

The Future of Legal Education: Preparing Law Students to Be Great Lawyers

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INTRODUCTION

For decades, many law school graduates have looked back at their legal education and concluded that they were not properly prepared to practice law.¹ Consequently, from time to time, the American Bar Association (ABA) and other bar groups have studied how to change law school education. In fact, in 2009, the Association of Continuing Legal Education Administrators (ACLEA),² the American Law Institute-American Bar Association (ALI-ABA),³ and a number of other organizations held a three-day discussion at Arizona State University on the future of legal education, the Critical Issues Summit.⁴ The event “brought together CLE professionals, law school deans and faculty members, law practitioners, bar leaders, judges, mandatory CLE administrators, law firm educators, and other experts on lawyer professional education to study and respond to the challenges of equipping lawyers to practice in a rapidly changing world.”⁵ Among other things, the Critical Issues Summit produced a final report and sixteen recommendations addressing issues related to law school preparations for legal practice and legal training for lawyers after law school.⁶

After the Critical Issues Summit, ACLEA established a Summit Issues Group in an effort to continue the dialogue about the future of training law students to practice law. This Article highlights key issues from the Critical Issues Summit that are particularly important to changing law school education today. Additionally, it offers suggestions that could further improve preparing students for the legal profession.

¹ See, e.g., R. Michael Cassidy, *Can Law Schools Prepare Students to Be Practice Ready?*, 17 CHAP. L. REV. 153, 156 (2013) (describing the author’s first day at a law firm after graduation).

² ACLEA, <http://www.aclea.org/> (last visited Mar. 9, 2015).

³ *About the American Law Institute*, ALI-CLE, <http://ali-cle.org/index.cfm?fuseaction=about.index> (last visited Mar. 9, 2015). ALI-ABA is now known as ALI-CLE. *Id.*

⁴ ALI-ABA & ACLEA, EQUIPPING OUR LAWYERS: THE FINAL REPORT OF THE CRITICAL ISSUES SUMMIT, at vii [hereinafter THE FINAL REPORT], available at http://www.equippingourlawyers.org/documents/final_report.pdf.

⁵ CHARLES C. BINGAMAN, CRITICAL ISSUES SUMMIT: FINAL RECOMMENDATIONS 1 (2009), available at http://www.equippingourlawyers.org/documents/summit_final09.pdf.

⁶ *Id.* at 2–8; THE FINAL REPORT, *supra* note 4.

SUMMIT RECOMMENDATIONS

In the Sections that follow, I will describe specific portions of the Summit Recommendations and reflections I have had as a law student, lawyer, and adjunct law professor. Unlike most people who attend law school expecting to pursue legal careers, I went to law school never intending to practice law. Instead, I planned to pursue a career in IT consulting after law school, and therefore I taught graduate computer sciences while I studied law. While I became a sole practitioner and eventually went on to join a law firm, my computer science and legal background have given me particular insight into IT legal matters. Further, as an adjunct law professor, I have had the wonderful opportunity to teach a variety of courses on IT legal matters and share my experience with hundreds of students, many of whom I keep in touch with, and I have even practiced law with some former students. As a result, I am also able to offer a unique perspective on how the Summit Recommendations may be helpful to legal education for law students based on my experiences and students' input.

A. Teaching Methods and Content

Studying law in the United States has followed pretty much the same process for generations, but the Critical Issues Summit suggested a fundamental change:

[Recommendation] 1. Law schools should examine their teaching methods and the content of their curricula to ensure that their graduates are capable of serving as effective beginning professionals. Such examination might include:

- a. Defining the learning outcomes they wish to produce;
- b. Designing the curricula and engaging faculty to produce those outcomes;
- c. Using proven teaching methods that will produce those outcomes, including the application of the latest research on adult learning styles and generational differences in learning; and
- d. Evaluating their success at achieving those outcomes.⁷

From a historical perspective, Recommendation 1 represents a shift away from the Socratic method most American law schools use. As

⁷ BINGAMAN, *supra* note 5, at 2.

an adjunct professor, I lecture in class and encourage discussion about cases and issues, but I do not use the Socratic method since I do not believe a professor attacking what students state in class about a case really helps them learn or better prepares them to practice law. Following Recommendation 1 would require law schools to reconsider teaching methods which will no doubt be difficult for many reasons, not the least of which is that change is generally not embraced, as law professors would have to learn new teaching techniques. Additionally, most law professors were taught with the Socratic method, so it seems likely they would continue to teach law the way they learned law.

B. Lawyer Competencies

[Recommendation] 2. Building upon the defined learning outcomes from Recommendation 1, law schools, the bar, and the bench should partner in the career-long development of lawyer competencies. In particular, law schools should initiate the continuum of legal education by integrating into their curricula the core practice competencies described in the ABA Model Rules of Professional Conduct, the MacCrate Report, the Carnegie Report, and the Canadian Centre for Professional Legal Education competency evaluation program in achieving their desired learning outcomes.

The ABA has long emphasized legal education and Recommendation 2 focuses not only on the Model Rules, but also on the 1992 MacCrate Report, *Legal Education and Professional Development—An Educational Continuum*.⁹ The MacCrate Report examines legal education since World War II and analyzes how Socratic method legal education has evolved.¹⁰ As one of the most significant works on legal education, the MacCrate Report was a long-term effort of legal scholars, including professors and deans from around the country, and took a historical view of the subject.¹¹ In 2013, the ABA issued a report that reviewed the state of legal education and challenges facing the profession twenty years after the MacCrate Report, concluding that

⁸ *Id.*

⁹ ABA, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report\).authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/2013_legal_education_and_professional_development_maccrate_report).authcheckdam.pdf).

¹⁰ *Id.* at 6, 236.

¹¹ *Id.* at v–vi.

[t]he insight of the MacCrate Report that criticisms of legal education that do not take into account the different roles that pre-legal education, law schools and the practice of law play in the education of today's lawyers are bound to be incomplete and misleading is as true today as it was twenty years ago.¹²

Recommendation 2 also encourages schools to review the Carnegie Foundation for the Advancement of Teaching report, *Educating Lawyers: Preparation for the Profession of Law*, which was a two-year study of legal education. The study analyzed sixteen law schools in the 1999-2000 academic year.¹³ The report reconsiders "thinking like a lawyer" as the primary construct for legal education.¹⁴

C. Core Competencies

[Recommendation] 3. Law schools should continue to refine their lists of identified core practice competencies, recognizing that essential competencies will vary by stage of education and by practice area.¹⁵

Recommendation 3 should spur law schools to train students in core competencies. These core competencies would differ from traditional legal education in their instruction of skills needed to actually practice law.¹⁶ For example, if a student plans to practice estate planning and probate, that student should take courses on how to write, probate, present, and contest wills. Because Recommendation 3 is based on time and experience,¹⁷ the legal educational training encompassing what is required to write and probate a will should be accompanied by a practicum that instructs the student how to actually probate a will.

¹² COMM. ON THE PROF'L EDUC. CONTINUUM, ABA, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 24 (2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013council_meeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf.

¹³ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

¹⁴ *Id.*

¹⁵ BINGAMAN, *supra* note 5, at 3.

¹⁶ *Id.*

¹⁷ *See id.* (Recommendation 3 refers to "the need across the educational continuum to identify essential practice competencies as the basis for planning career-long learning objectives for lawyers.").

D. Transition from Law School to Practicing Law

[Recommendation] 4. Law schools, the bar, and the bench should develop and encourage transitional training programs (defined as ones that teach or improve practice skills) to begin in law school and to continue through at least the first two years of practice. Approaches to implement this recommendation might include:

- a. Experiential learning opportunities in law school curricula, for example: practical experiences, clinical experiences, skills courses, internships, and mentorships;
- b. Post-admission supervised apprenticeships (similar to paid articling in Commonwealth countries) or other practice experiences such as working in legal services programs consistent with law graduates' financial situations; and
- c. Universal mentoring requirements for new admittees.¹⁸

Many CLE programs are directed at “nuts and bolts” for newly licensed lawyers, but maybe the two-year timeframe the Recommendation seems to suggest is too short, since developing a body of experience as a lawyer may take up to five years depending on the specialty. A more appropriate minimum timeframe would be “for the first five years after law school.”

E. Restructure the Bar Exam

[Recommendation] 5. Regulatory authorities should consider restructuring one-time bar examinations into phased examinations over time, linked in part to attainment of legal practice skills, with some parts of the examination occurring as early as in the law school years.¹⁹

Actually, the bar examination does not really help someone be prepared to practice law; instead, it is a measure of how many different areas of law an individual knows the day of the examination. Most law students, dreading the current one-time examination, would welcome a different bar examination. Recommendation 5's phased examinations over time sounds like a better experience for students because initial testing that begins in school would give both students and schools important feedback on how they are preparing for the profession.²⁰

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *See id.* at Reporter's Comment.

F. Training Law Professors

[Recommendation] 15. Law schools, law firms, and CLE providers should train their instructors in: teaching skills, effective uses of technology to enhance learning, intergenerational communication issues, the communication of professional values and identity, and the design of effective clinical experiences.²¹

In order to change teaching styles away from the Socratic method, Recommendation 15 suggests that law professors rethink how they teach and use current technology. It encourages pragmatic clinical experiences and the development of effective communication with younger generations of students. One way professors can improve their communication with younger students is by embracing social media. Many students use social media to communicate thoughts and to exchange business opportunities. By using the same technology and mediums to communicate as students, professors may be better able to tailor their teaching habits to meet current communication expectations, thereby improving the effectiveness of their teaching and ensuring more information reaches students.

G. Law Students Serving the Underserved

[Recommendation] 16. Acknowledging our professional responsibility, the legal community should continue to develop programs that will prepare and encourage law students and all lawyers to serve the underserved.

- a. As part of the legal community, law schools, if they have not already done so, should incorporate into their curricula the principle that improving access to justice for all is every lawyer's responsibility, and should offer students early in their law school experience exposure to underserved communities and opportunities to provide legal assistance to those communities.
- b. The legal community in each jurisdiction should collaborate to help newly admitted lawyers develop the skills that will enable them to provide effective legal services to underserved communities and to create opportunities for those lawyers to provide such services. . . .
- c. An entity of the ABA should serve as a clearinghouse for these programs to provide examples of best practices and innovative ideas.²²

²¹ *Id.* at 7.

²² *Id.* at 7–8.

As a first-year law student who worked at Legal Aid, I learned a great deal about the reality of legal needs and access in our society. By interviewing prospective clients and trying to understand their legal plights, I gained invaluable knowledge I could never obtain through traditional law school education. Since the legal community has assumed the burden of assisting the less fortunate in our communities, it seems appropriate to encourage service to the needy while students are still in school. Not only will students encounter current legal issues that complement their instruction, but they will also hopefully understand the value of helping the underserved and carry that with them into practice.

CONCLUSION

Given the fundamental role of the law in our society, it is critical that pragmatic preparation for future lawyers begins in law schools by updating the current Socratic method to address issues the Critical Issues Summit Recommendations present. Future lawyers will benefit from a revised educational system by being better prepared to assist their clients and society.