IN THIS ISSUE
Ethical Implications of Outsourcing page 6
The Future of Your Firm page 10
An Interview with Our New President page 26
Back to the Future: Creating a 21st Century Legal Education at Elon Law School

BY CATHERINE DUNHAM, STEVE FRIEDLAND, AND GEORGE JOHNSON

Viewing the environment of traditional legal education over the past 20 years from a current perch of global transformation, the picture almost seems to belong in an earlier historical era. Traditional legal education was linear, generic and without international or even national context. Law teachers taught primarily through lectures and the Socratic Method. Students were expected to learn by listening to professors teach, taking notes in class and studying in the library. For most of the 20th century, this traditional model of legal education remained dominant and static. Law students relied on casebooks and lecture for course content and, until recent years, were expected to learn, record and analyze legal thought in longhand. Prior to the true advent of the Internet and the portable computer, law student and faculty expectations of learning and process aligned neatly with few gaps or divergences. The law school experience of students mirrored the law school experience of faculty.
The 21st century has brought multiple changes in both the quality and quantity of legal education. The law schools have had to meet changing expectations of law practice in a world transformed by the internet, an economy dominated by oil and emerging powers, and international competition for legal work. Law schools saw they could no longer merely offer a single course in international law, point students toward the bar exam only upon receiving a degree, or turn out students who neither had the skills to practice law nor understood what those skills were.

These outside pressures on schools have been augmented by an inside pressure, namely, a new kind of law student. The 21st century student is proficient at numerous types of technology and is comfortable multi-tasking. This modern student possesses technical expertise that exceeds most law faculty’s reach, exclusively uses the computer to record information, and expects to access the internet with ready ease for legal research and all types of communication and information. The 21st century law student evolves from another world of learning, significantly different from the educational world of their faculty.

Some law schools have recognized the need to change their direction given these external and internal pressures, and Elon University School of Law is among them. By adapting Elon University’s highly successful undergraduate model of engaged learning to the law school environment, the nascent law school aims to achieve intellectual rigor while developing professional lawyers who will thrive in the 21st Century.

**Background**

The traditional model for legal learning was formed in the late 19th and early 20th centuries by Christopher Columbus Langdell through his professorship and deanship of the Harvard Law School. Langdell essentially created the academic tradition of law school out of a system that had formerly focused on apprenticeships and practical training at practitioner operated schools. Although many academic law schools were developing during Langdell’s time, it was really Harvard where the model of understanding and teaching legal precedent developed. Langdell’s model focused on the case method of instruction, which purported to teach the study of law through analysis of prior cases. The idea of taking apart a judicial decision, analyzing the court’s reasoning for the purpose of applying that process to another set of facts was, at the time, revolutionary.

In most American law schools little has changed in the teaching of substantive law courses since Langdell’s day. Professors still rely on the case method of instruction and many faculty members continue to use a version of the Socratic method of instruction, an integral part of Langdell’s teaching model. In a typical substantive law course, such as evidence or torts, the student learns by reading edited cases in a casebook, attending a class taught through some combination of lecture and Socratic dialogue, and taking an end-of-term examination. In most classes, the entire grade for the course rests on that single examination.

Generally, the Socratic and case methods are considered hallmarks of "rigor” in legal learning, in part due to the hazing type culture such methods engender. In addition, the traditional model has spawned a culture of independent study, largely created by the traditionally low number of law faculty per law student. This culture of independent learning evolved in a time when law students themselves were very similarly situated individuals, predominantly male, white, privileged, and with similar educational backgrounds.

Fortunately, law school is no longer full of similarly privileged and similarly educated individuals. At any given law school, the student population has racial diversity, gender diversity, economic diversity, and educational diversity. The academic backgrounds of law students can be and are very different. Also, legal education no longer suffers from a resource crisis, with students paying high tuitions and endowments reaching a record level. So, the question becomes whether legal education should consider revising its traditional practices to meet the needs of a very different time and a very different law student population.

**Why Legal Education is Ready for Change**

With America staring at continuing foreign wars, global warming, and an economic crisis of historic proportions, it is not "business as usual” for law schools. Instead, major tectonic shifts are being felt inside the walls of even the most traditional schools. These schools are starting to become conscious of the fact that, to maintain competitiveness in the world of law practice and to improve the efficiency of legal education school by school and course by course, law school tradition may need to be modified.

One key contributor to the need for educational change is globalization. The 21st century phenomenon of globalization results from the unprecedented mobility of goods, services, capital, and ideas around the world. The economy is increasingly internationally interconnected, and the modernization of law is inextricably tied to economic globalization. Traditional limitations on the geographic scope of law firms are falling away, and the reality of local practice is diminishing as even the local business clients engage in the global economy. The arena is expanding, and a law student’s goal must be to build a skill set optimal to serving as a participant in the global market. It is important for law students to be able to conduct themselves well, to know their strengths and weaknesses, and to be aware of their representation in terms of what they bring to the table. All must be sought with global perspective and awareness, for the exclusion of the global context runs the risk of making the profession of law itself marginal or irrelevant. The legal profession is increasingly challenged to serve as a global force providing structure and process for the complex world of the 21st century. Legal education should evolve to prepare lawyers to advance with the information era's intercontinental movement and operate effectively in the modern arena which spans the globe.

Another key contributor to the need for change in legal education is the fact that students are no longer who they used to be. If legal education is to be effective, it must reach modern students, not simply students from a prior era. It is difficult to generalize, but the 21st century law student is probably more demographically diverse, yet possesses possibly a more homogeneous set of learning skills. The 21st century student learns in a world of electronic data, accustomed to electronic data collections and constant access to materials via the internet. This student rarely writes in longhand, often reads from the computer screen, and almost never uses textual materials in the course of research. This student creates an individual learning environment in her computer, which is not tied...
to a physical study space such as the library carrel, but is portable, moveable, and often remotely accessible. When studying, the modern student segments her computer screen to view several different content items simultaneously. Rather than ponder a question for later study; this student is accustomed to the immediate gratification of Wikipedia, Westlaw, Lexis and other source sites that make information on endless topics available through very simple searches. This student can sit behind his screen and interact with people and materials otherwise not available. Thus, the computer itself creates a new learning environment for the modern student. This new environment is not only an individual environment but extends to the classroom when students bring computers into classrooms, particularly when those classrooms have wireless access to the internet.

The historically implemented mode of legal learning encourages law students to develop tunnel vision. Professionals have been pushed to become experts of their respective trades, and lawyers have been pushed to develop extreme expertise in very specific and discrete subject areas. Visually, this model of education-to-practice resembles an isosceles triangle as the wide foundation of education narrows to a single point. As the individual approaches that tapered area of proficiency, all interaction with and feedback from others becomes noise. As a result of the triangular model, creating a team of experts resembles a pie with many slices that represent the individuals who comprise the team. The team is highly competent and skilled in terms of levels of expertise brought to the table, but there is little interaction between members of the team where different perspectives on an issue would complement each other instead of independently existing side by side.

How Elon is Different

Elon Law School endeavors to be a law school with a difference, a difference that extends from its theoretical underpinnings to its practical import. Perhaps the first modification involves abandonment of the symbolic goal of traditional legal education, which was to teach law students to “think like a lawyer.”12 Not only does this phrase relate to a time when the professional lacked racial, cultural, and economic diversity, it also fails to speak to students, or faculty, about the process of legal learning. The goal in modernizing legal education at Elon, therefore, is to maximize effective learning through an adaptation of traditional methods to the modern realities of students and the profession.

The desired visual model at Elon of how a law school should move students from education-to-practice is not the triangle described above, but rather an hourglass. The broad foundation of knowledge tapers to high competency then gradually reopens such that the individual is receptive to interaction, feedback, and change from application of skills and integration of new approaches. The modern model would respond to the increasing importance and application of networking and interaction with others, and a team can be composed of highly competent people who are open to feedback and new approaches.

A. Offering a Learning-Centered Education

At Elon, the goal is to maximize effective
learning, which is different than maximizing good teaching. Elon recognizes that teaching and learning are not an identity. Just because someone is teaching does not mean someone is likewise learning.

A learning-centered education can have many meanings. It is not student-centered. It is not about giving students what they want (or feel entitled to), but rather about what they need. The goal is not to pander educational goals to modern gadgetry and gimmickry. Rather, updating the portrait of the typical law student allows the institutions and faculty to refine the role of teaching and learning in the modern law school and create learning environments both within and without the actual law school, which better equip law students for continued learning and professional practice in the 21st century.

For example, if we know that the student yields or splits his or her screen to share non-course and course content, we should endeavor to fill all the windows. When teaching the substance of a case, we can engage students in their world by calling on students to access related cases on Westlaw and Lexis, review a history or pop culture reference on Wikipedia, or seek out some detail related to the case or the notes on the internet. Also, with simple projection technology and classroom internet access, faculty can demonstrate the relationship between content by projecting their own working outline on a split screen that also includes the case itself and other content related to the course, such as an analytical map. Learning-centered education is active. It does not just tell students about information, but promotes learning by demonstrating law study and by coaching, rather than mandating, student involvement.

B. Preparing for a Global Practice

Those who engage in legal education should adapt domestic structures to be able to keep pace with the movement of globalization in best serving students, for different skills are now significant in interacting productively and successfully. Born to interact remotely through technology, the average law student is a “digital native,” aware from birth of the limitless resource that is the internet and intrinsically attuned to the instantaneous nature of communication that is possible, often via devices that fit in a pant pocket or a child’s palm. “Digital native” students are beyond the stage of infatuation with access to sources distributed globally. This broad scope of access is taken for granted, as globalization is not an external concept but what the student lives and breathes. To educate the student as if he or she was a “digital immigrant,” adapting to new technology, fails to take advantage of the natural intersection between the student and the environment of the 21st century marketplace. It is hence vital that the study of law is presented in the vernacular and modes of the students.

The 21st century world is characterized by extensive relations, and legal education serves as a catalyst for personal growth and understanding of self in becoming a lawyer. As law firms expand, a lawyer may be in contact with people around the world and travel to offices, conferences, and meetings anywhere from Los Angeles to Geneva to Tokyo. “Corporate homelessness” is coming into play such that large firms are pushing a trend of disassociation from a headquarters city in implementing national and global structures, with which it is possible to be an established institution in each city where business is conducted. Law students must examine and understand their limits to avoid being isolated or overextended in the world of virtual practice. Finding that balance is a personal issue to a degree, but is also important that legal education actively incorporates an understanding of the demands of 21st century global practice into the law school curriculum. Combining substantive education directly with practical education allows students to explore their role in practice from the first day of their professional education.

C. Cultivating a Professional Identity

The recent Carnegie report on legal education, “Educating Lawyers,” criticized the traditional model of legal education for its narrow cognitive-based approach to education, where students remained as students (and not lawyers) during most of their law school career. The report urged law schools to integrate the cognitive with the practical; to take law students and make them practice as lawyers earlier in their education and in a broader way than was done before.

At Elon, we have brought lawyers into the school as preceptors, reviving an ancient practice where the preceptors mentor, give feedback to and guide students throughout their first year of law school. In addition, there is a proposal to adopt week-long practicums for first year students in their first and second semesters of law school, which would allow all students to do some work as quasi-lawyers (under the guidance and supervision of experienced, highly capable attorneys) and to then write a significant paper solving a legal problem related to one of their first year courses. This program is an attempt to apply the Carnegie Report’s suggestion about integrating legal theory and practice in a committed and substantial fashion.

Also, Elon is developing and implementing a curriculum that interconnects law study with the study of leadership. Students examine leadership in all three years of the curriculum, first focusing on their attributes as a potential leader, second exploring the role of a leader in connecting to others, and finally experiencing leadership itself through a capstone project. The curricular design follows the template developed at the Center for Creative Leadership and is being shepherded at Elon by Dean Emeritus Leary Davis and Professor John Alexander, former Executive Director of the Center for Creative Leadership. In the leadership program, students work on legal problem solving by forming teams to research and advise selected community non-profits on legal
issues facing the organizations. The work is completed under the supervision of licensed attorneys and is presented to the client at the close of the course. The capstone project, the culmination of the leadership course, is an extensive and detailed self-study, similar to a graduate thesis, wherein the student explores a community or legal issue from the vantage point of leadership study. The full leadership course is designed to prepare students for modern practice, preparing students to think of the law in a global and community context, rather than solely in the academic context.

Conclusion

A new educational venture provides opportunities not otherwise available in an established setting. Seizing upon those opportunities, Elon University has designed its law school to be different than the traditional law school. The Elon Law School is endeavoring to meet the challenges of 21st century law practice, incorporating, not de-emphasizing, the unique perspective of the 21st century student. The Law School is using an innovative curriculum that explores law and leadership through the successful medium of engaged learning to develop lawyers who possess extraordinary substantive legal knowledge alongside the self-awareness requisite to success in the modern, global practice. ■

Catherine Ross Dunham is an associate professor of law at the Elon University School of Law. Professor Dunham is a licensed North Carolina attorney and a graduate of the University of North Carolina and Campbell University School of Law. She received her LLM from the University of Virginia. At Elon, Professor Dunham teaches civil procedure and directs the Trial Practice Program.

Steve Friedland is a professor of law and senior scholar at Elon University School of Law and has written several books and articles about legal education. He received his JD from Harvard Law School and LLM and JSD degrees from Columbia University School of Law.

George Johnson is interim dean and professor of law at the Elon University School of Law. Dean Johnson is a graduate of Amherst College and the Columbia University School of Law. He is formerly the president of LeMoyne-Owen College in Tennessee and served on the law faculties of Howard University and the George Mason University School of Law. At Elon, Dean Johnson teaches contracts and constitutional law.

Endnotes

2. Id. at 20-28.
3. Id. at 53 (“The Langdell approach not only limited itself strictly to legal rules but also involved the assumption that principles were best discovered in appellate court opinion.” This assumption underlay what became known as “the case method.”)
4. Id. at 53. (“Teaching at Harvard Law School under Langdell’s influence consisted of the professor and a large number of students analyzing appellate decisions, primarily in terms of doctrinal logic. This enterprise became entangled with the question-and-answer technique … a merger that rather pretentiously came to be known as the Socratic method.”).
7. See Globalization of the Economy, Global Policy Forum
11. Id.
12. The singular focus of law study on thinking like a lawyer, epitomized in films such as “The Paper Chase” (Thompson Films 1973), implied that the sheer quantity of time required to learn to think like a lawyer related to its quality. In contrast, the popular culture also intimated that each person had a limit and that some or many students were not minimally qualified to become a lawyer no matter how hard they tried.
14. See Marc Prensky, Listen to the Natives, Educ. Leadership, Vol. 63, No. 4 (Dec. 2005/Jan. 2006) (“I’ve coined the term digital native to refer to today’s students (2001). They are native speakers of technology, fluent in the digital language of computers, video games, and the Internet. I refer to those of us who were not born into the digital world as digital immigrants. We have adopted many aspects of the technology, but just like those who learn another language later in life, we retain an “accent” because we still have one foot in the past. We will read a manual, for example, to understand a program before we think to let the program teach itself. Our accent from the predigital world often makes it difficult for us to effectively communicate with our students.”).