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### Post-Crisis Legal Education: Some Premature Thoughts

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# POST-CRISIS LEGAL EDUCATION: SOME PREMATURE THOUGHTS

David Yellen<sup>†</sup>

## CONTENTS

INTRODUCTION .....	523
I. CURRICULUM REFORM AND PROGRAMMATIC INNOVATION ARE HERE TO STAY .....	525
II. DIVERSITY OF LAW SCHOOL MISSIONS WILL INCREASE .....	526
III. INTERNAL COMPETITION FOR RESOURCES WILL BE INTENSE .....	527
IV. IF STUDENTS RETURN IN DROVES, ALL BETS ARE OFF .....	529

## INTRODUCTION

It is an honor to take part in this Symposium recognizing Rick Matasar's enormous contributions to legal education. Rick has been a friend, mentor and inspiration to me and to countless others in legal education. His leadership, thoughtfulness, and good humor are greatly appreciated by all of us fortunate enough to have worked with him.

Rick frequently predicted a coming crisis in legal education.<sup>1</sup> The years following the financial crisis and recession of 2007/08 have seen those predictions come to pass. Financially and psychologically, the past five years have been very difficult for almost everyone with a stake in legal education. The main elements of the crisis have been law student employment and law school economics. As law graduate employment rates fell from 2007 to 2013,<sup>2</sup> thousands of recent graduates suffered unemployment or underemployment, while facing historically high debt loads.<sup>3</sup> Law schools have seen applications and enrollment plummet,<sup>4</sup> with dramatic effects on budgets.

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1. See, e.g., Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465, 467 (2005).

2. See *Employment Rate of New Law Graduates Up for the First Time Since 2007*, NAT'L ASS'N L. PLACEMENT (2015), <http://www.nalp.org/uploads/Classof2014SelectedFindings.pdf>.

3. DENNIS W. ARCHER, TASK FORCE ON THE FIN. OF LEGAL EDUC., AM. BAR ASS'N, THE REPORT OF THE TASK FORCE 7 (2015), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/reports/2015\\_june\\_report\\_of\\_the\\_aba\\_task\\_force\\_on\\_the\\_financing\\_of\\_legal\\_education.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/2015_june_report_of_the_aba_task_force_on_the_financing_of_legal_education.authcheckdam.pdf).

4. From 2010 to 2014, first year law student enrollment declined twenty-seven percent, from 52,000 to 38,000. See *ABA Section of Legal Education Reports 2014 Law*

The beginning of the end of the crisis in legal education may be near. There has been some modest job recovery over the past few years.<sup>5</sup> Combined with a decreasing number of law school graduates, this is leading to better employment rates. If job growth accelerates or even simply continues, it may turn out that the “correction” in the number of law students went a bit too far. Some have even suggested that in a few years there will be a shortage of law school graduates (although this seems highly doubtful).<sup>6</sup> Meanwhile, it appears that the steep decline in law school applicants may be bottoming out. LSAT takers are up for the first time since 2010.<sup>7</sup> Perhaps legal education will begin to regain some of its lost luster.

The end of the crisis will not necessarily signal the return of good times, though. Think about someone facing a serious health crisis. When the crisis abates, the patient may return to full health, they may be somewhat diminished, or they may be facing a chronic, even fatal condition. It remains to be seen to what extent legal education recovers from, and the ways in which it is changed by, our crisis. The shape that post-crisis legal education takes will depend to a significant extent on factors beyond our immediate control. How the overall economy fares, whether there is growth in the legal sector, the continued impact of globalization and technology, and how attractive law seems as a career path to young adults will all be critical. However, regardless of these trends, the responsibility lies with those of us in legal education to reflect on what we have learned during this crisis, to try to build on some of the educational advances that have been made, and to avoid returning to practices and attitudes that contributed to the crisis. In this Essay, I offer some initial observations about what may lie ahead. I will address three important areas: curriculum, faculty, and finances. These thoughts are obviously tentative and run the risk of overgeneralization. Just as schools have been impacted very differently by the decline in applications and jobs based on their status, location, financial resources, and other factors, so too a recovery will see improvements distributed unevenly. Still, there are likely to be trends that affect most schools to

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*School Enrollment Data*, A.B.A. (Dec. 16, 2014), [http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba\\_section\\_of\\_legal.html](http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_section_of_legal.html).

5. See *New Grads Find More Jobs for Second Year in a Row, But Not Enough More to Offset the Larger Class Size*, NAT'L ASS'N L. PLACEMENT (Aug. 2014), <http://www.nalp.org/0814research>.

6. See Ben Barros, *The Coming Lawyer Shortage*, FAC. LOUNGE (Aug. 20, 2014), <http://www.thefacultylounge.org/2014/08/the-coming-lawyer-shortage.html>.

7. See Debra Weiss, *LSAT test takers increase for third time in a row*, A.B.A. J. (July 13, 2015), [http://www.abajournal.com/news/article/lsat\\_test\\_takers\\_increase\\_for\\_third\\_time\\_in\\_a\\_row](http://www.abajournal.com/news/article/lsat_test_takers_increase_for_third_time_in_a_row).

some significant extent.

#### I. CURRICULUM REFORM AND PROGRAMMATIC INNOVATION ARE HERE TO STAY

When I first became a dean and attended the ABA's New Dean's Workshop in 2001, the dean of a very prominent school gave the following advice (I am paraphrasing):

Don't get bogged down in the curriculum. A dean will be judged by the money he/she raises and the faculty he/she hire. Don't waste your time and energy on curriculum reform. The faculty will debate things for a year or two and then, in the end, will probably just shift around a few credit hours in the first year.

This may have been good, or at least realistic, advice in 2001. Times have changed, though, and deans and faculties are reexamining the curriculum as never before. To be clear, there is little evidence that deficiencies in our educational model caused, or even contributed significantly to, the crisis in legal education (tuition levels are a different matter). Nonetheless, the intensification of some longstanding criticisms of the legal education model during the crisis did shed additional light on our failure to adequately prepare many of our graduates for modern law practice.

In response, the past five years have arguably seen more curriculum innovation and reform than any other time since the modern American law school was created. Many much-needed reforms have gained traction. In particular, law schools have been reoriented to focus more on what students need for success in their careers. Today, law deans and faculties are thinking much more carefully about what and how our students learn. Individual schools have expanded experiential learning opportunities, created incubator programs for recent graduates, and developed course offerings to include such topics as leadership, project management, the economics of law practice, etc. Group work and interdisciplinary projects are becoming more common. Many professors are working to incorporate experiential exercises into "traditional" courses. Consortiums like Educating Tomorrow's Lawyers<sup>8</sup> are providing research and serve as clearinghouses for schools looking to modernize. On a regulatory level, the American Bar Association now requires that every student complete six credits of experiential learning,<sup>9</sup> and that each school engage in a process of

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8. *Educating Tomorrow's Lawyers*, INST. FOR ADVANCEMENT AM. LEGAL SYS. (Oct. 14, 2015, 3:22 PM), <http://iaals.du.edu/educating-tomorrows-lawyers>.

9. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. Standard

identifying and measuring student learning outcomes.<sup>10</sup> California is considering a requirement of fifteen credit hours of experiential learning prior to admission to the bar.<sup>11</sup>

The wisdom of these reforms is debatable, and their success or failure may take years to assess. It also remains to be seen whether employers will respond to these developments. Will better training of law students lead to more hiring, or will employers reward schools that do a better job of training their students? But legal education has entered into a new era. Any sense of complacency in legal education is being replaced with urgency.

Beyond the content of our J.D. programs, schools are developing new delivery models and trying to attract new audiences. William Mitchell College of Law has launched a hybrid on-campus/online part time program.<sup>12</sup> At Loyola, we have over 300 students pursuing degrees online, principally non-lawyer masters programs in health law and compliance. Distance learning and providing legal education beyond the J.D. program are likely to grow significantly in the coming years.

Chicago's Mayor, Rahm Emanuel likes to say, "never let a good crisis go to waste." Although legal educators did not seek the crisis we have been facing, we have made good use of the crisis. Despite, or because of, the turmoil of the past few years, I believe that the quality of the legal education that students receive in the United States, has never been better. Even as the crisis begins to abate a bit, this new momentum will continue.

## II. DIVERSITY OF LAW SCHOOL MISSIONS WILL INCREASE

The twenty year period from 1990 to 2010 saw some powerful trends push law schools to become increasingly alike in approach. The *U.S. News & World Report* rankings, the new information age, and other competitive pressures led almost all schools in some similar directions. Tuition increased dramatically, and merit scholarships proliferated as schools sought to attract students with higher academic credentials. Tenure track faculty resources were reoriented to pursue prestige: teaching loads declined and an emphasis on the production of scholarship rose. Centers of excellence and other programs proliferated.

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303(a)(3) (AM. BAR ASS'N 2015–2016).

10. *Id.* Standard 315.

11. *Task Force on Admissions Regulation Reform (TFARR)*, ST. B. CAL., <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx> (last visited Mar. 14, 2016).

12. *See The Hybrid Program*, MITCHELL HAMLINE SCH. L., <http://web.wmitchell.edu/admissions/hybrid-program/> (last visited Mar. 14, 2016).

More and more schools attempted to follow the elite school model.

Post-crisis, fewer schools will be willing or able to follow this path. Resources are likely to remain tight for most schools, forcing hard choices. As schools increase experiential learning opportunities, they are likely to do so with an eye towards the types of jobs their graduates obtain.

The nature of faculty hiring will likely be more segmented. Faculty hiring has shrunk dramatically at many schools.<sup>13</sup> Increased teaching loads, layoffs, pay cuts or freezes, the disappearance of vacant faculty lines have all become increasingly common at all but the wealthiest schools. Eventually, hiring will increase, as senior faculty retire and the number of students attending law school rebounds. The nature of who is hired and what is expected of new faculty may reflect changes brought about by the crisis.

Before the crisis, there was a long trend towards hiring new tenure track faculty members based principally on their scholarly potential. More than a brief period of time in practice was not seen as an advantage. It was much more important to have produced an article or two than to have been a real working lawyer. Some schools became entranced with the PhD as an additional credential.

I will be very surprised if the pendulum does not swing back the other way for many schools. Experience in practice will be essential as professors are urged to incorporate more experiential learning into traditional courses. This practice base may inform the type of scholarship new faculty engage in at many schools as well. Schools need not and should not abandon their scholarly missions, but some realignment of priorities is likely to occur.

### III. INTERNAL COMPETITION FOR RESOURCES WILL BE INTENSE

The crisis in legal education has wreaked havoc on the finances of many law schools. Dwindling enrollment and skyrocketing scholarship spending<sup>14</sup> has combined to create a grim bottom line. From an institutional financial standpoint, the crisis in legal education will not be over until net revenues are increasing. Post-crisis, there will likely be a

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13. See Paul L. Caron, *Law Prof Jobs Are Drying Up*, TAXPROF BLOG, (Sept. 8, 2015), [http://taxprof.typepad.com/taxprof\\_blog/2015/09/law-prof-jobs-are-drying-up.html](http://taxprof.typepad.com/taxprof_blog/2015/09/law-prof-jobs-are-drying-up.html).

14. Evidence suggests that over the past decade, discount rates at law schools rose from being about half of those of colleges and universities, to equaling or surpassing undergraduate rates. See David Yellen, *Tuition Discounting on the Rise and Its Impact on Law Schools*, L. PROFESSOR BLOGS NETWORK (Aug. 26, 2015), [http://lawprofessors.typepad.com/law\\_deans/2015/08/tuition-discounting-on-the-rise-and-its-impact-on-law-schools.html](http://lawprofessors.typepad.com/law_deans/2015/08/tuition-discounting-on-the-rise-and-its-impact-on-law-schools.html).

slight uptick in the resources available to law schools, because of an increasing number of students and a decline in the discount rate required to attract a good class. Assuming this happens, there will be tremendous competition for any new funds. Navigating this pent-up demand for law school revenue will provide a great challenge.

It will disappoint many in the law schools, but central universities will have first call on any increased law school revenue. There was a time when many law schools were profit centers for their universities. That is, law schools were “taxed” at a level higher than the actual overhead costs they generated. This began to change in the 1990s as merit scholarships proliferated and law schools spent more money to compete with one another. Still, most universities were financially better off for having a law school. Today, however, many universities are, in effect, subsidizing their law schools, often to the tune of millions of dollars a year. It has been one of the surprises of the past five years that there have not been closures of law schools as universities, which are often not in great financial shape themselves, look to cut their losses. If the financial outlook of legal education does improve, universities will look to recoup some of the losses they have suffered while supporting their law schools during the crisis.

To the extent that there is an increase in law school budgets, tough decisions will have to be made. Most of a law school’s budget is taken up by salaries and benefits. If a school has cut or frozen salaries, there will obviously be demands for higher pay. If there is money for new hiring, the big questions will be whether it should go towards staff or faculty, and if the latter, what type of faculty. In legal education, like higher education in general, staff have been added at a faster rate than faculty for the past few decades. During the crisis, staff numbers have shrunk more than faculty, through attrition and layoffs. Deans may wish to increase the number of staff to meet the needs of new students in an era where a high level of services is expected.

Faculty hiring has been greatly diminished during the crisis. Many faculty members are working longer, and when there have been departures, schools are often leaving positions vacant. New faculty hiring energizes schools, so if budgets increase, there will be a strong case for this. On the other hand, student-faculty ratios are much lower than they were twenty years ago, and schools may be reluctant to commit long term resources to new faculty positions, even if the number of students rises modestly. If there is faculty hiring, there is likely to be considerable discussion about whether new faculty should be contingent or long-term, and if the latter, whether they should be oriented towards scholarship or experiential learning.

It would certainly be a pleasant change over the past few years for administrators and faculty to have to grapple with how to spend increasing budgets. If that happens, though, it will require careful thought and discipline.

#### IV. IF STUDENTS RETURN IN DROVES, ALL BETS ARE OFF

This Essay has been based on the assumption that over the next few years, legal jobs grow moderately, allowing law schools to slowly regain students and nudge scholarship rates downward. That might not happen, of course. Perhaps applicants will stay at their current level for the long term. If so, there will be major budgetary consequences for most law schools. Universities will only tolerate our operating losses for so long, and we will need to adjust to an era where we are smaller and can do less. Some law schools will almost inevitably close.

What if, on the other hand, my mistake is in underestimating the rebound of law school applicants? Will we be able to retain the greater focus on student needs that has been the virtue of our recent crisis? Virtually all law schools believe themselves to be “student-centered.” But what does that really mean? One answer is to consider whose interests may conflict with those of students and who may push law schools to be more attentive to their needs than those of students. The obvious constituencies who this may describe are faculty and administrators (both at the law school and at the university).

If “good times” return, it will be very hard to resist the forces that led to the legal education bubble in the first place. A few more students and a tuition increase a few tenths of a percent higher will enable a school to do great things. Reinvesting resources in faculty scholarship will help a school improve its standing in the academic world. And so on.

In keeping with Rick Matasar’s optimistic nature, I do not wish to be pessimistic. I think the renewed focus on what students need to learn for success in law practice will continue to grow. But human nature and self-interest are powerful forces. Other industries that have endured the bursting or deflating of a bubble have seen problematic practices return when times get better. It might be better for legal education to rebound slowly from the crisis, to allow the positive changes that have occurred to continue to take root.



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