

Trends and Challenges in Legal Education

By Mary Kay Kane

In the rapidly changing, fast-paced world we live in, identifying trends, except in the most general way, is a somewhat risky endeavor. And forecasts of what the future may hold may be even less reliable. With those realities confronting me when I agreed to write this short article, I thought that perhaps a more fruitful way to approach the task would be to discuss some of the major pressures and challenges that law schools are confronting today, as well as what appears to be some of the responses. The list necessarily is not exhaustive. In some instances, it offers exciting glimpses of what the future may hold; in others, there are portents of trouble ahead "that need our thoughtful attention. Shortness of space also allows only a brief suggestion about many matters that deserve their own in-depth analysis. But I hope that this brief article about our current and future students, curriculum, and faculty will provoke more serious reflections later.

Students

Law student trends and the challenges they pose for legal education begin with admissions. Although the major decline in law-school applications has tapered off in recent years, it remains true that there is only very limited growth in the nationwide applicant pool, with no forecasts suggesting a stronger picture. Yet new law schools are opening every year. The result is that we are in an era of increased competition among law schools for what is essentially a static pool of applicants. The ubiquitous law-school rankings and the potential they have

to distort applicants' choices exacerbate this competition. Thus, law schools now are engaged in what are effectively massive advertising campaigns—whether to alert others in the profession to the unique opportunities or programs they offer so as to improve their position in the various law-school ranking surveys or, more directly, to appeal to the applicants themselves. Although those efforts may be deemed critical to the very survival of some schools and to the enhanced prestige of others, the effect in either case is to direct financial resources to developing school images and outreach—resources that otherwise might have been available for programmatic improvements. That is a substantial price to pay but reflective of the market economy today. The situation needs to be examined critically within each institution to ensure that the balance does not become skewed.

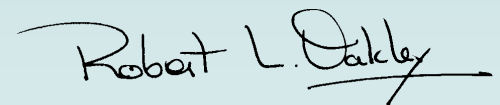
Even more fundamental to the future of legal education and of the legal profession itself are the various challenges to affirmative action in admissions that have been made in numerous states across the country. The importance of this issue cannot be overstated. It influences our ability to ensure that the legal profession reflects the great diversity of our society. It also substantially affects the ways in which law schools can provide access to those whose disadvantaged backgrounds might otherwise prevent them from being able to acquire the traditional indicators of law school success—high LSAT scores and high

This month's Member Briefing is the third in a three-part series on trends in the various kinds of organizations in which we work. The idea for this series grew out of AALL's new Strategic Plan. The Plan directs the Association to conduct the kind of review found in these Briefings on a periodic basis. Each area covered in a Briefing was written by a specialist from that area.

The first Briefing, published in October 2000, discussed some of the trends in the courts, especially state courts. The second, published in March 2001, was about some of the major developments in the practice of law. This third Briefing is about some of the issues in legal education. It has been written by the dean at the University of California at Hastings, Professor Mary Kay Kane. Ms. Kane is also the current president of the Association of American Law Schools.

Like the authors of the other Briefings, Kane covers a wide range of topics. Her topics include composition of the student body, affirmative action, finances, student debt, technology, internationalization of the curriculum, and faculty scholarship.

Taken altogether, these Member Briefings demonstrate that there are significant changes underway—not just in law libraries, which we all know—but in all parts of the profession. These changes will affect what we do in ways both large and small. I hope you have found the series interesting and helpful.



Robert L. Oakley
President 2000–2001

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undergraduate GPAs. The responses to these challenges are many. They involve attempts to develop effective means of explaining the value of diversity to the educational process as well as rethinking the ways in which law school admissions decisions are made, both the process used in each school and the relative weight and importance given to the LSAT in reaching admissions decisions. Indeed, the Law School Admissions Council has embarked on a nationwide campaign to educate everyone on the correct and incorrect uses of this test, including the presentation of data revealing that success can be achieved by those who fall in the lower test score ranges. A Joint Task Force on Diversity in Admissions also has just been formed by the AALS, ABA, and LSAC to develop additional means of addressing this challenge. This is not an issue that is easily solved or that is going to go away or diminish in importance. It is one that undoubtedly will demand continued and serious work and reflection in the legal education community for many years to come.

In addition to the admissions arena, at least two other student trends are worth noting. The first is the continually growing percentage of the law student population that is receiving accommodations due to a disability covered by the ADA and, in particular, as a result of a learning or mental disability. As these numbers grow, they necessitate the creation of increasingly sophisticated academic support programs. At some point, they also require faculties to consider the skills that are so fundamental to the profession that alternatives in course requirements or evaluation methods cannot be allowed. Faculties must consider how testing or methods of instruction can or should be altered to better reach those students and how to construct a sound academic program for them. Statistics at the undergraduate level suggest that this portion of our student population is sure to grow and thus these fundamental issues and law schools responses to them represent an

important area requiring attention over the next several years.

Finally, no description of trends in the student population would be complete without noting the continually increasing debt burden being assumed by today's law students. Those burdens clearly have an impact on graduates' job choices—particularly with the now incredible salary differential created by the adoption in many large law firms of starting salaries of as much as \$160,000. The increasing debt burden also enhances the pressures to excel while in law school in order to broaden job choices. This increases the competitive forces that already exist in law schools, widens the gap between the "haves" and the "have nots," and threatens the ability of many to engage in the public service or pro bono activities of the profession. Law schools are trying to combat some of these forces in a variety of ways—by increasing scholarship aid through the generosity of their alumni, by trying to do a better job of counseling about loans and debt servicing, and by developing or enhancing their own pro bono programs to instill in students the importance of the public service element of our profession, even before they begin their legal careers. Here, too, the work is ongoing and is likely to continue for many years to come.

Curriculum

There are at least four curricular initiatives that promise to be significant forces in the development of the legal education model of the twenty-first century. The first is the internationalization of the curriculum to take account of the need to train lawyers to operate in a global economy, where cross-border transactions are the norm rather than the exception. Internationalization is seen in a variety of initiatives: offering additional international business transactions and international trade courses; inviting foreign law teachers as visiting faculty, thereby increasing comparative law courses in various areas; and providing opportunities for

study abroad, either in U.S. law school summer or semester abroad programs focused on international/comparative studies or in student-exchange programs in foreign universities themselves. There also have been suggestions that the importance of this trend in practice is such that efforts should be made throughout the curriculum to inject international or comparative focuses into all basic law courses. Such efforts necessarily will result in new forms of teaching material and in scholarship to embrace this development.

A second and parallel trend has been the adoption in numerous law schools of specialized tracks within the JD curriculum that allow students to receive focused training and some form of a credential upon completion. This development is in part a reflection of some of the current trends in law practice, which has become increasingly specialized. It allows students to better market themselves upon graduation as being particularly interested and trained in certain areas. It is also clearly a result of the law school competition for applicants, because it provides a means for schools to distinguish themselves and market themselves to applicants accordingly. Like internationalization, this, too, is likely to be a long-term shift. On the positive side, it should result in even greater diversity among law schools in the programs they offer. Thus, the impact of this development potentially could be great; it certainly should affect faculty hiring, as well as library and information resources, as both need to be developed optimally to support whatever specialties are offered.

A third curricular front to note, although it has a much longer lineage than the prior two, is in the skills-training area. I mention it not because it is a new development, but because clinical-skills training actually has come into its maturity in the last decade, with clinical scholarship gaining recognition for identifying and wrestling with the important problems

of the appropriate roles of lawyers and the values to be fostered in the profession. With concerns growing about the competitive pressures in law practice today and whether they will adversely affect the ability and willingness of lawyers to engage in pro bono work and to be reflective lawyers, an important area of the law school curriculum that historically has focused on those issues is the clinical curriculum. Thus, the training done there will see increased emphasis as one means of lessening or combating some of the negative trends in the profession. How that will be accomplished remains to be seen, but continuing discussion about and experimentation with the skills training portion of law school curricula, including how to broaden the training to include things such as counseling and mediation, for example, are sure bets on the short- and long-term horizon.

The final and perhaps most dramatic trend in the curriculum is one that is just in its infancy but could have the greatest impact of all—technology in the classroom. The most obvious effect is suggested by experiments at several law schools engaging in distance learning initiatives, not to mention the attempt to provide a total Internet law school by Concord Law School in California. Opportunities to share faculty resources and courses between law schools and to ultimately expand our audiences and allow possible course offerings even internationally are exciting and likely to dominate the public's attention. But the use of technology to reshape courses for the students sitting in existing classrooms suggests even more fundamental changes are ahead in the very way in which our classes are taught. Instead of thinking of the faculty-student interaction taking place predominantly in the classroom (or in limited office-hour settings), the potential to carry on continuous dialogues between the students and the professor through e-mail and "chat rooms" now exists, and several faculty

are experimenting with those uses. From there, the next step is to reconsider how students learn and whether classroom time is being used most effectively or whether the delivery of information about the law in a classic lecture or a Socratic dialogue could be improved by using various modes of information delivery. Making those decisions will require us to seriously reexamine the entire framework of traditional classroom law teaching and to determine which elements require an interactive, live environment and which can benefit from other approaches to learning. These are important decisions, and ones that will require a significant investment of faculty time and institutional resources to achieve. But it is clear that the students of the next and future generations will be used to a different method of information delivery and testing by the time they arrive at law school. Thus, they are likely to demand that law schools not only prepare them to use technology in their practice and their research but also take advantage of the existing technologies to provide them with the best possible educational opportunity. Exactly how we do that is a question that will dominate debate for the foreseeable future.

Faculty

Trends on the faculty side of legal education embrace the role and tasks of faculty members but also the very expectations of and by faculty as to what is involved in being a law professor today. The challenges for law schools (and law school deans in particular) are in ensuring the continuation of the collegial intellectual interchange that is the ideal of the academic profession and in encouraging the development and commitment of faculty members to the law school as an institution. These two challenges always have existed, but various external forces raise a serious question about what the shape and form of the law professoriat will be twenty-five years from now.

Current trends that can have or are having a sharp impact on law faculty can be seen in several arenas. Consider the call for more accountability and assessment of the productivity of faculty, reflected in the increasing development of post-tenure review processes at several universities. A recent study noted that thirty-seven states have mandated the development of post-tenure review processes for their public universities, and private boards of trustees also are jumping on the bandwagon. The notion that tenure should not be a sinecure for inactivity and laziness is not one that anyone could challenge. The ways in which some of these review processes are developing, at least at the university level, however, suggest caution. Given the traditional obligations of faculty to engage in teaching, scholarship, and public service, the opportunity for post-tenure review is allowing for some special structuring of faculty arrangements that recognize that not all are created equal. For example, there are long-term agreements increasing teaching obligations of some who may not be effectively pursuing scholarship in order to distribute the obligations of faculty roles more fairly. These developments have many positive possibilities insofar as they allow individuals to focus on their primary interests and talents, but they also raise the possibility of stratifying the faculty in ways that could pose a risk to collegial and interactive faculty governance. Nonetheless, they clearly will continue, and law schools will need to carefully assess how they can best adapt to the changes ahead and still preserve the best in their respective institutions. (As an aside, it is worth noting that the calls for accountability and the use of "output" measures to determine whether law schools are carrying out their educational mission effectively pose a similar pressure on the faculty as a whole as the assessment of their institution's effectiveness reflects on

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their role in the institution and demands their serious consideration.)

Another pressure, which hopefully is not a long-term one, is purely economic. Law faculty members generally are well paid. (As a dean, would you expect me to say anything else?) Further, they typically have the luxury of structuring their professional efforts around topics and areas that are of interest to them. But with the incredible sums now being paid to some of the practicing bar, there is concern that some of the most senior and distinguished faculty members now receive less than graduates in their first year of practice. On the entry-level hiring front, as the disparity between beginning teachers' salaries and those of young lawyers continues to grow, the question is whether there will be a serious decline in the number of stellar faculty candidates whom we will be able to lure into academe, individuals from whom we have so benefited in years past. Second, although once in academic life the joys of that life may have prevented us from suffering a major exodus, a more serious concern is the number of faculty who may engage in outside consulting to supplement their income. Time spent consulting necessarily is not time spent on scholarship, in institutional governance, or in the informal student-faculty interactions that so contribute to a healthy and vibrant law school community.

For the past decade, the role of faculty members in institutional governance and in creating and participating in the law school community generally also has been shrinking for a totally different reason—computers. The ability to research and write without interruption in one's home (and in large metropolitan areas to avoid long commutes as well) was facilitated enormously by the explosion of personal computers and electronic access to research materials that before were available only through and in our libraries. For understandable efficiency reasons, now it is common for faculty

members to seek to schedule their classes only on limited days and in a compact time frame so that the remainder of the time they need not be at the school or in their offices but can remain at home using their computers. Given that faculty members are only on campus for limited times, every moment is often filled in satisfying their teaching obligations, in meeting with students outside of class, and in participating in various administrative or committee assignments. This means that there is less opportunity to engage in the informal facultywide discussions and exchanges that are at the heart of a collegial faculty who develop mutual respect and a vision of the enterprise. (Ironically, the burgeoning of e-mail and listservs suggests that faculty members may be engaging in more "conversation" outside their own institutions than inside. Although the broadening of the universe in which they discuss matters of shared interest is a healthy one, the question is whether it is coming at the price of internal dialogues.) Also, as faculty members become more isolated in their activities, new and untenured faculty risk being deprived of the kind of mentoring that could be foundational in ensuring their successful development as teachers and scholars. Obviously, the preceding description is painting with a broad brush and may overstate the issue. But the important point is that this shift of faculty work patterns has occurred slowly and without much thought about its implications. If it becomes the dominant mode, the role of faculty members as part of the law school community and in the development and shaping of their law schools and faculties will be fundamentally changed. Thus, it is something about which faculties should be consciously aware and seek to counter, lest the path of least resistance emerge victorious.

The final trend or challenge to traditional faculty roles that I want to mention also is a result of technology, but this time with a focus on how technology offers new tools by which

faculty can undertake their scholarship and teaching. I suggested earlier the classroom technology possibilities, and, to the extent that faculty embrace some of them, this may change dramatically the way in which they teach and the kind of activities that absorb their time and efforts. On the scholarly front, technology offers both the ability to access both new and a broader range of materials than ever before. But this, too, requires training as to what is out there and how best to find it. Additionally, e-publishing is likely to create entirely new forms of legal scholarship and certainly allows broader distribution and increased exchanges as work is developed. It also may require us to rethink some fundamental questions about what is legal scholarship of the twenty-first century, particularly insofar as the answer to that question may influence decisions about faculty productivity and scholarly contributions in the tenure and post-tenure review world of the future.

Conclusion

Despite the challenges of all of the preceding trends, I must conclude by saying that I believe that legal education enters this century in an incredibly strong position to make a significant impact on the way in which our society responds to the economic, global, and technological pressures surrounding us. Indeed, in many ways, many of the trends I listed are simply national challenges seen in the microcosm of the law school. But legal education has the tradition and talent to provide the reflection needed to meet the challenges and to chart our role so that law school graduates can continue to provide the leadership necessary to tackle these issues in the larger world. Thus, I am optimistic about the future and hope that this brief description offers some food for thought to help start a broader discussion throughout legal education about how to succeed.

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