

Waltz a Little Faster, They Are Playing a Tango



Brian D. Einhorn

“When you haven’t changed your curriculum in 150 years, at some point you look around.”¹

—Justice Elena Kagan, then dean of Harvard Law School

Using old methods doesn’t work. It’s like telling your dance partner, “Waltz a little faster, they are playing a tango.”²

The economic downturn that began seven or eight years ago has hit our profession especially hard. Tales of the woes facing new law school graduates abound: rising tuition, a soft job market for lawyers, and often a nearly crippling amount of educational debt with no way to pay for it. Today, graduates can carry law school loan debt of \$150,000—or more.³ Tuition at some law schools is \$50,000 or more *per year*.⁴ These lofty tuition bills are likely geared toward the big-city, large-law-firm jobs with average starting salaries of \$160,000, but only approximately 14 percent of law school graduates find jobs paying that much.⁵ The more common starting salary is in the \$40,000–\$60,000 range.⁶ And that’s assuming a new graduate can find a job at all. A recent analysis of data released by 200 American Bar Association-

accredited law schools shows that only 56.2 percent of graduates were employed in full-time, long-term jobs as lawyers.⁷ Take away those positions funded by law schools and the figure drops slightly to 55.1 percent.⁸ And 27.7 percent were either underemployed (in a nonprofessional or short-term/part-time position) or not employed at all.⁹

To some extent, these issues have been self-correcting—law schools have faced dramatic declines in applications and enrollment, but not soon enough. The ABA Task Force on the Future of Legal Education reported that in the United States the 2013 graduating class of 46,776 students was the largest ever with 412 more students graduating in 2013 than in 2012.¹⁰ Bar associations have also begun thinking about the future of legal education and what needs to change to address the issues presented by an evolving economy and the ever-increasing cost of legal education. The task force issued a lengthy report making several recommendations such as finding ways to reduce the cost of law school, developing new law school programs, offering more information about programs and their costs, and getting the legal profession more involved in educating law students and new lawyers.¹¹ Several of the suggestions, however, are aimed at changing legal education itself.

In my opinion, one reason the job market may be poorer than it should be is because graduates do not have the skills training to compete for jobs. Or stated another way, the jobs are not available because applicants are not ready to represent clients.

I have had many discussions with young lawyers about what bar associations could do to encourage them to join and participate. The answer I get most frequently can be paraphrased as, “Teach us how to practice law.” Is that really a responsibility local bar associations should have? And why are students graduating from law school so unequipped for the actual practice of law?

When I joined the profession more than 45 years ago, I was fortunate to get a job with a law firm where I could learn what I hadn’t learned in law school: how to practice law. But the legal profession—and the legal job market—has been changing drastically for the last several years. Because many law school graduates can’t find a job with a law firm—or any job at all—they start their own practices. Students need to leave law school having learned more than just how to think like a lawyer—they need to learn how to practice law. Especially in today’s economy, new lawyers shouldn’t need to be asking for someone to teach them how to be lawyers after having spent three

The views expressed in the President’s Page, as well as other expressions of opinions published in the *Bar Journal* from time to time, do not necessarily state or reflect the official position of the State Bar of Michigan, nor does their publication constitute an endorsement of the views expressed. They are the opinions of the authors and are intended not to end discussion, but to stimulate thought about significant issues affecting the legal profession, the making of laws, and the adjudication of disputes.

Students need to leave law school having learned more than just how to think like a lawyer—they need to learn how to practice law.

Many new lawyers are hanging out a shingle without having the benefit of clinical experience, a job with a law firm to learn the ropes, or any idea of what they're doing.

years—and hundreds of thousands of dollars—on their legal education.

“Often people defend the traditional curriculum by saying that we are teaching them to think like a lawyer...I say that is teaching them to think like an 1870s lawyer.”¹²

—Professor Edward L. Rubin,
then dean of Vanderbilt Law School

It's often said that a law school's job is to teach students how to think like a lawyer but, tellingly, no one ever says it's the law school's job to teach students how to *be* a lawyer. Medical students spend the second half of medical school almost exclusively in clinical training before they graduate. And after graduation, every state requires completion of at least one year—and often two years—in a residency program for a full, unrestricted medical license. Medical school, in other words, spends at least as much time, if not more, teaching students how to *be* doctors as it does teaching them to think like doctors. But although virtually every law school has some form of clinical program, few require participation. Law school students graduate, pass the bar, and are deemed fully qualified to practice law. The model for many years involved newly minted lawyers joining law firms or prosecutors' offices and learning how to be lawyers on the job. But in these days of not enough jobs and too many lawyers, many new lawyers are hanging out a shingle without having the benefit of clinical experience, a job with a law firm to learn the ropes, or any idea of what they're doing; and that will—I promise—lead mostly to bad results for these inexperienced lawyers and their clients.

Employers and law school graduates alike seem to agree that what new lawyers

need is more training on the real-life practice of law. One seemingly obvious way to make this change would be requiring law students to have some sort of clinical instruction—whether for credit or by way of a paid or unpaid internship—where they receive supervised training and experience in meeting with and counseling clients and potential clients, researching and preparing court documents, and even making court appearances.¹³ Some states haven't been content to wait for law schools to change their curricula, however. New York, for example, recently adopted a new court rule requiring that all new applicants to practice law in the state complete 50 hours of pro bono work *before filing an application* for admission.¹⁴ Aside from the goals of providing assistance to members of the public who need legal aid but cannot afford it and encouraging law students to continue pro bono service after being admitted as lawyers, the requirement guarantees that “prospective lawyers will acquire hands-on skills under the supervision of committed members of the legal profession.”¹⁵ The rule applies to any law school graduate seeking admission on examination in New York¹⁶ and not just those who attend New York law schools.

In New Hampshire, the University of New Hampshire Law School and the state's supreme court, board of bar examiners, and bar association developed the Daniel Webster Scholar Honors Program that replaces the traditional curriculum of the second and third years of law school—and the state's bar exam—with a specially designed program that gives simulated and real-world clinical training in counseling clients, taking depositions, appearing in court, negotiating and mediating disputes, and so on.¹⁷ In addition to the traditional first-year coursework and

upper-level courses such as criminal procedure, evidence, and professional responsibility, Webster scholars are required to complete six credit hours of clinical or externship experience as well as specialized courses in pretrial advocacy, trial advocacy, negotiations and alternative dispute resolution, business transactions, and advanced problem solving and client counseling.¹⁸ Students are evaluated in part by interviewing and advising trained “standardized clients” (similar to the standardized patients medical students examine as part of their training).¹⁹ They are required to conduct mock trials and depositions and other simulated assessments.²⁰ The cost of the program is modest because the program is supported by volunteer judges, lawyers, court staff, and court reporters.²¹ Webster scholars must maintain a minimum 3.0 GPA, and when they successfully complete the program, they are deemed to have passed the New Hampshire bar exam and are eligible for admission to practice upon successful completion of the MPRE and a character-and-fitness review.²²

California is also considering changes to its admission requirements, such as potentially requiring 15 credits of law school coursework in subjects including negotiation, oral advocacy, alternative dispute resolution, trial practice, and civility and ethics, and requiring 50 hours of pro bono work.²³

We need to change the way we think about education. We need to change the way we have been teaching, and we need to change the way we think about the practice. There is now technology that writes contracts and actually identifies ambiguous and missing clauses. Eventually, clients or prospective clients may not need a lawyer to prepare contracts for them. There are now alternative legal providers. The ways in which services are delivered are going to change, and law schools need to appreciate and somehow anticipate these changes so they can better educate their students. To quote social philosopher Eric Hoffer, “In the time of drastic change, it is the learners who inherit the fortune. The learned usually find themselves equipped to live in a world that no longer exists.” ■

(Continued on next page)

ENDNOTES

1. Glater, *Training Law Students for Real-Life Careers*, The NY Times, October 31, 2007, available at <http://www.nytimes.com/2007/10/31/education/31lawschool.html?pagewanted=print&_r=0>. All websites cited in this article were accessed May 21, 2014.
2. Expression used by John W. Reed, Thomas M. Cooley professor of law emeritus at the University of Michigan Law School, during a speech many years ago, which I knew I wanted to use someday.
3. Tamanaha, *The mismatched economics of legal education*, 85 NY St B J 14 (September 2013).
4. *Id.* at 14.
5. National Association for Law Placement, *The NALP Salary Curve for the Class of 2011* <http://www.nalp.org/salarycurve_classof2011>.
6. *Id.*
7. ABA Section of Legal Education and Admissions to the Bar, *2012 Law Graduate Employment Data* <http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf>.
8. See *id.*
9. See *id.*
10. Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education, available at <http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.pdf>.
11. *Id.*
12. Chanen, *Re-engineering the JD: Schools across the country are teaching less about the law and more about lawyering*, 93 ABAJ 45 (July 2007).
13. See MCR 8.120 (permitting law students under proper supervision to do all these things through law school clinical programs, legal-aid or public-defender offices, or legal training programs operated by county prosecutors, city attorneys, the Attorney Grievance Commission, or the attorney general).
14. 22 NYCRR 520.16.
15. Advisory Committee on New York State Pro Bono Bar Admission Requirements, Report to the Chief Judge of the State of New York and the Presiding Justices of the Four Appellate Division Departments (September 2012), p 2, available at <<http://www.nycourts.gov/attorneys/probono/ProBonoBarAdmissionReport.pdf>>.
16. Those qualifying for admission on motion are exempt.
17. University of New Hampshire School of Law, *Daniel Webster Scholar Honors Program* <<http://law.unh.edu/academics/jd-degree/daniel-webster-scholars>>.
18. University of New Hampshire School of Law, *Daniel Webster Scholar Program Curriculum* <<http://law.unh.edu/academics/jd-degree/daniel-webster-scholars/curriculum>>.
19. Garvey, *Making law students client-ready*, 85 NY St B J 49 (September 2013).
20. *Id.*
21. *Id.*
22. University of New Hampshire School of Law, *Daniel Webster Scholar Honors Program* <<http://law.unh.edu/academics/jd-degree/daniel-webster-scholars>>.
23. State Bar of California Task Force on Admissions Regulations Reform: Phase I Final Report (June 11, 2013), pp 16–17, available at <<http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000010717.pdf>>.



MONEY JUDGMENT INTEREST RATE

MCL 600.6013 governs how to calculate the interest on a money judgment in a Michigan state court. Interest is calculated at six-month intervals on January and July of each year, from when the complaint was filed, and is compounded annually.

For a complaint filed after December 31, 1986, the rate as of January 1, 2014 is 2.452 percent. This rate includes the statutory 1 percent.

But a different rule applies for a complaint filed after June 30, 2002 that is based on a written instrument with its own specified interest rate. The rate is the lesser of:

- (1) 13 percent a year, compounded annually; or
- (2) the specified rate, if it is fixed—or if it is variable, the variable rate when the complaint was filed if that rate was legal.

For past rates, see <http://courts.mi.gov/Administration/SCAO/Resources/Documents/other/interest.pdf>.

As the application of MCL 600.6013 varies depending on the circumstances, you should review the statute carefully.



Notice to Members

VACANCIES

The State Bar Board of Commissioners is seeking names of persons interested in filling the following agency vacancies:

Institute of Continuing Legal Education Executive Committee—One vacancy for a four-year term beginning October 1, 2014. The role of committee members is to assist with the development and approval of institute education policies; formulate and promulgate necessary rules and regulations for the administration and coordination of the institute's work; review and approve the institute's annual budget and the activities contemplated in support of the budget; generally and whenever possible, promote the activities of the institute. The board meets three times a year, usually in February, June, and October.

Michigan Indian Legal Services Board of Trustees—Two vacancies for three-year terms beginning October 1, 2014. The MILS bylaws require that a majority of the board be American Indians. The board sets policy for a legal staff that provides specialized Indian law services to Indian communities statewide. The board hires an executive director. The board is responsible for operating the corporation in compliance with applicable law and grant requirements. Board members should have an understanding and appreciation for the unique legal problems faced by American Indians. Board members are responsible for setting priorities for the allocation of the scarce resources of the program. The board is accountable to its funding sources. The board meets on Saturdays, on a minimum quarterly basis, in Traverse City.

Deadline for responses is July 4, 2014

Applications received after the deadline indicated will not be considered. Those applying for an agency appointment should submit a résumé and a letter outlining the applicant's background and nature of interest in the position.

Interested persons should write: Nominating Committee, c/o Marge Bossenbery, State Bar of Michigan, 306 Townsend Street, Lansing, MI 48933-2012