THE PROFESSION AND THE ACADEMY: ADDRESSING MAJOR CHANGES IN LAW PRACTICE[1]

Wednesday, April 28, 2010.

Introduction by Dean Phoebe Haddon

Thank you and acknowledgement of Mike Kelly, former Dean of the Law School, and to Linda Grdina, officer from the Fetzer Institute, which is the Law School's partner in efforts to address professionalism in legal practice.

The legal profession is undergoing profound change. Legal employers of all types and sizes as well as law schools are only beginning to plot a new course in contemplation of these changes. The economy has played a critical role in this impetus for change. While people are beginning to be cautiously optimistic about the economy picking up (Department of Labor reported 162,000 new positions added in April, 2010), the employment opportunities for lawyers remain low.

Legal scholars and consultants are questioning the traditional career model for law graduates that has entailed going to join a law firm, perhaps after a clerkship, and rising through the ranks of the law firm in a lock-step promotion path. Students, who are the lawyers of the future, will likely be involved in multiple jobs in multiple sectors as they pursue their profession. Firms in 2010 reported 33% decline in summer associate offers, 2011 and 2012 will be difficult years too. Law firms that survive talk about changing their structure of hours and payment and their relationship to lawyers, including outsourcing.

The focus of this conference is what will happen to students, not just in large law firms of the future, but in all areas of legal practice, especially other venues such as the small firm. Law firms report that they want students who are client-ready practitioners because increasingly, clients are unwilling to absorb the costs of firms to train their new associates. MD law firms said they want students who are able to undertake complex problems and be involved in critical writing. The ability to work collaboratively, to approach problem-solving in an inter-disciplinary way, is also important to these firms given the changes in practice and the specialized nature of legal practice.

Independently of the economic pressures on traditional law firms, the Carnegie Foundation published in 2007 its Report on educating lawyers. It recognized the increasingly urgent need to bridge the gap between analytical knowledge and practical knowledge and a demand for robust professional integrity. How can law schools help prepare students to be practitioners of the future while also having a better understanding

[1] Summary written by Lydia Nussbaum, May 24, 2010. Full video of the symposium is available at: http://video.law.umaryland.edu/OpenPlayer.asp?GUID=35D5980A-CE2D-4378-85BA-6024202DB6CE (session 1), http://video.law.umaryland.edu/OpenPlayer.asp?GUID=954A9D36-D8C7-4452-BDD5-2548919FD6D8 (session 2), http://video.law.umaryland.edu/OpenPlayer.asp?GUID=013EC3AE-7CDA-46D2-A760-F4FFDBD72032 (session 3).

of themselves as they engage in the practice of law? What should law schools be advising students about changes in practice and what to expect in the future?

There is also a need to prepare students who have cross cultural competence in an increasingly global world. This does not mean specialization in international law or spreading American values and culture, but rather has to do with mutual, shared problem-solving that will deepen students' empathy for other world citizens and help them confront the problems of today's world.

The Leadership, Ethics and Democracy Initiative (LEAD), thanks to the support of the Fetzer Institute, was launched at the University of Maryland School of Law to help students develop cross-cultural competency, leadership skills, and reflective habits to strengthen values of personal development and moral reasoning. There is a responsibility for law schools to prepare students to have a better understanding of the hierarchy of relationships and to be leaders in their future careers. With the trends in the legal profession, there is greater value placed on people who can listen and encourage others to join them in a common cause. It is good to explore the innovative ways in which law schools can provide educationally sound experience for law students and engage them in the rapid changes in the profession.

Changes in Big Law Firms and the Issues These Changes Raise

William Henderson[2]

A. Historical Background and Analysis
    a. 1948: government lawyers did better than private practitioners. Lawyers did not always make a lot of money in private practice.
    b. Many lawyers did not have college degrees.
    c. Private practice, ratio of partners to associates is 5:1. Leveraging phenomenon did not exist in mid-1900s.
    d. Cravath outlined the model for what became the modern law firm
        i. A scalable model for large law firm practice ("large" is 10 lawyers at that time).
        ii. The idea was that lawyers could be trained to be highly expert, especially in corporate matters, which was cost effective.
        iii. Large law firms spent tremendous efforts in training law graduates to build expertise. This training could be scaled up when there was greater need for expertise, or scaled down, depending on the needs of the clients.
    e. Two-hemispheres theory, Heinz-Laumann study of Chicago lawyers c. 1975: There are personal litigators (work for individuals) and corporate litigators (work for organizations). The lawyers who worked in these two areas came from different schools, were of different ethnicities, different religious groups, etc. They were demographically and socially different people.

[2] Professor of Law and Harry T. Ice Faculty Fellow, Indiana University School of Law.

f. A study in 1995 replicated Heinz-Laumann's study and found that the cleavage was still present, but that the divisions were not even – instead of the profession divided evenly between personal and corporate litigators, 2/3rds of the lawyers were corporate/organizational lawyers, whereas only 1/3 of the lawyers served personal, individual clients. Why the increase in corporate lawyers? The corporate sector enjoyed the spoils of the legal market because, as the economy boomed in the second half of the century, there was a rise in businesses that traded across state lines and across national lines, creating more and more complex corporate structures that needed more and more lawyers to address their legal concerns, not to mention the development of a massive government regulatory system to watch over all these businesses. Thus, there is a direct correlation between the rise in the national GDP and the rise of corporate legal services sector.
g. Law schools benefitted from this rise in demand for corporate lawyers; more and more law schools were created and they had many more graduates. The economic rewards created by the growth of the business law sector is what fueled law school growth.

B. Current Industry Analysis
   a. Competition for elite graduates among law firms means that elite law school graduates are pretty much guaranteed a spot at a high paying firm. That means that there is little motivation for elite law schools to innovate.
   b. The huge temptation of the big law salary draws many graduates away from public interest work or work where their heart really lies, which makes for unhappy practitioners and does not benefit law firms in the long term.
   c. Law students are getting too expensive to train – clients do not want to pay for first year associates on their matters. That means the leverage model is no longer working for upper level partners because the costs of training associates are not being covered by the clients and that means that partners are not making money off of associates and junior partners.
   d. Clients have changed: corporate clients have hired general counsel to control legal budgets, and balance those expenses against the security in knowing a prestigious firm (e.g. DLA Piper) has been hired to do the job. They both manage the legal expenses of the business as well as serve as lawyer to the firm.

C. The Future?
   a. Competency based models (Blackwell Sanders was one of the first to employ this model) promote people based on their competency areas, which include written and oral communication, research and analytical ability, creativity and flexibility, judgment, professional ethics, crisis management, efficiency and effectiveness, timeliness, initiative, ambition, drive, as well as a variety of interpersonal skills (teamwork and cooperation in the firm, tact and diplomacy, delegation and supervision) and abilities to forge good relationships with clients.
      i. Results? Lowered attrition, increased profitability, and doubled retention of minority partners within the firm.

ii. Challenges: requires a lot of time to evaluate attorneys and requires buy-in.

b. Richard Susskind's book, *End of Lawyers?*, looks at the commodization of legal practice, the move away from high end, individualized attention to clients (the bespoke practice) to automatized, packaged, highly technological practice. Susskind says there is a lot of money to be made in the automatization of legal practice.

Marc Galanter[3]

A. Trends in the profession can be broken down into roughly four periods.
   - 1935-1945
   - 1960-1970
   - 1985-1995
   - 2010-2020

B. A tremendous amount change occurred between each of these periods (changes in dominant industry, such as the disappearance of railroads and traditional newspaper press and the emergence of computer technology, World Wars – Cold and otherwise, the emergence of an American welfare state, growth and shrinking of the wealth of the middle class, the rise of a regulatory state, civil rights expansions, expanded use of litigation to provide remedies for intractable social problems, increased numbers and demographic types of law students, increased numbers of laws on the books), but can we predict anything about the future?

C. What can we say about the future 10 years? We see:
   a. Refined technologies are binding us into global networks suggest further profound upheaval. There is a new legal press generating a new transparency to view the legal profession.
   b. The legal world is increasingly responsive to the corporate sector, while individual claims are kept out or shunted into the ADR void.
   c. Regulatory institutions created after the Great Depression are hollowed out.
   d. The legal profession is still growing, but aging and becoming more female, stagnating at the bottom (entry-level positions) and flourishing, at least in some sectors, near the top.
   e. Firms are corporate, not collegial, with greater geographical spread.
   f. The classic firm structure that had partner-owners is being replaced by a model that has fewer and fewer partner-owners who are supported by employees (permanent associates and non-equity partners). Competition between associates in a single firm is unending. Partners are working longer and longer and not retiring.
   g. Expansion of law business to include non-lawyers (e.g. Great Britain and Australia).

[3] John and Rylla Bosshard Professor of Law and South Asian Studies, University of Wisconsin, Madison and LSE Centennial Professor, London School of Economics and Political Science.

h. Outsourcing of international corporate work to India, for example, which is a competitor for American lawyers.

D. We have no way of knowing whether change will continue (de-governmentalization, deregulation, anti-lawyer sentiment, etc.) or will there be a turn-around, an expansion of remedies for more and more members of society, which is where the first two periods of history were bringing us before the third period of the 1980s began.

Michelle Harner[4]

A. What kind of change are we seeing?
   a. Certainly, we are in a time of change. Big law firms are right-sizing, which is part of the normal cycle for organizations (reducing work force, eliminating functions and reducing expenses, redesigning of policies and upsizing in other areas). Right-sizing eliminates unnecessary work and improves or prioritizes the most important work.
   b. This change is good: law firms should be thoughtfully reconsidering how they provide services to their clients and meet client needs.

B. Big Law lawyers (and lawyers in general) add value for their clients.
   a. Big Law lawyers are hired NOT to provide standardized solutions, but instead to find answers/solutions that are not in the forms or treatises.
   b. Big Law clients hire great thinkers, creative problem solvers, and skilled technicians. That is where Big Law adds value.
   c. Legal institutions need to be innovative in how they train students so that students can be each of these three things.

C. Where are things headed?
   a. There is a lot of noise—Chester Paul Beach, Richard Susskind, Larry Ribstein—that are rants. There is a lot to learn from these rants, but there is also concern because they may not reflect the majority opinion. Certainly, clients want value and have been upset about paying first year associates $250/hr. But that does not mean the end of BigLaw.
   b. There is a role for unbundling of legal services, especially in the access to justice arena.
   c. But, sophisticated clients will not have their problems answered by formulas. To think that is to do a disservice to the profession and to the clients we are ultimately trying to serve.

Lisa Fairfax[5]

[4] Associate Professor of Law, University of Maryland School of Law.

[5] Professor of Law, George Washington University School of Law.

A. There are a series of disconnects, starting with this statistic: In 2009, 12,000 attorneys were laid off from firms, while in September, 2009 more than 60,000 took LSAT, (largest sitting in the history of LSAT).
    a. There is a disconnect between the market and the numbers of people coming through the pipeline. Law firms simply cannot absorb the people they have laid off as well as the new law graduates.
    b. This means greater debt for law students.
    c. There is an impact on corporate ethics as people are under serious economic pressures to hold onto their jobs.
    d. Diversity efforts also impacted, as latest statistics show women are more likely to be laid off than others in this time of economic contraction.
    e. The impact on the legal culture? It used to be taboo to lay off associates and partners, but now law firms are laying off senior people, which shatters the sense of trust that much of the corporate law firm culture is based on.

B. There is a disconnect between the training law schools are providing their students and the needs of law firms. We are still training lawyers as if they were in a 1947 practice. Part of the reason is that elite law schools do not want to be labeled as "trade schools," they want to produce "thinkers."
    a. Law schools train people to be litigators through the case study method. Negotiation and drafting are not emphasized, nor are accounting and corporate financing (*derivatives*, *broker-dealer* are all terms that are used in Big Law practice, but never heard in law school).
    b. There is a real need for people with transactional skills, who understand how agreements come together and are executed.
    c. But law schools teach students how to advise to people, not to organizations, which is what big law firms are doing.
    d. There is not enough emphasis on group work in law school, but that type of work is required in law firm settings. Working together, especially in transactional work, is essential.

A. Law schools have not had to change because law firms took care of all the training required to teach recent law graduates these important skills. But, since law firms are no longer providing training, law schools need to – but are they incentivized to change? Law schools are not incentivized to change for a variety of reasons:
    a. Rankings
    b. Great emphasis on scholarly writing, not teaching
    c. Non-practitioner scholarship valued over clinical teaching
    d. The longer one practices law, the less likely it is s/he can become a professor

Neil Dilloff[6]

A. Changes to Big Law

[6] Partner, DLA Piper LLP.

a. Big Law's competition is not other large firms, but spinoffs and smaller firms, where clients find the same quality lawyer, but in smaller environment and at cheaper cost.
b. Sophisticated clients hire attorneys first, law firms second. Sure, some in-house counsel hire law firms for insurance purposes, to be able to say "we hired the best law firm," but sophisticated clients hire the lawyers, not the firm.

B. What law firms are looking for in newly minted law students:
   a. People who have judgment
   b. People who have people skills
   c. People who are psychologists, who are sensitive to economics.
   d. Honesty
   e. Ethical billing of clients, resistance to billing pressures
   f. People who are workplace ready

C. Law firms need help from law schools so that firms do not have to start from scratch molding associates for 2 years to be business ready, client ready, and litigation ready. What do law schools do? Students need to practice the kinds of things they will do in the legal world.
   a. Adapt inside and outside the classroom: instead of telling students about trying a case, have them actually try one. Lecturing, while important, is not the way to teach students.
   b. Start teaching practical skills in 3L year, 2 years of theory is plenty.
   c. Every single course should be directed to doing and observing, as opposed to watching someone stand up in front of the room who is talking.

Question Period

1. Clark Cunningham, Georgia State: what is often said by law teachers is that they think large law firms do not trust law schools to prepare students to be client and practice ready and that what law firms want is for law schools to provide very bright people who have been sorted out, ranked. Do you agree that this is the case?
   a. Neil Dilloff: there should be a glove-in-hand relationship between schools and firms. At DLA, the pressures are always "how many hours should I bill and should I take non-billable time to go and do a training?" The truth is that it all depends on the partner to whom an associate is assigned. Some partners give their associates opportunities for career development and chances to meet clients and go to depositions and trials, while other partners have associates doing nothing but stare at a computer screen and sort documents. The inter-relationship between law schools and law firms should be tight, so that this trust issue can be bridged. There still needs to be a closer connection.
2. Mike Kelly: A comment that the responses from Michelle Harner and Lisa Fairfax defending the bespoke services of large law firms is exactly the kind of defensive posture that Susskind predicted corporate law firms would take. He finds it interesting that law professors are taking up the defense of the corporate law firm.

    a. Harner: does not completely disagree with Susskind. There is a role for commoditization, such as estates and wills, where standardization works. Much of the work she did for large clients entailed pulling parties together to make a deal, trying to track debt that was changing hands on a daily basis, figuring out how to incorporate new facts and challenging turns. This type of work could not have been handled by a computer program. There is also an interesting element of creative destruction to Susskind's theory – lawyers are not subject to the same creative destruction risks as railroads. But lawyers are not the same as a retail industry.
3. Doug Colbert: Model Rules of professional conduct identify lawyers as public citizens with a special duty of public service. How much emphasis do large firms place on their lawyers serving justice or doing pro bono work?
    a. Neil Dilloff: A LOT. At DLA, the minimum pro bono requirement is 100 hours, for both associates and partners. The motive is that it gets a lot of associates to handle matters on their own, as opposed to being the last cog in a big case. There is an important training component to pro bono work. Doing good, while making these folks better lawyers. DLA is not at the forefront of this, they copied this program from another firm. But, for their new associates coming in this fall they will be requiring fewer billable hours and instead demanding that the new associates do more training.
    b. Mike Millemann: DLA Piper has been a partner in MD's clinical work, both in getting the first clinic off the ground 20 years ago and also in the most recent international clinic.
4. Lyle Baker, Suffolk Law School: he comes from a law school that has 1600 law students, 800 in evening division, with a large percent of graduates who stay in MA and comprise 1/3rd of MA bar. They are not employed by large firms primarily. So what do we do for the other half of the hemisphere, which is not serving corporate clients, and may be much more sizeable for many of the lower tier law schools? Also, there are ways to leverage the practicing bar by bringing them into the classroom?
    a. Lisa Fairfax: There are professors who try to bring together a whole range of practitioners into the classroom to illustrate the law being taught. However, it tends to be done spottily, professor by professor, not as an institutional program. It is ad hoc and not comprehensive, and it should be more comprehensive.
5. Georgia Sorenson: struck by the fact that everyone is discussing the change law firms are undergoing as "transformational change." But what people are describing is not transformational change – it's just market forces change. Social scientists talk about transformational change as articulated, planned, systemic, enduring, measurable change based on core public values. And there needs to be more talk about transformational change, not market level change.
6. Shruti Rana: competing trends towards specialization and increased entrepreneurial activity is interesting. One distinctive aspect of the legal profession in the U.S. is the fact that there is a revolving door between different parts of the profession – you can work in the government, then go to a firm, then

go to public interest, etc. etc. This is a key advantage over lawyers from India and China who are stuck with whatever kind of legal practice they go into when they are 25. This leads to ossification and discontent, and also more of a chance for bribery and corruption, and is a reason why many young people in those countries are dissuaded from entering the law.

a. Marc Galanter: The variety of law practice is a good thing. It used to be that General Counsel for a railroad was the pinnacle of legal practice – but then these big firms came along and beat out the house counsel. The power of variety and representing lots of different clients turned out to be very valuable.

Changes in Medium and Small Law Firms (Including Solo Practices) and the Issues These Changes Raise

Gillian Hadfield[7]

A. Law school training is not appropriate. We need to teach people to be legal innovators.
   a. Law schools are not training people properly, no matter whether these students go on to practice in Big Law or in other areas of the profession.
   b. Law schools shouldn't be training people to be cog in a wheel, but instead should be teaching them to be creative, think outside the box, and be legal entrepreneurs.

B. What is Legal entrepreneurship? Thinking outside the box.
   a. She uses her class to illustrate what she is talking about. She tried an experiment with JD and MBA students.
      i. This class takes a tech start-up (her brother is a founder) that is an online platform where companies post challenges looking for solutions and then members of the online community (accessing the web platform) think up of solutions to the problems posted and then sell them to the original poster.
      ii. The start-up company has a business problem: the company is not closing deals fast enough with big banks and IBM because the contract for their company is too long, boring, and dry. None of the chief innovation officers at these client companies can get excited about the start-up.
      iii. The challenge for the business students: fix this problem.
      iv. The law students' challenge: Can students get this long contract down to a couple of pages of readable, succinct prose?
      v. The project was both a success and a failure. It was a failure for the law students because none of the JD students actually tried to shorten the contract. They convinced themselves that each element of the contract was an essential piece. They did not go out and talk

[7] Richard L. and Antoinette Kirtland Professor of Law and Professor of Economics, University of Southern California.

to other people, such as the CEO of the company, about the company's business goals and what they wanted in the contract. They had no understanding of the context for why the contract needed to be shortened, that the business needed the contract shortened in order to survive. It never occurred to them to talk with the business people about why the contract needed to be shorter and how things could have been simplified. There was no utilization of non-lawyers who might have an innovative approach to solving the problem. All they really did was polish the contract, fix typos and tighten language. They came back to the CEO of the start-up and said that the contract could not be shortened. Failure of the lawyer who was hired to serve the business client.

vi. The project was also a failure for the MBA students because they failed to get out of the attorneys what they needed in order to run their business more successfully. The real world consequence for the business would be that it would not survive in the tough market for tech start-ups.

b. So where are the legal entrepreneurs, the young engineers who have a great idea about legal practice (the legal equivalent of the "garage guys" who started Google)?

i. Young lawyers can't get outside investment, due to Model Rules of Professional Conduct.

ii. Young lawyers can't partner with non-lawyers who may have different approaches to the problem; there are limits on fee-sharing.

iii. Young lawyers don't have the education, inspiration, and orientation to be innovative legal practitioners. All our ambition has been thus far has been to teach students how to write legal research memos, to be the 5th cog in a corporate law model, and we're not even doing it that well.

C. Why do we need legal entrepreneurship? There is a need for new solutions to legal problems in a global market. There is a growing value gap between the legal service provided and the actual problem underlying the need for that legal service. Our legal education model is not educating people to be creative thinkers.

D. Legal Education Challenge: how to produce "garage guys" who will think outside the box?

a. The current model is to produce judges, we teach appellate reasoning. We are producing associates for Big Law who can produce legal research memos.

b. There is a need for deeper appreciation for function and purpose of legal work, especially contracts—people aren't thinking about the legal work as an instrument that works differently in different contexts (e.g. indemnity clause in a contract may be important for certain types of contracts, not others; but students in her class automatically included it as an essential even if it was not important). Students are reproducing old language and

old methods without thinking critically about whether those methods are appropriate for the specific problem they face.

c. Need for problem-solving orientation in ALL law school courses.

William Hornsby[8]

Talking about lawyers who are typically in solo and small firm practice who provide "personal plight" lawyering. These are lawyers who represent organic as opposed to artificial persons. They are "main street" lawyers and are a significant portion of our legal population.

There have been significant changes to the legal profession since the 19th century (the system of education, canons of ethics, fitness and character determination, bar examinations, system of discipline and statutory unauthorized practice of law (UPL)), but the methods of practice remain the same (Abraham Lincoln's method of practice looked very similar to Perry Mason: two member firms, nickel and dime cases, lawyers representing a variety of clients and engaging in a variety of matters in a given day). BUT, there are three dynamics, each of which created incredible change to the practice of law, specifically the ways in which lawyers get clients and provide services to clients:

a. 1960s: consumer movement
b. 1990s: internet use
c. 200?: economic contraction that has challenged the value of the services that personal plight lawyers provide to clients.

A. Consumer Movement: new ways for lawyers to get clients and the operational methodologies for providing/delivering legal services to those clients.
   a. Lawyer referral services, 1940s, and legal networks.
   b. Prepaid Legal services, union members paid small monthly fees for access to lawyers who would provide limited representation or answer legal questions
   c. Specialization, or certification, which has not been successful for attracting potential clients. Today, only 5% of the practicing bar has specializations.
   d. 1977 US Supreme Court decision re: legal advertisements cannot be banned by states. This was the most significant change in the way in which lawyers could get clients.
   e. Operational changes: emergence of legal clinics such as Legal Aid (Hyatt and Jacobi, had outlets in Sears and had free standing law offices) that provided routine services at fixed fees. Used automated word processing, which did not require a secretary to do all the typing, as well as paralegals. These outlets were open late, so that working people could go to them, and on the weekends. These are not still around because they had a high administrative overhead, which made them unable to compete with small

[8] Counsel, American Bar Association Division For Legal Services.

firm lawyers who also started to use paralegals and make themselves available to working people.

B. Internet: an electronic billboard for only a few hundred dollars a year that could be completely ajurisdictional. Created entirely different way for lawyers to reach clients.
    a. Online directories allowed people from around the country and around the world to find people in Iowa or anywhere else.
    b. Web 2.0: social networks, social media, etc. (Craigslist, Twitter, Facebook, YouTube!). Other service providers, document preparers, government, and courts, are now competing with lawyers.
    c. Document prep: started as software, but now is internet based. "MyCorporation" is a FREE internet site that helps people start up companies. This is a personal legal service not provided by lawyers. Courts now provide self-help centers, with documents/forms provided online that people can fill out and then print out and submit to the court. These are acceptable to the court because they are the courts' own forms! "A to J," developed by Kent Law School, is as document prep program that has an avatar guide leading the person to the courthouse door – the avatar asks legal questions in text or audio and then, based on the person's answers, will print out necessary forms, already filled out with the information provided in the person's answers. This is the leading edge of commoditization.
        i. **All of these internet based document prep services are competition for lawyers. If you can't figure out how to implement a system like this, in whatever practice setting you are involved with, you will LOSE, competitively, to people who can. And law schools that cannot figure out how to teach their law students how to use technology like this, will LOSE competitively to the law schools that do teach their students to do this. This is fundamental client demand that is easy and efficient.**
    d. Virtual Law Office – complete client interface through the computer technology. Documents can be posted and shared, clients can access their files by logging-in to a website. This conquers the time and inconvenience of travel. Allows for quick and easy communication that is confidential, more accessibility for clients.

C. Economic contraction also impacted the way in which lawyers and clients interact. This dynamic goes back to the "Do It Yourself" Culture that began in the mid-1980s and has been accentuated through the economic recessions. There are many more pro se litigants who are finding that paying for full services model simply does not have the value, so lawyers are adjusting their services, such as unbundling, to provide what clients think is affordable. Unbundling is a response to the proliferation of pro se litigants.
    a. ABA Delivery Committee had a meeting in 1993 with only 6 people in attendance. Last year, 2009, there have been scores of CLE programs on unbundling reaching tens of thousands of lawyers who are interested in providing this service as an alternative to full legal service model.

b. Law schools that understand this phenomenon and can promote it will have an advantage over those law schools that do not teach this.
c. Ethical issues to be aware of:
    i. Unbundling to be with informed consent of the client
    ii. Unbundling to be reasonable under the circumstances
    iii. Model Rule 1.2(c) standard
d. Niche practices is the client development response to the economic contraction.
    i. E.g.: bicycle law, biker lawyer, the wine lawyer, the horse lawyer, the pot lawyer
    ii. The Fantasy Sports League Dispute Resolution site. For $14.95, bet disputes can be settled.

D. What's the impact of these three dynamics on Legal Education?
    a. Law schools must recognize that many of their grads will provide personal legal services in small firm settings, they are going to be personal plight lawyers. There are more personal plight lawyers than AmLaw 100 lawyers. It is an important part of our profession.
    b. Law schools must advance practice management skills and theory. We can't have law practice management taught by a 40 year veteran practitioner who is paid $2500 to come in once every two years to teach a 2-credit night school course. What if Wharton or Harvard Business School were like that? We need to embrace law practice management as a doctrinally important because it provides people with important and unique abilities. There need to be fully funded, tenured professors (like Hadfield) who understand the modern economics of law practice and are willing and able to teach law students how to be ready.
    c. As a profession, we must re-evaluate our values and this starts with law schools. How is it that we define the pinnacle of success of lawyers as those who work in firms that advise BP on its public image during the greatest environmental catastrophe in history or who advise Wall Street financial institutions on how shape their testimony to Congress? How is it that we look down upon a divorce lawyer, who is looking out for the best interest of a child subject to a variety of harms, or a lawyer who is helping someone discharge obligations due to unforeseen medical expenses that may cause the person to lose his house and become destitute? Why is it that we don't look at those personal plight lawyers as the brightest and most important parts of our society? We have to deal with this incongruence in the market place because our dedication to pro bono and our resources for legal aid simply are not sufficient to meet the needs of all people on the economic spectrum.

Jeanne Charn[9]

[9] Director of the Bellow-Sacks Access to Civil Legal Services Project and Lecturer on Law, Harvard Law School.

Changes in legal practice that are affecting access to legal services and what law schools are (or are not) doing.

A. The political controversy over publically funded legal services has abated. There is bipartisan support for these services and there has not been a run at eliminating public funding since the Clinton administration.
B. Pro Bono is institutionalized and better understood. There is still a romance about pro bono, particularly in the legal academy, but that is misplaced. Pro Bono cannot bridge the gap in resources between clients of different economic means. There are sharp limits on pro bono lawyer's availability and what they're available for. Pro Bono is not free – it requires considerable amount of infrastructure and that infrastructure is paid for by the public. Pro Bono requires low and moderate income people to be linked up to big firms, and that requires infrastructure. The reasons why lawyers want to do pro bono are training, retention, recruitment, clients who have strong public interest concerns will be attracted to a law firm that provides pro bono, so there is both altruistic and self-interested reasons for big firms, small firms, and solo practitioners. Big Law is the face of pro bono (see Carol Seron's study), which creates tension within the bar. It costs a small firm lawyer a business opportunity, while big firms provide the salaries no matter what, so big firm lawyers can work on pro bono in slack time.
C. Technology has had a big impact on improving access to legal services – it reduces costs of advice and delivery of services. These services are not dumb, they are getting smarter and smarter. But the smarter they get, the more they are challenged as unauthorized practice of law.
D. Lower trial courts are changing dramatically, they no longer look the way they did 15 years ago, which is what we are teaching students in law school. They are undergoing serious restructuring, arising out of the Scotsdale Conference in AZ, where people discussed how not to fight the increased numbers of pro se litigants and instead thought about ways to make these courts more accessible (especially family courts and landlord/tenant courts). Courts became more hospitable, rather than overtly hostile to unrepresented clients. (Not being represented by a lawyer is a constitutional right in MA.)
    a. Courts have standardized and simplified proceedings and pleadings.
    b. Courts are moving along Susskind's trajectory to provide packaged legal services. By court order, pleadings must now be fill-in-the-blank. Anyone can now fill out an eviction complaint or divorce petition.
    c. Some states are further along than others and are working to educate and train judges on issues that arise with unrepresented litigants, such as maintaining neutrality while not being passive, managing the courtroom, how do you judge differently, etc.
    d. 2007 study: Charn's center at Harvard had a conference on judicial education, using live video of judges managing courtrooms that became educational videos. They expected only 20 states to show interest – but had 40 states as well as Puerto Rico and Virgin Islands. There is no question that states are aware of the impact that unrepresented litigants are

having on the court system and recognizing the need to do something about it.

e. The changes the courts are making to simplify and standardize the process is helping small firm and solo practitioners because much of the cost comes from the time drain of sitting in court and waiting for a case to be called. Now that the court system is more user friendly, these small firm and solo practitioners can do more coaching, advising, checking legal documents, all of which are unbundled legal services.

E. There has been a lot of innovation in the private bar, BUT more needs to be done to move from the handful of entrepreneurial risk-takers who are developing new ways of serving untapped personal plight clients to institutionalizing these methods of providing unbundled services.

F. There are increased resources for legal services, contrary to what the academy thinks.

a. Civil Legal Aid in the 50 states = $1,044,726,069 (does not include value of bro bono, private dollars for state and national advocacy programs, money spent on court based self-help centers). This is a 45.94% increase over the high water mark in 1980, the last year of Carter administration. Much of this money is coming from state and local budgets.

b. The population of people eligible for these services has jumped, increased by 43%. It is not clear, however, that more people are being served with this money.

c. But there is a serious problem: significant disparities between states since most of the money comes from legislative appropriations and IOLTA accounts.

G. Systemic challenges: No real policy center. Other countries have central governmental policy that clearly sets out how funds should be used. The U.S. manages weakly the way in which public legal services resources are used—that is primarily because the source of the funds is fractionated and there is no data that shows how the money is actually being spent.

H. Unlikely the U.S. will ever guarantee legal service (England and Wales have done this). Even if it were, it would not be by assigning a lawyer to each person, but by providing other types of assistance that will allow people to teach themselves and handle their own legal matters.

I. Law schools are totally behind the increase of legal services, but they don't know what is going on and they are not making intelligent contributions to policy. They are not doing research, partly because access to data is difficult and because they don't have much research capacity. Medium, small firms and solo practices are especially hard hit by law school graduates who lack adequate preparation because law schools are not teaching students how to practice in those settings. The mediocre quality of publically funded offices (such as public defender) reflects the fact that students are not prepared. There is also the idea that people with heart but not great brains go into this kind of public service work.

Ward B. Coe III[10]

[10] Partner, Gallagher Evelius & Jones LLP.

There are many economies, and throughout each of these economies have different clients who have different needs for navigating the law. The legal profession responds with different organizations and specialties that have evolved to meet these different segments of the economy. One example is lawyers on the eastern shore of MD who specialize in criminal law and real estate development – two separate areas of practice that are in demand based on their economic area.

Mid-size firms range from 25-65 lawyers in MD. Their clients include corporations, real estate developers, non-profit organizations, charitable organizations, wealthy individuals, entrepreneurs, insurance companies. Their practices have significant specialization.
They have not experienced profound changes in the legal practice. Law firms that represented large financial institutions have been troubled; mid-sized firms did not represent these clients and because of the variety of clients, they have not been negatively impacted by the recession.
WHY?

A. Partner compensation expectations are not the same. No one wants to be a millionaire.
B. The magnitude of expenses is very low – reverse leverage, which means low ratio of support staff to lawyers.
C. Firms are managed conservatively—no lines of credit for operations, partners live on profits. These firms might borrow money for computer upgrades. Some firms are heavily capitalized by partners' own accounts.
E. More flexible in management. Almost none of these firms have management partners – they pass around management responsibilities. In response to crises, these firms are still partnerships in the traditional, common law sense of the term. These firms are run on consensus, have few free agents, have not had trouble retaining people, and partners all have similar goals.
F. Mid-size firms expect the same things from law school grads as the big firms. Because of reverse leverage, mid-size firms will put people right to work. There are a lot of smaller cases that new associates will take on. Much of the research new associates do is used directly in briefs and court filings. New associates are taken to depositions, without billing for a few times, and then will be given an easy deposition to handle on their own.
G. What should law schools do? Teaching practice management is not very helpful. Firms are all managed so differently; there is no single way of managing that law schools could teach their students. He is also not sure there is much a first year associate could contribute to the management of a law firm. Instead, give students as much practical experience as possible in the clinic. It may be expensive, but it is the best way to get students ready for practice.
H. Pro Bono digression: in late 1990s, early 2000s, a lot of large firms began to follow DLA Piper by developing pro bono programs and having special pro bono partners. As a member of the MD Standing Committee on Pro Bono, he expected the pro bono services of big firms to pick up during the recession, but surprisingly, that has not been the case. The annual pro bono reporting in MD is mandatory and although the big law firms are doing a good job, of the Rule 6.1

aspirational goal of 50 hours, there are many more lawyers in small firms meeting that goal than in big firms.

William Reynolds[11]

The intensity of the analytic experience in law school, the first two years primarily, does a lot to teach people to think critically and under pressure. But also important is the emphasis on the basic building blocks of the law – torts, contracts, procedure – each of which used to be 6 credits and taught information that people can use for the rest of their lives. These basic subjects run through all the other elective courses that students take. Understanding HOW the law works, not the details, is what matters, and law schools are moving away from that (e.g. making these 4 credit, single semester courses and then shaving weeks off of semesters). Law schools increasingly are adopting a graduate school model – creating electives for graduate students, or young professors, to teach – but these electives do nothing to prepare people for practice. Reynolds explains that his Art Law class and his class on International business transactions has nothing to do with real practice.

As for getting law students to be creative and think outside the box, that is hard to do. Law students may be self-selected for not being creative. They rarely, if ever, question authority, especially in the legal classroom.

Teaching social networking may be a good idea – how to advertise as a lawyer. The PhD model of law schools does not say we should be teaching social networking. And people would laugh at the idea of a new course on social networking; a curriculum committee would never allow such a course.

Lawyers from big firms complain about law school graduates not knowing basic law, e.g. Harvard and Yale don't teach the U.C.C. because it's not considered a respectable topic. But these big firms will not hire MD students, who do have training in the U.C.C., and instead will only hire people from Harvard and Yale because they are interested in prestige of associate's law schools, not the skills they may have acquired at those schools.

How Should Legal Educators and Law Schools Respond to These Changes?

Michael Kelly[12]

"The gaping hole in legal education": failure of most law schools to address the dominant role of organizations in the legal profession. There are three interrelated phenomena that illustrate changes in legal profession that law schools have failed to address.

A. Massive consolidation.

[11] Jacob A. France Professor of Judicial Process, University of Maryland School of Law.

[12] Former Dean, University of Maryland School of Law.

a. Not just large firms, but also seen in small firms, in house counsel, government lawyers, and public service. Organizations of all kinds in the legal profession are much more focused, tight and rigorous.

B. Intense competition in private practice.

C. Maximizing income in the private practice world.
   a. In 1986, IRS reported that top 100 firms in USA generated 25% of all gross revenue of all law partnerships. By 2002 revenues of these top firms generated 40.2% of all revenues, in 2007, the top 100 constituted 47% of all gross revenues of all law partnerships in the US.
   b. The Heinz-Laumann two-hemisphere configuration is no longer appropriate because of the disproportionate earning power of Big Law lawyers.

D. Why is there a need for change in law school education to better prepare students for practice? Law students need to understand the organizational structures involved in all the different types of law practice. There is a need to teach law students about these organizations for five reasons:
   a. Evidence that law students are "organizationally challenged" meaning they do not do well in organizations. They are not comfortable in the organizational structures of the legal profession.
   b. Most lawyers represent organizational clients or are advocates against organizational clients. Lawyers that better understand how these organizations work and what these organizations' business is can better serve their clients.
   c. Many lawyers move into different organizations in and outside the profession – ability to read and understand organizations is invaluable.
   d. Understanding the kinds of constraints and the aspirations of different kinds of law organizations is fundamental to being part of the law profession. Certainly, law organizations are about business, but these law practice organizations should be able to stimulate conversation about what is different about lawyers and what sets them apart from other types of businesses (such as their ability to advise and influence law making process).
   e. There is a much expanded concept of legal ethics—not just the standard rules that apply across the profession to all lawyers (horizontal ethics), but also concepts of professionalism that address differences between lawyers and clients, lawyers of different rank, etc.

Robert Rhee[13]

What Can Law Schools Do in light of current understanding of changes in legal profession? Create a better product!

A. When hiring a lawyer, one picks the lawyer who has the best problem-solving skills for the problem at hand. But what is the best attorney, especially in the business context?

[13] Associate Professor of Law, University of Maryland School of Law.

a. One who understands legal risk in the overall context of the business risk. There is a divide in the practice between those who are able to bridge the gap between business and legal risks.

B. Most law students come to law school with an ability to do abstract analytical thinking but lack context, world experience. SO, law schools need to compensate for this lack of real world experience. Compare admissions process between business and law schools: to get into business school, you have to have real world experience, but not for law schools.
    a. Training is not going to be subsidized by law firms any more. In the long term, the pricing pressures on big firms and their drive toward efficiency will continue make it impractical for them to train new associates.

C. How can law schools create a better product?
    a. Interdisciplinary Education
        i. Business law as an example: the "skills v. theory" divide in law school is an artificial one. The key skill is problem-solving, which requires theory in order to understand the problems that face business organizations.
        ii. He teaches two business law classes, one for law students and one for business students. They are essentially the same class, the only differences are the types assignments (papers, exams, projects).
        iii. Law schools can offer a lot to business schools, and vice versa. Business curriculum offers: accounting, corporate finance, economics and corporate strategy. Law schools offer: contract corporations, corporate finance and securities regulation or regulation of industry.
        iv. Understanding the Madoff scheme is a prime example where knowledge of both business and law is important. Better knowledge of principles of finance and how markets work would have made it easier to catch on to the scheme sooner.
    b. Pedagogy
        i. Group work, decision making, leadership. "Soft skills" that associates would need to transition into leadership positions in law practice.
        ii. E.g.: teaching negotiations can be approached with simulations and hypothetical problems, OR as theory with case books. Students in his class used simulations for negotiations and they really enjoyed it and were able to connect with the material because it mimicked the practical world.
    c. Core Competencies: taken from Peter Van Zandt (Northwestern Law School Dean)
        i. Teamwork
        ii. Communication
        iii. Quantitative Analysis
        iv. Strategy
        v. Project Management
        vi. Globalization

d. Immersion in Practice of Law: is there a way to provide law students with immersion experience beyond clinics and externships? The steepest learning curve came from his working 8000 hours, his first trial or first acquisition or representation of a natural/organic person.

Gillian Hadfield[14]

Changing the way we teach law students: biggest obstacle to change is the teachers; there needs to be change made to teachers' methods. Simply adding courses to curriculum that seek to introduce "soft skills" is not going to be enough. These skills must be embedded into the legal analysis. There must be a change in the method by which law school teachers teach the core material.

A. Case-based team-based problem-solving
    a. Problem-based method of teaching is technique that she uses for first-year contracts and her upper-level advanced contracts. In 1st year contracts, 40% of grade is group based and in upper level class, 80% of grade is group based work. Students resisted at first but later came to enjoy it very much.
    b. Not a separate skills course
    c. The skills are embedded in legal analysis
    d. Active, engaged, students placed in decision-maker status. They are not being trained to be the associate in a firm who has to write a research memo. Students need to understand the decision-maker role because that is the person who first year associates are working for – their work product must fit the needs of decision-maker.
    e. Primary Goal: teacher says nothing
    f. Class structure:
        i. 8 cases, real cases taken from a law firm in Toronto who wrote up the facts of the case, put together all the case materials, took care of disguising the client. This is a great way for private law firms to support the law school teaching.
        ii. 8 teams of 4, each case has 4 client teams and 4 lawyer teams. Students switch off being lawyer or being client during the semester. Playing the role of client is instructive for law students because it helps lawyers to understand how to properly communicate with non-lawyers.
        iii. Advising client: framing, triage, research on all applicable law (procedure especially), judgment, communication. It is all integrated/embedded into the exercise of solving contracts problems.
        iv. 3 classes per case. 1 brainstorming session with all students. Students take turns running discussion learning how to make the most of the time they have to solve the problems at hand.

[14] *Supra* at 6.

v. Memos posted on Blackboard, discussion session (all people post publically and everybody reads everybody else's memos). Clients make comments
vi. Debriefing session, public detailed written feedback.

B. What did students learn? Her students gave feedback; go to: scip.usc.edu and look for Hadfield's conference (http://weblaw.usc.edu/centers/scip/events.cfm), where she posted the collected feedback from her students (http://weblaw.usc.edu/assets/docs/contribute/Individualreflections-entiregroup.pdf).
C. What would be her ideal curriculum? Don't have separate theory courses that are distinct from core classes. Instead, rethink how you do the core.
    a. Problem-solving team based methods in all first year classes (Contracts, Property, Torts, Criminal law, etc.)
    b. Legal research and writing embedded in substantive courses during all three years.
    c. Upper year courses taught with increasingly team-based methods.
    d. 3rd year: supplement with theory and more specialized legal treatments (yes, even lectures!).
    e. Flip the orientation of law school education. Instead of lecturing to students, first get students actively engaged in practice of law using basics. Then, add over-top of that the theory and philosophy of law and legal systems.

Jeanne Charn[15]

The key to clinical work is that students take on a professional role and shoulder the responsibility of client representation or handling of client work. Clinics are not just litigation. When a student functions in a clinical setting, they must learn how to function with the personalities, the institutional arrangements, etc. The clinical setting creates anxiety in student because they must act and they have a deep sense of responsibility.

A. Clinical teaching is a method of teaching, not just a context for teaching. It is a method of teaching that uses experience/realistic way of learning. Simulations have a tendency to wear themselves out because after a certain point the students can't help but recognize that they are not real. Simulations that are effective are intensive – but they usually go for two weeks, not an entire semester, because students get tired of the fiction. Clinical instruction is a method of teaching, it is experienced-based method of teaching by which substantive information about the law is absorbed by students *while doing*.
B. Clinics are a place where practitioners can enter the academy. Practitioners help inform educators and educational institutions about what is going on in practice. But a practitioner is not always a good clinical teacher. A good teacher-practitioner is someone who can stop and explain why s/he just did what s/he did, someone who can take a step back, frame and verbalize to the student the thought

[15] *Supra* at 8.

process and decision-making process s/he engaged in to determine how to handle a specific situation. It is people with this ability who make good clinical teachers.

C. Legal Profession courses needed to be re-conceptualized to include macro-legal services delivery and information about new trends in legal services. There have been profound changes in practice and law schools are doing a miserable job teaching students about how to address those changes. Interrogate students about their summer work experience, use their out-of-classroom practice experience as the setting for conversations about professional ethics and legal practice.
D. Other models?
    a. Utah requires at least 1 year of mentoring before a young lawyer can go into practice. Mentors are certified, there is a set program with criteria. DE is doing something similar.
    b. Washington & Lee—change in 3L program to focus on clinical and experiential learning.

William Henderson[16]

How should law schools respond to change? Attend to the market and recognize that change is going to be bottom up, not top-down. There needs to be an economic engine attached to this change or else nothing will happen.

A. Right now, there is no feedback loop that punishes law schools for doing a "bad job" or rewards them for doing a "good job." As Reynolds pointed out, the state of the market is one that rewards Harvard grads even though they have no U.C.C. learning.
B. Law schools receive $50,000 from each student for three years in a row. Are law schools willing to optimize the education given in return for that tuition money? Is the optimization worth more than just the sorting of IQs? The question for the legal market is whether they are willing to give up IQ points in return for guarantee that law students are well trained?
    a. Research shows that the importance/advantage of associate pedigree means less and less as lawyers' careers advance. In other words, it is individuals' character, people skills, emotional intelligence, and their passion about the work they do that drives them to success, not the school they went to.
    b. Henderson sees an opportunity to optimize education because of this phenomenon. Teach students to develop these intangible skills of emotional intelligence and an understanding of the work they want to do, and in the long run U of Indiana students will be at the top of the legal profession, which will benefit the school greatly and will topple Harvard's monopoly of the market. U of Indiana is building a client base, trying to work backwards by convincing successful lawyers in the profession that U of Indiana is going to be providing the best students and that these

[16] *Supra* at 1.

students will be the ones these successful lawyers are going to want to hire (i.e. Not the kids from Harvard).

c. U of Indiana is teaching with team-based learning, using emotional intelligence testing with feedback from teachers, teaching social networking skills and a new course on project management that uses an external client. Look at Mark Harris, who uses emotional intelligence for hiring, not the standard school pedigree and class rank.

Clark Cunningham[17]

www.teachinglegalethics.org is a pilot website that Cunningham is launching. It is an international website intended to draw together law teachers from English speaking jurisdictions. People can post teaching materials of all kinds, have discussion forums, etc.

A. Changes in the current practice of law are readily apparent.

B. There must be an international and comparative in thinking about legal education. The U.S. is one of the few jurisdictions in the world that allows people who earn a JD to practice without a period of supervised apprenticeship. Scotland, England, Wales, and Canada, all require some form of apprenticeship transition between law school and full practice. Scottish law schools continue to have simulation based course for their graduates to help them with this transition. UCLA offered a transition to practice LLM. National Institution for Trial Advocacy holds lots of workshops to teach law grads how to litigate.

C. Training is not happening in law firms and it is not happening in law schools either. So where are law students going to get their preparation for legal jobs? Legal education that teaches people how to practice need not be "trade schools" devoid of theory.

   a. Washington & Lee eliminated third year program

   b. See New Hampshire's "New Bar Program." State Supreme Court determined what legal education of new lawyers should be like. In this program, students who successfully complete 2 year course can be barred without having take the bar exam. This 2 year program is an honors program for 15 students, half of their courses involve simulation, externship and practice, with idea that at the end of the program they will be client-ready. But the duration of this program is why it's successful. It is integrated and sequenced. Students work in teams. Each student develops a personal portfolio of work (reflective journals, draft interrogatories or complaints) that is reviewed individually by a board examiner. Essentially, this is a two-year bar exam. The students are under constant scrutiny for two years, just like lawyers are in real practice. Students are motivated to do well in the program because they do not want to take the bar exam, examiners are motivated to do the program because they get to help shape the direction of legal education in their state.

[17] W. Lee Burge Professor of Law & Ethics, Georgia State University College of Law.

Question Period

1. Prof. Goldberg, University of MD. Law firms choose to pick people as young associates based upon their judgment and social skills and other nice attributes. Anecdotally, the students in the top 10% of the class have more job offers than people who are not in the top 10%. They get into the top 10% of the class because of their performance on exams. Do law firms believe that our exams test judgment and social skills?
    a. Clark Cunningham: First, let's not use the terms "social skills" and "soft skills" when referring to judgment but instead call them "fundamental skills." Learning outcomes for the law society of Scotland in their professional training program focuses on "Core Outcomes," which include professionalism, professional communications, and professional ethics and standards. Hiring partners from New Hampshire were excited about the fact that the graduate of the special program was client-ready, someone who was ready to take on responsibilities. Law firms take the easy way out by hiring the top 10% of law school graduates. But now law firms appear to be asking for reliable indicators of other skills, in addition to school pedigree and class rank, that will make law grads client ready.
    b. Gillian Hadfield: the Paul Beach quote about "worthless young associates" says more about the pressures on law firms from their clients rather than law firms' decision to hire new graduates. Firms need to be clearer about what it is that would be valuable to them. Final exams are predictive of what law schools have produced – people who can spot issues but who are not very informed on what to do about those issues or how to respond.
2. Dean Haddon: met with heads of law firms in Baltimore and explored this very issue, that people at the top of the law school class or at an Ivy League school get the job offers and not the people with the kinds of fundamental skills we are talking about here (judgment, leadership, and values). What they appeared to be interested in were other ways of assessing these skills and presenting them to potential employers. Part of the question of concern to law schools is COST: how are we going to be able to make this additional effort to make people client ready happen?
    a. Mike Millemann: some of the different teaching methodologies are cost-effective, such as team teaching and problem-solving embedded in core classes.
    b. Haddon: ABA Council on Legal Education is talking more about outcome measures rather than input (LSATs and college grades), which will require law schools to better demonstrate what they do and require transparent assessment of these skills.
3. Bonnie Allen: Moral formation of law students is also referenced in Carnegie Report. What can legal education do to help with the personal, ethical character formation of the lawyer, in the context of practice? Where is the lawyer formation in all of these changes in legal education?
    a. Jeanne Charn: it can't happen just in hortatory work. It has to happen in practice, which is why mentored practice in a clinic or after law school in

an apprenticeship training program is so important. There is nothing that substitutes for a student facing a problem and trying to figure out what to do, feeling at sea, being completely alert and worried, and then making a difficult decision/taking a chance. Once you do this the first time, a second time, a third time, you develop courage and backbone as well as different brain function when making judgment calls. Ethics as theory cannot be separate from practice.

b. Mike Kelly: it is frustrating that "ethics" is thought of solely as "legal ethics," which is not moral formation, it's learning the rules of the game. But in practice organizations, there are important lessons to be learned about the profound problems that worry all lawyers, young and old. Practice organizations are where the moral formation of lawyers in profession is happening and that is where we should examine how pressures on lawyers are impacting their ethical formation.
c. Gillian Hadfield: I don't think we have a moral crisis. The biggest ethical failing that we have is that we are not producing people who are good at solving other people's problems and certainly not for the amount they are being paid. We want to solve that problem. I am a fan of moral philosophy and moral judgment, but the fact is that law schools have a monopoly on legal education. This monopoly brings a responsibility to train young people well and we are not living up to that responsibility.
d. Robert Rhee: The way to teach ethics is to contextualize the difficult problems and ambiguities of decision-making by using case studies. He uses an Enron case study in one of his classes to reveal the structural and organizational problems facing the Enron professionals and highlighting their roles in the crisis. We take 22, 23, 24, year old students and give them a legal education, but their lack of world experience and experience working in organizations is perhaps why there have been ethical lapses and poor judgment in the profession.
e. Mike Millemann: wrote an article about developing judgment in a clinical setting with Luban. You develop judgment by emulating a model, you have to act and you have to engage with people in order to learn and internalize good judgment. Simulation is useful, but if you hope to teach judgment you have to have students assuming responsibility for, and with, other people, and then engaging in self-evaluation of that modeling and acting, where they learn what they did wrong and what they did right.
f. Ward Coe: Combine Mike Kelly's thought about legal organization with Gillian Hadfield's contracts team. Have the managing partner of each law firm identify that that the lawyers in the team are each billing different amounts, and then have the clients decide which of the lawyers they want working on the problem to solve it most effectively and with greatest cost-efficiency.

4. Lyle Baker, Suffolk Law School: Part of what we do with legal education is to take students through case studies and to devise principles of good conduct that are then applied to other contexts. Is there some talent that we are asking students to develop? It is not just a matter of having experience before law school. We

should determine admissions in a different way and examine whether they are bringing the best lawyers to the profession.

   a. William Henderson: the band-with of fundamental skills that have to do with analytical theory is quite narrow. But the band-with for these other competencies are broad and play a huge role in the real world, but are not a part of our admissions process. Rankings are important because you get buy-in from your alums and from prospective students. Rankings help provide leverage. Once you have reached a safe place in the rankings, then you can turn to changing programs. It is the first of a multi-step problem.

5. Reverend Ricky Jones: US District Court Judge Alexander Williams taught civil procedure—said that young attorneys don't know what "real life" is all about. Immersion is important, but New Hampshire goes too far. Getting the substantive law down is crucial. There should be a 5 credit hour class on the guidelines for litigation conduct. He has a multi-jurisdictional practice and each federal jurisdiction has different guidelines. He finds young attorneys very irritating, especially in discovery.
6. Diane Hoffmann: There is a lot of discussion of what we should *add*, but given that we have limited resources and limited time, what should we scrap?
   a. Mike Kelly: we're not talking about adding, we're talking about doing what we do differently. This means different methods of pedagogy, but not adding new material. There are always trade-offs in the classroom, determining which areas you cover in greater depth than others, but this is going deep in a different kind of way.
   b. Robert Rhee: What do we take out? We scrap and rework the entire 3rd year, adding in courses that look more like what Gillian Hadfield and Bill Henderson are talking about. Different types of classes, using different teaching methodologies, using interdisciplinary classes that allow students to try specialized tracks that go deep into a subject matter (e.g. health law, business law, international law, etc.). On the other hand, he likes the first two years because it takes a lot of class work to understand case law and statutes, to understand legal analysis and to write analytically about the law. Compare law school to business school, which is only two years. Business schools pack in a lot and at the end of two years of business school, an MBA student is able to execute complex merger transactions. How is that possible? (Their different methods of teaching.)
   c. Gillian Hadfield: "what to take out?" is an important point. We largely organize our syllabi around the idea that there is a finite set of legal rules that have to be conveyed to students within the 14 week semester. But that's the wrong way of thinking about teaching – we are heading into a world that is so thick with law, not just American law, which is ever expanding, but all these different jurisdictions. We are never going to teach anyone all that content of law. That is not the purpose of law school. When she teaches 1L Contracts and has her students writing memos, she has to go back and reduce the number of cases to 50. Ordinary first year Contracts classes use 150 cases, so that's the trade off.

But her students really remember the key material and what each of those cases means. We are teaching law students *how* to deal with law, not the law itself. Who knows what the law will be in Indiana for some regulation of franchise contract, that's not what she's teaching. She's teaching them what to do with that information.

d. Jeanne Charn: the 3rd year is troublesome. It is an added expense, $40-$50k at a private school, loading extra debt on students. It should be a structured learning experience that is managed in a different kind of educational setting. Harvard Med School radically changed its curriculum, switching from two years of intense classroom work with some clinical cases, to a problem-based model from the first year. They did this for the same reason Gillian just said – they can't keep chasing new medical knowledge, there is so much information they simply cannot teach it all, and instead we have to teach medical problem-solving. They randomized two classes into these different models, the conventional and the new curriculum, because the faculty had completely different predictions of what would happen to the medication students who had one kind of training as opposed to the other. It turned out that there were different strengths and weaknesses between the two programs at the margin, rather than something radically different, but when they tracked the graduates for a few years they saw the beneficial results they had hoped to achieve with the newer curriculum. If there are going to be changes to the law school curriculum, there has to be some way of assessing the impact of those changes as well as a clear understanding of what the benchmark is, some standard against which we can measure "what is better?" But law schools can't do that yet because we don't yet know what would happen if you tried one kind of teaching method as opposed to another. We also don't know what is valuable, we have no way of assessing whether you are a better lawyer if you do conventional legal education or something innovative.
e. Bill Henderson: What to scrap? Get rid of a whole lot of scholarship that nobody reads. It is very expensive to produce and labor intensive, distracting faculty from teaching and not adding practical solutions to solve real problems. But Faculty are churning out papers because it is the coin of the realm. Talk about incentives: for a few thousand dollars in a merit pool, people will write an article and not improve their teaching. That is patently ridiculous. Law schools should be in the business of teaching. They should be optimizing their teaching the best that they can for the $50,000/yr that they are charging students. Teaching well is really hard, figuring out what to measure in the classroom is really hard, and teaching judgment is really hard, and that is a 60 hr/week commitment. Let's not engage in scholarship for scholarship's sake. We are allocating scarce eyeballs to this work and very little of this scholarship ever gets read.
f. Mike Millemann: We've heard today descriptions of 6, 7, 8 different methods of teaching. You would not have to change any course

descriptions or any coverage. What needs to happen is that the law school, as an institution and not just a few teachers here and there, needs to decide to teach the subjects with a different method. Get rid of the repetitious, over-used, so-called "Socratic Method" in year 1, year 2 and year 3. Socratic can be useful, if done well, a couple of times. But what's really missing is a diversification of methodology.

g. Clark Cunningham: Three quick points: 1.) All we know about the 3rd year is that it follows the 2nd. There is no 3rd year curriculum. He challenges any law school to state: what are the learning outcomes of the 3rd year of law school. It is just a batch of electives at this point. 2) Take a close look at what Washington & Lee is doing with its 3rd year. It did not scrap the 3rd year – they insist that they are teaching intellectual property, international trade law, U.C.C. just as effectively as before – but through experiential methods. 3) Law schools should ask their graduates and their employers what needs to be done during law school. Use that as input. Georgia is in the process of changing its curriculum and conducted an informal survey of graduates. No one surveyed said, "I wish when I was in the law school there had been a substantive course in X, that's what would have made my education better." But law faculty will still sit around and debate endlessly whether to add new required courses, such as administrative law or international law. But that's not what employers and graduates are saying and their input needs to be heard. Far too often, when law faculty get into revising the curriculum, the only people they talk to are each other.

7. Mike Millemann: Where Do We Go From Here?
    a. Law Review is going to publish a symposium edition. August 1 is the hard deadline. There will be a written record of what came out of today.
    b. Website will post the day's proceedings.
    c. Possible listserv to be created so that this discussion can continue and we can continue to talk to each other.
    d. Michael, Jeanne and Robert: what is going on at Harvard?
        i. Mike Kelly: Harvard and New Law School collaborated on a conference (http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/events/future_ed/program) that discusses changes in restricting legal education because of changes in legal practice and the impact on hiring. The conference focused on getting rid of the 3rd year, proposing ways of getting through law school in 2 years or loosening ABA accreditation requirements. People at the conference agreed to assume projects, flesh them out, and bring discussion to Harvard conference in the fall. There is relatively little conversation about pedagogy, and they might appreciate something from us about all the different ideas about teaching methodologies that came out of today's discussions. Harvard uses mini-classes for first year students.

ii. Clark Cunningham: His understanding is that the New York Law School and Harvard conference is a three-part series. To be able to speak at the conference, you must have submitted concrete proposals for changing legal education, preferably collaborative proposals. Anyone here can put something like that together and submit it to Harvard to try and get on the agenda for that second part of the conference.
iii. Phoebe Haddon: Todd Breckwell (sp?) coming in September to U MD.

e. Lyle Baker: emphasizing again the importance of alumni. A conversation about changes in the profession needs to be with the profession.
f. Gillian Hadfield: we're really good at coming up with proposals and ideas, but the biggest obstacle is that hardly anyone teaching in a law school today wants to do anything different in the classroom. It is extremely difficult to get people to change. Teachers in law schools work out of their own, individual little silos and it is very hard to convince them to change. Mike is right in that you do not have to change much of the structure of the curriculum, you just have to change the way you teach it and it is not that hard.
g. Clark Cunningham: Making change is about incentives. Law schools and the profession can be much craftier about the way it uses incentives. Look at New Hampshire – if the NH Bar and the NH Supreme Court had just gotten together and handed to Pierce Law School a list of all the things they wanted to see change in the curriculum, nothing would have happened. Instead, they created an incentive by giving NH law students the option of NOT taking the bar exam and instead trying the special 2 year program. How did Pierce respond? They created a special tenured faculty position, hired a senior trial attorney who had never before been tenured, gave him two support staff. The State of Georgia is talking about more mild incentives, such as exempting students from the MPRE if they take a required professional ethics course. If they did this, there would be huge student demand for these courses. If there is student demand, then law schools will start to change. And these are good incentives because they cost nothing.
h. Mike Kelly: we need to be much cannier about how to lure law faculty into making these changes. Economic incentives are very important. Drawing the MD Court of Appeals into the conversation would also be interesting. There needs to be more conversation about ways to hook faculty.
i. Barbara Olshansky: providing information about the International Comparative Law Clinic program, which integrates lawyering skills, judgment and professional ethics. There are people trying to think of different things, and it did not take much economic incentive for her to teach that.
    i. Mike Millemann: In thinking about how to teach law students moral judgment, he could not help but think about the students

who came back from Namibia, Mexico, and China, who spoke about their transformative experiences.

j. Nancy Bonifant, an editor of the University of Maryland law review. There was a lot of resistance to publishing the proceedings of the conference among faculty and members of the law review. The articles that are going to be published are not typical, but she is excited to be publishing them. Simply creating dialogue and presenting these articles in national fora is going to be a great way of helping people understand the need for change. It is important to have these pieces written and accepted as scholarship.

k. Judge Fisher (sp?): After tackling the law profession and law schools, the next hurdle is going to be the courts. Courts need to be brought on board to understand that lawyers and the practice of law are changing.