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Lawyers and the Lessons They Provide for
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The Lawyer of the Future

Deanell Reece Tacha*

Introspection is the order of the day for legal education and the legal profession. The economic stress of the last few years tore away at many of the traditional models of law practice and caused many to question the value of a legal education. The combination of rising tuition and a challenging employment market causes very bright, aspiring lawyers and judges to question whether law is a wise professional choice for them. The history of legal education and the legal profession provides powerful positive responses to these contemporary doubters. Rigorously educated legal professionals are problem-solvers, models of civil discourse, agents of orderly social change, articulators of policy, enforcers of procedural safeguards, and guardians of sacred inalienable rights. Law-trained professionals are, in short, the face of the rule of law that is the envy of much of the world. Recognizing all the challenges of this time in history, the central value of the importance of legal education cannot be diminished.

The current debate about the value of legal education is itself an opportunity for the legal profession and legal educators to examine what we are doing with the analytical precision that we bring to cases, problems, arguments, and opinions. We must face honestly both our successes and the ways in which we may have failed to adapt to the changing needs of students, the profession, and the nation. Refreshingly, this very discussion is occurring in law schools, courts, bar associations, and throughout the legal profession. During my first year as Dean of the Pepperdine University School of Law, I spent much of my time studying the many dimensions of the questions related to the value of a legal education. Many brilliant lawyers and judges are thinking about these questions. In the spirit of being part of the national discussion, on April 20, 2012, the *Pepperdine Law Review* and I convened a group of these distinguished commentators on legal education to discuss some of the most challenging issues confronted by legal education as it seeks to reinvent itself for a new century. The articles

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contained in this issue cannot capture sufficiently the dynamism and flourishing debate that these participants provided for the Pepperdine faculty, students, and alumni at the *Lawyer of the Future: Exploring the Impact of Past and Present Lawyers and the Lessons They Provide for Future Generations* symposium last spring.¹ The interchange among these legal scholars inspired, challenged, and encouraged all who had the privilege of being part of that important conversation. We are so privileged to present their insightful articles and are confident that they will make valuable contributions to the national dialogue.

Professor Paul Carrington of Duke University reminds us powerfully of the central role that lawyers played in the founding days of this nation and the expectations of those lawyers.² The dedication of so many of those early lawyers to steering the course of the republic was a critical factor in the success of the new nation. Indeed, legal education in its several forms at the time was largely directed at preparing lawyers for service to the country.³ Thus, Chief Justice George Robertson's rallying cry at the Transylvania Law School to "go forth and save the Union . . ."⁴ This article challenges today's legal educators to consider whether we have perpetuated in modern law schools that essential role of training for public and government service.⁵ He observes that economic reward and social status may have trumped national service as a goal of legal education.⁶ If that is so, what an indictment! The means of recalibrating successfully is a challenge of its own, but Professor Carrington calls us to consider it.

Professor Robert Cochran of the Pepperdine University School of Law examines the life of Justice Louis Brandeis as a model of the lawyer as public servant.⁷ Brandeis was instrumental in bringing to the legal profession of his time the values of the lawyer as advocate and embracing the modern understanding of the advocate's key role in the ethical, adversarial legal system.⁸ Justice Brandeis in his lectures and through his

1. See Paul D. Carrington, *Founding Legal Education in America*, 40 PEPP. L. REV. 343 (2013); Robert F. Cochran, Jr., *Louis D. Brandeis and the Lawyer Advocacy System*, 40 PEPP. L. REV. 351 (2013); Stephen Gillers, *How to Make Rules for Lawyers: The Professional Responsibility of the Legal Profession*, 40 PEPP. L. REV. 365 (2013); James E. Moliterno, *The Future of Legal Education Reform*, 40 PEPP. L. REV. 423 (2013); Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); William D. Henderson, *A Blueprint for Change*, 40 Pepp. L. Rev. 461 (2013); Patricia Kay Oliver, *Justice For All*, 40 Pepp. L. Rev. 509 (2013).

2. Carrington, *supra* note 1.

3. *Id.* at 343–44.

4. *Id.* at 347 (quoting George Robertson).

5. *Id.* at 348–49.

6. *Id.* at 349.

7. Cochran, *supra* note 1.

8. *Id.* at 351–56.

work laid out three qualifications for an effective advocacy system: all sides must be ably represented, clients must be counseled to act justly, and lawyers must seek a fair solution.⁹ Those three qualifications and Brandeis's life stand as guideposts as legal education takes this introspective look at itself.

Professor Stephen Gillers of the New York University School of Law offers a sobering look at whether the professional responsibility rules that lawyers and bar associations draft for themselves are governed by a higher set of rules that reflect their grounding in the rule of law.¹⁰ He points out that there are many interests at work in the rule-drafting process and in the application of rules to particular circumstances.¹¹ The results, he posits, may not always serve the ends of justice or undergird the rule of law.¹² As the legal profession addresses very new models for "practicing law" or delivering legal services, the rule drafters need to take steps to bring intellectual rigor, more predictive analysis, diverse views, transparency, and leadership to these all important responsibilities.¹³ Inherent in Professor Gillers's presentation is the role that law schools must play in teaching ethical behavior not only from the rules, but also in the context of the larger values at play in a particular situation.

Building on the themes that Professor Gillers raises, the distinguished lawyer James E. Moliterno focuses his article on the direct criticisms being leveled at legal education—high cost, rising debt load, a disconnect between law schools and the profession, and a lack of employment opportunities.¹⁴ He argues that the modern law school, in addition to teaching legal analysis and skills like interviewing, negotiation, writing, and advocacy, must teach students to work together in teams to solve problems and to understand the business aspects of law practice like project management, the needs of clients, and creative resolution of controversies.¹⁵ In addition to legal education, Mr. Moliterno analyzes the role of the bar examinations and describes the current model as "dysfunctional."¹⁶ He challenges bar examiners and courts to abandon the course-specific model that impedes law

9. *Id.* at 357–64.

10. Gillers, *supra* note 1.

11. *Id.* at 366–71.

12. *Id.* at 377–405.

13. *Id.* at 405–21.

14. Moliterno, *supra* note 1.

15. *Id.* at 434–36.

16. *Id.* at 436.

school reforms and try to devise examinations that test the competencies which make a good lawyer.¹⁷

Professor Deborah Rhode brings laser-like focus to the challenges that legal education faces and suggests possibilities for reform.¹⁸ She points to the role that accreditation and rankings have played in escalating the cost of legal education.¹⁹ She describes powerfully the personal and institutional impact of the staggering increases in student debt.²⁰ Professor Rhode directly challenges the traditional law school curriculum and argues that law schools should require practical skills courses that include problem-solving, marketing, project management, leadership, and other practice-oriented topics that better prepare students for working in a client-centered modern legal environment.²¹ Of utmost importance, Professor Rhode laments that legal education fails to foster professional responsibility and professional identity.²² She concludes that, in addition to the various curricular changes, law schools cannot cut costs significantly without challenging both accreditation and rankings imperatives.²³ She urges innovative new models like earlier enrollment, degree options, varying specialties, and more student choices.²⁴ She emphasizes the importance of designing experiential teaching opportunities that incorporate ethical analysis and pro bono service.²⁵ The template Professor Rhode sets before us is both ambitious and exciting. Legal education would do well not to ignore it.

Professor William Henderson of the Indiana University Law School has emerged as one of the leaders in quantitative analysis of the profound changes occurring in the legal profession.²⁶ In his symposium presentation, he used his extensive research to lay out a strategy for responding to a problem that he describes as “a profoundly serious business problem.”²⁷ In

17. *Id.* at 430–34.

18. Rhode, *supra* note 1.

19. *Id.* at 438–46.

20. *Id.* at 441–42.

21. *Id.* at 448–49.

22. *Id.* at 451–54.

23. *Id.* at 455.

24. *Id.* at 456–59.

25. *Id.* at 457–59.

26. See, e.g., *Outcome Assessment Project, Research Team*, NORTHEASTERN UNIV. SCH. L., <http://www.northeastern.edu/law/about/oap/research%20team.html> (last visited Nov. 20, 2012) (“Professor Henderson has spent his career analyzing the business side of the legal profession and legal education, which has earned him a reputation as a legal innovator. He is recognized as one of the foremost experts on legal labor markets and the empirical analysis of the law firms and legal education.”); Lincoln Caplan, *An Existential Crisis for Law Schools*, N.Y. TIMES, Jul. 15, 2012, at SR10, available at <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html> (discussing Professor Henderson’s quantitative analysis of recent employment data from the American Bar Association).

27. Henderson, *supra* note 1.

analyzing the structural shift in the U.S. legal profession, he urges legal education to take a long-term strategic approach to the stifling trio of dwindling law school applicants, high debt levels, and diminished traditional employment opportunities.²⁸ He stresses the importance of taking into account the greatly changed landscape of providing legal services, in large measure driven by the information revolution.²⁹ Professor Henderson warns that law professors must understand the changes in the legal profession and engage with lawyers and legal entrepreneurs with the goal of designing a competency-based curriculum that builds effective lawyers.³⁰ Characteristically, he takes a quantitative approach to the change, arguing that twelve percent of the curriculum could be changed and make a significant difference in the lawyer-effectiveness of students.³¹ Twelve percent is a realistic challenge to set before legal academia.

Finally, in her moving personal account, Patricia Oliver, Director of Christian Legal Aid of Los Angeles, sets before us the ideal of “Justice for All,” the compelling motivator and the aspirational goal of all lawyers and judges.³² Ms. Oliver points out the vast need for legal services among the American public and the inadequacy of current models to meet these needs.³³ In representing lawyers as philanthropists, she suggests an “urgent care,” mass-produced approach that would reach more people, serve more needs, and be more integrated and efficient.³⁴ Finally, she challenges us to consider what “justice” means—returning us to the themes that Justice Louis Brandeis espoused at another important time of change in the legal profession.³⁵ Ms. Oliver clearly beckons law students and lawyers to rethink their own roles in, and the structures for, delivering legal services more broadly to give meaning to “justice for all.”

What a challenging and thoughtful array of scholars this symposium attracted! We are grateful to each of them and honored by their participation. May this symposium be a valuable and action-inspiring motivator for legal educators to consider the challenges that lay before them. In characteristic style, lawyers must solve problems. Legal education has a problem. Together we will solve it.

28. *Id.* at 461–64.

29. *Id.* at 479–90.

30. *Id.* at 490–503.

31. *Id.* at 503–07.

32. Oliver, *supra* note 1.

33. *Id.* at 517.

34. *Id.* at 520–23.

35. *Id.* at 528–31.
