

Synopsis of Santa Clara University of Law Leadership Roundtable (Afternoon Session)

The following is a brief synopsis of topics presented at the afternoon session of the SCU Leadership Round Table on 3/24/2012, followed by three leadership law students' impressions of possible ways to address these challenges.

Topic 1: The Leadership Challenge for the Profession and Legal Education, Part 1

Jim Leipold, Executive Director, National Association for Legal Professionals

The major issues of this discussion dealt with poor legal job market, the number of students graduating with debt, and the fact that many large firms are eliminating or limiting their summer programs. Contextually, this is a nice setup for why law schools need to show more leadership in helping prepare their students for practice in the real world. In particular the fact that large firms are scaling back on their summer recruiting (for OCI's) creates a void that law schools must fill. Furthermore, the fact that recent numbers indicate that more law school graduates are choosing not to practice law is another indictment on the process. There is a need for schools to work with smaller firms, concurrently developing community-based law practice to give students a chance to get critical work-experience before they graduate from the program. This is a market failure, because if the work is indeed out there, then the schools need to address the issue and provide practical experience. True, the law firm hiring models and poor job market perpetuate the issue, but the law school is the "ground floor", if you will.

The Leadership Challenge for the Profession and Legal Education, Part 2

Donald J. Polden, Dean, Santa Clara Law

Dean Polden presented an appraisal of hot-topic legal issues facing legal education institutions, and their constituents. The appraisal was honest, and identified several areas where educational institutions have opportunities to lead their peers and their constituents to positive change in this tumultuous economic environment. These areas may be summarized under three broad categories: transparency, quality metrics, and cost.

Transparency

Legal Educational Institutions have come under fire recently for several reasons relating to transparency. However, the most prominent regards job placement data. Since the economic collapse in 2008, several law schools have been accused of deceptive and/or fraudulent reporting practices. Some students and alumni have even instituted legal action against these institutions, and the fallout has compromised the public trust in legal education as a whole. While in some cases fraudulent and/or deceptive practices may have been implemented, Dean Polden pointed out that in others, law schools may have simply attempted to provide employment for graduating students during an unfavorable employment environment.

Regardless, all agree that fraudulent and/or deceptive job placement reporting practices must cease. In order to encourage honest and transparent reporting, ABA accreditation review processes may need to be relaxed to relieve some of the pressure for unrealistic job placement in this economic environment. Moreover, Dean Polden suggested that law schools should specifically identify and articulate those skills that students will be expected to learn and develop before graduating. By doing so, law schools can provide a guarantee to students and employers

that upon graduation, all applicants possess a minimum competency in key areas including substantive knowledge, “soft” skills, and practical skills.

Quality Metrics

Many law schools face difficult pressure regarding perceived quality. Annual publication of the *US News and World Report* has become an increasingly terrorizing experience for administrations. The unfortunate fact that the rankings are seemingly based on misleading or under-representative metrics complicates this pressure and terror. In particular, school rank is largely a function of incoming student LSAT scores and/or GPA, and these metrics are at best a predictor of first-year performance, and do not reflect competency as an upper division student or eventual attorney.

Accordingly, law schools have an opportunity to challenge this process and model the way to a more representative system of metrics for evaluating quality of legal education. How to do so remains an important issue for resolution.

Cost

In spite of the dismal employment landscape for aspiring attorneys, law school costs continue their rapid rise. Student debt is rising accordingly, much to the chagrin of students, employers, and bar associations alike. A growing contingency believes college education, and even more so law school education, is at worst a sham and at best an inefficient use of time and money. Legal education institutions must seriously ask whether they can continue to justify increasing costs and salaries in view of the failure to prepare students for practicing law and further failure to enable them to procure sustainable employment.

Legal education institutions face a difficult challenge to provide better-fitting legal education at reduced costs, or see their market shrink significantly.

Topic 3: Developing Case Studies as a Leadership Education Model

George Chacko, Leavey School of Business, Santa Clara University

Typical legal education is doctrinal and Socratic in form. Students acquire a vast body of knowledge, and are expected to learn how to apply it after graduation. At the same time, potential employers complain that students lack practical skills and knowledge, even in spite of excellent subject matter knowledge.

Enter the case study method. Several institutions, typically business schools such as at Harvard, prefer a case study methodology to the traditional doctrinal approach. Students are provided with a hypothetical problem (preferably based on a real-world situation) and instructed to review the issues and provide an analytical solution. Suggested reading and/or research may be provided, but little or no lecture on the materials occurs. Students may work in groups or individually, but group work is encouraged. Classroom experience consists of active discussion, with each group presenting perspectives on potential solutions and contributing to a collective, collaborative synthesis of the ultimately proposed solution(s). Where the case studies are based on real-world experiences, students may advantageously learn from hypothetical mistakes and apply these lessons upon encountering similar challenges in practice.

One participant requested Prof. Chacko’s opinion regarding whether such a collaborative method could be realistically applied to a first-year legal education that fosters competition and disincentivizes or even punishes collaboration. Encouragingly, Prof. Chacko indicated that

under many circumstances, competition may be an integral part of the case-study method. For example, Harvard Business School's embodiment of the case study method is highly competitive, with strict grade curves applied to classes similar to first-year legal education. The key, however, is to foster an environment for positive competition, and ideally one which mirrors the competition to be encountered in the real world.

Chacko made an interesting point about what the "goal" of the MBA program is. He said the program's goal is to produce managers. Comparatively, what is the goal of law schools? That is a fundamental question that must be answered. Are law schools looking to produce practicing lawyers? If so, practical experience and application seems like a logical requirement. Business school prepares students to make complex decisions and then execute those decisions. Additionally, the schools attempt to promote collaboration. Grade curve notwithstanding, these underlying skills are applicable to lawyers and should be integrated into the teaching model.

Topic 4: Perspectives on Leadership and Developing a Professional Identity

Leary Davis, Dean and Professor Emeritus, Elon University School of Law

Dean Davis presented an interesting study of demographics within the legal community, and particularly focusing on demographics of leadership.

While the demographic implications of the study were interesting, his novel definition of the legal profession and emphasis on apprenticeship were most applicable to the leadership discussion. Dean Davis proposes that the legal profession is best defined as follows:

A network of specially educated people drawn together by shared needs, values, attitudes and interests to establish, maintain and continuously improve a system of justice, within the context of which they help others solve problems and maximize opportunities within the bounds of equity and civility.

With this definition, Dean Davis proposes that the profession may remedy some of the ills caused by prior failure to clearly define professionalism in the legal community. In particular, clarity in defining professionalism will provide guiding principles to legal educators, increase practitioners understanding of and focus on professionalism and impact on conduct, and bolster public trust in the profession as a whole. Thus, legal institutions (and Bar Associations) may lead by challenging the status quo of unclear professional requirements by modeling a new, clear definition that inspires a shared vision among lawyers and law students, enabling them to effectuate positive change for the profession to the ultimate benefit of the public constituents.

One suggested method to realize these improvements is through a three-tier apprenticeship model, the "Carnegie Apprenticeship Model." Essentially, professional education involves three types of apprenticeships, each conveying a different type of skill or value to the pupil. First, practical apprenticeships provide practical skills such through experiential learning. Second, cognitive apprenticeships develop the abstract reasoning associated with practicing law effectively. Third, ethical-social apprenticeships provide "soft" skills to practitioners, including basic social skills, interpersonal skills, etc. all while forging a strong ethical compass to guide the pupil through treacherous challenges.

According to Dean Davis, by implementing a new, clear definition of professionalism and the legal profession, and impressing that meaning on aspiring professionals, legal education institutions can lead the legal community and its constituents to positive ethical change.

Topic 5: Future Trends in Leadership Development

Nick Petrie, Center for Creative Leadership

Nick Petrie presented an interesting review of the Center for Creative Leadership's (CCL) approach to training leaders to be more effective in their leadership roles. According to Mr. Petrie, individuals in leadership positions know what is needed to affect positive, effective leadership. Moreover, these individuals know how to affect such leadership. Surprisingly, however, these individuals do not actually implement those practices and leadership suffers.

Why? It's hard, and complex.

Modern leaders are required to perform very different tasks from their predecessors, and new skills, abilities and attributes are required for this performance. Nick's research indicates that CEOs cite creativity, adaptability, and similar skills as being paramount to modern leadership. However, methods of developing these skills are neither prevalent nor well understood. CCL takes a developmental approach involving three primary steps.

1. Awaken to realize that other ways of thinking exist.
2. Unlearn old practices and Discern open thinking from old assumptions.
3. Advance your practice to develop new ideas' strength.

In essence, the idea is to expand the leader's mind so that it can process more complex situations more easily. Moreover, the mind is subject to fewer constraints and less prone to generalizing solutions. CCL has apparently experienced encouraging success by employing this methodology. However, in order for its impact to expand beyond those few leading lawyers whose large and wealthy firms can afford and decide to send their attorneys to CCL, legal education institutions will need to adopt a similar goal, if not approach, of expanding students' minds to embrace increased problem-solving capacity, and not just fill those minds with doctrinal knowledge according to the law education status-quo.

Student Perspectives

Some Thoughts

All of the speakers and topics were thoroughly interesting and it was very encouraging to see first-hand that at least some leaders of legal education institutions realize the gravity of the present situation and its impact on their constituents -- the students.

In order to provide students with more soft and practical skills that prepare them for real-world legal challenges and improve their marketability to potential employers, law education institutions generally, and Santa Clara University School of Law in particular may consider the following suggestions.

Model the Way: Create a new model of legal education geared toward readying students for practice, not simply imparting a volume of doctrinal jurisprudence.

Challenge the Process: Move away from the current paradigm of doctrinal education toward an apprenticeship model. Encourage and expand clinics, client counseling programs, internships, externships, etc. to provide more opportunities to develop relationships with local practitioners and practical skills for eventual employment. This apprenticeship model would be especially applicable to and advantageous for upper-division students.

Enable Others to Act: Remove restrictions currently in place on internships/externships. Permit students to graduate with more non-classroom credits. Remove or relax restrictions that prevent students from extending internships with a single entity beyond a single semester (for credit). Develop closer relationships with alumni, local law firms and legal institutions. Put far less focus on OCIs and the top 20% of the class. Provide constructive advice and opportunities for students in the bottom 80% of the class beyond instructing them to limit their aspirations and career vision.

As a final note, some students have felt resistance to apprenticeship education models from traditional legal educators. Opposition to non-doctrinal education models seemingly believes that a “proper” legal education is obtained through Socratic doctrinal instruction from a professing academic.

In response, one perspective is to adopt George Chakos’ proposition that education through case studies (and preferably case studies based on real-world situations) is superior to conventional education through focus on doctrine. Importantly, doctrinal education need not be eliminated, but should be supplemented by an upper-level education dominated by practical experience.

Indeed, practical experience amounts to the best type of case study. Externships, counseling experiences and clinical experiences are all based on real-world situations. Entire classes of students will develop based on exposure to a variety of individual experiences through a complementary class component. In particular, students will take tangible benefit from discussing mistakes avoided and/or committed, and the lessons learned from the experience. While the current class component accompanying SCU externships provides interesting information, focusing on developing practical skills applicable to real-world legal employment would better serve students’ needs. One approach may include spending more time in classroom case-studies according to the model introduced at the SCU RoundTable.

Another Perspective

I agree with the speakers at the Round Table, that the current model of educating law students does not take into account some of the best practices from other types of professional education. While maintaining the deep traditions and history is important so that students will appreciate where the law came from, it is more critical than ever to prepare them to enter the market prepared to hit the ground running.

Because law firms are shifting away from large classes of first year associates, where they do a lot of on the job training in the first few years - the schools need to fill that gap and deliver a pool of resources that have learned the necessary skills as part of the educational curriculum. This will make students from such a university more viable, and higher in demand.

How can we do this here at Santa Clara?

Set the Example : Don't wait to follow the trend of other educational institutions. Find the programs that will set our students apart and expend resources implementing those that will deliver a more highly skilled pool into the job market.

Enlist Others: Look to Alumni to find out what specific things they would look for that might set our students apart from the pack. Many times we ask our alumni for money, and for some that is how they might prefer to contribute. However there are many others who, if asked, might be willing to participate in other ways - creating internships, offering their expertise in clinics so we can expand our footprint and offer more options to students to learn the practical side of working from the folks in the trenches.

Search for Opportunities: Take the examples from the Business School, and create active learning. When a student comes to a realization based on stepping through a scenario that information will be retained and much easier to recall - experiential learning is proven to be more effective - and a lot more fun! In addition, make greater use of the apprenticeship type learning through the clinics or internships. I would imagine there are many untapped streams of opportunities. A more formalized division within Law Career Services that worked with each and every student to help them secure at least one practical experience either at a clinic or internship (make this a requirement for graduation) would increase the value of students based on the skills they can bring to any firm they join.

Foster Collaboration: Use of new methods of teaching may lead to greater collaboration rather than competition among students. While many groan and protest over group projects, it is through those types of projects that some of the best learning is delivered. Maybe adding a one unit class each semester that requires small groups to meet, discuss case studies, and deliver their thoughts to a larger class, would help develop collaborative behaviors. Working together to a common goal, having spirited debates over direction, learning to compromise, and actually standing up to deliver results, are all key skills they will need when they start to practice in earnest.

Finally : We don't have to throw out the old to infuse it with new life. Legal education has made great strides in many areas with the inclusion of some opportunities for internships, clinics, legal writing classes, moot court, law review, etc. But many of these are limited to just a select few. Schools must look at how they can create this energy and opportunity for each and every student. The goal isn't just to land the top 15% in the most prestigious of firms. We want to have every student graduate with the knowledge that they have already been in the 'trenches' and can provide what they went to school to learn - fair representation and justice - in the public service, as a solo practitioner, at a small firm, as well as the large ones.