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Erwin Chemerinsky

UC Irvine School of Law, echemerinsky@law.uci.edu

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Rethinking Legal Education

*Erwin Chemerinsky**

Law schools can do a much better job of training lawyers. Last year, a report prepared for the Carnegie Institute came to this conclusion. Simultaneously, many law schools across the country began to rethink aspects of their curriculum. Harvard and Stanford, for example, have received media coverage for changes that they have implemented. Further, *The New York Times* recently reported that representatives of ten law schools will be meeting to devise recommendations for legal education in the twenty-first century.

Change is long overdue. Legal education has changed remarkably little in over a century. The approach that Dean Christopher Columbus Langdell devised at Harvard Law School in the nineteenth century, emphasizing professors teaching from casebooks in relatively large classes, has virtues. The method has taught countless generations of lawyers how to analyze issues and develop legal arguments. It is also very cost-effective to have one teacher in front of a large number of students. Some law schools generate significant profits for their universities.

But the reality is that few law students graduate from law school ready to practice law. Studies show that the majority of law students never meet a client or have any practical experience. Almost every law school has a clinical program, and many are superb, but virtually always, only a minority of students participate. Clinical education is expensive because it requires close supervision of students and thus small student-faculty ratios.

The most important change that is needed in law school is to ensure that every student has a clinical experience or the equivalent. Many of the current efforts at reform are focused on whether the first year should include different classes, such as international law or a course on regulation. Certainly, law students need to be prepared to deal with the globalization of the twenty-first century and the highly-regulated environment in which many lawyers practice. But adding new courses taught in traditional ways does not significantly alter legal education.

Meaningful reform requires that law schools do far more to emulate the way medical schools train doctors. A core aspect of medical education is clinical education. Generally, third- and fourth-year medical students spend much of their time in rotations through various specialties. They see patients and participate in their diagnosis and treatment. Some medical schools begin having medical students interact with patients even earlier.

* Alston & Bird Professor of Law and Political Science, Duke University; Founding Dean, University of California, Irvine School of Law.

The contrast to legal education could not be more stark. Most law students have limited exposure to the practice of law during law school. If they do not participate in their school's clinics or complete an externship, their only involvement with law practice is a summer job or two. The majority of students, especially at elite law schools, spend their summers at large firms where the focus is often more on evaluation and recruitment than on training. Students rarely meet clients and usually do research projects on small aspects of large cases. They get a sense of life in the firm but minimal actual training as lawyers.

I believe that it is long overdue for law schools to do more to emphasize experiential education. For example, my goal is that at the new University of California, Irvine School of Law, every student will participate in a law school clinic or have the equivalent experience, such as through a carefully selected externship. A clinical experience for every student in the third year will solve a problem that plagues every law school: how to make the third year of law school meaningful and useful for students. There are many educational benefits that can be derived only through clinical experiences. Students benefit from having clients and seeing the duties and complexities that come from serving real people. There is an opportunity for training about professionalism that comes when students have their own clients whom they must represent. Simulations are often valuable teaching tools, but they cannot substitute for dealing with real people. Also, the principles that are learned in the classroom, that are rightly often abstract and theoretical, become concrete and real when put in the context of a real case on behalf of an actual person.

For the last three years, I have been one of the supervising attorneys in an appellate litigation clinic at Duke Law School. Two or three small groups of students, depending on the number of faculty members available to supervise, handle an appeal in the United States Court of Appeals for the Fourth Circuit. The students write the briefs, and one of the students argues each case in the court. The students get the chance to deal with an actual appellate record, with all of its messiness and complexities. They have to master rules of appellate procedure. They have to deal with producing and filing the brief and dealing with the printer. One of them stands before the judges and argues and learns that, although moot court is wonderful, it is not the same as arguing in a court on behalf of a real client.

Clinics can take countless forms and obviously need to be based on the legal needs of their communities. A clinic serving victims of black lung disease is important in West Virginia, just as an immigration law clinic is crucial in California. Whether clinics represent prisoners, abused women, children in foster care, former military personnel seeking benefits, AIDS patients, or small businesses, they all require that students learn to practice law under close supervision. Some clinics focus more on transactions, others on litigation, others on administrative proceedings. But, all give students training on how to be a lawyer.

The ideal, as the Carnegie report urges, is for students to have some experiential learning in each of their three years. For example, the traditional first-year legal writing class should be reconceived and should focus more on lawyering skills and legal problem solving. Too often, legal writing classes are structured around artificial problems unlike those lawyers ever see. It would be preferable to build such classes around actual cases and to be sure that they include a variety of different practice areas, including those dealt with by public interest lawyers. Most first-year legal writing classes conclude with an appellate brief and argument. Why? Why not have students argue a motion to dismiss or a summary judgment motion, something more likely to be seen by a larger number of students in their early years of practice?

Upper-level classes can also incorporate experiential learning. This semester at Duke Law School, I taught a class on the Federal Practice of Civil Rights. Each student was required to draft a complaint, prepare a discovery plan, and engage in a negotiation exercise. The large size of the class, over 130 students, meant that the students did these exercises in small groups. But they still had the experience of performing the tasks of lawyers. Experienced business lawyers repeatedly have told me that law schools can do a far better job of teaching students about complex transactions through similar exercises based on actual situations.

This all seems so obvious, but the reality is that changing institutions is difficult and clinical education is expensive. Many law faculties would rather hire additional professors than invest in clinical faculty and programs. But, there is no way to reform legal education in any meaningful way without giving law students far more experience in the practice of law.

Closely related to better training lawyers, is finding ways to provide more feedback to law students. In the majority of law school courses, a student's grade is based on one evaluation, a final examination at the end of the semester, where the student receives just a grade with no other feedback. This is impossible to justify from a pedagogical perspective. It is based on the difficulty of providing multiple evaluations, or even detailed comments on the single evaluation, in a course with many students and one teacher who lacks the support of teaching assistants. It is unrealistic to expect every course to provide multiple evaluations. Still, it is possible to provide students with some classes where this occurs. My goal would be to have each first year student have one class per semester in a small section where multiple evaluations occur.

Unfortunately, such an emphasis on skills training is often thought to be the opposite of teaching theory and interdisciplinary perspectives. This is a false dichotomy that law schools should emphatically reject. The most important change in legal education since I was a law student thirty years ago is the recognition that law is inherently interdisciplinary and must be shaped by understanding fields such as economics, philosophy, and psychology. Law schools still do too little to bring these disciplines into their classes in a

systematic way. Few schools, to my knowledge, make any coordinated effort to ensure that all students receive interdisciplinary instruction. Instead, it happens by chance whether a student will receive such instruction depending on which professors she has.

One of the greatest attractions to me of being the founding dean of a new law school is the chance that I have, along with my colleagues, to re-think legal education. I hope that our new law school will be highly interdisciplinary, providing students with the knowledge and perspectives that come from other fields such as economics, sociology, philosophy, and psychology. At the same time, it is essential that we provide every student with a clinical experience. Legal education needs reform, and I look forward to our new law school being a part of that process. I know that we will learn a great deal from other reform efforts across the country, and I hope that we will contribute to them as well.