

Legal Education Facing a Wave of Change

FOR THE PAST YEAR, I'VE BEEN SERVING ON THE AMERICAN BAR ASSOCIATION'S TASK FORCE ON THE FUTURE OF LEGAL EDUCATION. The Task Force is charged with developing a set of recommendations for the improvement of legal education, which respond to current and anticipated weaknesses in the economy, rapid and substantial changes in the legal profession, and shortcomings in the delivery of legal education.¹

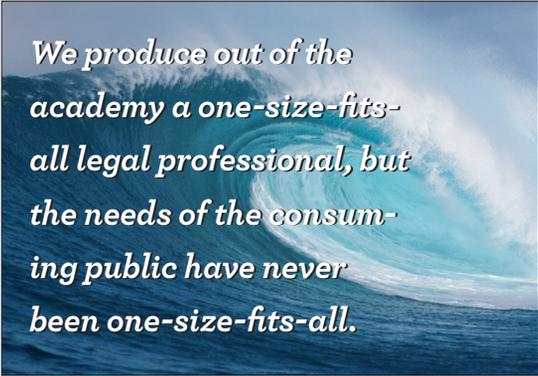
The Task Force has been grappling with the many issues facing law students, law schools, and new lawyers. In July, I was asked to speak about these issues and the future of the profession at the American Association of Law Libraries (AALL) Conference here in Seattle. The Conference attracted 1,500 law librarians from around the country. I spoke at a morning session of the section for academic law librarians. Given my columns over the last year² related to the future of the profession, I include excerpts from my remarks below:

As you may know, Washington state is in the midst of launching a program to begin licensing limited license practitioners in the coming year. It is the first of its kind in the nation. Given the groundbreaking development of this program, I thought I would talk about where I see the profession headed and the critical role that the legal academy must play.

As I have said to several faculty audiences — if you don't understand what is going on outside the halls of the law school, then what you teach inside the halls will be of limited use.

It is clear that in the future we will no longer be educating and regulating lawyers. Rather, we will be educating for and regulating a legal services market. That market can be understood as always having lawyers as its cornerstone, but it will also have limited license legal technicians and other legal professionals that we haven't even thought of yet.

As we see this tidal wave of change coming, I think we have two choices: one, we can paddle out and ride the wave; or, two, we can wait for the wave to crash down over us and we'll be left picking up all the debris around us. It will likely come as no surprise to you that I firmly believe we need to ride out and surf this wave of change, as there is much more control in doing so, and there is much opportunity if we choose to see it that way.



We produce out of the academy a one-size-fits-all legal professional, but the needs of the consuming public have never been one-size-fits-all.

Importantly, at the core of all these considerations is the consuming public. The bottom line is, we are not serving the consuming public. Our services are too expensive and average people cannot access the system.

I think one of the rich ironies of this debate about the future of legal education is the claim that law schools are producing too many lawyers for the market. We cannot stand here and say with a straight face that there are too many lawyers when we know that fully 85 percent of indigent clients and 85 percent of moderate-income clients are going without the legal services that they need. A moderate-income family of four is making upwards of \$92,000, yet the average family cannot access the services they need.

The problem isn't that law schools are producing too many lawyers — rather, in my opinion, the problem is our current legal education system is producing a faulty product. I don't mean faulty because the graduates aren't eager, bright, and dedicated, but faulty because these graduates are leaving law school burdened by stag-

gering debt loads and they are leaving law school not practice-ready.

As the profession, we look to the law schools to produce a product for us. And, as we head into the 21st century, we know that legal professionals (and I use that term deliberately as opposed to lawyers) will need different skills in order to deliver our services. And law schools must adapt to help produce these professionals who will serve the public.

In general, I see five major trends at work impacting the profession and how we deliver our services:

- A changing lawyer demographic.
- The changing nature of the world at large.
- The changing nature of law firms and attorneys.
- The changing nature of clients.
- The changing delivery of legal education.

The world in which we must deliver legal services is changing drastically. The gulf between the haves and the have-nots continues to widen. The 2010 census showed that the richest one percent of Americans account for 24 percent of all income. Another statistic that I heard several years ago that stunned me was that one-quarter of one percent — think of how small that number is — 0.25 percent of taxpayers in 2005 reaped almost 47 percent of the total income gain (as compared to 2000). This gap has only been exacerbated by the recent recession.

Our lawyer population is aging and significant numbers of lawyers will be transitioning out of the profession in the next 10 to 15 years. The overall population is aging as well, and Washington's elderly population is predicted to double in size between 2005 and 2030.

Changes in technology have led to increasing global ties such that, for example, an economic meltdown in Greece a few years ago was of serious concern to



the United States. The business model for how lawyers do their work is changing as well. More than half of our members practice as a solo or in a small-firm setting, and these numbers are increasing as new attorneys emerge into the market to fewer opportunities in the large firms and public sector.

New lawyers are demanding a work-life balance and using technology to make this balance more of a reality. With remote technology and other options to do our work at locations other than a physical desk, I think newer lawyers offer hope for our profession in showing us that one can attend their son's or daughter's — or even their own — soccer game and still get the work done.

After decades of hearing that the billable hour is coming to an end, we are actually seeing a major shift toward alternative fee arrangements, that is, value-based billing that provides predictable expenses for the client and a more effective delivery model for lawyers. The billable hour has long been cited as the root cause of lawyer dissatisfaction with the profession and client dissatisfaction with lawyers. Much of this drive to change billing structures is coming from corporate clients, as general counsels are getting pressure from CEOs and CFOs to contain costs and meet annual legal-fee budgets.

Our clients are changing. Lawyers are expensive, and people want to spend as little as possible. Clients are using technology more; Legal Zoom boasts some two million satisfied customers. Cyber-settle is settling claims with no lawyers involved at all, with more than \$1.9 billion in settlements performed. We cannot ignore the impact technology will have on our profession. Just think about how you get your newspaper today, how you read a book, or how you download music in this day and age and we can appreciate how technology has impacted many other industries.

When I give this presentation to law students or new lawyers, I'm always worried that they're wondering what in the world they have gotten themselves into. But I encourage them that this is a time of great opportunity if we seize it, and I tell them that they are coming into the profession at an exciting time when we all have great opportunity to influence the future of the profession and better serve the needs of the consuming public.

Here are my thoughts for how we move forward.

For the profession: We must innovate.

First, with respect to the court system and judicial system funding, we need to ask ourselves what the judiciary of the 21st century should look like. Our judicial system was created hundreds of years ago and it is time to rethink how the judiciary delivers its services. The public accesses information and services in a different manner now and our profession needs to keep up.

Second, we as a profession need to own that we have made the system too complicated. While no one set out to reach this result deliberately, we must work to simplify things. I'm a lawyer and there are numerous things that I can't figure out without a lawyer. I don't mean to discount the importance of the nuances that have developed over time in numerous areas of law, but coordination and simplification of the system in many areas might be a good starting point.

Third, we need to acknowledge that some people can navigate the system on their own and we need to give them the tools to do so. The reality is we will never have enough lawyers to serve every person facing a legal problem, so we must work to find ways for people to do some things on their own or with the help of new legal professionals such as the limited license legal technicians.

For the academy: We must refocus.

The third year of law school needs to change. If we're not going to do away with it, then we must refocus it to be a practical training experience. Something all of you are very well versed in. I've heard much comment that the first-year curriculum is where the change is needed, but there seems to be a corresponding feeling that there isn't the stomach to do so.

Law schools need to diversify the education they deliver. We produce out of the academy a one-size-fits-all legal professional, but the needs of the consuming public have never been one-size-fits-all. Law schools should be embracing new models like the limited license legal technician and other possible educational tracks that may not lead to the traditional, fully licensed attorney. I'm pleased that the law schools in our state are stepping up to the plate with us here as we work to implement the Limited License Legal Technician program, working closely

with the community colleges in our state to develop an educational delivery system for these new legal professionals.

How we produce legal scholarship needs to be reconsidered. As a former editor-in-chief of a law review, I could never understand what 2Ls and 3Ls could possibly know about the cutting-edge issues of the law and the profession, yet we were charged with reviewing and selecting articles for publication in professional journals.

So why does any of this matter? I'll close with where I started: we are not serving the consuming public.

And when the consuming public gets fed up, they go to their legislators and the executive. And, when legislators and the executive have agitated constituents, what do they do? — they act. We are seeing this trend around the world (in England, Ireland, and Australia) — where the profession is losing elements of self-regulation as the government steps in to take over certain elements of legal regulation in response to consumer pressure.

And as we know, without an independent profession, you cannot have an independent judiciary, and without an independent judiciary, you cannot have a system that is based on the rule of law. So to me, what's at stake is well beyond legal education — and it is well beyond the profession — what's at stake is the core of what we understand to be the cornerstone of our democracy. And that is the rule of law.

I invite you — indeed I encourage you — to ride out and let's surf the wave together. **NWL**

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NOTES

1. For more information on the Task Force please visit www.americanbar.org/groups/professional_responsibility/taskforceonthe-futurelegaleducation.html.
2. "Let's Seize the Moment," Dec./Jan 2013 *NWLawyer*, http://nwlawyer.wsba.org/nw_lawyer/201301/?pg=13&pm=2&u1=friend; "Moving Forward," Feb. 2013 *NWLawyer*, http://nwlawyer.wsba.org/nw_lawyer/201302/?pg=13&pm=2&u1=friend; "The Changing Legal Services Market," Apr./May 2013 *NWLawyer*, <http://nwlawyer.wsba.org/nwlawyer/201304/?pg=11&pm=1&u1=friend>.