BUILDING A NEW LAW SCHOOL: A STORY FROM THE TRENCHES

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INTRODUCTION

Thank you for the opportunity to return to Rutgers to participate in this symposium on legal education. This building is a wonderful facility; it is a real jewel in the Rutgers crown. Many other members of the Rutgers educational community come to the Rutgers-Newark Law School and immediately become infected with atrium envy. But what goes on here is much more significant than the law school's physical beauty. Your law school is noted for its commitment to excellence in scholarly research. Rutgers-Newark is also recognized for its innovative teaching, particularly its very early commitment to clinical teaching.[1] But most significantly, all of us in legal education recognize that Rutgers-Newark Law has, for many generations, an extraordinary and sustained commitment to social justice.[2] All of this makes Rutgers-Newark Law a very special place indeed.

This is a striking moment for the legal profession and for legal education. The state of the economy has placed incredible stress on all components of the legal profession. That stress must be felt by law schools. Continuing a long-term trend, our colleagues in the practicing bar will ask us to bear more of the effort of training our graduates to be more fully-formed practitioners from the moment they graduate. The profession's desire to shift costs coincides with calls within the academy for fundamental change in the goals and modes of instruction in legal education.[3] The *Carnegie Report* is only

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1. *See* Rutgers Sch. of Law-Newark, Clinical Program Overview: History, http://law.newark.rutgers.edu/clinics/history (last visited Aug. 20, 2009) (explaining that for the past forty years, Rutgers has been at the forefront of immersing students in the "hands-on" representation of real clients).

2. *See* Rutgers Sch. of Law-Newark, The J.D. Program, http://law.newark.rutgers.edu/academics/jd-program (last visited Aug. 20, 2009) (explaining that Rutgers-Newark curriculum promotes "intellectual growth and a commitment to social justice").

3. *See* WILLIAM M. SULLIVAN ET. AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 22-23 (2007); *see also* Adam Cohen, Editorial, *With the*

the latest in a series of calls for significant transformation in the structure of legal education.[4] The *Carnegie Report*, like the *MacCrate Report*[5] before it, calls for a broadening of legal education.[6] It asks legal educators to teach legal analysis, legal skills, and professional values in an integrated, holistic manner.[7]

Starting a new law school in such an environment is an exciting and daunting task. The problems we face are fundamentally no different than those that well-established law schools confront regularly. However, everything comes at once incredibly quickly, every problem seems related to some other yet undetermined issue, the stakes seem very high, and there is little institutional experience available for guidance. And even more than with an established school, a new school must think about the challenge of simultaneously interacting with potential students, potential faculty and staff, the bar, and internal university constituencies. I hope I can report to the readers of the *Rutgers Law Review* an interesting story about how we attempted to meet the challenge of crafting our program of legal education—what opportunities we have been provided and what constraints we have faced.

INSTITUTIONAL CONTEXT

A new law school has the wonderful opportunity to think comprehensively and in an integrated manner about creating its instructional program. A new law school can hire a faculty and staff that is totally committed to the vision of the school and that has the skill set which matches the vision. A new law school can deploy all of its resources in a very targeted manner in support of its vision. In contrast, established educational institutions invariably act incrementally. Fundamental change in an existing program immediately implicates difficult and interrelated questions around identity, budget, and personnel. Thus, with a considerable investment in its current way of operating, no education institution—unless it is facing an enormous crisis—readily embarks on a process of transformation that is likely to create massive tumult.

However, juxtaposition of decision-making in a new school

Downtown, It's Time to Rethink the Legal Profession, N.Y. TIMES, Apr. 2, 2009, at A26, http://www.nytimes.com/2009/04/02/opinion/02thu4.html (claiming that if law jobs become scarce, law school curriculum will need to make a shift towards a greater focus on practical skills in order to satisfy prospective employers).

4. SULLIVAN, *supra* note 3, at 18-19.

5. *See* LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM 4-6 (American Bar Association 1992), http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html.

6. *See* SULLIVAN, *supra* note 3, at 194.

7. *See id.* at 191.

versus an established school may be a bit too stark. If it is university based, institutional context and commitments do count, even for a new law school. The larger university context frames attitudes toward the teaching innovation and the role of scholarship and service in institutional life.[8] In all of its programs, Drexel seeks major commitment to experiential education and high-end scholarly productivity.[9] Moreover, from an institutional perspective, it was important that Drexel's new law school built on existing programmatic strengths. Thus, a Drexel law school had to have commitments to teaching and research in business, health, and technology. Also, community engagement is a major university focus. In the context of creating a new law school, a major obligation to do pro bono work was necessary.

Historically, Drexel was a place where lower middle class students got the education they needed to capture the American dream.[10] Our core programs were in engineering and business.[11] For many decades, our undergraduate programs have been Co-op based.[12] As part of their academic program, our undergraduate students often obtain two or three full-time paying job experiences before they graduate.[13] Commitment to experiential education is in our DNA. Linked to our Co-op heritage, the Drexel brand is that we prepare focused hard-working, job-ready graduates.

As part of our context, Drexel also is a university of change. We

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8. *See* Drexel Univ., University Mission Statement, http://www.drexel.edu/about/mission.aspx (last visited Aug. 20, 2009) (stating that the mission of Drexel University is to serve society through "scholarly activity and community initiatives").

9. *See* Mark L. Greenberg, Civic Engagement and Service Learning: A University's Culture of Connectivity, http://www.drexel.edu/univrel/emergingtrends/greenberg.asp (last visited Aug. 20, 2009).

10. The Earle Mack Sch. of Law at Drexel Univ., Diversity Initiatives, http://www.drexel.edu/law/diversity.asp (last visited Aug. 20, 2009) ("[F]or the last 115 years, Drexel's doors have been open and welcoming to those who have come from disadvantageous backgrounds, those who were not "typical" students, and those who faced major barriers to success . . . .").

11. See The Earle Mack Sch. of Law at Drexel Univ., History of Drexel University, http://www.drexel.edu/law/history.asp (last visited Aug. 20, 2009) [hereinafter Drexel Law School History] for a discussion on Drexel's art, science and industry focus. For a list of Drexel's business subjects and a timeline detailing Drexel's development of course offerings, see Alison Lewis, *Pearlstein Center Inspires a Look at College Business' Long History*, 3 LIBR. NEWS 7 (2002), http:www.library.drexel.edu/archives/pdf/collegeofbusinessarticle.pdf. *See also* Drexel Univ., Drexel Archives Collection http://www.library.drexel.edu/blogs/collections.timeline (last visited Aug. 20, 2009).

12. Drexel Law School History, *supra* note 11.

13. DAVID A. PAUL, WHEN THE POT BOILS: THE DECLINE AND TURNAROUND OF DREXEL UNIVERSITY 10 (2008).

are one of those few examples of a university that is willing to fundamentally reinvent itself. This willingness to change arose out of crisis. In the mid-1990s, the University faced a real enrollment crisis.[14] Demand for engineering education crashed, and our campus, located in University City, Philadelphia, became a very unattractive physical location for our then largely commuter-based student population.[15] To meet the crisis, we began a program of university transformation. Our colleagues at the University of Pennsylvania were crucial partners.[16] They led an effort of neighborhood rebirth that converted our location into a great urban college town.[17] We assisted by participating in the University City Business District program and by significantly growing our on-campus housing options.[18] We expanded our educational programs in hot areas such as digital media and computer and information sciences.[19] We grew arts and sciences programs that had historically only been service disciplines for engineering and business.[20]

We also mindfully invested in advanced educational technology as a core strategy. Drexel was the first major university that became wireless.[21] Our transformation was aided by the acquisition of the largest private medical school in the United States.[22] Along with the medical school, we obtained major programs in nursing, public health, and other health sciences.[23] These strategies resulted in a doubling of the student population, increases in student quality, significant increases in sponsored research, dramatic growth in endowment, and a generally enhanced institutional profile. We could legitimately say that by 2005 Drexel had become a well-ranked comprehensive national research university.

Our late president, Taki Papadakis,[24] was never one to rest on

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14. *See id.* at 23-24, 84-153.

15. *See id.* at 24, 59, 61, 65, 97, 127.

16. *See id.* at 166-70.

17. *See id.*

18. *See id.* at 34-35, 166-67.

19. Drexel Univ., The iSchool at Drexel University, http://www.ischool.drexel.edu/Home/About/WhoWeAre/History (last visited Aug. 20, 2009).

20. DREXEL UNIV. COLL. OF ARTS AND SCIS., STRATEGIC PLAN (2004), http://drexel.edu/coas/strategic_plan.pdf.

21. Drexel Univ., A Brief History of Drexel University, http://www.drexel.edu/about/history/brief.aspx (last visited Aug. 20, 2009) [hereinafter Drexel University History].

22. Drexel Univ., Coll. of Med., History http://www.drexelmed.edu/Home/AboutTheCollege/History.aspx (last visited Aug. 20, 2009).

23. Drexel University History, *supra* note 21, at 6.

24. Drexel Univ., Office of the President: Biography, http://www.drexel.edu/papadakis/biography3.aspx (last visited Aug. 20, 2009).

his laurels.[25] He was always thinking about what would be next. And for him, what was next after a decade of extraordinary change was a law school. He believed that starting a law school would strengthen our existing programs and confirm our newly won institutional stature. He believed that a great national research university ought to have an excellent law school, music to all of our ears. Taki's vision for Drexel framed our vision for the law school.

All of us at Drexel were very excited about opening a new law school. It would be icing on the cake of a decade of remarkable growth and transformation. Surprisingly, however, and despite our best hopes and desires, the public was not marching up and down Market Street demanding that a new law school be started. Before our launch, the region had considerable capacity and strength in legal education. University City already contained a superb national law school—Penn.[26] The Philadelphia area supported three very strong regional players—Rutgers-Camden,[27] Temple[28] and Villanova.[29] Penn State[30] was in the midst of a major investment in legal education.[31] Widener,[32] with its two campus model, also met with quality important regional needs for legal education.[33] And needless to say Philadelphia, is but a short distance from both the New York and Washington/Baltimore law school markets. So if we were to achieve the ends the University desired for its nascent law school, we faced considerable challenges. We needed to develop a unique identity quickly, a distinctiveness that presented a powerful new option for potential students and faculty.

PROGRAM DESIGN

Starting with the initial framing of our program of legal

25. Drexel Univ., Office of the President, http://www.drexel.edu/papadakis/taki_news.asp (last visited Aug. 20, 2009).

26. Univ. of Pa. Law Sch., Penn Law, http://www.law.upenn.edu/ (last visited Aug. 20, 2009)

27. Rutgers School of Law – Camden, http://www-camlaw.rutgers.edu/ (last visited Aug. 20, 2009).

28. Temple Univ. Beasley Sch. of Law, Temple Law School, http://www.law.temple.edu/ (last visited Aug. 20, 2009).

29. Villanova Univ. Sch. of Law,, http://www.law.vill.edu/ (last visited Aug. 20, 2009).

30. Penn State University Dickinson School of Law, http://www.dsl.psu.edu/ (last visited Aug. 20, 2009).

31. *See* Penn State Univ. Dickinson Sch. of Law, Penn State Board of Trustees Approves Two Campus Plan, http://www.dsl.edu/archive/approved2.cfm (last visited Aug. 20, 2009).

32. Widener Law, http://law.widener.edu/ (last visited Aug. 20, 2009).

33. Widener Law, The Benefits of Two Campuses, http://www.widener.edu/About/TheBenefitsofTwoCampuses.aspx (last visited Aug. 20, 2009).

education, we have attempted to preserve the educational benefits of traditional legal education while also pressing broader educational goals.[34] Through a mix of traditional classroom teaching and an aggressive agenda based on experiential education, we hope our students develop a rich client-centered approach to legal problem solving. Our students need to deeply understand theory, doctrine, analysis, and modes of argumentation. We want them also to be effective written and oral communicators, legal researchers, fact investigators, transaction cost engineers, and counselors. Some of the skills can be taught in the traditional classroom, some can best be taught through experiential education models.

Our first year looks very similar to the conventional curriculum taught at most law schools.[35] It is a fully required curriculum encompassing the traditional core courses in contracts, torts, property, criminal law, constitutional law, civil procedure and legal research and writing (which we have called legal methods).[36] Like most programs of legal education, our most significant goals for the first year are for students to learn core doctrinal content and the basic skills of legal analysis and argumentation. Even within this long established model we have found opportunities to innovate. As part of the year long legal methods course, we teach a nine-week session exposing students to interviewing, counseling, and negotiation.[37] Our commitment to legal method is also expressed in the institutional decision to teach this area of the curriculum largely with a tenure/tenure-track faculty. Many of the first year doctrinal professors also require students to participate in a significant number of more practical skills exercises such as drafting or oral argument.[38]

Since Drexel is so heavily branded around Co-op, early on we decided that Co-op would be the focus of a comprehensive set of upper level experiential education offerings.[39] Co-op would serve the

34. THE EARLE MACK SCH. OF LAW AT DREXEL UNIV., DREXEL LAW VIEWBOOK 1 (2008) http://www.drexel.edu/law/pdfs/DrexelLawViewbook2008.pdf (last visited Aug. 20, 2009) [hereinafter DREXEL LAW VIEWBOOK].

35. *Id.*

36. The Earle Mack Sch. of Law at Drexel Univ., Course Descriptions, http://drexel.edu/law/course-offerings.asp (last visited Aug. 20, 2009) [hereinafter Drexel Course Drescriptions].

37. *See* DREXEL LAW VIEWBOOK, *supra* note 34, at 10; Terry Jean Seligmann, *Teaching What We Wish We Had Learned in Law School*, DREXEL L. BRIEF 6, http://www.drexel.edu/law/PDFs/drexel-law-brief-no6-seligmann.pdf (last visited Aug. 20, 2009).

38. Seligmann, *supra* note 37.

39. THE EARLE MACK SCH. OF LAW AT DREXEL UNIV. EXPANDING THE BOUNDARIES OF LEGAL EDUCATION, THE CO-OP PROGRAM AT DREXEL UNIVERSITY EARLE MACK SCHOOL OF LAW 1 (2009), http://www.drexel.edu/law/pdfs/Drexel-Law-Co-op-Book.pdf

majority of our students who desired a major real world experience while in law school. Along with Co-op we would invest heavily in clinics,[40] trial advocacy,[41] and a wide range of simulations in the general upper level curriculum and in the concentrations. The simulation courses would require students to act in the roles of lawyers, producing sophisticated work products such as complex corporate transactional documents. We would also offer our students a range of practical learning opportunities through a mandatory pro bono program.[42] We would create concentrations related to the most significant and exciting university programs—those in health,[43] business[44] and technology[45]—and students would have a major experiential education opportunity as part of each concentration.

Our Co-op program is an externship program on steroids. Our Co-op is a non-paying twenty-five-hour per week two-quarter experience with a mandatory reflective classroom component that we take very seriously.[46] Students can take part in Co-op in their second or third year of law school.[47] Placements range across all practice settings—judicial, public interest, governmental, for-profit law firms of all sizes and in-house corporate counsel offices.[48] We have developed more than one hundred Co-op partnerships and to date more than 50 percent of the eligible students have participated in the Co-op program.[49]

[hereinafter DREXEL CO-OP PROGRAM].

40. The Earle Mack Sch. of Law at Drexel Univ., Field Clinics, http://drexel.edu/law/field-clinics.asp (last visited Aug. 20, 2009).

41. The Earle Mack Sch. of Law at Drexel Univ., Trial Advocacy at Earle Mack School of Law, http://drexel.edu/law/trial-advocacy-home.asp (last visited Aug. 20, 2009).

42. The Earle Mack Sch. of Law at Drexel Univ., Pro Bono Service Program at Earle Mack School of Law, http://drexel.edu/law/pb-serviceprogram-home.asp (last visited Aug. 20, 2009).

43. The Earle Mack Sch. of Law at Drexel Univ., Health Law Concentration: Overview, http://drexel.edu/law/healthlaw-overview.asp (last visited Aug. 20, 2009).

44. The Earle Mack Sch. of Law at Drexel Univ., Business and Entrepreneurship Law Concentration: Overview, http://drexel.edu/law/entrepreneurship-overview.asp (last visited Aug. 20, 2009).

45. The Earle Mack Sch. of Law at Drexel Univ., Intellectual Property: Overview, http://drexel.edu/law/ip-overview.asp (last visited Aug. 20, 2009).

46. The Earle Mack Sch. of Law at Drexel Univ., Drexel Law Co-op Program: Overview, http://www.drexel.edu/law/Co-op/coop-overview.asp (last visited Aug. 28, 2009) [hereinafter Drexel Co-op Overview]; *see also* The Earle Mack Sch. of Law at Drexel Univ., Law Co-op Education: Co-op Frequently Asked Questions (FAQs), http://www.drexel.edu/law/Co-op/coop-FAQs.asp#6.pdfs/Drexel-Law-Co-op-Book.pdf (last visited Aug, 28, 2009) [hereinafter Co-op FAQs].

47. Co-op FAQs, *supra* note 46.

48. DREXEL CO-OP PROGRAM, *supra* note 39.

49. *Id.*

The substance of the on-site portion of the Co-op program is jointly established by the student and placement supervisor in a written learning agenda. Students perform in roles, completing tasks similar to those done by newly licensed lawyers. But because we do not permit our Co-op partners to bill for a student's work, our students can also be given some of those traditional training opportunities, like second chairing a deposition, that clients no longer are willing to be billed for.[50] Some Co-op students take principal responsibility for client representation under Pennsylvania's certified legal intern program. The classroom component requires students to examine a wide range of professionalism topics. Students are asked to actively reflect on how their professional assignments are furthering their learning agendas. Students receive a total of eighteen quarter-credits for participating.[51]

We decided that if Co-op was to be a signature component of the law school we would make a commensurate institutional investment in the program. Approximately 2.5 full-time in-house faculty positions are devoted to teaching and managing the program.[52] All the placements are vetted by the law school independent from specific student interest in being placed at the site. There is an elaborate matching process that requires students to interview with prospective sites.[53] Supervising attorneys undergo mandatory training on mentoring young professionals—for which they receive free Continuing Legal Education (CLE) credits (including coveted ethics credits).[54] Each Co-op site is visited at least annually by one of our faculty members who directs the program.[55]

Law deans are always thinking simultaneously about educational quality and budget. Even with a substantial commitment of institutional resources in managing our Co-op program, the program is efficient, especially when compared to in-house law school-based clinics. In-house clinics are great educational experiences. They are excellent venues for combining head, hands and heart learning. But because of their cost, in-house clinical

50. *Id.*

51. *See* Co-op FAQs, *supra* note 46 (explaining that students receive seven credits per quarter for field work and two credits per quarter for class work, totaling eighteen credits in one year).

52. *See* The Earle Mack Sch. of Law at Drexel Univ., Co-op Faculty, http://www.drexel.edu/law/Co-op/coop-faculty.asp (last visited Aug. 20, 2009) [hereinafter Drexel Faculty].

53. *See* DREXEL CO-OP PROGRAM, *supra* note 39, at 3; *see generally* The Earle Mack Sch. of Law at Drexel Univ., Drexel Law Co-op Program: Highlights, http://www.drexel.edu/law/Co-op/coop-highlights.asp (last visited Aug. 20, 2009) (outlining complete steps involved in matching process).

54. *See* DREXEL CO-OP PROGRAM, *supra* note 39, at 1.

55. *See id* at 2.

classes are difficult to offer to most students. The typical law school-based clinic professor intensively teaches and supervises eight to twelve students per year. In comparison, each Co-op faculty member is able to mentor and teach approximately forty-five students per year.[56] This increased student-faculty ratio, leveraged by the wonderful contribution of the bar, gives any student who decides to take a Co-op the benefits of learning in a clinical environment, something that we could not do fiscally if we were only offering in-house clinical education.[57]

We guessed right on investing in the Co-op program. This program is the single most cited feature students report in deciding to attend Drexel.[58] Our surveys of participating students and Co-op supervisors reveal an extremely high level of satisfaction. Moreover, from a general institutional marketing standpoint, Co-op has embedded us positively and promptly in our legal community. The bar has embraced our students. The investment in programmatic details demonstrates to the bar our institutional quality.[59] And, although the Co-op program is not directly related to placement efforts, several students have obtained wonderful full-time jobs as a consequence of their Co-op placements. Our students who have gone to a Co-op after having taken many of their classroom-based concentration courses have been in particular demand as future associates. Our students of color have also found that Co-op is a great way to become positively exposed to elite segments of the bar. Similarly, our pro bono program has had the advantage of showcasing our students and the institution as a whole to the rich legal community in the Delaware Valley.

To build on our experience with Co-op we have also established three field clinics—one at the Defender Association of Philadelphia,[60] one at the AIDS Law Project of Pennsylvania[61] and one at the Public Interest Law Center of Philadelphia.[62] More than twenty students

56. *See id.* at 9; *see also* Drexel Faculty, *supra* note 52.

57. *See* DREXEL CO-OP PROGRAM, *supra* note 39, at 1; *see also* Drexel Co-Op Overview, *supra* note 46.

58. *See* The Earle Mack Sch. of Law at Drexel Univ., Drexel Law: My Choice, Janice, http://www.drexel.edu/law/mychoice/janices-story.asp. (last visited Aug. 20, 2009).

59. Drexel Co-op Overview, *supra* note 46.

60. Defender Assoc. of Philadelphia, History and Mission, http://www.phila.gov/defender/ (last visited Aug. 20, 2009).

61. Philly S.O.S., AIDS Law Project of Philadelphia, http://www.phillysos.org/servicelocation.asp?id=2101140449 (last visited Aug. 20, 2009).

62. Pub. Interest Law Ctr. of Philadelphia, Staff, http://www.pilcop.org/bios.html (last visited Aug, 20, 2009).

per year take part in a field clinic.[63] To participate in these clinics, students must be certified to represent clients under the Pennsylvania certified legal interns program since students in each clinic are representing clients in live matters. At the Defenders clinic, students represent clients in preliminary hearings on felonies, argue motions, and try misdemeanor cases in municipal court. At the AIDS project, students represent clients in disability hearings, in guardianship matters, and in landlord-tenant cases. At the Public Interest Center, students represent clients in a wide variety of environmental justice matters. Students commit to participating for a full academic year in a field clinic. They must also take a reflective seminar on justice lawyering to participate in the program. The seminar examines the ways in which the legal system can and should promote equality and fairness for individuals and groups.[64] In total, students receive eighteen quarter-credits for their field clinic participation.[65]

The law school enters into an agreement with each field clinic sponsoring organization, ensuring that the service and educational goals of the field clinic are both met.[66] One of the organization's lawyers is appointed an on-site supervisor and mentor to our students. The on-site supervisor teaches the substantive law students need to represent clients and provides the day-to-day oversight of the student's work product. The law school provides a substantial grant to each of our field clinic partners to subvent the salary of the on-site supervisor.[67] While the investment in funding our partners is notable, it is a very efficient way to provide well-supervised clinical slots to our students.

The third piece of our live client/real life practice experience program is our traditional in-house appellate clinic, to be launched next fall.[68] A full-time member of our faculty will supervise eight students in representing clients in civil and criminal appeals in state and federal court. On the theory that no good idea goes unstolen, we are modeling our clinic on the very successful appellate clinic at

63. The Earle Mack Sch. of Law at Drexel Univ., Field Clinics Enhances Legal Experiences, http://www.drexel.edu/law/docket/january09/default-c.html (last visited Aug. 20, 2009).

64. Drexel Course Descriptions, *supra* note 36.

65. *Id.*

66. *See* Public Interest Law Center of Philadelphia, The Law Center Launches New Public Health and Environmental Justice Clinic, http://www.pilcop.org/ehj.html (last visited Aug. 20, 2009).

67. *See, e.g., id.*

68. Drexel Univ., In-House Appellate Litigation Clinic, http://www.drexel.edu/law/appellate-clinic.asp (last visited Aug. 20, 2009).

Georgetown Law School.[69] Our students will be able to do appellate arguments in federal and state court in civil and criminal matters.

Though our pro bono program is not a credit bearing part of the curriculum, we view it as an important component of our commitment to experiential education. While students are required to meet a fifty-hour minimum, some students have far exceeded the minimum.[70] On average our students performed more than 100 hours of service. Five students exceeded 400 hours of service. This amount of service is roughly equivalent to the amount of field hours in our three credit bearing live client/real world experiences. Additionally, seventeen students committed to 200 hours of service. Students are entitled to find their own pro bono placements. But like many law schools with mandatory pro bono programs, we find that developing signature programs directly sponsored by the law school or in collaboration with partnering agencies is a key way of ensuring that high quality service and education are simultaneously provided.[71] As with the field clinics, it is our experience that investing modest resources in our pro bono partners serves our students' interests. Our investments have enabled our partners to offer high quality training and professional supervision to our student volunteers. Our partners can then view our students as assets in meeting their mission, instead of being free-riders.

ISSUES AND CONSTRAINTS

1. *What is a proper mix of coursework in the upper-level curriculum? Are deep structural issues implicated?*

With the range of live client/real life practice opportunities for our students, we have the capacity to offer every student an intense experience for credit, something we currently do not require. Such a requirement is, however, under active consideration. If we require an intense experiential education course, we need to decide the minimum number of credits needed to meet the requirement. Since we have but a single graduating class, we are still in the assessment stage on many issues and ideas. We are evaluating the enrollment trends for all of our courses, including the experiential education curriculum. We need to evaluate our students' performance on the bar examination and their reputation with legal employers to ensure that students are taking an appropriate mix of experiential education

69. Georgetown Univ. Law Ctr., Introduction to the Clinic, http://www.law.georgetown.edu/clinics/al/al.html (last visited Aug. 20, 2009).

70. THE EARLE MACK SCH. OF LAW AT DREXEL UNIV., PRO BONO SERVICE HANDBOOK 3, http://www.drexel.edu/law/pdfs/Pro-Bono-Handbook.pdf (last visited Aug. 20, 2009) [hereinafter PRO BONO SERVICE HANDBOOK].

71. *See id.* at 4.

and doctrinal courses.

The issue of proper curricular mix is of particular interest to us because in addition to the live client/real world curriculum that most of our students take, they are intense consumers of a broad slate of simulation courses. As at many law schools there is huge demand for our courses in pre-trial and trial advocacy. For the size of our school we also offer a large number of slots for students to participate in moot court[72] and trial team competitions.[73] Students also flock to the range of simulations and drafting courses that we teach in our areas of concentration and elsewhere.

What concerns us is whether as a practical matter we are crowding out of the curriculum the core upper-level doctrinal courses that are bar exam tested courses in many jurisdictions and are of the type that form the knowledge base all lawyers ought to have. We are also concerned that students will not be able to take a sufficient number of perspective courses that enrich materially a young lawyer's sophistication of viewpoint on the legal system and society.

A typical Drexel law student might have well more than a third of her upper-level curriculum devoted to experiential education courses. That means our typical student (when we are on semesters) might take as few as twelve upper-level classroom courses. Everyone has his/her list of necessary upper-level doctrinal courses. This list typically includes offerings such as evidence, business organizations, federal income taxation, administrative law, commercial law, international law, and professional responsibility. If a student accepts our advice and takes such courses then she may have only six or seven additional opportunities for coursework that create perspective, depth or breadth in any particular area of legal study.

The crowding-out concern implicates basic questions about the structure of legal education. A perennial suggestion to the current criticisms is that legal education ought to only be two years in length.[74] The crowding out phenomenon caused by students taking an intense experiential education curriculum instead creates the opposite pressure—might we increase the length of the typical program of legal education to respond to needed time in conventional courses and in experiential education opportunities? Lengthening the program of legal education obviously raises the cost to the student of her education. The current cost of legal education and the amount of debt students must take on to complete their education

72. The Earle Mack Sch. of Law at Drexel Univ., Moot Court, http://drexel.edu/law/moot-court.asp (last visited Aug. 20, 2009).

73. The Earle Mack Sch. of Law at Drexel Univ., Trial Advocacy Program: Trial Team, http://drexel.edu/law/trial-advocacy-trial-team.asp (last visited Aug. 20, 2009).

74. *See, e.g.*, Kristin Bull, *Fast-Tracking Law School*, TIME MAG., July 23, 2008, http://www.time.com/time/nation/article/0,8599,1825863,00.html.

are already major concerns. Increasing those costs by lengthening law school seems implausible. So how might legal education be redesigned within existing time and cost structures to allow students appropriate exposure to doctrine, theory, and practice?

Two solutions should be examined. Within the framework of a three-year program of legal education we need to examine ways of delivering some courses more efficiently. In particular, we might examine whether every classroom course ought to have as its learning agenda the teaching of doctrinal content as well as other skills such as legal analysis and argumentation. The typical first year curriculum already has intensely provided students in every course with the comprehensive mixed-learning agenda. If we are convinced that not every upper-level course has to have multiple learning goals, we might more efficiently present doctrinal content in shorter blocks through the lecture method or through on-line learning techniques. Under this model, the student then might be exposed to many more areas of doctrinal knowledge in an academic year than is currently the norm.

Another approach is to bite the bullet and extend the time period devoted to legal education, perhaps to four years, but to make the total cost and length of the student's educational program match today's model. This could be done by decreasing the amount of required pre-law undergraduate education by one or more years. Such a proposal raises a host of questions. For example, there should be a concern of whether under this model students would have sufficient maturity, and background knowledge and skills to fully benefit from graduate professional education. This fear is particularly salient for students who need specialized non-legal scientific or technical knowledge to successfully lawyer in areas like intellectual property law or sophisticated financial practice.

As more law schools confront the problem of balancing equal commitments to theory, doctrine and experiential education, the more we will confront the need for major structural changes in legal education. As in the United States, in other advanced legal cultures there is considerable ferment concerning the structure of legal education arising out of the same set of issues. Two examples suffice. While Japan has just in part adopted the graduate model of legal education,[75] in the United Kingdom the undergraduate model remains nominally in place, but with an intense required integrated follow-on practical educational component and supervised practice for new lawyers.[76] If we were to adopt a structure for legal education

75. R. Gladding, *A Revolution in Japanese Legal Education,* 13 LEG. EDUC. DIG. 57 (2004), http://www.AustLii.edu.au/au/journals/legeddig/2004/57.html.

76. WILLIAM TWINING, THE PAPERCHASE IN ENGLAND AND WALES, *in* ROGER

that encompassed a two year program of general studies, followed by in depth classroom legal studies, capped with several years of experiential education and mentored practice our system of legal education would be remarkably similar to that in Great Britain.[77] Whether any other country's system of legal education would work in this cultural context is an open question. For example, if we adopted the British model, finding thousands of high-quality mentored post-graduate opportunities would seem to be a daunting task. But, the experiences of other advanced legal systems provide relevant exemplars for potential solutions.

2. *Can we sustain the intensity of our program?*

Experiential education is a particularly demanding form of instruction for both faculty and students. The demands are derived directly from the very benefits of the instructional approach. Students are asked to perform in role on a regular basis. They are constantly asked to draft and to make presentations either in real or simulated practice settings. This requires more intense preparation by students than in the typical upper-level doctrinal course. Our students almost universally give great kudos to their experiential education classes, but students also uniformly are stunned by the extra workload. Similarly, faculty members are required to give much more feedback in experiential education courses than in the typical classroom course. As faculty are also managing active research agendas, this can create great stress. One answer to the faculty workload issue is to give liberally time off from teaching for research purposes to reflect the special effort of teaching in the experiential education mode. Of course, this tactic has important budget implications. Experiential education courses also tend to be exclusively taught in small sections, placing further pressure on faculty workload and on the institutional budget.

To date, a generous start up budget funded by the University Board of Trustees and our naming benefactor, Ambassador Earle Mack, and a deep sense of mission on the part of faculty and students has allowed us to sustain our approach to legal education.[78] As we mature institutionally, we will have to be mindful to continue to invest in supporting commitment to mission. Our university board

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BURRIDGE, LEGAL EDUCATION IN THE UNITED KINGDOM AND THE UNITED STATES: AN OVERVIEW 40, 46-47 (1985); Malcolm Smith et al., *Japan's New Legal Education System: Towards International Legal Education*, 10 J. JAPAN 39, 40 (2005), http://www.law.usyd.edu.au/anjel/documents/ZJapanR/ZJapanR20_07_Smith_etal.pdf.

77. Roger Burridge, Legal Education in the United Kingdom, http://www.aals.org/2000international/english/uk.htm (last visited Aug. 20, 2009).

78. *See* The Earle Mack Sch. of Law at Drexel Univ., A Welcome from Dean Roger J. Dennis, http://www.drexel.edu/law/welcome.asp (last visited Aug. 20, 2009).

remains dedicated to an on-going fiscal investment in our mode of instruction. The individual commitments from students and faculty are nurtured during recruitment and through constant institution-wide discussions of the value of experiential education pedagogy. The incredible, unceasing generosity of the practicing bar is also an essential ingredient for our program. Without the flow of Co-op placements and participation in simulations and in adjunct teaching by the practicing bar we simply could not maintain our complex curriculum.

3. *Do accreditation standards restrict our program?*

A question that many have asked me is "what role did the American Bar Association's (ABA) accreditation standards play in our decision-making concerning the launch of the school?" The context of this question is the current set of concerns over regulation of law school accreditation. ABA certification of law schools is a canonical example of professional education programmatic accreditation. Such accreditation has the dual purpose of protecting future clients and current students through ensuring that each law school's program meets minimum standards of quality.[79] Since 1921, ABA Section on Legal Education and Admissions to the Bar has been the profession's accrediting body and since 1952 it has been the federally approved accreditor for law.[80] The ABA accreditation process is not without its serious critics. Some assert that the ABA standards go substantially beyond requiring schools to meet minimum standards. These critics thus assert the ABA standards unduly increase the cost of legal education while straight-jacketing institutional autonomy.[81] Particular areas of concern for these critics are ABA requirements around topics such as the terms and conditions of employment for full time faculty and ABA constraints on the use of part-time faculty, distance education teaching modalities, and executive education type program construction. Another set of critics assert that the standards are not sufficiently focused on the real educational needs of students for a more practically oriented legal education.[82] As I will demonstrate, these

79. JUDITH S. EATON, COUNCIL FOR HIGHER EDUCATION, AN OVERVIEW OF U.S. ACCREDITATION 2-3 (May 2009), http://www.chea.org/pdf/2009.06_overview_of_us_accreditation.pdf.

80. Robert A. Stein, *Maintaining High Standards*, ABA J., March 2006, http://www.abajournal.com/magazine/maintaining_high_standards/.

81. *See, e.g.*, Susan Beck, *Suggestions for Law School Makeovers Include Radical Changes*, THE AM. LAW., Jan. 05, 2009, http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202427181507.

82. Stephen J. Friedman, *A Practical Manifesto for Legal Education*, LEGAL TIMES, Sept. 28, 2005, http://www.law.com/jsp/article.jsp?id=1127811912465.

debates had surprisingly little impact on our decisions in designing our school.

Of course, accreditation by the ABA is crucial to the success of a law school. It is ABA accreditation that allows the law school's graduates to sit for the bar examination in all jurisdictions in the United States.[83] And in the key jurisdictions where our graduates will sit for the bar, graduating from an ABA accredited law school is the only pathway to admission for a new lawyer.[84] Thus the whole law school community worked on the accreditation process, almost from the moment the school opened its doors. We were fixated on getting our provisional accreditation at the earliest possible moment, a goal that we accomplished.[85] Nevertheless, in almost all of our key decisions about constructing the program we were more driven by our own independent judgment about institutional goals and objectives than by accreditation standards. To demonstrate this conclusion I will discuss features of our curricular design, faculty hiring strategies, and infrastructure investments that implicate accreditation standards that are somewhat controversial.

The ABA accreditation standards on curriculum in most respects give institutions considerable autonomy. The foundation of the standards is the requirement that students upon graduation be prepared to pass the bar examination.[86] Beyond that general standard, the ABA requires students to have substantial instruction in the core of legal doctrine, legal analysis, legal research, problem-solving, oral communication, writing in legal context, and professional responsibility.[87] A law school must provide substantial opportunities for its students to have live client or other real life practice experiences and for participation in pro bono activities.[88]

For us, none of these requirements were at all problematic. We live in a very competitive environment, battling to matriculate quality students and to place our graduates with legal employers. This competition makes a school's success in bar passage key. For legal employers, a law school's first time bar passage rate is one of the very few absolute markers of institutional quality. For students, passing the bar on the first attempt is critical for successful early

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83. Am. Bar Ass'n, Bar Admissions and Comprehensive Guide, http://www.abanet.org/legaled/baradmissions/basicoverview.html (last visited Aug. 20, 2009).

84. *Id.*

85. Drexel Law School History, *supra* note 11.

86. AM. BAR ASS'N, 2009-2010 STANDARDS FOR APPROVAL OF LAW SCHOOLS 19, std. 301(a) (2009-2010), http://www.abanet.org/legaled/standards/2009-2010standards webcontent/Chapter3.pdf [hereinafter ABA STANDARDS].

87. *See, e.g., id.* at 21, std. 302(a).

88. *Id.* at 21, std. 302(b)(1).

career development. Hence, we decided to offer five Multistate Bar Examination-tested subjects, (contracts, torts, property, criminal law and constitutional law) as part of a largely conventional first year curriculum.[89] We also offer upper-level courses that are tested through the MBE and through state essay questions in multiple sections—evidence, federal income taxation, business organizations, professional responsibility, and family law.[90]

Our intense commitment to experiential education was also driven by our own judgment of what prepares young lawyers best for practice and what potential students and employers would find attractive. Our decision to make Co-op a non-paid academic program rather than a program where students would receive financial compensation was informed by the ABA accreditation standard that does not permit students to receive compensation for credit bearing activities.[91] Two other factors were much more important in our decision not to allow students to receive compensation for Co-op. As a new school we had great doubt about whether we would be able to develop sufficient placements if our Co-op partners were required to compensate our students. We also wanted students to be exposed to educational experiences that might not be justified under a compensated model. Our decision to have a mandatory pro bono program was driven by similar pedagogical goals and a general university commitment to civic engagement.[92]

Issues of faculty status are a major current regulatory issue in legal education. The crux of the debate concerns the tenure and governance rights of faculty with different teaching roles—the basic categories that frame the debate are conventional classroom teachers, clinical teachers and legal writing teachers. The ABA standards require that a law school be able to "attract and retain a competent faculty."[93] Beyond that basic requirement, the standards imply that full-time doctrinal classroom teachers should be on the tenure track, clinicians should have security of position reasonably similar to tenure, while there is no required model for tenure for legal writing faculty.[94] For our school, these distinctions seemed insensible. Thus the debates about the status-based decisions the ABA has made did not determine our faculty hiring model. We

89. Drexel Course Descriptions, *supra* note 36; Nat'l Conference of Bar Exam'rs, The Multistate Bar Exam, http://www.ncbex.org/multistate-tests/mbe/ (last visited Aug. 20, 2009).

90. *Id.*

91. Drexel Co-op Overview, *supra* note 46; *see, e.g.*, ABA STANDARDS, *supra* note 86, at 28, std. 305-3

92. *See* PRO BONO SERVICE HANDBOOK, *supra* note 70, at 1.

93. *See* ABA STANDARDS, *supra* note 86, at 35, std. 405.

94. *Id.* at 35-36.

decided that full-time faculty who were engaged in extensive scholarship would be tenured or tenure track.[95] Classroom teaching, clinical teaching and legal writing instruction in our curriculum are all of great consequence. Moreover, our faculty members teach multiple styles of courses. All of our full-time clinicians and legal writing faculty also teach doctrinal courses and our faculty members who primarily are doctrinal classroom teachers also sometimes teach legal writing, clinical, or simulation courses. And, based on our hiring experience, the subject matter of a faculty member's teaching is not linked to her scholarly potential.[96] A major collateral benefit of our unitary faculty model is that we can compete in hiring for the very best clinical and legal writing faculty.

The third controversial topic a new law school must consider is the ABA standards regarding infrastructure. The basic requirements for physical facilities are straightforward.[97] A law school needs to have sufficient classrooms, offices (including offices for clinics), student space, and library space for its program. Within this list, the most difficult topic is investment in information resources.[98] The ABA accreditation standards require that a law school have a law library that is "an active and responsive force in the educational life of the school."[99] The law library should have the resources—collection, human capital, technology, and physical space—to support the research, teaching, and service missions of the law school.[100] As with other aspects of the law school's operations, however, these standards did not fundamentally force investment beyond what we thought was necessary to provide a quality program of legal education. Because we have high scholarly ambition for our faculty (and students) we needed a library staff and collection that would support our intense research activities. Also central to the law school's educational mission is teaching students to do unmediated high level research. This drove the decision to hire a number of J.D./M.L.S. trained professionals who could be active participants in scholarly research and teaching.

Content, rather than format, guided our collection development plan. We understood we needed to build a monograph collection quickly that had both depth and breadth. For recently published

95. *See* The Earle Mack Sch. of Law at Drexel Univ., About Us, http://www.drexel.edu/law/about-us.asp (last visited Aug. 20, 2009).

96. *See generally* Drexel Faculty, *supra* note 52 (explaining general hiring criteria).

97. *See* ABA STANDARDS, *supra* note 86, at 49, std. 701.

98. *See generally id.* at 44-48 (detailing the various resources a law school is required to retain).

99. *See id.* at 44, std. 601(b).

100. *Id.*

monographs we knew that such a collection element would be largely in hard copy. We believe that much of the rest of the collection can be obtained in electronic format, including historical material that is used for scholarly research. Also, while we have some exemplars in hard copy of materials that are available online, by designing a largely electronic collection we are exposing and preparing our students for contemporary practice settings.

CONCLUSION

It is an exciting time for legal education. Within legal education and in the legal profession as a whole, there is fruitful debate about what law schools ought to be doing to educate their students. Starting a new law school in this environment is an amazing opportunity. Our experiences suggest that a research university can create a law school that is deeply committed to experiential education. When Rutgers-Newark celebrates its 125th anniversary, I am hopeful that our successors at Drexel and Rutgers-Newark—two law schools that understand quality in both domains is vital—will come together again to reflect on designing an excellent law school.

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