or ultimately help to manage a large firm or large government or public interest law office. Why don't we view the ability to handle the business of practicing law as an essential outcome of a legal education? We have assumed that students will gather this knowledge on the job or that it was just too practical to include in a graduate-level program of higher education. Even in the clinical community, there is little emphasis on teaching students how to run the law office in which they work. There are some good arguments against teaching law office management: we just don't have time; there are more important things to teach; and there is too much variety of practice to teach enough useful information in one class. Perhaps an outcome-based curriculum would push us to explore the place of law practice management in our curriculum.

#### 6. *Bar Exam Suffering—Why Can't Diploma Privilege Work?*

Graduates study for the New Mexico Bar Examination in our building during the summer. What a miserable group, suffering through hours of tedious lectures! Would outcome-based assessment allow us to eliminate the bar exam? In his interesting reflection, published a decade after the report that bears his name, Robert MacCrate describes the history of law school assessment.<sup>3</sup> When states first

---

3. Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805 (2004).

developed bar examinations to aid in the licensing process, there were several states that gave a diploma privilege to graduates. The privilege was eliminated because of the bar's doubts about the preparation for the profession provided by law schools.<sup>4</sup> Why not reverse that decision? Why not so clearly document the preparation of our graduates that the bar examination is no longer necessary? Would this be a good thing? Ask anyone whose debt has been augmented by bar exam fees and tuition for the preparation course, and who then had to delay full-time work in order to study or could not even begin his or her job search because the relevant market does not hire until after bar passage. There is certainly a powerful lobby that profits from the bar exam, but as a law student, I might wonder why after paying for three years of tuition, I must then pay for a dull, some might say mind-numbing, course before I can be licensed. If we planned and documented our students' competencies, might we eliminate this rite of passage for our graduates?

### 7. *Seven Solo Practitioners*

Last year, our Career Services Office sponsored a program for students who intended to open a solo practice immediately after graduation. Seven students showed up for the meeting (out of about 100 third-year students). For a clinician dean, no greater wake-up call was possible. These are not students who have no other options; these are students who went to law school purposefully to learn to run their own business, to become independent through their education. Why not develop a curriculum and a method of assessing students that recognizes the truth that any of our students can take their diplomas from our schools, pass the bar, and represent a client on their own the next day?

### 8. *Access to Justice Network—Recognizing the Continuum*

In the *MacCrate Report*, there is a call for a continuum of lawyer education from law school through the course of one's career. The Open Society Institute funded a pilot program that has grown into a national effort to build that continuum in a very particular way. As a member of the Law School Consortium Project, UNM has developed a network of solo and small firm practitioners who receive inexpensive and targeted CLE in exchange for accepting pro bono or reduced-fee work. At very low tuition rates, our "Access To Justice Network" offers participating practitioners special courses in, for example, Small and Solo Law Office Management, Spanish for Lawyers, New Mexico Legal History, and Welfare Reform. An outcome-based curriculum planning process will help us better define the relative roles of law schools and such post-law school programs in properly educating and training lawyers.

---

4. *Id.* at 817 (New York example).

9. *President's Retreat and Assumption That Outcomes-Based Assessment and Accountability Are Core Goals*

A few weeks ago, I attended a management retreat called by the president of our university. One of the core strategies identified at the retreat is a focus on accountability. There was simply no question among participants that pressure from the state legislature and from various accrediting bodies means that we must better document our expected outcomes and student successes. Participants described outcome-based assessment as something “we are all doing, because our accrediting bodies require it.”

As deans, we need to provide leadership that encourages faculty members to move toward outcome-based curriculum planning and assessment. We need to bring our alumni and, perhaps, the clients of our alumni into the discussion. Law faculty members need to create a way to learn about law practice on an ongoing basis and to develop outcomes that are relevant and useful—this can be done only with very good information about the current state of practice.

Here are some of the real difficulties I see in attempting to move toward a consciously outcome-based curriculum:

1. Any curricular reform is difficult. It can be experienced as threatening to faculty members and as intruding on academic freedom. For some schools, reaching any kind of consensus around the needed educational outcomes will be difficult, if not impossible. Attempting to develop statewide or nationally accepted competencies poses even greater challenges.
2. The work of identifying outcomes and proper assessments can be tedious, even boring. The *MacCrate Report's* list of basic skills and values is a starting point, but bringing those lists alive in a curriculum is easier said than done. The CLEA Best Practices Document should be helpful. In the meantime, we need to avoid describing this endeavor to faculty members as requiring strict compliance with competency check lists when planning a course—freedom and creativity must be preserved.
3. Law schools may already be a little too similar. Trying to develop an outcome-based system might make us even more difficult to differentiate. Getting back to my earlier point about clients, more uniformity of training for lawyer competencies would be a good thing. However, we will need to protect our unique attributes in the context of teaching more uniform competencies.

Our graduates' future clients deserve our attention to this trend toward competency-based education and the attendant challenges. Successfully moving to outcome-based curricula and assessment will strengthen our schools, protect future clients, and bring even greater credibility to our programs in the eyes of other constituencies. I look forward to the challenge.