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Luke Bierman

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# The Next Move in Legal Education is Ours . . .

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## THE NEXT MOVE IN LEGAL EDUCATION IS OURS. . . . .

LUKE BIERMAN\*

When 150 legal educators, lawyers, judges and law students met in June 2014 at Elon University School of Law to continue their work as members of the Alliance for Experiential Learning in Law, it represented more than the culmination of three years of work intended to promote transformative approaches and programs for legal education that ensures that law graduates are ready to practice with a full complement of skills and ethical and social values necessary to serve clients and the public interest, now and in the future. This Symposium provided recognition that there are serious efforts afoot to realign legal education to comport with trends that are more contemporary than those attendant to Christopher Columbus Langdell's view of the world in the 1870s. Indeed, attendees of the Symposium benefited from the lessons of those in other professions such as architecture and medicine that have had to deal with very similar transformational dynamics as those affecting law and legal education.

The Alliance's efforts are not idle work. There is increasing and ample evidence that the traditional model of preparing students for the practice of law as developed by Dean Langdell and employed in essentially every law school in some fashion lacks relevance to the ways in which modern social interaction and commerce are developing. The speed by which social convention changes in the post-modern information age is stunning, challenging even the most facile participants. As our views of privacy, ownership, security, liberty, and a multitude of other governing principles are evolving to reflect more 22nd century than 19th century thought and practice, it should not be surprising that the legal profession including the legal academy, risk averse by social construct and professional design as the guardians of ordered change, might be slow adapters. Indeed, as de Tocqueville recognized almost 200 years ago when the Frenchman visited the young republic to learn how it was faring, lawyers provide a natural limit to the "unreflective passions of democracy," the very forces that can upend the order and rigor that individuals seek for freedom and liberty, that society demands for structure and security and that enterprises crave for economic vibrancy.

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\* Luke Bierman is the Dean and Professor of Law at Elon University School of Law.

Of course, the confluence of these competing forces, popularly characterized as status quo and dramatic change, is where the challenge lies. But we all know that with challenge comes opportunity.

One opportunity that arises is the potential to imagine how we might educate lawyers who are capable for this new age. During the last great transformation a century ago people moved from the farms to the factories, a migration that saw the development of vast infrastructures and concentrations of wealth, mobility, opportunity and subjugation with a concomitant rise of services like large law firms to support that movement. The Langdellian model of legal education was perfectly attuned to that growth, with its emphasis on large classes and university integration. As the legal profession grew, the law schools were well positioned to supply increasing numbers of lawyers to meet the demand.

As society now evolves in ways vastly different from that experienced in the last century, we have the capacity to reconsider the pedagogies and subjects that will animate our current students as they consider their practices into the 2060s and 2070s. Without the luxury of being futurists, we need to make careful calculations and assessments about what these students will be doing with their time when they are practicing. Some of that time will be spent in the traditional and essential roles as legal analysts who provide wise and savvy counsel about the intersections of people, policies and laws while helping to resolve disputes regarding the contours of those intersections, as lawyers always have done. But some time also will be spent as project managers, delivering efficient and economical legal services, and as compliance officers, ensuring enterprises comport their conduct with prevailing regulatory standards. Much time inevitably will be spent as lifelong learners so that their professional lives can accommodate the rapid evolution and change in society of a kind we now only have begun to experience.

I have written and spoken elsewhere about how these activities might be characterized and how we might inculcate them to our students. No matter; what is important is that we engage in serious consideration about how this might be done for if there is anything that is certain, it is that some if not much of what and how *we* learned and practiced and comported our professional lives will be different in the not too distant future, which may very well mean now. That goal, of course, is the purpose of the convening of the Alliance – to provide a forum for precisely that kind of thought and discussion, to offer opportunity to develop new approaches and indeed new paradigms that will enable us as teachers and leaders to move from where we have been to where we want to go, keeping in mind the paramount

need of our students to be prepared as they move into a post-Carnegie world, largely uncharted and highly evolutionary.

Another kind of opportunity exists in how we go about creating this new vision for legal education. It is common knowledge that the legal academy is highly stratified with very different incentives, rewards and statuses for different participants. Teachers and scholars focusing on doctrine, clinics, writing, externships and other activities are aligned in very hierarchical ways that have led to deep chasms throughout the academy. This not only inhibits us in promoting the ideals associated with collegiality and academic freedom but also fails to reflect how the practice of our profession actually works. Rarely does a client with a problem walk into an office with a sign proclaiming how to characterize the nature of the problem or the procedures that should be employed in helping the client solve it. That is not the way the world works despite the academy's best efforts to organize itself in that highly linear and hierarchical way. Problems are solved by taking the best that many pedagogies and other aspects of practice offer and applying a comprehensive understanding of all aspects of law and procedure. That is how we fulfill our ethical and fiduciary duties.

The developing paradigms thus provide us with the opportunity to push aside the historical chasms and rethink our alignments and incentives. This moment in the evolution of practice and pedagogy provides us with a unique opportunity to examine closely the relationships that currently exist and imagine how they might be organized more holistically, more effectively, more efficiently and more economically. We have that unique moment that rarely comes, where we might consider how we would prefer to organize and teach and learn, and then actually organize, teach and learn in those ways. We can look carefully at the structures, the pedagogies and the methodologies we use to teach our students and, drawing on modern learning techniques and contemporary thought about workplace dynamics, organize ourselves accordingly. We could essentially, and literally, put our money where our mouths are. That would be spectacular.

I am humbled and excited to work at a law school that is doing precisely that. At Elon Law, founded as the law school with a difference, the faculty recently has concluded a six month conversation about the curriculum that followed a two year strategic planning process. Identifying competencies and then reverse engineering, the faculty has devised a new curriculum with seven trimesters offering more intense and focused instruction, full time practice requirements with faculty oversight (read residency), and communication instruction in every term, all accomplished in two and a half years with a

substantial savings in tuition. This different approach to the curriculum is possible only because the law school faculty and university administration all came together in a spirit of good will and hard work to devise preparation for lawyers that is true to historical values while providing innovations that make sense pedagogically, doctrinally, and experientially.

This new approach will necessarily require additional collegial discussions about the roles of different participants in the law school, from doctrinal and clinical teachers to staff, alumni and students. The contributions of all our community members will be subject to examination and assessment as we continue to think about the role of the law school in the 21st century. Indeed, we are beginning to identify ourselves as more than teachers and scholars and students but as fully integrated members of our local legal and civic community who provide leadership and assistance beyond the traditional service and clinical models. We are thinking about facilities and partners in ways that we would not have considered even a few years ago. Our expectation is that this creative approach will provide us with a much more engaged law school; faculty, staff, students and alumni alike. With this engagement, we expect more and richer opportunities for our faculty, staff, students and alumni to teach and learn experientially, to conduct scholarship and to provide service in partnership with others. This would indeed be a different approach to how we imagine ourselves as a law school, from faculty to staff to students to alumni.

It also will allow us to reconsider how we think of ourselves as members of a community. The ways that we might value our respective contributions might change dramatically. Integrating doctrine with practice, writing with attention to other means of communication, and fulltime placements in practice reinforced with classroom instruction will offer new and effective ways to promote teaching, learning and practice preparation. From this approach, some of the chasms that have limited our ability to maximize teaching, scholarship and service may dissipate. We may identify new ways to help each other teach more effectively and efficiently, with better results for our students as they move on to undertake professional responsibilities. We may find new found relevance with courts and other public, private and nonprofit community members for our scholarship and advocacy. This approach may offer some freshness where needed the most, in our fundamental approaches to prepare lawyers in a transformational age.

