

# Breaking down the walls

Law schools are finally starting to re-examine and re-evaluate their teaching methods, as the era of Socratic lectures and 100% finals is giving way to clinical courses, practical skills applications and new classroom technology.

By Daniel Casciato

**W**hile some lawyers would grudgingly admit the legal profession is averse to change and innovation, law professors would say the situation is even more dire in law schools.

“There’s no doubt about it. The record is overwhelming,” says William Henderson, associate law professor at the University of Indiana School of Law and an empirical legal studies specialist who blogs about teaching innovations at [www.elsblog.org](http://www.elsblog.org).

Teaching, evaluating, and grading methods have remained static across North American law schools for decades, with little impetus for fresh approaches. Henderson attributes this to several factors. “One of the primary drivers is that we teach for relatively large classes. Another is that the rewards in the institution have become like any other academic pursuit, where your primary career advancement depends on your scholarly productivity.”

As a result, Henderson says, innovative teaching methods rarely lead to professional, tangible rewards. “That’s not a

way to build your career if you’re trying to reach the top of the legal profession. Most professors are rewarded for producing articles. That’s the incentive structure.”

Lack of outside pressures to improve is another contributing factor, believes Edward Rubin, dean of Vanderbilt Law School in Nashville and chair of the American Association of Law Schools’ Committee on Curriculum.

“Unlike business schools, we don’t have to compete with the market,” he says. “To become a lawyer, you have to go to an accredited law school, so we’re not competing with non-academic training institutions. And unlike medical schools, which are in the same position in terms of offering a gateway degree, law students only have to compete with each other. As long as they have the same training, no one is getting a particular advantage.”

#### **PEDAGOGICAL PARADIGM SHIFT**

However, just as the legal profession is now being forced to abandon old methodologies and adopt new practices in the



law professor Shin Imai. “There have been huge changes since I attended law school about 30 years ago. The significant changes have been around technology.”

### TECHNOLOGY ADVANCES

Today, law classrooms are powered with high-tech AV equipment, connections for laptops, and Internet access. Osgoode is also now webcasting continuing legal education classes and special lectures through Media-site, which is similar to TiVo. Students watch lectures on-demand, with the ability to pause and rewind. “Technology has gone beyond PowerPoint slides,” Imai says. “I use AV equipment to show short video clips to illustrate a point.”

While professors like Imai embrace technology, a debate is raging in other law schools about whether laptops should be banned in the class-

room and Internet access cut off. Reports of students checking their Facebook accounts, watching YouTube videos or playing online games during class prompted some schools to pull the plug and others to seriously consider it (see Addendum Upfront article, p. 12).

Mary Lynch, law professor and co-director of the Albany Law Clinic & Justice Center in Albany, New York, says professors need to respond by taking students’ attraction to and fluency with technology and making it a benefit, not a disadvantage.

“You engage that part of the student in helping them assess their own learning and their peers’ learning,” she says. “You want students to be active participants in the learning process, not passive learners.”

One example is through clicker technology, where students participate in question-and-answer sessions from their laptops. Some of Vanderbilt’s faculty members will use this technology this coming semester.

### PRACTICAL SOLUTIONS

In addition to taking advantage of technology, law schools are also placing greater emphasis on clinical education and hands-on opportunities, according to Douglas Berman, law professor at the Moritz College of Law at Ohio State University and founder of the Law School Innovation blog (<http://lsi.typepad.com/>). At Moritz, they offer a legislation

face of technological, marketplace, and generational changes, law schools are facing the same sorts of pressures, and have to respond accordingly.

“Legal education hasn’t changed all that much for quite some time, although clinical legal education has grown to some extent within law schools,” says Anne Colby, a senior scholar at the Carnegie Foundation for the Advancement of Teaching at Stanford University, and co-author of *Educating Lawyers: Preparation for the Profession of Law*.

Colby is co-directing the Preparation for the Professions Program, which is examining the process for entering five different professions — law, Christian and Jewish clergy, medicine, engineering, and nursing — by looking comparatively across these professions, as well as within each one.

“The legal field seemed happy with the way it was. It was a bit complacent, yet we actually found there was a huge receptiveness to change, and our report has been picked up all over the U.S.,” she says. “There’s now a coalition of law schools working together to discuss changing their teaching approach.”

Some law schools are already ahead of the curve in their instructional philosophy, curriculum, and delivery, like Osgoode Hall Law School in Toronto.

“Pedagogy has taken big strides since the days when the philosophy of education was to stuff somebody’s head with information and that person would regurgitate it,” says Osgoode

# Rethinking the classroom

*“It is sometimes difficult to effect change when there is a tradition of doing things in a particular way.”*

**S**o says the Law Society of Upper Canada’s Licensing and Accreditation Task Force in its *Interim Report To Convocation on the Skills and Professional Responsibility Program* (see article, p. 16). When it comes to law school curricula, it’s a bit of an understatement: the standard first-year curriculum for law schools across the country was first articulated in 1957 and has changed little since. In the U.S., it’s been even longer.

But despite this inertia, law schools can change. They can innovate. They can introduce new courses, clinics, programs and initiatives that take into account the realities of practising law in the 21st century. Here are six U.S. law schools that are doing just that.

#### 1. Washington and Lee University School of Law, Lexington, VA

W&L is taking on so-called “third-year malaise” by replacing the final year’s traditional classroom instruction with nothing but hands-on learning. Through a mix of legal clinics, internships, externships, and courses

Some law schools are doing more than talking about innovation — they’re rewriting the rules of legal education.

*By Susan Goldberg*

that simulate legal practice environments, students will put into action the lessons of their first two years to develop the professional and practice skills they’ll need in the real world.

Each semester will begin with a two-week immersion course in practice skills, including one that focuses on office and transactional practice. As well, students will participate in a year-long professionalization program that will encompass legal ethics, civil practice, civic engagement in leadership, and *pro bono* services. The third-year courses will be taught by members of the permanent law faculty, adjunct faculty, and visiting “professors of practice” drawn from the bar and bench.

The revised program, says Dean Rodney Smolla, will recapture and re-present all the

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intellectual content of the traditional law school model — but in practical form. “It’s not that we will train law students instantly ready to practise and be fully formed lawyers,” he says. “Ideally, you’re constantly learning throughout your entire life.

“But if the third year takes concepts that we’re already teaching students, and helps them then apply them in realistic settings — much like medical schools and other professions have done, and much like most societies do with regard to law — that certainly gives them a much better grounding in the first few years of practice.”

## 2. Harvard Law School, Cambridge, MA

With law school debt loads approaching or surpassing six figures these days, a head start isn’t a bad thing, especially for students who aspire to work in the public service. With those kinds of student loans, a career as a prosecutor or public defender can suddenly seem unrealistic. That certainly seemed to be the case at Harvard, with an annual tuition of approximately \$40,000: only about 10% of recent graduating classes have entered the public service upon graduation.

Concerned about these low numbers, Harvard has announced plans to waive tuition for third-year students who pledge to spend five years working either for nonprofit organizations or the government. The school already has a loan forgiveness program for students choosing public service.

Harvard students who wish to participate in the program will have to demonstrate their commitment to public service during law school, through participation in clinics and other programs. The school, which tracks the income of its graduates, will monitor recipients of the grants to ensure they don’t quietly defect to the (better-paying) ranks of corporate law.

## 3. University of the District of Columbia’s David A. Clarke School of Law, Washington, DC

The Clarke School of Law has created Advocate for Justice Scholarships, up to 20 full, three-year scholarships awarded annually to top students whose records reflect a deep commitment to advocacy and justice.

The scholarships fit into UDC-DCSL’s mandate as a self-described public interest-oriented law school. Its student body is highly diverse (64% women and 55% students of colour, as well as a range of ages and life experience), and its curriculum includes mandatory clinical programs and the “Law and Justice Community Service Program,” in which first-year students are required to provide 40 hours of service to a local non-profit, agency, or judge. Faculty include practicing lawyers and former judges, and the school aims to keep its tuition base as low as possible.

With the new scholarships, UDC-DCSL aims to increase the number of graduates entering the public service — an ambitious project, given that 40% of its recent grads have taken public-interest and public-service positions, jobs in government, and advocacy work.

## 4. University of Detroit Mercy School of Law, Detroit, MI

In response to both law students and law firms, each of whom asked for more practical training, the school has completely retrofitted its curriculum. Dean Mark Gordon, a Harvard graduate who arrived at UDM in 2002, pioneered the sweeping changes after recognizing that the school’s traditional curriculum wasn’t addressing the real needs of the marketplace. He has tripled students’ opportunities for practical training, requiring that each student work with clients before graduation.

The school has opened a veterans’ clinic in addition to its appellate, mediation, urban and immigration clinics for students who plan to specialize. *Continued on next page*



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Third-year students now are also required to participate in a mock law firm program, simulating the complex transactions involved in major business deals.

The results? Top firms around the United States are hiring UDM grads. In 2007, 90% of its grads passed the Michigan bar exam on the first try — a rate that surpassed both the state average and that of higher-ranked Michigan schools. Applications to the school are up more than 20% — two-thirds from out of state — even as applications to law schools nationally have declined by 15.7% over three years.

#### **5. University of Dayton Law School, Dayton, OH**

Dayton is tackling third-year malaise in a different way: by eliminating it, so to speak. It offers students the option to complete the standard three-year law degree in two calendar years, through an earlier start date and a more intensive course load.

More than simply shaving off a few months here and there, Dayton offers students the chance to focus early on the kind of law they'd like to practise — and the school unabashedly admits to preparing students for a law practice career — by offering three curricular tracks: advocacy and dispute resolution,

personal and transactional law, and intellectual property, cyberlaw and creativity. All students must participate in hands-on clinical programs or “capstone” courses to their chosen track.

#### **6. Northwestern University School of Law, Chicago, IL**

Also dispensing with the traditional three-year degree is highly ranked Northwestern Law School. Like Dayton, it is offering a compressed J.D. program that takes just 24 months to complete. But it's also bidding to rethink the purpose of a law degree. Focusing on students slightly older than average with more work or life experience behind them than the average university graduate, Northwestern is changing its curriculum to involve many more practice skills.

Among the mandatory courses for the two-year degree (soon to apply to the three-year program too) are quantitative analysis (accounting, finance and statistics), the dynamics of legal behaviour (teamwork, leadership and project management), and strategic decision-making. The buzz in the blawgosphere indicates that Northwestern may be on to the next big thing in legal education. ■

Susan Goldberg is a freelance writer in Thunder Bay, Ontario.

approach, which relies on trying to look at real-life problems and involving students as actual actors in understanding and articulating the problem.”

Imai was honoured last year with an award from Osgoode, his second at the school, for his innovative teaching methods. In their nomination, students noted that Imai engages students not only in discussions about law, but also in exercises intended to develop practical and ethical modes of reasoning.

#### **ALL OR NOTHING**

Another way the learning experience could be improved is eliminating the 100 percent final exam. Marjorie Silver, law professor at the Touro Law Center in Central Islip, New York, calls it a “terrible way to educate.” So she abolished the practice altogether.

“I give my students multiple writing assignments and opportunities throughout the semester to give them feedback, and multiple incentives for them to work as hard as they possibly can,” she says. “I try to deliver a consistent, positive message about the importance of working hard.”

Silver stresses the importance of being committed to figuring out what doesn't work in the classroom and to keep changing it until it does work. “I

relish the challenge of finding more and better ways to reach my students and helping them develop into the best lawyers they can be and the best people they can be.”

For professors still relying on 100 percent final exams, the Carnegie project's findings indicate they are not taking advantage of how assessment could help improve performance throughout the semester, says Colby.

“We recommend a more formative assessment, where students receive feedback all along about their work, so it's not just a one-shot feedback at the end of the course,” she says. “We found there are many problems in the current system of assess-

ment. I think the move needs to be more towards continual assessment, coaching, and feedback.”

While some U.S. schools have eliminated 100 percent finals, Maureen Fitzgerald, president of CenterPoint, a conflict resolution law practice in Vancouver who earned her Ph.D. in legal studies, finds the practice still prevalent at most Canadian schools. “I think they still do it because it's easier not to change. But they must change this, if nothing else. [One hundred percent finals are] so damaging to students and so un-educationally sound that it's shocking [they're] still there.”

Through research for her thesis, Fitzgerald discovered students believe that 100 percent final exams did not provide an opportunity to demonstrate what they really knew. “All graduates felt that a three-hour final exam did not and could not measure all of the things that students were able to do,” she wrote.

clinic and might add a transactional clinic.

“When I was in law school, I didn't get the feeling clinics were well respected or considered an integral part of the law school experience,” Berman says. “I think attitudes have shifted, and many law schools are making an effort to provide a broader array of clinical offerings. There are efforts to expand on the kinds of skills and legal engagements that clinics present to students. So it's not just for those who want to be trial lawyers.”

Imai brings that clinical perspective into his classroom, so that students are active participants. At the beginning of each class, he provides discussion questions and problems based on readings from the course materials and a novel chosen for that semester. Students are then divided into small groups to discuss a problem based on the novel, and instructed to analyze one aspect of a problem from the perspective of a particular stakeholder or stakeholder groups.

The discussions involve policy implications and legal ethics issues arising from the problem. After the group discussions, the students reconvene and share their insights with the entire class. By incorporating these practices, students become part of the teaching process.

“After they have studied the abstract concepts, I make them apply the law to situations involving complex actors,” Imai says. “It was important for me to break that traditional method of teaching. You have to realize that shoving information into people's head is not teaching. I use the problem-solving

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“Students appeared concerned that they had only one opportunity to demonstrate their knowledge and if they blew it, they would be a failure. Others felt that the pressure of 100 percent finals and the timing of the exams caused them to perform badly, promoted unhealthy competition and impacted their motivation to do well.”

**PUBLISH OR PERISH**

Perhaps the most significant step law schools could take to improve teaching methods is to hire professors for their teaching skills instead of their publishing ability. But that would also be among the most difficult steps, since law schools emphasize and assess professors on their publishing skills.

Lynch, like many of her colleagues, says that law schools have to look for balance on the faculty. “Perhaps we’ll find a whole slew of people who are expert practitioners and the most productive scholars and the most collegial committee members and wonderful with alums,” she says.

“But the reality — like choosing anything in life — is that you usually don’t get everything. So you need to look at the faculty as a team with diverse members, some who have outstanding scholarship or potential for scholarship, and some who are expert in teaching in accordance with best practices for legal education.”

Imai believes that teaching in a law school is a skill and discipline, something that needs to be taught. He is a proponent of the annual course development seminars that Osgoode

began three years ago, where professors learn how to teach.

“The teachers who teach our children in grade school or high school have to go teacher’s college first. We don’t do that with law professors,” he points out. “I think that’s a problem. There is a discipline to teaching.”

While law schools are finally making a closer examination of teaching innovations and trying to improve, law professors say more work is still needed. And the impetus for that continual improvement has a consistent and growing source: pressure from the students themselves.

**Perhaps the most significant step law schools could take to improve teaching methods is to hire professors for their teaching skills instead of their publishing ability.**

“Students should appreciate how critically important it is for them to have an active and vocal role in encouraging law schools to do good by them,” says Berman. “Students can and should, on the first day they arrive at law school, be comfortable and aggressive in articulating their views of what’s important to them in the classroom experience.”

Lynch agrees, but adds that other stakeholders need to get involved. “Law firms, judges, the legal and consumer community, and citizens can be part of this. Law schools graduate people who have incredible influence in government, business, and our communities.

“We all have a stake in putting pressures on law schools to move forward and make this a commitment to our legal, government and court structures and our communities.” ■

Daniel Casciato is a freelance legal writer in Pittsburgh who has contributed several articles to *National*.

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