LPM 2.0 Powered by Change Management

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Business of Law

What Are Law Schools Training Students For?

An email conversation between Mark A. Cohen, Thought Leader | CEO Legal Mosaic and Joek Peters CEO LegalBusinessWorld around Marks' article 'What Are Law Schools Training Students For?' (Forbes)

The legal profession and the trillion-dollar global industry are undergoing a transformation. The seminal elements of legal practice—differentiated expertise, experience, skills, and judgment—remain largely unchanged. The delivery of legal services is a different story altogether. New business models, tools, processes, and resources are reconfiguring the industry, providing legal consumers with improved access and elevated customer satisfaction from new delivery sources. Law is entering the age of the consumer and bidding adieu to the guild that enshrined lawyers and the myth of legal exceptionalism. That's good news for prospective and existing legal consumers.

The news is challenging for law schools, most of whom seem impervious to marketplace changes that are reshaping what it means to be a lawyer and how and for whom they will work. The National Advisory Committee on Institutional Quality and Integrity (NACIQI), a branch of the Department of Education, rebuked the American Bar Association (ABA) in 2016 for its lax law school oversight and poor "student outcomes." Paul LeBlanc, a NACIQI member, concluded that the ABA was "out of touch with the profession."

Joek: 'This 2016 outcome, the ABA being out of touch with the profession must have triggered them to act; what has happened since this disturbing outcome was presented, and do you think law schools are more 'in-tune' with the current market developments?

Mark: Law schools have made some strides during the past few years-- experiential learning, legal technology, entrepreneurship, legal innovation, and project management courses, are becoming standard fare. A far bigger—and more important step would be for the legal Academy to forge alignment with the marketplace. That would be a "win-win-win" for students, law schools, and legal providers/consumers. Students would be exposed to the "real world" and the skills, opportunities, and direction it is taking. The Academy would acquire context, use-cases, and an understanding of consumer challenges and needs—a strong foundation from which to remodel legal education and training, address the "skills gap," as well as to improve "student outcomes." Legal providers/ consumers would benefit from a talent pool better prepared to provide solutions to the warp-speed pace and complex challenges of business.

Joek: 'I totally agree. For the last 2 years I'm a guest speaker on innovation and change at the Honors College of Law at Leiden Law School and I've noticed that they are preparing students to work in a more dynamic marketplace in which change in customers needs, IT developments and structure are more apparent. But I also notice sort of a 'false urgency', meaning that a lot of Law Schools talk about the importance of change, but in the end focus on the primacy of tradi-

tional educational. In terms of management, strategy, organization etc., and to get rid of this 'false urgency', what needs to be done, and do you think that the business of law and legal delivery needs to be an inseparable part of the standard law school curriculum?

Mark: Yes, I feel strongly that students be exposed to the marketplace as it is today, not as it was even a decade ago. That means that legal practice and delivery should be taught in an integrated fashion. Simply "knowing the law" is insufficient for lawyers today. The "false urgency" you mention is a problem because there is an urgent need for students to be trained differently than before. That's because legal buyers have different demands and expectations. "Change" is meaningless unless it is contextualized—why has it come about, what's it's impact, and what is required to adapt to it? That's what law faculties should focus on to provide context. The problem—especially in the U.S.—is that few full-time law school faculty have practice experience much less understand industry changes that have occurred during the past decade.

What Does It Mean To "Think like A Lawyer" Now?

Law schools have long focused on training students how to "think like a lawyer." Their curricula were designed to: (1) hone critical thinking; (2) teach doctrinal law using the Socratic method; (3) provide "legal" writing techniques and fluency in the "language of law"; (4) advance oral advocacy and presentation skills; (4) encourage risk-aversion and mistake avoidance; (5) refine issue identification and "what ifs;" and (6) teach legal ethics. Practice skills were usually acquired post-

Law schools still teach this way even as the marketplace has changed markedly, particularly during the past decade. Legal delivery is now a three-legged stool supported by legal, business, and technical expertise. Law is no longer solely about lawyers; law firms are not the default provider of legal services; legal practice is no longer synonymous with legal delivery; the legal buy/sell balance of power has shifted from lawyers to legal buyers; lawyers do not control both sides of legal buy/sell; and the function and role of most lawyers is changing as digital transformation has made legal consumers—not lawyers—the arbiters of value. These changes are affecting what it means to "think like a lawyer" and, more importantly, what skills "legal" skills are required in today's marketplace.

Legal knowledge was long the sole requisite for a legal career; now it is a baseline. "Thinking like a lawyer" today means focusing on client objectives, thinking holistically-not simply "like a lawyer," understanding business, melding legal knowledge with process/project management skills, and having a working knowledge of how technology and data impact the delivery of legal services. Lawyers no longer function in a lawyer-centric environment—now, they routinely collaborate with other legal professionals, paraprofessionals, and machines. Thinking like a lawyer means understanding the client's business—not simply its "legal" risks. It also means collaborating with others in the legal supply chain, ensuring that the "right" resources are deployed to drive client value, working efficiently, capturing intellectual capital, using data, and advancing client objectives.

Legal performance is shifting from input—

hours and origination-- to output-- outcomes and results that drive client value. Lawyers must be attuned to the complexity and speed of business. They must render counsel that considers not only legal risk but also other factors such as brand reputation, regulatory, financial, etc. They must provide multi-dimensional, holistic, timely, and actionable advice. This is what the marketplace construes as "thinking like a lawyer."

Joek: The underlying competences in 'Thinking like a lawyer' changed and I agree that all legal students, before taking on their professional career, need to be aware of new market dynamics and that a successful career in the legal industry means more than being a specialist in a certain law practice. But, how about training students to 'Think like their client' not only from a legal business perspective but actually train them to be able to understand the challenges and need of their clients and be more business savvy, so their lock-in is not only on legal matters, but actually knowing the drivers of a clients success and growth?

Mark:
"Thinking like a client"—at least knowing the client's objectives, risk tolerance, value assessment, and business has always been critical. The problem is that most lawyers have little direct client contact and, so, neither ask those questions nor see things from a holistic perspective. Law schools have traditionally taught students to "think like a lawyer" and that's fine so far as it goes. But thinking like a lawyer involves not only legal expertise and competency but also—as your question implies—much more. I agree with you; lawyers must be business savvy, understand how

technology impacts legal delivery, how the legal supply chain works, project management, and the basics of data analytics. They must understand client challenges from more than the narrow "legal" perspective, because clients today want answers to compex, multi-disciplinary client challenges, not legal briefs.

What Should Law Schools Train Students For?

 Most law schools continue to train students for traditional practice careers, even as more "legal" work formerly performed exclusively by law firms has been disaggregated and is now increasingly sourced in-house, to law companies, and to "legal" service providers from other disciplines—notably, the Big Four. "Practice" careers are shrinking, and that means that law students and those in the early and mid-stages of their careers must learn new skills to qualify for the jobs that will replace them.

Deloitte projects that 39% of all legal jobs will be automated within a decade. Many of those positions are currently filled by law firm associates who, through labor-intensity (read: high billable hours) and premium rates sustain the traditional partnership model. That model is changing; law firms are hiring fewer newly-minted lawyers and only a small fraction of BigLaw associates make partner. Legal buyers are balking at paying premium rates for non-differentiated "legal" tasks. For many law grads, "gigs" are replacing full-time jobs, and the average lawyer can expect double-digit job changes during her/his career. "Knowing the law" is now a baseline that must be augmented by new skills that are seldom taught by law schools—data analytics, business basics, project management, risk management,

and "people skills" to cite a few.

Why are most law schools slow to revamp curricula--even as many have spent tens of millions on new buildings that drive no value to students? And why is the Academy detached from other stakeholders in the legal ecosystem? There are many explanations for the disconnect between the legal Academy's training and the marketplace's needs: the ABA's protectionism of the profession (read: dues-its dues-paying lawyer members); faculty indifference; focus on the profession, not its interplay with the industry; unwillingness to embrace pedagogical change; a narrow, anachronistic, self-serving interpretation of "scholarship," ranking fixation, a monolithic, undifferentiated approach to legal education/training, and an absence of meaningful performance metrics and accountability. Law schools have begun to pay the price for stasis—declining enrollment, fiscal pressure, migration of talent to other professions/business, and a torrent of negative press. What's to be done?

Law Schools Should Focus on Consumer Needs and The Skills Required to Satisfy Them

Businesses have different cultures, hiring criteria, target markets, and performance metrics—why not law schools? Most academics would respond, "The goal of business is profit—that's very different than an educational institution." Perhaps, but in today's world, profit is derived from customer satisfaction—a positive experience, a satisfying outcome, and value. Most law schools are receiving failing grades when measured by these criteria. They should, as Mary Juetten suggests in a recent article in the ABA Journal, focus on outcomes. For Ms. Juetten, that includes adding metrics, going beyond substantive law, more practical

experience (a/k/a experiential learning),

doubling down on dispute resolution mechanisms, and finding solutions for the access to justice crisis by aligning tech products to material marketplace needs (use-case). Let's hope the ABA takes note of her recommendations.

There is no one-size fits all answer to the training issue, and that's part of the problem. Law schools have largely undifferentiated curricula and train as if grads from all law schools are preparing for similar careers. That flies in the face of past, present, and future reality. A small band of elite, brand-differentiated law schools ("T-14"—perhaps 20) continue to prepare the bulk of graduates for "practice" careers at similarly brand differentiated law firms, in-house legal departments, law companies, as well as high-level Government, academic, and judicial careers. For the other 170 or so U.S. law schools, it's a different story— but by no means a bleak one. There is enormous opportunity to train students to better serve law's "retail" segment. Tens of millions of new legal consumers would enter the market if there were more new, efficient delivery models that better leverage lawyer time utilizing technology, process, data, metrics, and a client-centric business structure. So too are there opportunities for grads of non-elite schools trained in data analytics, project management, knowledge management, and a plethora of other "business of law" positions— many of which have yet to be created.

All law schools should provide grads with: a command of doctrinal law "basics" including legal ethics; critical thinking; people and collaboration skills; business, tech, and data analytics basics; marketplace awareness; a learning-for-life mentality; and an understanding that law is a profession and a business. Law schools must also train students to be client/customer centric. This is far more important than the "lawyer-centric" approach of the past. Students must graduate with a grasp of what legal consumers expect of lawyers; what skills are necessary to satisfy those expectations; and what additional/ongoing training will be necessary to drive client value? A law school diploma is no longer the end of one's formal education—it is a baseline in a lifelong process. This presents a challenge and opportunity for law schools to be the principal source of that ongoing training.

Conclusion
Law schools must become better aligned with the marketplace. It's consumers—not lawyers-- that now decide how and when lawyers are deployed. This is a path previously traveled by physicians, accountants, and other professions. Service professions—like businesses-- must serve the needs of consumers. Those needs are not static. That's why law schools cannot remain static and must adapt more fluid curricula to meet the needs of legal consumers, not their own.

Joek: I think a fairly large group of professionals will agree with your recommendation(s). However, isn't part of the problem that it is easy to say that curricula must be more fluid, and that we can learn from other professions to change the curricula, but because of a lack of insights in what legal education should look like and/or how to migrate to such an educational system is the actual challenge... and if you were asked to change the law school curricula, what would you

propose or do, the migrate the current Law School curricula to the 'new' updated curricula?

Mark:
I'll answer your question by assuming I had license to build the model from scratch, unencumbered by legacy faculty, overhead, culture, and regulatory constraints. I would start from the premise of educating/training students with the tools necessary to meet legal consumer demands. It's buyers that are now dictating how, when, with whom, and at what price point lawyers—and other legal professionals—are engaged. Consumers, not lawyers, now determine what "legal" tasks are and when lawyers are required. That's a different marketplace than traditional legal curricula were designed to step into. Also, fewer lawyers will have traditional "practice" careers now and more will have hybrid practice/delivery jobs and gigs.

All lawyers should have a baseline knowledge of traditional core doctrinal courses—like physicians—but beyond that training should be specialized—again, like doctors. Why should all law schools train students as if they were engaging in identical jobs/gigs? A use-case approach would be helpful. "Soft skills"— a misnomer because they are core skills— should also be emphasized. That includes collaboration, client management, cultural awareness, and other areas related to emotional intelligence. "Residency" periods, externships, and practical experience would also be required. So too would one or more semesters at a foreign law school. Cost would be reduced by a combination traditional and "flipped" classrooms. That's a start....

About Mark A. Cohen
Go to his Bio, Professional Overview and Speaking Assignments and Published works

Reading Tip

Mark recently returned from a residency period at the Singapore Academy of Law. He shared experience with CBA National.

Read more about Singapore's ambitions for the legal industry at: http://national-magazine.ca/Articles/December-2018/Singapore-s-ambitions-for-the-legal-industry.aspx