

Has Legal Education Gone the Way of the Auto Industry?

Experts debated this and other provocative questions about legal education, lawyer training, and law firm leverage at the third NALP Roundtable on the Future of Lawyer Hiring, Development and Advancement.

On December 14, a third panel of legal industry experts gathered in New York City to continue the public conversation about changes that are happening in the industry. The gathering included law firm partners and associates, law school deans, and NALP professionals from both schools and legal employers, but it was the voice of in-house counsel that caught everyone's attention.

A group of law school deans and law firm partner panelists were engaged in a thoughtful and detailed back-and-forth about how the law school curriculum may need to change in response to the changes in the economy and the industry — and what the role of law firms is in training young lawyers — when Phillip Bradley, Senior Vice President and General Counsel for Duane Reade, broke in and shifted the debate.

“There is, in my view, a gap between what the law schools think they're doing and what the law firms think they're buying,” Bradley began. “You've got a vendor who is creating something — the law graduate.... You then have the purchaser [a law firm], who's saying, ‘I want to have a product that is ... functional for me.’ ...And, if you [compare what] the law schools think they're delivering to what the law firms think they're buying, there's this huge gulf. And now coming at it from the perspective of a consumer of legal services, we're being asked to pay for it ... for the law firms to then make up for that delta....”

Bradley continued, “For the law schools to just continue to churn out people in sort of the aca-

demic vein without getting to bridging that gap makes you somewhat akin to the car companies — you're manufacturing something that nobody wants. And that's a real risk, I think, for law schools if they don't come into the modern world and realize that the luxury of people practicing law for three years to learn how to practice law — which was what it was when I came out of law school — isn't there today. It's just not going to happen in the current environment. And I don't mean ... just the last 18 months — I'm talking about the last 5 or 10 years of what the reality of law firm economics are.”

This sobering indictment from the head of legal services for a major corporation got everyone's attention.

The focus of this third Roundtable program was on the changing landscape of lawyer training and development from law school through practice rather than on the recruiting process, which had taken up much of the energy of the first two programs. In general, both law firm and law school participants agreed that what law schools do very well, and what they have always done very well, is to teach the essential skill of “thinking like a lawyer.” Beyond that, however, everyone recognized the need for law schools to find ways to do a better job of teaching a wide range of professional skills, including clinical skills for both litigation and transactional practices, professionalism, business and quantitative skills, ethics, a sense of service, problem solving skills, group and team work skills, and an awareness of emotional intelligence.

Collectively, these skills, which are not generally taught in a deliberate way across the legal curriculum, can be loosely categorized as “the craft of lawyering,” as they were by Dean William Treanor from the Fordham University School of Law.

There was also widespread consensus that all of these things, valuable as they are, are expensive to teach, in particular because they require a much smaller student-to-faculty ratio than large substantive law lecture courses. Panelists brainstormed about how to integrate more experiential learning into the curriculum without raising the cost of legal education — for example, by including more widespread use of internships and by providing more opportunities for specialization within the curriculum, thereby acknowledging that different kinds of lawyers need very different skill sets. All of the law school representatives seemed committed to training both big-firm lawyers and community-based lawyers — and all of those in between. And everyone seemed to agree that going forward there is great potential for more collaboration between law firm lawyers and law schools.

The group turned to Stephanie N. Willson, Chief Professional Resources Officer for McCarthy Tétrault LLP in Toronto, for some insight into the Canadian articling process, a year-long training program required by the provincial licensing authorities in Canada that accomplishes many of the goals clients and firms in the U.S. say they want. In addition to having new law school graduates work under close supervision and also having them rotate through a variety of practice areas, large law firm articling programs try to focus young lawyers very early on solving client problems. “Client problems don’t come to us with law school courses attached to them, and I find that that’s something ... law students seem to struggle with initially,” Willson noted in describing her firm’s goals in working with law school graduates. This is accomplished in part through the widespread use of client secondments during the articling year, something that U.S.-based law firms have begun to return to during this recession.

On the law firm side, the discussion about training and advancement was focused very much on the

growing movement among law firms to transition to levels-based advancement and compensation schemes. Jeffrey K. Haidet, the Chairman of McKenna Long & Aldridge, spoke in great detail about his firm’s 2008 transition away from lockstep to a system that has four levels that associates pass through before being considered for partnership. McKenna’s program is based on the idea of life-long learning and development for lawyers — even after the transition to partnership — and aims to set learning goals and benchmarks for many of the “Bradley, who was a partner at McKenna before he became an in-house lawyer, validated the importance of the transition that McKenna has undergone. “As a consumer of legal services, and from discussions I’ve had with other consumers of legal services, the issue that we deal with on a regular basis is staffing of matters. And I can tell you, it really doesn’t matter to me what year somebody graduated from law school, it’s can they deliver a particular competency at a fair price? And so, there is that discussion of what can this person actually do, and what’s the price for that person doing it? ... What I’m looking for is competency at a level that can do the work that I need, at a price that I’m willing to pay.”

When the conversation turned to the cutbacks that many PD departments have faced in staffing and budgets during the recession, Bradley again did not shy away from provoking his fellow panelists. “To the extent law firms think they can skinny back on their professional development programs in a time of economic distress, I would suggest that the moose on the table is that the partnerships are all focusing on keeping their profits per equity partner at the same levels they’ve been at, or close to it. And that is a very short-term view of things — A, because one of the frustrations of in-house counsel with law partners is [that] the partners were making too much money to begin with; when they’re making more than the CEO makes, it can raise some interesting issues in the discussion of why are you hiring that law firm. But, the second piece is, to the extent that they are not going to invest in that smaller but more in-demand group of people that they’ll be pulling through the system, that’s just very short-term thinking.”

In addition to the move away from lockstep, Haidet suggested that the leverage model at large law firms has been permanently changed by the recession. “I think you’ll see people heading in the direction of looking at a different approach to leverage, how they leverage, what their entry-level classes look like. You know, we’re looking at a model where we may hire at a level to simply sustain our partnership, as opposed to a forced attrition level, and deal with other resources like we talked about — other track, maybe off-partner track associates, other professional service providers that will provide the support — and also some continuity — that our clients are looking for in a way that might economically make sense for all of us.... I think you’ll see law firms move away from, ‘Let me hire 50, let me cull ... 35 of them over the course of their year so I only have a pipeline of 15 that I have to think about for partner.’”

Milton Regan, Professor of Law and Co-Director of the Center for the Study of the Legal Profession at the Georgetown University Law Center, summarized the trends in the industry this way: “Profitability is going to depend more on ... what an economist would call organizational capital in the future, as opposed to individual rainmaker capital.... Providing legal services now with efficiency pressures from clients requires that you have as strategic a smart mix of resources so that you are disaggregating those elements that can be assigned to persons who aren’t as high fee earners. And for each matter that’s going to be different, right? And the firms that succeed in that system may well be those that develop organizational processes and procedures, ways of doing things, and then have the knowledge management systems so that they can return to that, and don’t have to invent the wheel each time....”

Regan continued, “I think [that] puts on the table the larger question of the importance of lifelong learning for everyone. I mean, the world is simply moving too quickly to be able to specialize for any considerable length of time and assume you’re going to be able to continue to be successful. People are pursuing very diverse sorts of career paths where they may go up, back, sideways, and then up again on a different sort of level. Deloitte has pioneered this, what they call mass career customization, where there are people who are able — depending on where they are in life and the responsibilities they have — to ratchet up or ratchet down in terms of the amount of work they take on.... Maybe law schools have some role to play here as educational institutions. You know, something beyond simply continuing legal education ... helping people retool and rethink where their careers are going.... In other industries innovation is a major strategic initiative; I think by and large in the law — for various sorts of reasons, culturally and perhaps economically — it hasn’t been. And so, I think that’s — that’s going to have to be on the table as one of the major challenges, I think, going forward.”

Hosted by NALP and the NALP Foundation, with educational support provided by the WestLegalEd-Center, this was the third in a series of four Roundtable discussions about changes that are underway in our industry. Transcripts and audio/video files of all three events can be found on the NALP website at

www.nalp.org/futureoflawyerhiring.

The final program in this series will take place on March 12 in Chicago, and will be broadcast live via the Internet. Watch *NALPnow!* for details about how to view this program in real time.