

Schools Respond to Shifts in Legal Landscape

By Ed Finkel

The rapid technological, economic, and cultural changes sweeping through the legal profession at the dawn of the 21st century have left forward-thinking educators pondering ways to better prepare their students, particularly 3Ls, for the new realities they will face upon gaining their JD.

Washington and Lee University School of Law in Lexington, Virginia, for example, overhauled its third-year program to address a lengthy list of challenges the school sees facing the legal profession, including but not limited to: “intense pressures created by the modern competitive legal business environment, the stresses of trans-jurisdictional practice, the pressures of globalization, the struggle to provide legal services to the indigent, the challenges domestically and internationally to the rule of law, the challenges of addressing issues of racial, ethnic, and religious diversity, the role of lawyers in civil engagement and leadership, stresses on leading a good and decent and healthy life, balancing family or health or spiritual needs with the pressures of fast-paced practice, the breakneck pace of technological innovation,” and the list continues.

In its 2010 iteration, the annual Law School Survey of Student Engagement (LSSSE) provided food for thought about how well prepared students feel. Conducted by Indiana University’s Maurer School of Law, the survey found that half of the students had never worked with faculty on non-coursework activities, half felt that law school contributed some or very little to the development of a personal code of values and ethics, 57 percent said they felt “very much” or “quite a bit” prepared for

understanding the needs of clients, 50 percent chose one of those two options when it came to working cooperatively as part of a legal team, and 45 percent said the same about coping with the day-to-day stresses of law practice.

The study recommends that schools create more opportunities for faculty-student interaction to address these gaps, particularly to shore up students’ confidence in dealing with non-academic dimensions such as the ability to work with others. William D. Henderson, director of Indiana’s Center on the Global Legal Profession, says the results point up the need to infuse practical education about the legal profession into the curriculum.

Henderson notes that 3Ls’ answers to questions about understanding client needs, working cooperatively, coping with day-to-day stresses, and other aspects of practice did not change much from those of 1Ls. “The telling thing about this is, the numbers aren’t going up over time,” he says. “They should be going up if we’re doing our job as educators.”

Henderson believes legal education is undergoing structural transformation due to three factors: (1) the end or at least leveling off of the traditional legal services model based on time and materials, due to changes in supply of and demand for lawyers; (2) political issues surrounding the financing of law schools as costs and enrollment rise while the value of a generalist law degree declines due to changes in the model; and (3) the standardization, outsourcing, or automation of basic tasks that lawyers traditionally have performed.

Indiana has begun to see its figures on the LSSSE survey rise since imple-

menting a first-year course called “The Legal Profession” in 2009 (after a beta test in 2007), says Henderson, one of the professors who has taught the course. The Legal Profession focuses on ethics, competencies, and economics, placing students in real-world situations in which they must grapple with workplace pressures and organizational incentives. They work in teams and present solutions to the issues they have been assigned, which are then critiqued by their professor and fellow students.

“It’s not so much, ‘These are the things you do to keep from getting disbarred’ as, ‘These are the things you need to do to build your career,’” Henderson says. “There’s a whole bunch of professionalism behaviors that you need to address that feed into skills. You can’t be a good advocate if you don’t listen to people, if you don’t understand people’s motivations, if you don’t have an element of self-awareness. . . . It’s not a technical skill by itself—there’s an element of emotion involved.”

Getting at such values-laden issues requires experiential education and role-playing, which students at Indiana found disconcerting at first, Henderson says. “It’s foreign to students,” he says. “If your law school hasn’t used this pedagogy before, you experience a rough ride. . . . We took their feedback, and we think we’re moving along the right continuum. But it’s hard—it’s hard emotionally, and it takes a lot of time.”

The University of Tulsa College of Law has retooled in the past couple school years with the addition of the “Dean’s Seminar on the Legal Profession,” a required first-year class taught by Dean Janet Levit and Assistant Dean Kristine Bridges, which gives an overview of the law profession at the outset of students’ first year.

The six-week classroom component covers topics like US legal history, ethical obligations, time management, potential professional paths, leadership skills, mentorships and networking, and a lawyer’s duty to serve the public interest. The four-week professional development component that follows covers career planning, résumé and cover letter writing, an interviewing exercise, and required participation in the annual meeting of the Oklahoma Bar Association.

The course starts with a full-day introduction during the orientation “foundations week,” half spent at the courthouse and half at the bar center. “It’s so they understand there is life outside the law school and understand how important bar membership is to their professional development,” Bridges says. “The whole legal market and legal education is making a shift right now. Law schools have to recognize that their purpose is to make students as practice-ready as possible. There are so many different levels to what it means to be practice-ready.”

Those include not only formal legal skills but also a deeper understanding of everything from ethics to the economics of the profession, Bridges says. “One of the purposes of the seminar is to get them introduced to what is expected of you professionally,” she says. “At the end of the day, sitting down one on one with the client and giving advice are at the core of the service we give.”

And clients want a professional attitude from the get-go, Bridges says. “Clients need people to be ready on day one,” she says. “I don’t think clients are just looking at what attorneys are doing, they’re looking at all services. We are a service-based industry. If clients are getting services in an

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advanced technological way from accountants, for example, we as attorneys need to be able to compete.”

The class was held for the first time in fall 2010 based partly on the recognition that students sometimes enroll in law school by default, Bridges says. “The purpose of the class is to let students understand what they are taking on. We have a lot of obligations outside ourselves,” she says. “We do have a focus on the duty to serve the public, whether they decide to do a public service profession, or whether they take on pro bono cases in private practice.”

Washington and Lee chose to blow up its third-year curriculum in search of an effective way to infuse knowledge

of the profession into its offerings. The overhaul aims to integrate legal theory and legal doctrine with a newly developed sense of professional judgment and ethical identity. When planning for the new program began in 2006, “Law firms and legal practice were in a very happy state,” notes interim dean Mark Grunewald. “This is not some recent and hasty response; it’s a longer-term view of what legal education should be.”

Launched in 2009 as an optional program that about two-thirds of students chose, and required starting this school year, the program aims to give third-year students the ability “to more systematically exercise and express professional judgment in a variety of contexts” and “reflect more systematically on what it means to live one’s life in the law,” the school says on its website. “Students should recurrently consider and receive guidance on the admirable qualities, dispositions, attitudes, concerns, and habits—moral and intellectual—of good lawyers.”

“They’re either doing various practice simulation courses, clinics, or externships; they’re not taking your regular classroom-slash-exam law school course,” Grunewald says. “Everything they do is in the setting of legal practice. Some of it is actual legal practice, like

the legal clinics, but probably the unique part of it is done in these very substantial practice simulation courses.”

In those courses, whether they focus on tax, or labor and employment, or mergers and acquisitions, students handle the types of work that they would be doing as attorneys on a daily basis, Grunewald says. “They’re learning not only substantive law but actually experiencing the work lawyers do and participating in that work,” he says. “They’re connecting more directly with being a legal professional than they would be in their former passive roles as students in a classroom.”

Professional development occurs over time—and the new third-year curriculum at Washington and Lee accelerates that

ARE FIRMS CHANGING HOW THEY RECRUIT STUDENTS?

Fall is the New Summer for Nashville Firm. As lawyers and legal educators ponder how best to prepare students for law practice in the 21st century, one of the old assumptions that's being questioned, at least in some quarters, is whether traditional summer internships are necessary or even desirable.

The Nashville firm of Waller Lansden Dortch & Davis ended its summer program in favor of a shorter program that runs for six weeks in September and early October, providing students with research projects they can handle remotely and fit into their busy early fall schedule as school gets under way—and which concludes in time to meet NALP guidelines for those who have offers from other firms.

The firm began the program in 2011 after its summer class kept shrinking, while the firm's needs grew ever more unpredictable, says Kathleen Pearson, director of professional recruiting. "We thought it was time to try something new—scrap summer and start from scratch," she says. "We thought about what would make sense from a business perspective—how to line up client needs, student needs, and our needs."

The firm's new approach, called Schola2Juris, provides a \$10,000 scholarship, job shadowing opportunities, the ability to work with firm attorneys virtually, and a weekend social retreat, the firm says. The Schola2Juris program enables Waller Lansden to bring in associates later in their legal education, when they have a better sense of what type of law they want to practice, and when the firm has a better sense of what type of lawyers it will need, Pearson says.

"For the traditional summer program, you need to predict two years in advance [given recruiting schedules]. And students have only had their first year of law school," she says. "We need to hire people to do specific jobs. Two years before you need [new hires], there's no way to tell what your clients are going to need. . . . By moving it to your third year, students have had another year of classes, and we can predict out a full year which practice groups are forecasted to do well, and need to bulk up."

A student working with the firm's corporate group, for example, had the opportunity to see what a first-year associate might handle with regard to everything from incorporation, to acquisition, to dissolution, Pearson says. "They get a feel for what type of work they'd be doing and how it fits with the firm, as opposed to 'whatever's available' research projects," she says. "It's much more meaningful as far as the types of lawyers who are going to be with us."

Pearson doesn't know of other firms that have taken a similar approach, and she doesn't know whether Waller Lansden's approach would work for other types of firms. "Firms would be wise to look and see what might work for their own business model, as opposed to recruiting the same way everybody else does," she says. "It doesn't make sense for a firm our size, here in Nashville, Tennessee, to recruit the same way a firm in New York City does."

"A lot of firms have been waiting to see how we did it [and] if we were successful," she adds. "It takes quite a leap of faith for the partnership to radically change anything in their business model."

process, Grunewald says. "Students move from learning the law the way law students do, to learning the law the way lawyers do," he says. "You learn what you need to learn to deal with the problem you're facing. It's very much the transitional piece from being a student who takes notes and tries to absorb substantive law and answer questions on an exam, to identifying a client problem, figuring out a solution, working through that solution and coming up with an answer."

The University of Wisconsin-Madison Law School is beginning a program that addresses what some might see as the declining value of generalist law degrees. In fall 2012, the school is teaming with the university's Center for Neuroscience to offer a joint JD-PhD Dual Degree Program in Neuroscience and Law. Students who enroll in the program will explore the intersection of those two fields as it applies to issues like how to assign criminal responsibility, the

capacity of youth and the mentally ill to stand trial, and the link between erratic or dangerous behavior and degrees of mental impairment.

The Neuroscience and Law program has grown out of a four-year-old joint degree program in Neuroscience and Public Policy, as well as another program that combines Neuroscience and International Public Affairs that began in 2010, says Ronald Kalil, program director and a professor in neuroscience. Until now, the intersection of those disciplines has mostly been filled with "either lawyers who have tried to do self-study in neuroscience, or vice versa," Kalil said. "I said, 'We can do better than that.'"

Among the most prominent issues that Kalil anticipates addressing are the effects of brain tumors or other conditions on negative, even criminal behavior. "You hear stories about people who have been upstanding citizens in the community, and then all of the sudden they start to behave differently, committing small crimes," he says. "Then, for some reason or another, they get [brain] scanned, and they have a tumor in their front lobe, which is pretty much the seat of the soul in the brain."

Once the tumor is removed, they're back to normal, Kalil says. "So what level of culpability do they have for the time when the tumor was essentially modifying their behavior in ways they couldn't control?" he says. "These types of issues are coming up, again and again and again."

A potentially thornier issue is how to judge the effects of a horrific childhood—one that involves physical and/or sexual abuse in the home, for example—might have had on brain development, and how to factor that into criminal cases, Kalil says. "We have for a long time accepted, although it's difficult to get a judgment, that if someone is declared insane, they're not culpable," he says. "What do we know about people who are not insane but have been twisted by life's circumstances? This becomes a huge ethical issue about where do we draw the line?" ■

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