Ms. Andrea Sinner  
ABA Commission on the Future of Legal Education  

Re: Submission to the ABA Commission on the Future of Legal Education  

Dear Ms. Sinner:  

I am pleased to submit the following responses to the ABA Commission on the Future of Legal Education's call for testimony.1

Response to Question 1 (How can law schools prepare students for the law jobs of the 21st century? What are the new skillsets not traditionally included in law school curriculum?)2

There are many features of the traditional law school curriculum that serve law students quite well in a rapidly changing world. Legal analysis, a close reading of texts, clear writing and thinking, and an ability to discern good arguments from bad are all valuable skills and will continue to be so. Law schools (particularly through experiential education) also help students to develop essential law practice skills in the areas of fact investigation, negotiation, oral and written advocacy, problem solving, document drafting, and client counseling.

These skills are important and necessary, but they are no longer sufficient. Students should also be able to identify how technology and other innovative methods can be used to deliver legal services better, faster, and cheaper. Put simply, students will still need to “think like a lawyer,” but they will need to “think like 21st century lawyers.”

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1 I am responding in my personal capacity. My views do not necessarily reflect those of Suffolk University Law School or any other entity with which I am affiliated.

What does this mean specifically? The answer varies depending on the school, but at the school where I serve as dean (Suffolk), it means exposing students to concepts like legal project management and process improvement, legal design (story here), automated legal document assembly, expert system tools, electronic discovery, and other areas as well. We're also teaching students how to innovate the operations of a law practice to make legal services more affordable for currently underserved clients, and we are giving students paid opportunities to learn about new delivery options.

We're certainly not the only ones pushing the envelope. A growing number of law schools (and universities) have developed an expertise in this area and have emphasized a range of related skills, such as legal analytics. Here’s a partial list of such schools.

BYU Law – LawX, A Legal Design Lab

Columbia Law School – Lawyering in the Digital Age Clinic

Duke University School of Law – Law Tech Lab

Georgetown University Law School – The Program in Legal Technologies

Harvard – Center on the Legal Profession and LawLab (housed at Harvard’s Berkman Center for Internet & Society, but with many collaborators)

Hofstra University School of Law – Law, Logic, and Technology Research Laboratory

IIT Chicago Kent College of Law – Center for Access to Justice & Technology and The Law Lab

University of Miami School of Law – Law Without Walls

MIT – Computational Law Research and Development

Michigan State University College of Law – Legal RnD

Northeastern University School of Law – NuLawLab

Northern Kentucky University Chase College of Law – Lunsford Academy for Law, Business, and Technology
Northwestern Pritzker School of Law – Technology, Innovation, and Entrepreneurship Concentration

University of Pittsburgh School of Law – Innovation Practice Institute

Stanford – CodeX The Stanford Center for Legal Informatics and the Legal Design Lab

Suffolk University Law School – Institute on Law Practice Technology & Innovation and Concentration

Vanderbilt University Law School – Program on Law & Innovation

Vermont Law School – Center for Legal Innovation

These innovations are paying off. Students are getting jobs that did not even exist a few years ago, such as in legal project management, knowledge engineering, and legal solutions architecting. For example, when Suffolk Law graduated its first group of students with some coursework in these new areas, employers specifically reached out to recruit them. (See, e.g., here.) Granted, this is hardly an empirical study (the sample size is still small), but the available evidence suggests that legal employers are increasingly looking for students who have learned the skills taught at the schools referenced above.

Anticipating Objections

One objection to updating the curriculum in the way that I have outlined here is that law schools should not try to teach all of the knowledge and skills that students need for professional success. Legal education is premised on the idea that considerable learning takes place on the job, so one could argue that the new areas of study, even though important, should be learned later.

To be sure, considerable learning needs to take place on the job, but we should want our students to have learned enough in law school so that, when they see a particular problem or issue in practice, they have a reference point for how to deal with it. They need to be able to “issue spot.” The new skills and knowledge described above are simply giving students the ability to engage in a new kind of issue spotting. That is, students should know these new concepts sufficiently well to identify when they can be deployed to deliver services more effectively and efficiently.
A more important reason to offer this kind of education in law school is that students will not necessarily develop the skills in practice. Although the industry is rapidly evolving, many junior lawyers will join practices where few people have these new skills. Put another way, the knowledge that described above is less likely to be learned on the job than traditional practice skills and doctrinal subjects because the knowledge is so new and most lawyers are not expert in these areas. In this sense, junior lawyers will not be learning these new concepts on the job; rather, they may be educating their superiors.

The flipping of the traditional information flow has another benefit: it increases the relevance of junior lawyers. At a time when the value of a young associate is increasingly questioned, law schools have an opportunity to give their graduates a knowledge base and skillset that clients increasingly demand and that most legal employers lack. In short, teaching these new skills will position law schools and their graduates as leaders of a profession at the cusp of significant change.

A second possible objection to this new curriculum is that the skills will be quickly outdated. This argument, however, proves too much. In law school, we regularly teach students about doctrines that have changed or are likely to change. When we teach an area of law (say an older, but now discarded, doctrine), we do so to convey both a conceptual point and a way to think about an issue. In much the same way, teaching law practice technology and innovation is designed to help students think in new ways about legal services. The technology will change, but the mindset will serve graduates well throughout their careers by giving them the conceptual tools they need to improve how legal services are delivered and accessed. This will make them more competitive and better able to serve their clients and the public.

Response to Question 2 (What can law schools do to further progress on access to justice?)

There are many possible ways for law schools to improve access to justice, but I will focus on one that draws on my answer above. Namely, law schools should teach students how to deliver legal services as efficiently as possible so that future lawyers have the tools they need to drive down the cost of legal services and address the public’s unmet legal needs.
A. The Standard Law School Curriculum

For more than a century, law schools have relied on an educational model developed by Harvard Law School’s Christopher Columbus Langdell. The Landellian method requires students to read appellate opinions, extract from those opinions basic legal doctrines and principles, and apply those doctrines and principles to a set of facts that students have never seen before.

In recent decades, law schools have supplemented the Landellian approach by teaching a wider range of skills. For example, most law schools now have live clinics, where law students represent real clients under the supervision of seasoned clinical faculty members while learning numerous important skills, such as fact investigation, negotiation, oral and written advocacy, document drafting, and client counseling. Law schools also have introduced more legal research and writing instruction, various kinds of simulation courses, and other opportunities to gain different kinds of practical experience while in law school.

The relatively recent expansion of experiential education in law schools has been important and valuable, but the standard curriculum nevertheless has a notable omission: law students still graduate without knowing how to minimize the cost of their services. In other words, the standard curriculum leaves future lawyers largely unprepared to address the access to justice crisis.

B. Teaching the Efficient Delivery of Legal Services

Law schools can better serve students and the public by teaching students the knowledge and skills needed to deliver legal services in new and more cost-effective ways. For example, a few law schools have developed concentrations – a bit like law school majors – that teach concepts long used in the business world to improve effectiveness and efficiency, such as project management, process improvement, design thinking, and data analytics. Others are teaching students how to use specific technologies that can drive down costs, such as automated legal document assembly, online law practice management tools, and the effective use of basic law office software, such as Microsoft Word and Excel.

Some law schools are giving students opportunities to apply this knowledge to real-world situations. For instance, at Suffolk Law, we have created a Legal Innovation and Technology Lab (LIT Lab), where students help legal services organizations perform their work more efficiently by using new technologies, like automation, and modern methods, like data analytics. The LIT Lab is essentially a new kind of clinical program where the “client” is an organization,
such as a legal aid office, that wants to make more efficient use of limited resources. LIT Lab students review the organization’s processes and help it develop and implement cost-saving solutions. In addition, we embed an “innovation fellow” in clinical programs to give students an opportunity to improve the efficiency of the clinic. We also have established an Accelerator to Practice Program, a comprehensive three-year course of study and practice that prepares students to join or start a law firm that serves average income individuals and families. The award-winning program includes training in legal innovation and technology and an opportunity to manage the law school’s embedded fee-generating law firm. Through these kinds of programs, students help to improve access to legal services while in law school and develop skills that prepare them to deliver their services more efficiently throughout their careers.

Law schools can also make this knowledge and expertise available to more experienced legal professionals through continuing legal education programs, certificates, and new degrees. Law schools have long helped the profession remain up to date on changes in the law, but law schools can have an impact on access to justice by helping seasoned lawyers retool and learn new and more efficient ways of delivering their services.

To be clear, teaching law students and more established legal professionals to be more efficient is not a panacea. Because of deep structural problems, significant unmet legal needs will exist even if law schools teach lawyers to become much more cost-effective. Nevertheless, by supplementing the standard law school curriculum with new kinds of knowledge and skills, law schools can help to address the access to justice crisis in ways that have been largely overlooked.

Conclusion

Thank you for the opportunity to submit this letter to the Commission, and do not hesitate to let me know if you would like any additional information.

Sincerely,

Andrew M. Perlman