

## Changing the 'How' But Not the 'Why'

By **Jeremy Paul**

Law school applications are declining more slowly and entry level hiring has begun to recover. First-year law school enrollments have shrunk from more than 52,000 in 2010 to a far more sustainable 38,000 in 2014. Recent studies by Profs. Frank McIntyre and Michael Simkovic continue to vindicate the long-run earning power of the J.D. degree. Perhaps you can hear law school deans breathing sighs of relief. Alas, it is way too soon for that.

Law schools that view nascent positive trends as license to return to business as usual will be missing the far more profound changes in the legal profession that demand new approaches to legal education. The most significant change is the extent to which knowledge of the law is cheaper and easier to obtain for everyone with access to a computer. Future lawyers can expect to earn less for merely informing clients about the law. How lawyers will add value in this changed environment is the question of the day. How lawyers should be trained to do so should be a top priority for every legal educator in the United States.

Some things, of course, will never change. Clients will always need advocates capable of translating large amounts of complex information into compelling written and oral arguments. People of means will readily pay for counselors who can assist them in memorializing transactions, negotiating deals, and navigating regulatory complexity. And the lawyerly skills of separating wheat from chaff, managing complexity, and paying attention to detail will be prized by clients and employers for years to come. The

Socratic method, the reading of appellate cases, and the traditional issue-spotting exam have proven successful at training lawyers in these familiar ways. But if this is all we do, our students will graduate unprepared for an economy in which a wider array of skills will be needed to thrive.

Most sensible law schools will respond to economic pressures by adding courses, modules, externships and other instruction in some of the skills lawyers need in the 21st century. Already there is growing recognition that law school should include training in financial literacy so that graduates grasp the difference between an income statement and a balance sheet. Law schools are emulating business schools by encouraging group endeavors that stress the value of teamwork. Work on simulated legal problems is now designed explicitly to introduce students to what it takes to manage a legal project. A global perspective is now a core element of many law school programs. Quantitative methods are also becoming part of the law school repertoire, despite the stereotype that lawyers are math-phobic. Even some introduction to strategic planning is finding its way into law school classrooms. These are all salutary developments.

Simply offering modest incursions into the traditional law school curriculum, however, will not be enough to provide our graduates with what lawyers need now. Truly innovative law schools will start from the premise that as law practice is rapidly changing some reconceptualization of the core curriculum will be needed. After all, even those administering licensing exams for taxi drivers in New York have changed the test to remove knowledge of the city



map. It's much more important now to be skilled with a GPS. Law schools need to ask ourselves how our profession has been equally transformed and how to prepare our students for the new world. Here are some key ideas for new courses and other key competencies.

### **The Nature and Structure of the Profession.**

The best place to start in preparing law graduates for the demanding and rapidly changing world they will enter is to enlist students from day one in exploring and understanding the legal terrain. Law degrees now open doors in auxiliary fields such as compliance, human resources, insurance claims, procurement, public health, higher education administration, and many more. And there are many settings in which to practice. The legal landscape should be a subject for explicit study, not background noise to be briefly sketched by the career office.

**21st Century Communication.** Clarity in oral and written expression long prized at law school remain in high demand. But lengthy memos and court briefs are increasingly expensive to produce and may be too time consuming for key decision-makers to read. Similarly, the gifted orator who tells a great story can still hold a jury or a boardroom spellbound. But the vast

majority of us will find our audience losing patience unless there are pictures to look at during the presentation. From pie charts and bar graphs to more compelling visuals, law students must acquire the tools of contemporary communication even if they now remain unfamiliar in the world of the law.

**Technology.** It's not merely the means of communication that are being radically transformed by the computer age. Searching through documents, predicting judge and juror behavior, storing and accessing information, and even reviewing case law have all been permanently altered through the advent of exciting technology tools. It's far too easy for law schools to ignore these tools on the theory that the students will learn to do what the teacher did and change on the job later. This is not acceptable. Every law school should be looking as hard as it can for people who can train students to use technology in the most efficient and productive ways.

**The Language of Clients.** Lawyers will continue to have a comparative advantage in reading and interpreting cases, statutes and regulations even if the text of these sources of law are now readily available. Just think of how easy it is to overreact to medical symptoms when you try self-diagnosis over WebMD. But it won't help the lawyer to be better at reading the law than her client, if only the client understands the language spoken in his business or other enterprise. From the language of computers to the world of biotech, the lawyer who succeeds now will be the one who not only skillfully speaks the language of the law but who thoroughly understands the world in which her client operates. Accordingly, huge advantages will flow to those law schools who show how interdisciplinary can be more than an aspect of grant-funded research or a buzzword tossed out to make the school sound hip. The law school of the future will have deep ties with every corner of the university (or other partners) not just the political science department. And the goal will be to graduate students who learn how to immerse

themselves in other professional languages even as they are mastering the law.

**Institutional Design.** As individual dispute resolution via the adversary system becomes increasingly unaffordable, designing institutions that produce fewer disputes and speedier resolutions will be a key task. From game design to psychology, law schools here too have much to learn from other parts of the university in how laws can be crafted to provide appropriate incentives to produce desired behavior. And law school curricula must be reformed to provide students space to work on writing new rules, not just time to interpret existing rules through the lens of the case method.

**Gathering and Marshaling Facts.** As the practice of law becomes less court centered, student understanding of how to use facts must go well beyond the traditional evidence course. The interplay between relevant and prejudicial is fascinating, and questions of admissibility are a fine way to introduce students to the challenging question of how something is proved. But lawyers appear in countless venues where the rules of evidence are not binding, and are often called upon to lead investigations that unearth the facts. Every law student should have at least one experience in which finding, as opposed to just working with, the facts is part of the task.

**Entrepreneurship.** A core value of the legal profession is an understanding that the lawyer is there to serve client wishes and needs. Thus the typical relationship is that the client generates a set of objectives and action steps and the lawyer helps make them happen. Some might say this is part of the lawyer's professional identity. But in the 21st century, this identity will have to change a bit. Lawyers will still do all we can to pursue client objectives, but we must also pursue our own. Most lawyers graduating from law school now will have many jobs during the course of long careers. Our graduates need to manage those careers. Accordingly, offering opportunities for students to chart

a course and make something happen is vital to their (and ultimately our) success. This can be done nicely within intellectual property clinics, which are becoming increasingly popular.

**Learning by Doing.** This is by far the most important. Clinical legal education was the most transformative innovation in legal education in the last generation. It remains immensely useful, but alas it is also very expensive. Few schools can provide all the clinical education that would be desirable. Yet once it is clear that the modern lawyer is unlikely to be paid well simply for knowing the kind of thing you can learn from books, it should also be clear that law schools have an obligation to teach students how to learn on the job. After all, very few positions come with a "how-to manual." The Northeastern University School of Law co-op model requires students to complete four 11-week stints working full time in a professional setting. It is built on the idea that a sequenced set of experiences working and then reflecting on that work offers a bold way to be sure that law students get supervised experience. Other schools have adopted exciting semester in practice programs aimed at similar student exposure to the professional world. Programs such as these that get students out of the classroom are crucial to training students for the professional world they will inhabit.

Law schools are hardly alone in our need to adapt to a radically transformed marketplace. Consider what journalism schools are facing. Yet meeting the challenges ahead may require law school administrators and members of law faculties to live different lives from the one they expected.

We can nonetheless take heart from a simple truth: The core mission of training professionals ready and eager to help individuals, organizations and society achieve justice will remain unchanged. What lawyers do will inevitably be different. Why we do it will barely change at all.