OUTCOMES ASSESSMENT ROCKS!!

Shifting From an Input to an Output Approach

In Legal Education

A Future Ed II Proposal

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THE PROPOSAL: THREE BASIC ELEMENTS

There are three fundamental elements to our Outcomes Assessment Proposal. As developed below, we believe our Proposal meets many of the current criticisms of legal education. The three elements are:

1. LAW SCHOOLS AND LAW FACULTY SHOULD EMBRACE OUTCOMES AND ASSESSMENT.

We propose that law schools and law faculty embrace the outcomes-and-assessment approach to legal education by taking leadership of the formulation of outcomes and assessment in legal education. The question is not if the assessment of learning outcomes will be required, but rather, when it will be required and who will take the lead in defining its parameters.

University accrediting agencies already require university-based law schools to submit outcomes and assessment data,¹ and the American Bar Association Section of Legal Education appears poised to adopt a new outcomes and assessments standard.² Much of the leadership and scholarship of the outcomes-and-assessment approach to date, however, has come from

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¹ For example, SACS Standard 3.3.1.1 provides:

The institution identifies expected outcomes, assesses the extent to which it achieves those outcomes, and provides evidence of improvement based on analysis of the results in . . . educational programs, to include student learning outcome.

² For the last two years a subcommittee of the ABA Section of Legal Education has gone through successive drafts of revised standards. Key provisions of the May 5, 2010 draft provide:

Section 301(a)—“A law school shall identify, define, and disseminate each of the learning outcomes it seeks for its graduating students and for its program of legal education.

Standard 303(a)—“A law school shall offer a curriculum that is designed to produce graduates who have attained competency in the learning outcomes identified in Standard 302.

Standard 305—“In measuring its institutional effectiveness pursuant to Standards 202 and rigor of its educational program pursuant to Standard 301, the dean and faculty of a law school shall:
(a) Gather a variety of types of qualitative and/or quantitative evidence, as appropriate, to measure the degree to which its students, by the time of graduation, have attained competency in its learning outcomes;
(b) Periodically review whether its leaning outcomes, curriculum, and delivery, assessment methods and the degree of student attainment of competency in the learning outcomes are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly as entry level practitioners in the legal profession; and
(c) Use the results of the review in subsection (b) to improve its curriculum and its delivery with the goal that all students attain competency in the learning outcomes.
cognitive and educational psychologists and others who lack expertise in the teaching or practice of law. Law schools and law teachers, who work at the intersection of the academy and the practice of law, are uniquely equipped to lead in shaping outcomes and assessment in legal education. We should not cede leadership of this important conversation to others.³

2. LAW SCHOOLS AND LAW FACULTY SHOULD ENGAGE ALUMNI AND OTHER PRACTICING LAWYERS AND JUDGES IN ARTICULATING SPECIFIC LEARNING OUTCOMES

We propose that law schools and law teachers, in developing learning outcomes, focus on the practice communities they serve. We therefore suggest that each school establish processes to listen to and learn from alumni and other practicing lawyers and active judges in defining the critical knowledge, skills, and values its students must acquire before graduating.

The practicing bar has for some time complained that law school graduates are not adequately prepared to begin practice. The complaints come from various segments of the bar, and they identify different perceived shortcomings in graduates. Many are valid, but some perhaps overestimate the preparation that can occur prior to practice. The only way to assure that graduates have the abilities required by legal employers is to engage those employers in carefully articulating precisely what new law graduates should know and be able to do as they begin the practice of law. That conversation will also develop understanding about what further training and education must await practice and experience or post-J.D. study.

Each law school, moreover, should focus on the practice communities it serves. Doing so will lead different law schools to formulate different learning outcomes—those who send a substantial percentage of graduates to work for “BigLaw” will, at the margin, state somewhat different learning outcomes from those whose graduates practice primarily in a small firm setting.

PROPOSAL IMPLEMENTATION

Over the next few years, law schools must develop formal and informal mechanisms through which they can tap into both alumni and the practice communities they serve. Cumberland and Dayton are instituting or have in place mechanisms for obtaining input on

³ Implementation of this Proposal has already begun. For a presentation on implementation of an assessment process by one of our schools, see Shaw, Assessment: One School’s Experience, www.abanet.org/.../Shaw%20%20The%20Assessment%20Process%20One%20School%20s%20Experience%20January%202010.PPT-2010-01-19 (visited August 9, 2010). The Cumberland faculty has also initiated a process of identifying core learning outcomes.
outcomes from these constituencies. These mechanisms can serve as a model for other schools seeking to identify appropriate outcomes.

At Cumberland, a committee of the Alumni Advisory Board has been created to provide guidance to the law school on skills and outcomes. The committee already is providing input by responding to core learning outcomes adopted by the Cumberland faculty. The school will also survey alumni and relevant legal markets. By April 2011, Cumberland plans to provide a report to Future Ed III outlining some best practices in engaging the practice community.

3. Law Schools and Law Faculties Should (i) Implement Assessment Mechanisms Which Measure Achievement of Critical Learning Outcomes and (ii) Evaluate the Results to Make Changes When Appropriate.

Without mechanisms to gauge whether law students in fact acquire the critical learning outcomes set by law schools, we will never know whether the students are learning what we purport to and are trying to teach. To the extent that knowledge, skills, or values are important, schools and faculties need to devise processes to determine whether those learning outcomes are achieved. For example, while law schools have long administered final exams to gauge students’ doctrinal understanding and issue-spotting abilities, we have failed to use their results to gauge our own institutional effectiveness. The time has come to think about how to grade our own performance.

Proposal Implementation

The success of any assessment plan rests largely on a school’s ability to identify reliable, valid outcome measures for each of the outcomes identified. On many levels, this may be the

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4 At Dayton, Susan C. Wawrose, Victoria L. VanZandt, and Sheila Miller, members of the Legal Profession Program faculty, have used sophisticated surveys, focus groups, and other tools to pose the question “What do law school graduates need to know to be prepared for practice?” to the law school’s recent graduates and major employers. Their answers are being used to help refine the school’s legal writing curriculum.

5 Moreover, we believe that law schools and faculties should use not only summative assessment tools but formative assessment tools as well. For many law teachers, the use of multiple, formative assessment, rather than the traditional, summative, three-hour-exam-at-the-end-of-the-semester of Paper Chase fame, will be the most challenging innovation. We also advocate the inclusion of assessment by outside and independent evaluators. Even for law teachers who use multiple, formative assessment, outside or independent evaluation of success in achieving outcomes represents a new step. Dayton has formally implemented such independent assessment procedures, and a couple of professors at Cumberland have experimented informally with them. The inclusion of outside or independent evaluators offers an additional opportunity to engage other stakeholders (as required for Future Ed II proposals), such as University Institutional Research staff and even members of the bench and bar.
most daunting challenge, but we believe that we can find such measures if law teachers take the lead.

Thus, over the next two years, Dayton plans to conduct a study of outcome measures for the purpose of developing a report on best practices in measures for use by Dayton and by other law schools. The best practices will reflect practical as well as pedagogical considerations, and the process will involve the school’s deans, full time faculty, adjunct faculty, students, and alumni as well as colleagues at other schools. Step One of the Dayton study will be the development of a survey to be sent to law teachers at all American law schools geared towards identifying ways that we already seek to measure our students’ knowledge, skills, and values. Dayton plans to complete the survey by April 2011.

HOW OUTCOMES ASSESSMENT MEETS THE FUTURE ED I CRITIQUE

The take-away line from Future Ed I was that of United Technologies General Counsel, Paul Beach, who said “I don’t have legal problems. I have business problems with legal components.”

At least a couple of thoughts seem implicit in that statement. One is that the mission of law schools should include a greater client-centeredness. Another is that the mission of law schools includes getting students, at least by the end of the 3L year, to see legal problems both in context and usually as part of a larger whole. That is, the legal problems do not come neatly packaged, and the client often cares about the legal answer only insofar as it either liberates or constrains options.

Linked to that focus is a new economic reality for the legal profession. The argument runs something like this: customers of legal services (clients) and of our graduates (law firms—particularly the larger law firms that represent a large market share of all legal work purchased and hire a significant number of law graduates) have become increasingly dissatisfied. Client-customers are upset at the cost and inefficiencies of legal bills; firm-customers are upset with what is perceived as a lack of new lawyers’ marketable skills without extensive training.

Clients, moreover, are becoming increasingly insistent that they do not wish to pay for this training—directly (by barring first and second-year associates from working on matters without approval) or indirectly (by paying higher per-hour fees that will be used, in part, to subsidize the training of new associates sponsored by firm itself). This, in turn, leaves firms

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6 Mr. Beach’s statement actually mirrors, in a very concise fashion, the critique of legal education in Best Practices and Carnegie reports. See also, the critique of our fellow Conference participant, Thomas D. Morgan, The Vanishing American Lawyer (Oxford University Press, 2010).
anxious to find someone else to perform the training function; they are increasingly looking to law schools to provide that training. If you don’t, they argue, then we’ll stop hiring your graduates and either hire laterally or send offshore as much standard legal work as we can.

We think this is a bit of an oversimplification. As numerous speakers pointed out, what is true of large firms like Jones Day is not necessarily true of, say, Burr & Forman (headquartered in Birmingham), Baker Donelson (headquartered in Tennessee with offices in Birmingham) or other regional law firms. Similarly, the pressures faced by Harvard or Columbia are going to be different than, say, those that Cumberland or Dayton faces. A common refrain was that there is not a “Future” of legal education; there are, rather, “Futures” that will vary.

Still there is a validity to Mr. Beach’s statement in other practice settings; insert the words “or personal” after “business” and it has even greater strength in the case of an individual consulting a lawyer about a domestic relations or estate planning matter, or one involving the purchase or sale of a closely held business.

At Future Ed I a number of worthy proposals were suggested to deal with the new reality in the legal profession and importance of preparation for practice—initiatives like greater use of online legal education, acceleration of the time period to completion of law school, collaborative education, the partnership of law schools and law teachers with law firm training programs, and LL.M. programs. Some of those suggestions promise not only to improve preparation but also to “bend the cost curve.”

We submit however that whatever programmatic changes may be initiated, it is important to chart where we, as different schools and individual teachers, are going.

Hence, this proposal. Identifying learning outcomes, almost by definition, draws a law teacher into considering what outcomes will be significant for the student to carry into practice. Moreover, the element of our proposal which focuses on obtaining input from practicing lawyers in the relevant practice community entails defining learning outcomes in a client-focused away. That aspect of the proposal also re-enforces the thought emerging from FutureEd I of the diversity in law school missions, captured in the idea that there is not one but many futures of legal education.

**One Final Point**

Law schools and law teachers stand at the intersection of the world of practice and the academic world-- both that of academic law and that of the larger university. As such, they are uniquely positioned to bridge those worlds. Our proposal offers a way to do just that.