



**STANFORD LAW SCHOOL**

**Memorandum**

**TO:** Members of the Board of Trustees

**FROM:** Larry Kramer, Richard E. Lang Professor of Law and Dean

**DATE:** February 12, 2007

**RE:** Developments at the Law School

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To facilitate communications with students, the student Law Association set up a system for gathering questions and funneling them to me for a response. The first batch included questions about our curriculum plans.

Changes to the Law School's curriculum are something we as a community have thought about long and hard. Indeed, our campaign is founded on these changes. One student's question provided an ideal opportunity to offer a comprehensive explanation of our plans. Below please find the original query from the student and my response.

**QUESTION:**

Lots of students have been talking about the law school curriculum and are generally interested in what you think and what plans Stanford might have in the works.

**RESPONSE:**

I. Ask any law school graduate what was the most significant intellectual experience he or she had in law school (that is, what really shaped their thinking, what stuck with them, what mattered most), and almost all will give the same answer: the first year. This seems to be true no matter what law school they attended, no matter what career they chose to pursue, and whether they graduated last year or fifty years ago. I spend probably half my time talking to Stanford graduates, usually beginning a first meeting by talking about their time here, and I get this answer almost 100% of the time. The first year, in other words, is the part of law school that really seems to work. The problem with legal education is in the second and third years and consists mainly of failing to keep students engaged by offering them something of equivalent educational and intellectual value to what they got in the first year. It is from that perspective puzzling to see most schools that think about curriculum reform, focus their energy on changing the first year.

A common explanation for this curious fact is that we need to focus on the first year because this is the only year when we have the students' full attention. But that, of course, is merely to restate the problem: *why* do we have students' full attention only in the first year? Why do we progressively lose them after that? What are we doing wrong in the second and third years?

That legal education's weak spot is in the later years is hardly a new insight. Last year, I toyed with the idea of building my commencement address around the first commencement speech given at Stanford Law School, by Nathan Abbott. I was unable to find his speech (no copy seems to have survived), but I did find some letters he wrote about legal education—including one from 1901 in which he is already bewailing the fact that third year law students are disengaged. Everyone knows this, for it is true everywhere and has been true since the beginning of the three-year curriculum. By third year, perhaps even the middle of the second year, law students know the drill and find themselves less engaged and less interested in their classes.

II. To understand why the first year succeeds so much better than the upper two years, we need to understand what it is that law schools do in the first year. We are, for the most part, teaching beginning students to "play scales." That is, we are teaching the basic skill of "thinking like a lawyer": the art of legal problem spotting and analytical thinking that distinguishes lawyers and constitutes the heart of our discipline.

In theory, this skill could be taught with almost any set of legal materials. But we are doing something else as well that first year, namely, introducing students to a set of foundational concepts and building block doctrines that underlie every field of law—such things as intent, reasonableness, consent, injury, negligence, duty, and the like. We teach these concepts through a sequence of common law courses. This, too, is not absolutely essential, and there surely are other ways to teach the same concepts. But they developed at common law, and experience has shown that these common law courses are an excellent vehicle for teaching them to students.

Learning building block concepts and the accompanying art of using them as a lawyer is actually quite exciting and engaging. It is truly new for most students, which makes it challenging and fun, if sometimes anxiety producing. The learning curve is very steep, and first year students have a palpable sense of how much they are gaining.

Beginning in the early to mid-1980s, most law schools began to reform the first-year curriculum. A variety of different approaches were tried, but all shared the idea that we could accomplish what I described above within a first-year curriculum that included more variety. Law schools remained committed to the idea that the first year should be built mainly around the basics, and no one has abandoned a curriculum consisting mainly of torts, contracts, property, civil procedure, constitutional law, and criminal law. But many schools concluded that they could reduce the number of hours spent on those courses and use the extra time to introduce some other things into the first year. Hence, most schools in the 1980s and 1990s cut back the length of the traditional common law courses and offer some other things as well. The most common addition was a course

dealing with statutes and regulations, but different schools added other options beyond that—some emphasizing international law, others intellectual property, still others problem solving or quantitative analysis or "perspectives" (law and economics, feminism, law and society, etc.).

As interesting as the question of what to offer in a revised first year curriculum was whether to do so in the form of new requirements or as electives. There is an ongoing debate about what law schools should require and why they should require it. Some people see requirements as necessary to signal students about what is important. By requiring some things, the argument goes, we send a message to students that these are the subjects that really matter and that other subjects are of secondary importance. Since statutes are at least as important as common law, if not more important, it's not enough just to add a course on statutes and regulations in the first year. It must be a required course.

I've always found this argument unpersuasive. We don't require the common law courses because common law is more important than statutory or regulatory law. We require the traditional first-year courses for the reasons suggested above: because experience has shown that they work well as building blocks to teach foundational concepts that students will need in all their other courses, whether these other courses are based on common or statutory law. Beyond that justification, however, I don't see much reason to have substantive requirements in the first year. Students are smart enough to figure out that they shouldn't graduate without some significant exposure to statutes and regulations, and I seriously doubt that many graduates think that common law is more important than statutory law. We should, of course, offer students advice and guidance on their course selection—and one of our main ongoing projects is to significantly beef up the process we have for advising students. But law students should have as much freedom as possible to define their own course of study and to make their own choices about what they want to take. Hence, when Stanford reformed its first year curriculum many years ago, it shortened the traditional courses but did so in order to create space for students to take electives. We offer electives for first year students that fit the important categories, but we give our students freedom to choose how and in what order they want to build on the foundation established in the traditional first year courses. (I do think it makes sense to have some broad requirements like a writing requirement and a clinical requirement, which are meant to ensure that students do certain types of work but leave them free to choose the content and area of interest. There is, as well, a separate argument for requiring legal ethics, which goes to our responsibilities to the profession.

This sort of curriculum "reform" is fine as far as it goes. It may have some modest benefits in making the first year somewhat more varied—and it seems to do so without cost to students' learning the foundational concepts of legal analysis and learning to think like a lawyer. Students get to start taking classes that fit their personal interests earlier but are still as well educated in the basics. So the reform has not *hurt* anything. But it has not solved or even addressed the real problem.

III. So what is the real problem? It is not just that students are less engaged in their second and third years. That is a symptom as much as a problem. The problem is that legal education has traditionally involved teaching one skill (thinking like a lawyer) and doing so for three years. The second and third year curriculum is thus best described as "more of the same." The fields of law are different, but what students do in their second and third year classes is mostly just what they did in their first year classes. There is, to be sure, a bit more variety: opportunities to take some seminars and write papers, and opportunities to do clinics and externships. But these tend to be a haphazard feature rather than a systematic part of the curriculum, and the core curriculum remains focused mainly around doctrinal field surveys. Students take these other sorts of classes to relieve the monotony or to have a chance to "do some good" or have some fun while earning their degree. They are not an integral part of a consciously constructed upper level curriculum, and for most students the upper two years still consist mainly of more conventional law classes, with a handful of alternatives thrown in.

Bear in mind, it is *critical* that we teach students to think like lawyers and that we do it well. This is, as I noted above, the heart of our discipline and profession and what sets it apart. But we do not need three years to do that. On the contrary, most of what we have to offer students in terms of teaching them to think like lawyers is exhausted after two years or less. (Here is another point that, when I make it to lawyers, invariably produces vigorous nods of agreement from the entire audience.) Not that students are good at it after so short a period. It takes a career of actually working with law to become a good lawyer, much less a great one. But what we add by putting students through the paces in conventional classes drops off quickly after the first year and is exhausted well before everyone graduates. Students are still learning doctrine, which is hardly a waste. But they can pick this up easily in other, more efficient ways. If that's the best we can offer, it's no wonder students begin to drift away.

Yet thinking like a lawyer is not the only skill necessary to be a great lawyer. Far from it. Knowing how to analyze helps lawyers help clients identify legal problems and avoid liability or secure a remedy when problems occur. But it doesn't help lawyers help clients solve the problems the lawyers have spotted. To do that, you need also to understand what the client does. And you need to know how to work as part of a team, one that most often includes non-lawyers, because that will be a critical part of your professional life after graduation no matter what you do. For example, a corporate client asks its lawyer about a particular deal and the lawyer says "no, you can't do this because the law won't allow it." Well and good, and the client should be pleased to avoid liability. But when the client turns and asks the lawyer to help figure out a legal way to do the deal, the lawyer will need to know more than just doctrine. The lawyer will need to understand how the deal works, will need to know how to evaluate the risks and benefits, and will need to be able to work with the client to find a solution. This will be true no matter what the field, moreover, whether in the public or private sector, whether corporate law or intellectual property or environmental law or whatever. I cannot tell you how many people I have spoken to since becoming dean have said to me something like the following: "The problem with lawyers is that all they ever do is tell me 10 reasons I can't

do what I want. I need lawyers who, after they've done that, can help me find a legal way to get it done."

What we need to do in the second and third years, in other words, is to polish off the skill set our students began to build in the first year while also helping them start to develop *other* skills they will need to be great lawyers. When I speak to alumni, I usually refer to this in shorthand as the need also to help our students "think like clients." But that's not a single skill, much less something that can be taught in a generic course on problem solving. What it takes to solve a client's problem depends on what kind of law one is practicing and what kind of clients one is working with. An environmental lawyer needs a different skill set from an intellectual property lawyer, and both need different skills than lawyers who do corporate work or social services work or education work or biotech work. And so on.

Curriculum reform at Stanford is thus mainly focused on the second and third years and aims to address the shortcomings suggested above; in doing so, it will make the upper years a more varied, interesting, and professionally relevant experience for students. We will thus keep our first year roughly the same and preserve its strength (though we are exploring ways to improve the first year research and writing classes). And we want to be sure that students fill out their basic legal education in the second and third years by taking the classes necessary to be a well educated lawyer. Think of these as akin to distributional requirements, though we do not impose them as formal requirements: classes everyone should take, covering subjects every lawyer should know something about. Students should also take the law classes we offer in their particular areas of interest. But this is not enough to occupy more than a second year, and we want to afford students opportunities to get a more three dimensional education in addition to this. Students who want a traditional generalist legal education may still get one, and an excellent one at that. But students who want a more varied legal education, one that will add new and different skills and tools of great value, will have opportunities to do that as well.

A. How are we doing this? First, by making better use of the rest of the university. What does the university do, after all, except train the people our graduates will work with and for, their future clients and colleagues? And Stanford is unique among universities in the breadth and depth of its programs in this respect, with top-rated schools in business, engineering, medicine, earth science, education, and more. Stanford was the only university ranked in the top 10 in all 17 categories in which there are rankings, and it was in the top five in 15 of these categories and the top three in 13 of them. By making strategic use of courses and programs in other schools and departments at Stanford, we can afford our students unparalleled educational opportunities. Our 27 new joint degree programs—most of which can be completed in three years—are one manifestation of this. But we will afford similar opportunities and structures to all of our students, who are not seeking another degree but do want exposure to the basics in fields related to their legal interests.

There are multiple advantages to this sort of approach—some obvious, some less so. To begin, the people who teach in the other schools and departments are going to be better than law professors who attempt to teach the same material. We have already seen this in the accounting and finance courses we now offer, taught by professors from the GSB and much better received than the courses we used to offer. But the same is true whether we are talking environmental policy or medical ethics or risk evaluation. Second, what all these disciplines share in common is that each is about teaching students to solve problems in the respective field by the techniques most appropriate to that field. It is implausible to think that one can teach a generic skill of solving problems and equally implausible to think that law professors can do this by posing problems in their law classes. The techniques required are more sophisticated and varied than this. Studying the methodologies and processes used in a relevant other discipline is thus the best possible way to inculcate a problem solving mentality and to combine those skills with the problem spotting and analytical skills of a good lawyer. There are also significant advantages in learning these skills and concepts in an environment that mixes law students with students from another discipline, where the culture of learning has different strengths and emphases.

Bear in mind, too, that, like legal analysis, the skills and problem solving techniques taught in other disciplines are transferable skills that will find use across a wide range of potential career choices. This is not more specialized education. What we do now is specialized, consisting as it does of teaching a single method and skill. Combining this traditional legal education with new methods and skills from other disciplines provides a broader education, even as it ironically prepares students to practice in a more specialized world. Wherever life and serendipity take our graduates, they will be better prepared to adapt and succeed.

B. A separate but related aspect of enriching the law curriculum concerns the teaching of comparative and international law. Until approximately 20 years ago, international law was limited for the most part to a narrow set of public law issues (UN, treaties, etc.) and extremely marginal in the curriculum. At Chicago, where I went to school and taught in the 1980s, we had only one course in international law, public international law, which was taught every other year. Hardly anyone took it. Nor did they need to, for after graduation everyone entered practices that were wholly domestic to the United States. Only two or three U.S. law firms even had international practices, much less offices abroad. All that has now changed. Where only a tiny number of graduates used to practice law across national borders, today only a tiny number do not. International law has gone from the peripheries to the center, and law schools have been scrambling to adapt.

But what do we mean by international law? There has been significant growth in our program, but that growth has been in the same areas of international law that were always covered. The biggest change has been an increasing emphasis on international human rights and the emergence of national security law in the wake of 9/11 and the war on terror. Hence, most law schools now offer a large curriculum in public international law, with a lot of emphasis on the new international tribunals and new controversies over

international human rights. Stanford is no exception. Indeed, this past year, Allen Weiner (who directs our growing international program) came to me to say we have too many courses and need to think more systematically about how many to offer and in what order.

All this is important and worthwhile, and I'm delighted we are able to do it. But it's not the international law most of our graduates will practice. The international law our graduates will practice is in the private sphere. It's not about government-to-government interactions. It's about cross-border transactions between private parties. It's about international business and international trade, international procedure and arbitration, international tax, and, critically, international investment and development. This means building a program that covers these fields, the ones our students will actually deal with, and that also explores the relationships between these fields and public international law.

To a large extent, we can and should address our needs in the international arena by employing the same strategy as that discussed above—namely, by making sensible use of the rest of the University. And, in fact, Stanford has incredible resources in areas that overlap our needs. Resources like the Center on Democracy, Development and the Rule of Law (CDDRL), the Center on International Security and Cooperation (CISAC), the Center on International Development (CID), the Stanford Center on International Conflict and Negotiation (SCICN), the Center for Global Justice, the Asia Pacific Program, the European Forum, the Hoover Institution, and much, much more. There are degree granting programs in, among other things, International Policy Studies and International and Comparative Area Studies, and a new program is being considered in International Economic Law and Development. The University is seeking to raise \$500 million as part of the international initiative in its just announced campaign, and virtually all the new program ideas are in areas that overlap the interests and work of lawyers and legal scholars.

When it comes to the international curriculum, however, this is not enough, and we need to enlarge our own offerings as well. As noted above, we presently offer a rich menu of choices in public international law, which we are now seeking to rationalize and organize better. With recent additions to our faculty, we also offer a strong curriculum in international trade. But we need to grow in such areas as comparative law, international business, international tax, and international development. This is incremental growth for the law school: new areas of coverage as opposed to courses that displace current offerings we can drop. Hence, we plan to enlarge our faculty by approximately 10-15% to cover these new areas.

C. Creating opportunities for law students to study concepts and methodologies in other disciplines and enlarging their exposure to international and comparative problems is only one part of an enriched upper level law curriculum. It will change the mix of ideas our students have by adding substantive knowledge in a relevant field to the generic analytic skills taught in their law classes. But we also need to teach students how to deploy these skills in context and how to work with others in teams. Toward this end, we are making two further changes in our curriculum.

First, we are working with faculty and students from Stanford's other schools to create a range of multidisciplinary, team-oriented, problem-solving courses, such as the expert witness course we began this year with students from the sciences, or the clinical course that combines law students with medical students to address patients' full needs in both domains. Rather than attempt to teach students problem solving by lecturing abstractly about methods, these courses bring students and faculty from different disciplines together, assign them actual problems, and require them to work to find a solution. We already have a number of such courses, with more planned.

Second, and more important, is our clinical program. Clinical education grew out of student demands in the 1960s to do something useful for the community while in law school. Clinics were, in the early years, less about teaching than about providing legal services. After starting as one of the real pioneers in legal education, Stanford rebelled against this model and reduced its clinical program nearly to the vanishing point. That all began to change during Kathleen Sullivan's deanship, and with strong support from key faculty members—Bob Weisberg, Pam Karlan, George Fisher, Mark Kelman, and David Mills—Stanford began to build a new kind of clinical program. The hiring of Larry Marshall was the last piece of the puzzle. Rather than regarding clinical education as marginal, as maybe something to keep students occupied, we regard it as a central part of our pedagogical mission and curriculum, something every law student should experience.

The reasons for this may seem obvious but are worth restating briefly. In the classroom, one learns concepts either hypothetically or in the abstract. Understanding how these concepts play out in a real world setting is something that can be learned only in the real world. There are, moreover, a variety of critical skills lawyers need that can't be taught in a classroom: how to work with clients, how to work with colleagues and in a team, and ethical dilemmas of all sorts. Broadly speaking, clinical education is a way to teach students to be reflective, thoughtful lawyers. It's a way to teach them to understand their professional responsibilities and the meaning of professionalism.

One can, of course, learn all this the hard way, in practice. But never as well as in a clinical setting. Law firms are not there to teach; they are there to represent. We can do things in a clinical setting that simply cannot or will not be done in practice. We can choose cases for their pedagogical value; we can have a faculty member spend an enormous amount of time reviewing each step with students, talking to them about what they did and why, helping students name it so they will see it more easily next go-around, getting students to reflect on their actions; and so on. In this way, clinics provide an ideal bridge between the classroom and the professional world, as well as giving students a palpable sense of why lawyering matters in people's lives. (And it's important to note in this connection that enhancing the pedagogical function of clinics is not in tension with and has not reduced their function in providing legal services to underserved communities and inspiring students to make public service a part of their careers.) This is why every other profession except law already requires a serious clinical experience before giving someone a license to practice. Imagine graduating a doctor who had never been in a hospital but only in a structured teaching setting. One can't become a priest or a

rabbi without some clinical experience, much less a psychologist or dentist or pretty much anything else.

Consistent with this, we are seeking to enlarge and enrich our clinical program and make it a part of every student's education. This means expanding the number and variety of clinics, so there is space for everyone and something of interest to everyone. And it means developing clinics that reflect the same multi-disciplinary world lawyers face. We hope to accomplish this with a kind of "clinical rotation," where students take only a clinic during a particular quarter. There would be no competing exams or classes to worry about, we could build in a more serious professional ethics component, we could deepen the research and writing component, and we could operate clinics in a greater variety of settings (e.g., imagine an international human rights clinic operating abroad rather than here).

IV. Put this all together, and we're looking at an upper level experience that is very different from the one students have traditionally received. The legal education remains as strong as ever. Students take the essential courses, and our law faculty continues to do what it does best. But students can have a much richer, more varied educational experience in which they also get opportunities to study across disciplines, to work in teams with students from law and other disciplines, to have a serious and intense clinical experience, and so on.