

Leading Change in Legal Education—Educating Lawyers and Best Practices: Good News for Diversity

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I. INTRODUCTION

Two recent influential books on legal education, *Educating Lawyers*¹ and *Best Practices for Legal Education*,² come to similar conclusions about the problems with many legal education programs today. Many other suggestions for improvement in legal education programs are also similar.³ A major point made in both books is the need to train lawyers in their roles and skills as professionals.⁴ *Educating Lawyers*

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1. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

2. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007). Mary Lynch and Albany Law School have created a blog with two goals in mind:

1) [T]o create a useful web-based source of information on current reforms in legal education arising from the publication of Roy Stuckey’s *Best Practices for Legal Education* and the Carnegie Foundation’s *Educating Lawyers*; and 2) to create a place where those interested in the future of legal education can freely exchange ideas, concerns, and opinions.

A Place to Discuss Best Practices for Legal Education, <http://bestpracticeslegaled.albanylawblogs.org/> (last visited Mar. 31, 2008).

3. See Cameron Stracher, *Meet the Clients: Law Schools Rarely Teach Students How to be Lawyers*, WALL ST. J., Jan. 26, 2007, at W11; Nancy H. Rogers, *Law Schools To Discuss Possible Major Changes*, NAT’L L.J., Sept. 10, 2007, at S.

4. *Educating Lawyers* summarizes six tasks that law schools must perform in preparing students who integrate cognitive knowledge, professional identity, and skills:

1) Develop in students the fundamental knowledge and skill, especially an academic knowledge base and research; 2) Provide students with the capacity to engage in complex practice; 3) Enable students to learn to make judgments under conditions of uncertainty; 4) Teach students how to learn from experience; 5) Introduce students to the disciplines of creating and participating in a responsible and effective professional community; and 6) Create students who are able and willing to join an enterprise of public service.

SULLIVAN ET AL., *supra* note 1, at 210.

suggests focusing legal education on three apprenticeships for the practice, knowledge, identity, and skills, while *Best Practices* focuses on the specific cognitive and practice skills and professional and ethical values, and urges law schools and educators to develop coherent teaching objectives and curricula focusing on those skills and values. The specific suggestions in *Best Practices* for small group learning, collaborative learning, skills training, values education, cultural competence, professionalism training, personal and professional balance, and outcome-based assessment represent a potential for profound changes in the manner in which legal education is delivered in this country.⁵

The books both contemplate a move from the current model of large classes taught through modified Socratic dialogue to a sequenced set of courses and experiences that build on basic legal analytical skill and provide opportunities for real life and simulated practice experience. Assessment would become more outcome-based with genuine opportunities for students to receive constructive feedback on their skill development as it evolves.⁶ Different law schools would implement these changes as appropriate for their particularized communities.⁷ I believe that while those changes would benefit all future lawyers (and future clients of those lawyers), the changes would be particularly welcome for students of color and members of groups which are under-represented in law school.⁸

II. IMPLICATIONS FOR STUDENTS OF COLOR

Law schools around the country have varying levels of commitment to diversifying their student bodies.⁹ Many schools accompany their

5. See, e.g., Katherine Mangan, *A Plea for Real-World Training in Law Schools*, CHRON. OF HIGHER EDUCATION, Jan. 19, 2007, at A6; David F. Chavkin, *Experience is the Only Teacher: Meeting the Challenge of the Carnegie Foundation Report*, (NYLS Clinical Res. Inst., Paper No. 07/08-3, 2007), available at <http://ssrn.com/abstract=1008960>. Out of almost 200 ABA accredited law schools, only the following schools make clinical legal education in some form a graduation requirement: City University of New York (CUNY), District of Columbia, Thomas Cooley, Inter-American University, University of Maryland, University of Montana, University of New Mexico, University of Puerto Rico, and University of Washington.

6. SULLIVAN ET AL., *supra* note 1, at 235.

7. Stanford recently hosted a gathering of ten law schools at the William and Flora Hewlett Foundation to follow up on the suggestions contained in the report. The ten schools invited were CUNY, Dayton, Georgetown, Harvard, Indiana-Bloomington, New Mexico, NYU, Stanford, Southwestern, and Vanderbilt. See Jonathan D. Glater, *Training Law Students for Real Life Careers*, N.Y. TIMES, Oct. 31, 2007, at B9. This diverse group of schools will undoubtedly study a variety of approaches for various types of law schools.

8. Darlene C. Goring, *Silent Beneficiaries: Affirmative Action and Gender in Law School Academic Support Programs*, 84 KY. L.J. 941 (1995-1996).

9. See Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admissions*, 72 N.Y.U. L. REV.

efforts to diversify their students with academic support programs to help their “diversity” students navigate the law school experience.¹⁰ Academic support programs have evolved over time, but a common theme of successful programs is to develop ways of giving students meaningful feedback and guidance as they develop the analytical and writing skills necessary for success in law school.¹¹ Many programs feature practice exams, meetings with tutors or professors, and diagnostic sessions. Professor Vernellia Randall’s¹² program emphasizes building the skills sequentially.¹³ Many other academic support programs focus on learning styles, adapting appropriate study skills, and developing enhanced writing skills.¹⁴ Researchers have suggested the use of the student’s undergraduate major to assess potential strengths and weaknesses in legal reasoning abilities.¹⁵ While many of these ideas were developed to enhance the performance of diversity students, these practices are beneficial to all students. Utilizing *Best Practices* will make legal education more accessible and effective.¹⁶

Academic support professionals have suggested the idea (which is endorsed in *Best Practices*) of using lawyers in the practicing bar to assist with the education of students.¹⁷ In addition to helping with the teaching mission, contact with judges and lawyers can help students who do not already know attorneys meet members of the legal profession.

1 (1997); Transcript, *Who Gets In? The Quest for Diversity After Grutter*, 52 BUFF. L. REV. 531 (2004).

10. See Ellen Yankiver Suni, *Academic Support at The Crossroads: From Minority Retention To Bar Prep And Beyond—Will Academic Support Change Legal Education Or Itself Be Fundamentally Changed?*, 73 UMKC L. REV. 497 (2004); Richard Cabrera & Stephanie Zeman, *Law School Academic Support Programs—A Survey of Available Academic Support Programs for the New Century*, 26 WM. MITCHELL L. REV. 205 (2000); Kathy L. Cerminara, *Remembering Arthur: Some Suggestions for Law School Academic Support Programs*, 21 T. MARSHALL L. REV. 249 (1996).

11. Adam G. Todd, *Academic Support Programs: Effective Support Through a Systemic Approach*, 38 GONZ. L. REV. 187, 189 (2002–2003) (explaining that academic support programs have contributed diverse teaching methods, individualized instruction, learning theory, and compassion into the law school education).

12. Professor of Law, University of Dayton School of Law.

13. Ollivette E. Mencer, *New Directions in Academic Support and Legal Training: Looking Back, Forging Ahead*, 31 S.U. L. REV. 47 (2003).

14. CUNY uses an academic support specialist as part of its teaching team. The academic support faculty member has been a major contributor to CUNY’s innovative curriculum of training for its diverse student body. Interview with Sue Bryant, Associate Dean, CUNY Law School, in Palo Alto, Cal. (Dec. 6, 2007).

15. Mark Graham & Bryan Adamson, *Law Students’ Undergraduate Major: Implications for Academic Support Programs*, 69 UMKC L. REV. 533 (2001).

16. This is not to say that law schools will no longer need academic support programs; however, those programs will be even more effective when coupled with more effective teaching and a more relevant curriculum.

17. Compare Todd, *supra* note 11, at 210–20 with STUCKEY ET AL., *supra* note 2, at 105–63.

Also consistent with *Best Practices*,¹⁸ academic support professionals have suggested collaborative and experiential learning experiences as more effective learning techniques, particularly for different learning styles.¹⁹ Collaboration ability and experience are critical in preparing students for the practice of law, particularly in diverse settings.²⁰

Academic support and legal writing professionals have advocated the use of formative feedback so that students can focus on their weaknesses.²¹ Formative feedback provides students information on their performance to enable them to improve performance before they receive a summative evaluation.²² Evaluating student outcomes—that is, whether students achieve teaching objectives that are tailored to preparation for the practice of law—will provide more accurate information about our graduates than the sorting that is performed by traditional law school exams today.²³ Since the Law School Admission Test (LSAT) measures performance of an analytical skill that is further honed in most first year courses, broadening the performance criteria evaluated in our legal education programs will also benefit those with potentially excellent practice skills, but lower LSAT scores.²⁴ Further, using criteria referenced assessment²⁵ rather than norm-based

18. STUCKEY ET AL., *supra* note 2, at 105–63.

19. See, e.g., Vernellia Randall, *Increasing Diversity and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 210 (1999).

20. Carole J. Buckener, *Rationalizing Grutter v. Bollinger's "Compelling Educational Benefits of Diversity": Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877 (2004).

21. Indeed, many academic support programs focus on giving interim and diagnostic feedback before the summative evaluation of the end of semester exam. See, e.g., Martha M. Peters, *Bridging Troubled Waters: Academic Support's Role in Teaching and Modeling "Helping" in Legal Education*, 31 U.S.F. L. REV. 861 (1997); Kristin Gerdy, *Continuing Development: A Snapshot of Legal Research and Writing Programs Through the Lens of the 2002 LWI and ALWD Survey*, 9 LEGAL WRITING 229, 244 (2003). See also SULLIVAN ET AL., *supra* note 1, at 104–11 for a description of the effectiveness of legal writing programs.

22. Feedback may also help students develop their "meta-cognition" skills. That is, feedback may help them understand what they are supposed to be learning. See, e.g., Andrea A. Curcio, Gregory Todd Jones & Tanya M. Washington, *Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance*, 57 J. LEGAL EDUC. 195, 202 (2007) (describing study of two courses; students in the course with the required writing exercise performed better on the exam; unexpected result of required writing exercise in one course was that the group that benefited most were students with higher LSAT scores).

23. See SULLIVAN ET AL., *supra* note 1, at 163–76.

24. See, e.g., Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam*, 8 CLINICAL L. REV. 247, 248 (law school grades do not correlate with or predict success as a legal professional).

25. Criteria referenced assessment requires professors to use valid measures to assess whether students have achieved the professor's teaching objectives. STUCKEY ET AL., *supra* note 2, at 243; SULLIVAN ET AL., *supra* note 1, at 162–84.

assessment²⁶ will help avoid the competitive sorting that has historically disadvantaged many students of color.²⁷ Assessment will focus on whether the student has mastered the material, not on a comparison of the students' performance.²⁸ Thus, I believe that the ideas described in *Best Practices* are likely to benefit all students, but particularly students of color and those from under-represented groups.²⁹

An additional benefit of both books' suggestion to incorporate experiential learning opportunities will be the potential opportunity for students of color and other unrepresented groups to learn more concretely about the practice of law and to connect with their communities.³⁰ Research has demonstrated the benefits of experiential learning for graduate students of color.³¹ In addition, scholars report that clinics are especially attractive to female law students and students of color.³² Thus, the move away from decontextualized, modified Socratic dialogue in large classes will better prepare all law students and, I predict, will result in better performance and preparation by diversity students.

26. Norm referenced assessment ranks students' performance as compared to each other, otherwise known as "grading on the curve." STUCKEY ET AL., *supra* note 2, at 243; SULLIVAN ET AL., *supra* note 1, at 168.

27. *C.f.* Dorothy Brown, *Taking Grutter Seriously: Getting Beyond the Numbers*, 43 HOUS. L. REV. 1 (2004) (proposing the integration of diversity/race ethnicity (critical race theory) in the classroom as a way to address disparities in law school performance).

28. *See, e.g.*, Suellyn Scarnecchia, *Serving the Most Important Constituency: Our Graduates' Clients*, 36 U. TOL. L. REV. 167 (2004) (using an outcome based assessment will help ensure that law students are adequately prepared to represent a client upon graduation).

29. STUCKEY ET AL., *supra* note 2, at 235–63. My own experience with the diverse students of color at UNM is that LSAT is much less of a variable in predicting success if the assessment is outcome based rather than criteria referenced. The UNM law school, with its excellent student faculty ratio and required clinic, has been a major factor in diversifying the legal profession in New Mexico. *See* Brief for New Mexico Hispanic Bar Ass'n et al. as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 537 U.S. 1043 (2003) (No. 02-241), *reprinted in* 14 BERK. LA RAZA L.J. 51 (2003).

30. *See* Sam Marullo, *Bringing Home Diversity: A Service-Learning Approach to Teaching Race and Race Relations*, 26 TEACHING SOCIOLOGY 259 (1998) (An empirical study comparing student success in a service-learning course on race relations and a course using lecture format; students in service learning course were more successful.); Brief for New Mexico Hispanic Bar Ass'n et al. as Amici Curiae Supporting Respondents, *Grutter v. Bollinger*, 537 U.S. 1043 (2003) (No. 02-241), *reprinted in* 14 BERK. LA RAZA L.J. 51 (2003); Antoinette Sedillo Lopez, *Latinas in Legal Education—Through the Doors of Opportunity, Assimilation, Marginalization, Cooptation or Transformation?*, 13 AM. U. J. GENDER SOC. POL'Y & L. 109, 118 (2005) (disconnecting from community can create isolation and marginalization).

31. M. Christopher Brown II, Guy L. Davis & Shederick McClendon, *Mentoring Graduate Students of Color, Myths, Models and Modes*, 74 PEABODY J. EDUC. 105 (1999).

32. Kirsten Edwards, *Found! The Lost Lawyer*, 70 FORDHAM L. REV. 37, 74 (2001) (many students, particularly women and minorities, gravitated to the Yale clinics during law school).

Finally, *Best Practices* clearly suggests that a legal institution must be diverse to gain the educational benefits of diversity.³³ A diverse institution will help students become more successful in serving diverse groups of clients and working with diverse colleagues. *Best Practices* also posits that law students should receive specific training in “cultural competence” to further enhance these strengths.³⁴ This will benefit all students, but again, will be particularly welcome for law students from under-represented communities.

III. HOW TO MAKE LASTING CHANGE IN AN INSTITUTION

Individual law professors can incorporate many of these ideas in their teaching, but how can a law school make broader institutional changes? A dean has an important leadership role in improving legal education in her or his institution.³⁵ For example, funding priorities in discretionary spending can move the institution to be more effective in its educational mission. Easy approaches to supporting teaching excellence are to allow extra compensation, release time, and other incentives for professors who work on their teaching, supporting committee work, and curriculum. However, lasting curricular and institutional educational change must come from the faculty. Thus, the dean’s role is to use the power of the position to persuade and lead educational reform.

Curricular reform involves taking the institution through an education process in which faculty members review *Educating Lawyers* and *Best Practices*. The reading of those texts should produce multiple opportunities for reflection and discussion. Ideas stemming from the readings, reflection, and discussion should lead to a process of developing ideas for improvement and subsequent implementation of those ideas. Of course, this process should not stop at that point; the implementation should be evaluated and reflected upon. Then the cycle should begin again. Through this process a dean can help the faculty rely on its expertise to develop an educational program that is responsive to the needs of its students.

33. STUCKEY ET AL., *supra* note 2, at 89.

34. See, e.g., Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH U. J.L. SOC. POL’Y (forthcoming) (describes teaching goals and provides suggestions for effective teaching of cultural communication and context).

35. See R. Lawrence Dessem, *Top Ten Reasons to be a Law School Dean*, 33 U. TOL. L. REV. 19 (2001) (a dean has the opportunity to affect legal education.); Leroy Pernell, *Deans of Color Speak Out: Unique Voice in a Unique Role*, 20 B.C. THIRD WORLD L. J. 42 (2000) (deans of color can bring an important and unique perspective to legal education).

This conference, sponsored by the Society of American Law Teachers and Seattle University Law School, to promote an increase in the number of deans of color in the legal academy is a very exciting opportunity for all deans, including deans of color and potential deans of color, to think about their role in the legal academy. Increasing the number of deans of color in the legal academy will not only integrate law school leadership, but it has the potential to transform legal education. *Educating Lawyers* and *Best Practices* are important resources for implementing this change.