

**Report on Future Ed: New Business Models for U.S. and Global Legal Education Conference
At New York Law School, April 15-16, 2011 by Jenni Parrish**

This report will highlight selected aspects of this two-day conference held at New York Law School. For more explanation, especially of the programs I don't discuss, please go to http://www.nyls.edu/centers/harlan_scholar_centers/institute_for_information_law_and_policy/event/s/future_ed/fe3_program where links to parts of the program will be inserted soon. As noted in the program (see Appendix), this was the third of three conferences co-sponsored over the last year by Harvard Law School and New York Law School looking at innovation in legal education to predict likely future directions. When I asked another participant why the previous two conferences had not been widely publicized, he indicated that the first two conferences included only invited participants. While feeling at a slight disadvantage for not having participated with the other 100-150 legal academics in the yearlong enterprise, I nonetheless found much in this third conference to chew on as we ponder the challenges of legal education in the 21st century. The first day was exciting, the second day was disturbing. I observed it all with a view toward the challenge of persuading the Hastings Law Faculty to look at alternative legal education delivery mechanisms.

On the first afternoon, each presentation was 7-10 minutes with a question/answer period after every two to three presentations. These were projects developed over the last year and at the end of the day, all participants were to allocate up to \$1,000,000 virtual dollars to these projects according to how innovative we thought they were. The good news was nothing got boring; the bad news was that there was very little detail regarding many of the proposals. I touch on some of them here as they may prove useful at Hastings going forward. I tended to be most attentive to technology-enhanced law teaching and to any discussion of student learning outcomes.

The second program on the first day related to Student Learning Outcomes and the sole speaker present was Henry C. "Corky" Strickland from Cumberland School of Law. The most interesting point that he made was that involving practicing attorneys in determining outcomes may push more faculty toward accepting this new way of assessing a law school's teaching effectiveness. He suggested creating focus groups from the local bar to figure out what the law school should be including and/or emphasizing in its curriculum.

The third program of the first afternoon outlined a transactional skills curriculum that included Contract drafting (not a writing course but more an introduction to transactions), Business Basics (how to cut a deal, basic financial literacy, risk management, how the stock market functions, time value of money), Skills courses, and Simulation courses (a capstone experience). The presenter was Tina L. Stark of Emory University Law School (but she told me at the break that she is moving to Boston University Law School next year). She said that anecdotal evidence is strong that this kind of curriculum places recent law graduates on a par with many 2d year associates already in the firms. Tina Stark was just a dynamite speaker. If Hastings was ever inclined to move in this direction, she would be a good speaker to bring in to talk about it. I will pass this information on to Heather Field who seems to be moving us down this path with her new course on Financial Literacy for Lawyers.

The fourth program was "Anatomy of a Controversy: The Study of a Major Lawsuit from Complaint to Resolution" and the creator and presenter was Dennis Greene from University of Dayton Law School. This is a synchronous online 14-week seminar. It sounded absolutely fascinating.

The fifth program outlined Washington & Lee's experiential third year program which has proven to be so popular that it will be fully implemented for all 3Ls in 2011-12. It is an elaborate 12-week simulation after a 2-week skills immersion course. James Moliterno, the presenter, indicated that the substantial involvement of the local bar made this new program very cost-effective. He also indicated that faculty members who did not wish to participate in the program, did not have to do so, but he did not have time to explain what a law school does if a very substantial number of faculty do not wish to participate.

The sixth and seventh programs seemed to be about various ways to involve law firms or corporate law departments (e.g., Pfizer) in the development of law students from the day they walk in as 1Ls until the very end of their careers (thus "Cradle to Grave" was the subtitle of one of the talks).

The eighth program was "Law Without Walls: Innovating Legal Education and Practice." Michele DeStefano Beardslee, a very dynamic faculty member from the University of Miami Law School spoke about this project where six law schools in three countries are collaborating to "find the gaps and mine the gaps."

The ninth program was about assessing distance learning methods in law schools and the presenters were Rebecca Purdom of Vermont Law School and Larry Farmer of BYU Law School. While higher education generally is moving more and more toward distance education, the ABA is still placing (arguably unrealistic) limits on accredited law schools in how much of the degree program can be DLE (currently no more than 12 hours can be DLE and no first year courses can be DLE; hybrid courses where the distance education component is 50% or less does not count against the 12 hour maximum; some people say that a hybrid course is 1/3 or less online). Clearly, Purdom and Farmer want to shape the changes they consider inevitable in the ABA's strictures on DLE. They are putting together a conference in the fall (October 2011) somewhere in New England that will be totally devoted to DLE.

The last three programs, the 10th through the 12th, dealt with "apps for justice," simulated environments for working with clients, and "gamifying" legal learning, literally creating games that law students can play on their iPhones or iPads that will help them learn basic legal concepts. The common theme here was the use of advanced, and very sexy and unserious technology to convey serious legal learning.

In the final one hour Q/A session, the theme of all the questions seemed to be: how can we decrease the amount of time spent in law schools without cheapening the degree? Someone pointed out that medical schools use cadavers so that students won't make mistakes on live patients. Then interns are allowed to practice medicine, but with close supervision.

How do we change? What is quality? What is an acceptable outcome? How do we measure success? Law firms want to know why law schools haven't yet solved the problem of unprepared law graduates hitting their doors.

One questioner, apparently the only Canadian in the room, said that Canadian law schools have tried the one year practicum, but for a variety of reasons are now doing away with it!

The final words of the first day came from Rick Matasar, Dean at NYLS, who said there are three reasons why people change: fame & glory, money, fear. And David Wilkins of Harvard Law School said that law schools have always had two missions, the practical and the theoretical. The genius of law

schools is in not separating these two missions. Thus ended the first day, a truly inspiring glimpse at the innovative spirit among law faculty members who are determined to make law school better.

The second day had a totally different tone. The weather outside had gotten a lot bleaker and that fact seemed to be reflected in the five hourlong presentations on this day. Rick Matasar kicked things off by reiterating his faster/cheaper/better theme from the day before. Why, he asked, are students still coming to law school in light of the persistent bad job market for law graduates? He identified several possible answers including service to others, autonomy issues, the monopoly for licensed lawyers, and for some a lack of alternative career possibilities. But ultimately the question becomes one of sustainability: how long can law schools continue to graduate such large numbers of new lawyers who cannot find work as lawyers and who graduate with enormous amounts of debt? In rapid-fire fashion, he outlined all sorts of criticisms and responses to the ills besetting legal education in the recent past and the future we can anticipate. He did assert that even if New York Law School cut its tuition by 20%, it would save only \$206 per month in the debt service for the average NYLS graduate, not enough to make much difference to the graduate and yet it would be a huge hit for the law school.

Better is expensive: clinics cost money, lowering teacher/student ratios costs money, hiring adjuncts to broaden the course offerings costs money, technology costs money. "Oy!" Some barriers must fall if Better will be Cheaper. These include the terms and conditions of faculty employment (will tenure give way to long term contracts?), the number of full-time faculty that law schools can afford, the physical plant (shared offices??), the duration of the typical JD program may have to be reduced to make a legal education more affordable, the ceiling of 20 hours/week on student employment may have to be relaxed, the ABA may have to allow more than 12 hours of credit for distance legal education.

Change is coming fast. Law schools will have to develop more "products" beyond just the JD degree, i.e., certificate programs, a variety of LLM programs, continuing legal education programs, etc. Successful law schools will combine the traditional regional vs. national models, the teaching-focused with the research-focused. Law schools will need to develop consortia and have cooperative course offerings. For example, since 9/11, every law school has struggled to offer courses in terrorism and the law. But really, how many terrorism experts are out there? What if a single terrorism expert was shared among several law schools?

Libraries will have to share collections, LWOW's (Law Without Walls) will develop and spread, and law schools will develop alliances with employers comparable to NYLS' connection with IBM where the future employer gives some input on the direction of the curriculum, etc. We will need to consider accelerating programs so that students spend less than the usual 4 (undergrad) + 3 (JD) + 1 or more for advanced degrees. We will need to disaggregate. For example, why have five faculty members teaching five sections of Torts when you could have 1 faculty member teaching Torts and all five sections would observe the lecture on their PC? According to Matasar, faculty members need to disconnect from the traditional modes of imparting legal information and focus on what humans do best: sharing expertise, mentoring, bestowing wisdom. Every faculty member must become a skills trainer. "Once more with feeling: better, faster, cheaper!"

The next two talks were about leveraging technology and leveraging the tenured faculty role. The first talk was delivered by three different people, but the common theme was that we must utilize technology in the classroom to deliver the nuts and bolts basics of a legal education as cheaply as possible.

The next talk was on “leveraging the tenured faculty role” and was delivered by Richard K. Neumann of Hofstra University School of Law. The basic theme here was that while creativity in academic settings is often enhanced by job security (tenured faculty can take more risks), things have gotten a bit out of control. Not so long ago, law schools were operated on the principle he describes as the “Langdellian bargain,” i.e., “Langdell argued—and his university president, Charles Eliot, was persuaded—that large numbers of students could be taught law economically in big classes, and that the result would be professional learning because students in class would do more than passively receive information, as they would in a lecture....[due to the use of the Socratic method].” (Neumann’s handout, p. 3). The problem is that law schools have succumbed to the pressures to add clinics, seminars, other kinds of small group teaching experiences, and have consequently greatly expanded the number of faculty members hired, many of them tenured or tenure-track. The “bargain” no longer exists.

He went on to assert that because of the importance of scholarship for granting tenure and because so many law schools are becoming tuition-driven, “....students and graduates are not aware that part of their debt was incurred to pay faculty to write law review articles. Students are also not aware of how little teaching gets done to free up faculty to write those articles. When we were all students ourselves, typical teaching loads were four or five courses a year. Now many faculties have lobbied successfully to teach three courses a year—so they can write more articles.” He goes on to question just how many law review articles written by law faculty are really worthwhile, given the decrease in attention paid to law review articles by legislatures, the courts, and the bar. All in all, his talk was a searing indictment of business as usual within today’s law school environments. The audience was awake and there was pushback, but there was an uneasy tenor to the whole environment as if some really unpalatable truths had been unleashed for consideration.

The fourth talk that day was entitled “Lessons from Engineering.” Richard Miller, an engineering professor at Olin College of Engineering in Massachusetts, talked to us about how different his school is from the typical huge university engineering department. He started out talking about how he and a group of like-minded engineering faculty members, being unhappy with the traditional method of teaching engineering, have undertaken a new and challenging kind of engineering education. He started with the question: What is an engineer? Possible answers: An engineer is an applied scientist, a designer of a system, a creative problem solver, a project/team leader,”to engineer is to make”....an engineer is a person who envisions what has never been and does what it takes to make it happen.” Miller went on at length about what an engineer needs to know and how an engineer ought to be educated. So, how does Olin do the job? He started with the applicant’s interview. It goes on for a weekend during which time the prospective student builds things in teams, makes presentations, and generally is much more thoroughly vetted for an ability to get along in that environment than is true for most students applying to undergraduate engineering programs.

Olin College has no academic departments, no tenure, low tuition, is focused on continuous improvement which inevitably means there will be an expiration date on the current curriculum, and the learning culture is far more important than maintenance of the current curriculum. Student engagement and student satisfaction are critically important. Olin has 50 % women students as opposed to the 18% found in most engineering schools. “Having women on the teams changes the conversation.” Women are more focused on how engineering projects will change people’s lives. How do you get so many women students? Miller said that at the weekend of initial interviews, they are looking for “multiple intelligences” and that most women are more sensitive to group dynamics than are men. Next question: This is an interesting profile of the kind of student you want, but shouldn’t you be

trying to change the whole population? His answer was that they're not trying to change the whole population of engineers, but rather to create leaders. Olin is creating partnerships with the University of Illinois Engineering School and with Stanford's engineering program to create even more student opportunities and engagement. The next question was: how do you engage Olin's students? Assessments are a constant. It's a small community and faculty and students dine together. There is more faculty/student interaction outside the classroom than inside. Olin is not satisfied with the degree of racial and ethnic diversity it has achieved so far. 25% of students are non-white, but most of those are Asian. On the faculty, there are 40% women. 20% of the whole faculty is foreign as opposed to 50% in most engineering schools. The final question to Mr. Miller was how much research does the Olin faculty engage in? All faculty must be involved in research. The normal teaching load is 12-14 credit hours per year. There is more focus on quality of scholarship rather than quantity and national visibility matters.

Now, why, you may be asking, was Mr. Miller's talk about this innovative approach to engineering included in a two-day program on the future of legal education? I suppose that different members of the audience might have different answers, but to me, his talk emphasized the need for change from business as usual in academia. Costs must be kept low. Faculty must be willing to change the curriculum often so as to enhance student learning outcomes in a fast-changing field. Diversity is important. No tenure means lower costs and no one can assert his God-given right to resist change. In the guise of a very friendly and interesting talk about an academic experiment, there was a not-so-subtle lesson that the status quo cannot be sustained in any higher education environment.

The final speaker of the day was James H. Shelton III, Assistant Deputy for Innovation and Improvement, U.S. Department of Education. My notes on his talk are a bit less comprehensive because I was eating lunch while he spoke. But some of his ideas were worth noting. He focused on technology and how it will change, and is changing, everything. Technological systems will soon figure out what you're trying to do and what you want before you can fully articulate it yourself and then do these things for you. Scary world.

Industry is tired of having to train or re-train recent graduates. The public is also tired of paying for all kinds of (inadequate) education. There is an increasing demand for accountability.

Mr. Sheldon warned that we are facing a kind of bubble with student debt loads that could be analogized to the mortgage foreclosure crisis. This was met by absolute silence in the room and later during the Q/A, when asked to clarify, he did clarify that he had said just that.

However, Mr. Sheldon was not there to scare us. Rather his message was that there is an opportunity here. He is in charge of educational innovation in the United States. He feels that we are under-investing in educational R&D. We do not develop courses based on scientific research regarding memory, group problem solving and creativity, but rather on what kind of teaching we got as students. That must change. We know so much more today about how humans learn than was true when we were all students. It must be utilized and we must focus on learning outcomes, controversial though they are. He made the point that innovation often looks like "bad acting" early on in the process. Teachers must be allowed to take risks and even make mistakes in order to bring about the necessary changes in American education. We have to focus on retaining and graduating more students and we cannot do that if we are teaching them yesterday's skills.

As I have already indicated, the talks on the second day were far more sobering than those on the first day, and far more thought-provoking. Everyone agrees that the landscape of higher education is changing. The innovative ideas discussed on the first day were about the individual efforts being made to create change in individual law schools. The ideas discussed on the second day were more about major trends that are bringing about nearly overwhelming changes in how American legal education is/will be delivered. The first day was fun, the second day was chilling. As indicated, there was some audience pushback on some points but nobody said anything like: "I don't believe this is going to happen."

I hope that something like this conference happens again in the future. It's disappointing that this conference happened separate and apart from AALS. I do know that a conference devoted to distance legal education will occur in October somewhere in New England, details to come soon. I would suggest that the next step is that Hastings needs to start having an internal conversation about some of these ideas, especially the importance of student learning outcomes. I have begun to talk to faculty individually about this idea and they are quite interested to know what it is all about. With both WASC and the ABA emphasizing the importance of student learning outcomes, the time is ripe for moving ahead with at least that piece of the puzzle that is the future.

Appendix

Future Ed 3 – Preliminary Program

Friday, April 15

12:00 – 12:30 p.m. Welcome (Elizabeth Chambliss, Richard Matasar, David Wilkins)

12:30 – 1:00 p.m. Explain Format of Conference (Elizabeth Chambliss)

1:00 – 5:45 p.m. Angel Fund Pitches

Everyone at the conference gets \$1 million in virtual currency and decides whom to back and how much. Results to be announced at the close of the conference on Saturday. Question for each proposal/team is where the big law school team should invest its resources (including faculty and student time). Audience to fill in a paper form to allocate among projects.

Each "pitch" gets 7 minutes, plus 3 minutes each to respond to in-group competitors, followed by comments and questions from the audience (10-15 minutes). Below are the groupings and schedule for presentation. Final proposals will be posted on April 1.

1:00 p.m. Group 1 (7-7-3-3-10)

- Predictors for Successful Lawyering: Rethinking Law School Admissions (David Oppenheimer & Kristen Holmquist)
- Learning Outcomes, Practicing Lawyers, and the Berkeley Effective Lawyering Predictors (Lori Shaw, Henry C. ("Corky") Strickland, & Howard P. Walthall, Sr.)

1:30 p.m. Group 2 (7-7-7-3-3-15)

- A Transactional Skills Curriculum for a New Century: The Need to Incorporate Practical Business and Transactional Skills Training into the Curricula of America's Law Schools (Tina L. Stark & Eric C. Chaffee)
- Anatomy of a Controversy: The Study of a Major Lawsuit from Complaint to Resolution (Dennis Greene)
- Washington & Lee's Experiential Third Year: Description and Implementation (James Moliterno)

2:15 p.m. Group 3 (7-7-3-3-10)

- Training New Lawyers: Post-Graduate Partnerships between Law Schools and The Legal Profession (Rachel Littman & Christine Mooney)
- "Cradle to Grave" Legal Professional Development (David Wilkins, Scott Westfahl & Cory Way)

2:45 p.m. Break

3:00 p.m. Group 4 (7-7-7-3-3-15)

- Law Without Walls: Innovating Legal Education and Practice (Michele DeStefano Beardslee & Michael Bossone)
- Knowledge Management in Legal Practice—Virtual Externship (Tanina Rostain, David R. Johnson & Paul Lippe)
- Assessing Distance Learning Methods and Success in the Law School Setting (Rebecca Purdom & Larry Farmer)

3:45 p.m. Group 5 (7-7-7-3-3-15)

- Apps for Justice: Learning Law by Creating Software (Ron Staudt & Marc Lauritsen)
- Standardized Clients and SIMPLE (SIMulated Professional Learning Environment): Learning Professionalism through Simulated Practice (Karen Barton, John Garvey & Paul Maharg)
- Seriously Gamifying Legal Learning (David R. Johnson & Tanina Rostain)

4:30 p.m. Break

4:45 p.m. Audience Comments and Discussion (60)

Moderator: Elizabeth Chambliss

6:00 p.m. Reception and Dinner (Golden Unicorn, Chinatown)

Saturday, April 16

8:00 a.m. Continental Breakfast (breakout rooms available)

9:00 a.m. Investment Forms Due

9:00 a.m. Keynote

Speaker: Richard Matasar (Dean, New York Law School)

We spend real dollars and they are our students' dollars. Even if we didn't do anything new and different, how can we save money while preserving quality?

9:30 a.m. Leveraging Technology

Speakers: Burck Smith (CEO, Straighterline)

David Thomson (University of Denver, Sturm College of Law)

Moderator: Barry Currier (Dean Emeritus, Concord Law School)

10:30 a.m. Leveraging the Tenured Faculty Role

Speakers: David Yellen (Loyola University Chicago School of Law)

Richard K. Neumann, Jr. (Hofstra University School of Law)

Moderator: Gary Tamsitt (Australian National University College of Law)

11:30 a.m. Break

11:45 a.m. Lessons from Engineering

Speaker: Richard Miller (President, Olin College of Engineering)

Moderator: Carole Silver (Indiana University Maurer School of Law)

12:30 – 2 p.m. Lunch and Keynote: Everything Will Change: Even Law School

James H. Shelton III (Assistant Deputy Secretary for Innovation and Improvement, U.S. Department of Education)

2 p.m. Announcement of Virtual Investment Winners

2:30 p.m. Conference Close

Co-hosts:

