The Dean’s Office: Three Questions About Legal Education

By David Yellen
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The winds of change are swirling around legal education. Many of the critical challenges we are facing today involve the following three factors: capacity, cost, and quality. Are there too many law students, law schools, or both? Why is law school so expensive? Are law schools doing an adequate job of preparing students for their careers? (Note: I have explored these issues in a little more detail in recent posts at The Faculty Lounge.)

The first decade of this century was a boom time for law schools. From 2000 – 2010, first year law school enrollment increased around 20%, from 43,000 to 52,000. The number of ABA accredited schools went from 183 to 200. Jobs seemed plentiful in the first half of the decade, there were strategic advantages to growth and many universities felt it was prestigious to add a law school. Since 2010, the number of applicants has tumbled about 40%. First year enrollment dropped to 44,000 this year. In the fall of 2013, as few as 40,000 students will enroll, representing the smallest number since the 1970’s.

This decline in enrollment is a good thing, given the job market. Fewer than 60% of the class of 2011 had permanent, full-time jobs requiring a JD nine months after graduation. The Bureau of Labor Statistics is projecting around 22,000-25,000 lawyer jobs per year, counting growth and attrition.

These numbers are certainly not the whole story….  

Some law school graduates (but I do not believe as many as some schools suggest) do very well in jobs not requiring a JD. The After the JD Study has shown that law graduates as a group do better the longer they are out of law school (although we need similar studies of graduates since the Great Recession). But it is clearly a very difficult time for many law school graduates and there is nothing to suggest that things will get much better any time soon.

I believe that we will probably see some further declines in enrollment, perhaps to around 35,000 students per year. That would be a 33% decline in enrollment in just a few years. Ironically, this is an instance where pressure generated by the often pernicious U.S. News rankings has pushed law schools in a positive direction. On the other hand, predictions that many schools will close seem more unlikely to me, as even weakest schools will probably choose major downsizing over closing.

The issue of right-sizing legal education is particularly important because of the cost. Average tuition at private law schools has gone up 2½ times the rate of inflation since 1985 — from
$8,000 to $40,000 (the true average increase is less, because scholarship spending, principally in the form of merit scholarships for students with high GPAs and LSAT scores, has gone up dramatically, too). A typical law student, graduating with over $100,000 in debt, faces a considerable financial burden.

Many factors have contributed to this level of tuition increase, and this trend goes far beyond law schools. Yes, salaries for many faculty members have gone up, but not nearly at the rate of tuition. The most important factors have been competition and rising expectations about what law schools should do. Competition usually drives prices down, but in higher education, with the mix of almost limitless federal student loans and relative price insensitivity among students, the opposite has occurred. In an effort to raise academic prestige (a race that has been very much fueled by U.S. News), most law schools have hired more traditional faculty, who often now teach less and research more. To enhance the student experience, we have also hired more clinical and other experientially-based faculty. Law school administrative staffs have also grown greatly in areas like student services, technology, career counseling, public service programming, fundraising and communications.

Even with the downturn in applications, tuition has not come down, although some schools have frozen tuition, and the rate of increase is down dramatically at many other schools. Selective discounting through scholarships continues to grow. I know that this is very unsatisfactory to many, but it is very difficult institutionally to cut nominal tuition. Even if a law school wanted to cut tuition, its parent university might well refuse to agree. Dean Roger Dennis has described how a private law school could operate effectively while charging $20,000 per year. Unfortunately, this model would require modifications of the ABA Standards. Perhaps some new schools, or some failing ones, will go as far as possible down this path, forcing others to follow suit.

The law school experience today is much better than when I went to law school in the 1980s. Back then, law school focused more heavily on reading and class discussions about appellate cases and statutes. There were a few variations in the second and third year (I thoroughly enjoyed my trial advocacy class and the legal aid clinic in which I worked), but overall, the three years were quite similar.

Today, many more students take advantage of clinical or externship opportunities. There are simulation courses, not just in trial advocacy and other litigation areas, but in transactional legal work as well. There are more opportunities to learn things like interviewing, counseling, negotiating, law practice management, etc. There is growing collaboration between law schools and with lawyers in identifying and sharing best practices.

The picture is not entirely rosy of course. We are not nearly as devoted to experiential learning as are medical schools (and never will be, given the different funding models). Too much of the curriculum is still influenced by the interests of the faculty, rather than by what students need. The ABA Standards impose unreasonable limitations on how schools structure their curricula; for example, law school could be much cheaper if the entire third year could be based on an externship or apprenticeship model. And the current downsizing puts many of the recent gains at
risk. Experiential learning is often more expensive than the large classroom-based model, and untenured experiential faculty are more likely to face layoffs.

The ongoing struggles of many recent graduates should not be underestimated. However, I am optimistic that legal educators will rise to the occasion and meet the current challenges well. By the standards of the academic world, we are changing quite rapidly. If a leaner, smarter, more efficient legal education system emerges, we will not have wasted this crisis.