Leading Change in Legal Education—Educating Lawyers and Best Practices: Good News for Diversity

Antoinette Sedillo Lopez†

I. INTRODUCTION

Two recent influential books on legal education, Educating Lawyers¹ and Best Practices for Legal Education,² come to similar conclusions about the problems with many legal education programs today. Many other suggestions for improvement in legal education programs are also similar.³ A major point made in both books is the need to train lawyers in their roles and skills as professionals.⁴ Educating Lawyers

† Professor of Law and Associate Dean for Clinical Affairs, University of New Mexico. I would like to thank the organizers of the Society of American Law Teachers conference, “Promoting Diversity in Deanships,” co-sponsored by Seattle University School of Law, for inviting me to join Paul Holland as a luncheon speaker on this topic. I appreciate the research support of Ernesto Longa, UNM Law Library.

2. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007). Mary Lynch and Albany Law School have created a blog with two goals in mind: 1) [T]o create a useful web-based source of information on current reforms in legal education arising from the publication of Roy Stuckey’s Best Practices for Legal Education and the Carnegie Foundation’s Educating Lawyers; and 2) to create a place where those interested in the future of legal education can freely exchange ideas, concerns, and opinions.
4. Educating Lawyers summarizes six tasks that law schools must perform in preparing students who integrate cognitive knowledge, professional identity, and skills:

1) Develop in students the fundamental knowledge and skill, especially an academic knowledge base and research; 2) Provide students with the capacity to engage in complex practice; 3) Enable students to learn to make judgments under conditions of uncertainty; 4) Teach students how to learn from experience; 5) Introduce students to the disciplines of creating and participating in a responsible and effective professional community; and 6) Create students who are able and willing to join an enterprise of public service.

SULLIVAN ET AL., supra note 1, at 210.
suggests focusing legal education on three apprenticeships for the practice, knowledge, identity, and skills, while Best Practices focuses on the specific cognitive and practice skills and professional and ethical values, and urges law schools and educators to develop coherent teaching objectives and curricula focusing on those skills and values. The specific suggestions in Best Practices for small group learning, collaborative learning, skills training, values education, cultural competence, professionalism training, personal and professional balance, and outcome-based assessment represent a potential for profound changes in the manner in which legal education is delivered in this country.5

The books both contemplate a move from the current model of large classes taught through modified Socratic dialogue to a sequenced set of courses and experiences that build on basic legal analytical skill and provide opportunities for real life and simulated practice experience. Assessment would become more outcome-based with genuine opportunities for students to receive constructive feedback on their skill development as it evolves.6 Different law schools would implement these changes as appropriate for their particularized communities.7 I believe that while those changes would benefit all future lawyers (and future clients of those lawyers), the changes would be particularly welcome for students of color and members of groups which are under-represented in law school.8

II. IMPLICATIONS FOR STUDENTS OF COLOR

Law schools around the country have varying levels of commitment to diversifying their student bodies.9 Many schools accompany their


6. SULLIVAN ET AL., supra note 1, at 235.

7. Stanford recently hosted a gathering of ten law schools at the William and Flora Hewlett Foundation to follow up on the suggestions contained in the report. The ten schools invited were CUNY, Dayton, Georgetown, Harvard, Indiana-Bloomington, New Mexico, NYU, Stanford, Southwestern, and Vanderbilt. See Jonathan D. Glater, Training Law Students for Real Life Careers, N.Y. TIMES, Oct. 31, 2007, at B9. This diverse group of schools will undoubtedly study a variety of approaches for various types of law schools.


efforts to diversify their students with academic support programs to help their “diversity” students navigate the law school experience.  

Academic support programs have evolved over time, but a common theme of successful programs is to develop ways of giving students meaningful feedback and guidance as they develop the analytical and writing skills necessary for success in law school. Many programs feature practice exams, meetings with tutors or professors, and diagnostic sessions. Professor Vernellia Randall’s program emphasizes building the skills sequentially. Many other academic support programs focus on learning styles, adapting appropriate study skills, and developing enhanced writing skills. Researchers have suggested the use of the student’s undergraduate major to assess potential strengths and weaknesses in legal reasoning abilities. While many of these ideas were developed to enhance the performance of diversity students, these practices are beneficial to all students. Utilizing Best Practices will make legal education more accessible and effective.

Academic support professionals have suggested the idea (which is endorsed in Best Practices) of using lawyers in the practicing bar to assist with the education of students. In addition to helping with the teaching mission, contact with judges and lawyers can help students who do not already know attorneys meet members of the legal profession.


12. Professor of Law, University of Dayton School of Law.


14. CUNY uses an academic support specialist as part of its teaching team. The academic support faculty member has been a major contributor to CUNY’s innovative curriculum of training for its diverse student body. Interview with Sue Bryant, Associate Dean, CUNY Law School, in Palo Alto, Cal. (Dec. 6, 2007).


16. This is not to say that law schools will no longer need academic support programs; however, those programs will be even more effective when coupled with more effective teaching and a more relevant curriculum.

Also consistent with Best Practices, academic support professionals have suggested collaborative and experiential learning experiences as more effective learning techniques, particularly for different learning styles. Collaboration ability and experience are critical in preparing students for the practice of law, particularly in diverse settings.

Academic support and legal writing professionals have advocated the use of formative feedback so that students can focus on their weaknesses. Formative feedback provides students information on their performance to enable them to improve performance before they receive a summative evaluation. Evaluating student outcomes—that is, whether students achieve teaching objectives that are tailored to preparation for the practice of law—will provide more accurate information about our graduates than the sorting that is performed by traditional law school exams today. Since the Law School Admission Test (LSAT) measures performance of an analytical skill that is further honed in most first year courses, broadening the performance criteria evaluated in our legal education programs will also benefit those with potentially excellent practice skills, but lower LSAT scores. Further, using criteria referenced assessment rather than norm-based

18. STUCKEY ET AL., supra note 2, at 105–63.
22. Feedback may also help students develop their “meta-cognition” skills. That is, feedback may help them understand what they are supposed to be learning. See, e.g., Andrea A. Curcio, Gregory Todd Jones & Tanya M. Washington, Developing an Empirical Model to Test Whether Required Writing Exercises or Other Changes in Large-Section Law Class Teaching Methodologies Result in Improved Exam Performance, 57 J. LEGAL EDUC. 195, 202 (2007) (describing study of two courses; students in the course with the required writing exercise performed better on the exam; unexpected result of required writing exercise in one course was that the group that benefited most were students with higher LSAT scores).
23. See SULLIVAN ET AL., supra note 1, at 163–76.
24. See, e.g., Ian Weinstein, Testing Multiple Intelligences: Comparing Evaluation by Simulation and Written Exam, 8 CLINICAL L. REV. 247, 248 (law school grades do not correlate with or predict success as a legal professional).
25. Criteria referenced assessment requires professors to use valid measures to assess whether students have achieved the professor’s teaching objectives. STUCKEY ET AL., supra note 2, at 243; SULLIVAN ET AL., supra note 1, at 162–84.
assessment would help avoid the competitive sorting that has historically disadvantaged many students of color. Assessment will focus on whether the student has mastered the material, not on a comparison of the students' performance. Thus, I believe that the ideas described in Best Practices are likely to benefit all students, but particularly students of color and those from under-represented groups.

An additional benefit of both books' suggestion to incorporate experiential learning opportunities will be the potential opportunity for students of color and other unrepresented groups to learn more concretely about the practice of law and to connect with their communities. Research has demonstrated the benefits of experiential learning for graduate students of color. In addition, scholars report that clinics are especially attractive to female law students and students of color. Thus, the move away from decontextualized, modified Socratic dialogue in large classes will better prepare all law students and, I predict, will result in better performance and preparation by diversity students.

26. Norm referenced assessment ranks students' performance as compared to each other, otherwise known as "grading on the curve." STUCKEY ET AL., supra note 2, at 243; SULLIVAN ET AL., supra note 1, at 168.


28. See, e.g., Suellyn Scamechcia, Serving the Most Important Constituency: Our Graduates’ Clients, 36 U. TOL. L. REV. 167 (2004) (using an outcome based assessment will help ensure that law students are adequately prepared to represent a client upon graduation).

29. STUCKEY ET AL., supra note 2, at 235–63. My own experience with the diverse students of color at UNM is that LSAT is much less of a variable in predicting success if the assessment is outcome based rather than criteria referenced. The UNM law school, with its excellent student faculty ratio and required clinic, has been a major factor in diversifying the legal profession in New Mexico. See Brief for New Mexico Hispanic Bar Ass'n et al. as Amici Curiae Supporting Respondents, Grutter v. Bollinger, 537 U.S. 1043 (2003) (No. 02-241), reprinted in 14 BERK. LA RAZA L.J. 51 (2003).


Finally, *Best Practices* clearly suggests that a legal institution must be diverse to gain the educational benefits of diversity. A diverse institution will help students become more successful in serving diverse groups of clients and working with diverse colleagues. *Best Practices* also posits that law students should receive specific training in "cultural competence" to further enhance these strengths. This will benefit all students, but again, will be particularly welcome for law students from under-represented communities.

III. HOW TO MAKE LASTING CHANGE IN AN INSTITUTION

Individual law professors can incorporate many of these ideas in their teaching, but how can a law school make broader institutional changes? A dean has an important leadership role in improving legal education in her or his institution. For example, funding priorities in discretionary spending can move the institution to be more effective in its educational mission. Easy approaches to supporting teaching excellence are to allow extra compensation, release time, and other incentives for professors who work on their teaching, supporting committee work, and curriculum. However, lasting curricular and institutional educational change must come from the faculty. Thus, the dean's role is to use the power of the position to persuade and lead educational reform.

Curricular reform involves taking the institution through an education process in which faculty members review *Educating Lawyers* and *Best Practices*. The reading of those texts should produce multiple opportunities for reflection and discussion. Ideas stemming from the readings, reflection, and discussion should lead to a process of developing ideas for improvement and subsequent implementation of those ideas. Of course, this process should not stop at that point; the implementation should be evaluated and reflected upon. Then the cycle should begin again. Through this process a dean can help the faculty rely on its expertise to develop an educational program that is responsive to the needs of its students.

33. STUCKEY ET AL., supra note 2, at 89.
This conference, sponsored by the Society of American Law Teachers and Seattle University Law School, to promote an increase in the number of deans of color in the legal academy is a very exciting opportunity for all deans, including deans of color and potential deans of color, to think about their role in the legal academy. Increasing the number of deans of color in the legal academy will not only integrate law school leadership, but it has the potential to transform legal education. *Educating Lawyers* and *Best Practices* are important resources for implementing this change.