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Introduction: Transforming Legal Education

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INTRODUCTION: TRANSFORMING LEGAL EDUCATION

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For as long as we can remember, legal education has been delivered in essentially the same fashion, in buckets. Not literally, of course, but rather through an expert in a specific subject matter domain.¹ The expert mines a bucket of substantive law, such as Contracts or Torts, relating it to students through a book of appellate cases.² The students received this knowledge, studied it outside of class for its meaning, and then returned to class in a rather formalized linear structure to learn more about the nature and ethos of the bucket.³ With a presumptive identity of teaching and learning—that is, if the teacher was teaching, the students must be learning—things such as learning science, cultural awareness, power structures, specific objectives about developing a variety of lawyering skill-sets, and measuring those developments formatively, were at best peripheral to the learning process.

The legal educational orthodoxy, however, is losing momentum—no longer an unquestioned beacon of educational superiority—and the rapidity and centrality of the potential changes have taken many people by surprise. The changes have been generated by forces located outside of the Academy, leading to the commoditization of legal education.⁴ As related in the article by Professors SpearIt and Smith Ledesma, students are voting with their pocketbooks⁵ and a shrinking number are applying to law school.⁶ Further, the type of law jobs available in a globalized, tech-savvy legal market is evolving. The economic forces are also influenced by the clients and the lawyers who operate within the system. Clients are no longer blithely

1. Traditional subject matter domains included Torts, Contracts, Civil Procedure and Property Law.

2. For one of the earliest casebooks, *see, e.g.*, C.C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS vi (1871).

3. The irony is that a law graduate in the early 1900s might very well feel right at home in the law school classroom of the early 2000s, especially when leafing through the books used to facilitate core courses.

4. *See* Terrence Loose, *What You Should Do Instead of Law School*, YAHOO! EDUCATION, http://education.yahoo.net/articles/best_law_school_alternatives.htm (last visited Feb. 16, 2014).

5. It was believed for many years that attending law school was a good idea for many people as a background for other endeavors, even if they did not want to practice law.*

6. There has been at least a double-figure percent decrease in students taking the LSAT in each of the past three years, according to the Law School Admission Council. *See LSATS Administered—Counts and Percent Increases by Admin and Year*, LSAC, <http://www.lsac.org/lisacresources/data/lisats-administered> (last visited Feb. 16, 2014).

accepting the fee structures of their lawyers, particularly institutional clients served by big firms; in-house lawyers are also responsible for managing fees, not just cases. The day of assigning multiple senior and junior lawyers in a law firm or business to a job, and clients paying the resulting fees without question, seems to be over. Consequently, the compact with the profession, through which law graduates are effectively given subsidized training by the lawyers that hire them, has been breached and may never return. Instead, a very public cost/benefit debate is occurring—is legal education worth its price?⁷

It is not just the legal profession that is changing, but law students as well. Born-digital students seem to prefer more flexibility, mobility, and different learning approaches than the singular, Socratic-style, in-class linearity of generations past. The idea of one size of learning fitting all is losing its appeal, especially for gamers and those living within a device-obsessed culture.

Despite all of the negativity swirling around legal education, there is, to some, a silver lining—this sea change brings opportunity.⁸ There is now a huge chance to reframe legal education so it is stronger and better situated in the global marketplace. After all, it is hard to find a part of law that is so local it is not connected to or affected by a broader, if not global, stage.

This new path for legal education likely involves a different understanding of a law school's dual roles. One role is teaching about a specialized knowledge domain, *the law*, often short-circuited into a way of thinking called *thinking like a lawyer*.⁹ This role provides law schools admission to the academy, the world of graduate education, through resemblance to other programs in length and rigor. The other role is teaching students to become professional lawyers, operating with and applying the knowledge learned in the marketplace. Any reconceptualization likely involves an education that is designed to transition students into law practice so that they not only pass the bar exam, but understand what it takes to succeed in their respective fields. The education probably will involve using learning science and experiential education throughout the educational process, not just sporadically, but in domain-specific applications to maximize its value. A new approach involves creating beneficial learning

7. *E.g.*, Loose, *supra* note 4. This commoditization is economic-oriented, mostly looking at the value of legal education compared to other graduate programs or no extra schooling at all. *See, e.g., id.*

8. This opportunity is to effect lasting and beneficial modifications that adapt to the needs of the constituencies in the long-term, not simply a short-term increase in paying applicants.

9. This term has been over-used to justify what traditional law teachers do, without any specific data-driven outcomes analysis.

environments, those that are learner- and community-centered, and those that create engagement and not disinterest. It is technology-driven and empathy-motivated, paying attention to Yeats' famous quote, "education is not the filling of a pail, but the lighting of a fire."

This edition of the *Nova Law Review* at Nova Southeastern University, Shepard Broad Law Center illustrates how the changing world of legal education provides an opportunity to revise and adapt our understandings and assumptions as we go forward. The authors all use the theme of reframing—altering the pillars of legal education or even the law itself.

Professors SpearIt and Stephanie Smith Ledesma, in *Experiential Education As Critical Pedagogy: Enhancing the Law School Experience*, use critical pedagogy to examine the benefits of increasing the use of experience in legal education, particularly as a response to the downturn of law school applicants, law jobs, and publicity about the value of law school. The focus of the article is how changes in methodology serve not only to educate, but also to empower students. The article thus expands boundaries and offers an uncommon window into the power relationships that lie within the legal education arena. The authors view the empowerment of students through an experiential student-centered education not only as an intrinsic benefit, but one with various instrumental outcomes, especially if doctrinal faculty are engaged in the experiential process. The most significant outcome for the authors is the opportunity for students to experience justice and not simply read about it in a book.

Professors Curcio, Ward, and Dogra offer the very timely *A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes*. In light of the fact that the American Bar Association appears ready to adopt a learning outcomes model for its member schools, the authors suggest that competency in working across cultures, the importance of which is already understood in law practice in a multicultural world, should be adopted in a more systemic and systematic way in law schools. The authors go far beyond just opining about the usefulness of such a pedagogy however, and provide a sample survey that could identify and measure culturally competent learning outcomes. While law schools have been challenged by how to adapt curricula that blend together demands for a more modern and pragmatic education, the authors propose how their survey instrument and research can assist law schools in incorporating cultural sensitivity and specific learning outcomes within an existing curriculum, without starting from the beginning. Thus, this article has something for the entire legal community, speaking to professors, students, practitioners, and accreditors, all at the same time.

Professor Elizabeth Shaver infuses the domain of legal research and writing with creativity and alternative pedagogy in *LRW's The Real World: Using Real Cases to Teach Persuasive Writing*. Professor Shaver uses the MTV reality show, *The Real World*, to illustrate how to reposition teaching and learning in legal research and writing. In particular, she describes an exercise that utilizes actual briefs and judicial opinions to teach the different components of persuasive writing. Included in these components are the development of a theme, organization of the arguments, and effective use of case law as authority. Through the exercise, students become practitioners and importantly, learn how to spot and develop persuasive writing. Significantly, Professor Shaver thoughtfully organizes the order of learning for her students—knowledge of the rules and principles comes first, and then the application of that knowledge through judgment and evaluation about the components of persuasive advocacy follows. In describing the comprehensive exercise, Professor Shaver provides a roadmap to her thinking about learning and persuasive writing in general.

Ms. Feluren, in *Moving the Focus Away From the IQ Score Towards the Subjective Assessment of Adaptive Functioning: The Effect of the DSM-5 on the Post-Atkins Categorical Exemption of Offenders With Intellectual Disability From the Death Penalty*, writes about the impact of the new version of the Diagnostic and Statistical Manual (“DSM”)—the DSM-5, the authoritative resource for diagnosis used by psychiatrists and psychologists—on the death penalty for persons who have an intellectual disability. In *Atkins v. Virginia*,¹⁰ a seminal case about the Eighth Amendment’s limits on the death penalty for the mentally disabled, the Supreme Court drew a line against imposing the death penalty against a person who was significantly impaired mentally.¹¹ Ms. Feluren analyzes the interface between the mental health system, as illustrated by the DSM-5, and the legal system, utilizing history and the textual changes to predict how the changes in the DSM-5 ought to be handled within the constitutional framework.

Ms. Duquette writes about products liability and mass shootings in the United States in *The Rx and the AR: A Products Liability Approach to the Mass Shooting Problem*. Ms. Duquette presents a different perspective on how to deal with the issue of mass shootings—using controls over the distribution of prescription medications, instead of focusing on guns. Ms. Duquette’s point is that many of the mass murderers were prescribed either antidepressant or antipsychotic medications and presumably were adversely

10. 536 U.S. 304 (2002).

11. *Id.* at 321.

affected by them. As such, the pharmaceutical industry should be part of the calculus in efforts to remedy this problem.

These articles provide for wonderful reading on many levels, from thoughtful dispositions about topical and nuanced questions, to ways to ably respond to a rapidly transforming world, one where the entire nature of legal education and law could see more change in the next decade than it did in the previous century. Law review articles are sometimes criticized for their lack of utility, but this is one criticism that cannot be leveled at this volume. In fact, it is clear these articles will contribute to the national narrative about transforming legal education and law. The new narrative created by these pieces helps to pave the way for decades of tradition to give way to a different and stronger foundation built to withstand emerging contexts—leading to more suitable outcomes for a volatile and very challenging era for legal education and the rule of law.