

Presidential Report on 2014

“Observations from the Trenches,” at the First Meeting of the AALS House of Representatives

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Members of the House of Representatives, I am glad to be with you at my penultimate meeting as president of the association and am pleased to offer some brief remarks of reflection as I conclude my service. I know you all look forward, as do I, to the remarks of my colleague and successor as president, Dean Blake Morant, to be delivered at tomorrow’s second meeting of the House.

In my remarks at last year’s annual meeting in New York, I sketched my theme of the year, legal education at the crossroads. I invoked the popular song of the 1930s in order to make perhaps the too-clever point that we were facing a choice—and we needed to avoid the Faustian bargain that might take us away from our core values. Alas, I don’t have a song on offer to provide a bookend to this year. If I did, it might be something like “Smoke on the Water” or something similarly evocative, if a tad less alarming. But, in any event, I do appreciate the opportunity to reflect just briefly on the past year in legal education—at least the past year as I have seen it in my work as president of the association.

Let me first say just a word about this annual meeting and the theme. Looking over the program, I am struck by the ways in which legal educators are looking at old issues in creative new ways and at new issues with similar imagination and passion. In a presidential panel this morning, we gathered to talk about “implementing innovation in law schools” and we heard some really ingenious strategies for improvement and perhaps

even more significantly reflected on the opportunities and challenges to implementing change in our schools. The programs over the course of the remainder of this meeting are likewise valuable and give our community a sense that things are well in American legal education and great energy can be—and is—channeled to make constructive progress and to provide ever new ways of seeing our complex world.

But what I really want to reflect upon for just a few minutes is what I have observed and learned through this action-packed year, a year that has taken me to a large number of member schools and, in addition, engagement and dialogue with deans and professors at many other schools. Like my colleagues on the executive committee and, in particular, incoming president Blake Morant and president-elect-designate Kellye Testy, I have visited several law schools—more than two dozen all told—all in an effort to talk about the new AALS and to learn how law schools are adapting to this new normal.

Here are some observations from the trenches:

First, the pace of real innovation is ever growing. A number of law schools have encountered this period of substantial challenge in enrollment and post-graduate placement with diligent attention, with acceptance of the imperative of change, and with resolve to respond constructively in their academic choices. New courses and curricular initiatives, yes, indeed. But more far-reaching reforms are well in the works. At more than a few member schools, deans have reconfigured their clinical programs to emphasize a more comprehensive approach to new lawyer training through, for example, incubator programs and, in some cases, law school embedded law firms. Corporate labs and entrepreneurship programs have become vehicles by which law schools have joined legal training with foundational business skills—this in



an era in which the intersection of law and business is increasingly important. Design thinking has found its way into law school pedagogy and, with it, the shrewd metaphor of the T-shaped lawyer, she who has deep legal skills, but also the ability to collaborate across many disciplines. Public interest remains squarely in the canon of law school curricula—and I should pause to note this remarkable fact, given the temptation to deemphasize public interest in an era in which post-graduate employment is challenging to say the least and in which student debt is ubiquitous. Member law schools are making more sophisticated use of adjunct faculty and, as well, non-tenure-stream residential faculty who come to the law school with significant, valuable experience in legal practice.

To be sure, ABA and AALS regulations regarding faculty governance and tenure present challenges to this creativity but, as witnessed by various innovations in staffing models, these regulations have not proved to be serious obstacles to ingenuity, but, instead, a broad structure to think about employment models that serve well the aims of student learning and academic freedom.

Moreover, imaginative revisions of the law school's essential structure are underway. A number of law schools have developed accelerated programs and pipelines from undergraduate institutions in order to shorten the aggregate time of postsecondary and professional education. And this has been a year in which many law schools have developed master's and post-graduate programs in order to open up legal education to foreign and non-traditional students, and also to provide specialized training to young lawyers in order to help them thrive in a complex profession.

Technology looms large as both an external source of pressure and as a focal point for law school innovation. Subject to resources available, a number of member schools are availing themselves of new modalities of technology to improve pedagogy, in both the doctrinal and experiential parts of the curriculum. In some instances, law schools have deployed technology to widen the scope of access, as through mostly online and blended programs and also public-facing initiatives such as MOOCs and ambitious uses of social media. More than 100 member schools have their own YouTube channel, something that would have been unimaginable 18 months ago. The next few years will make clearer whether technology represents principally an opportunity or a threat to professional education as we know it; for now, innovative law schools have captured some of the utility of technology in their curriculum, in their programs, in their strategic plans.

Change is well underway and progress in adaptation of core educational strategies to new exigencies is manifest and exciting. I have seen it first hand; and you can see it not only in your own institutions, but also, at least second hand, by looking at law school websites and, happily, at the new and improved AALS website which collects these innovations.

I should pause here to express at least a bit of dismay about how law schools are still portrayed in the media. While the

incessant and scurrilous attacks on law schools represented by the so-called "scamblogs" seem to have more or less run their course, the focal point of the media remains on the financial challenges facing law schools—not even so much the financial challenges facing law students, which is an important focus—but on the law schools themselves. And yet the media and blogosphere tells this story through a scrupulous focus on the decline of law school enrollment, holding a sort of deathwatch with Vegas-like projections of the over and under on which law schools will go under. Like many of you, I have encountered the pregnant pause where the reporter on the other end of a call listens closely to see whether I

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will choke up in the face of the big news that an entering class is down by x or y number of students.

While it is never useful to fight the facts, I continue to believe that this is not the real story, not where our attention should be. Yes, the evidence is clear that law schools have struggled to meet their enrollment targets and to maintain the quality of their entering classes. But, in the main, this is not an existential threat to legal education, and not a predicament worth major public attention.

At the risk of coming across as insufficiently sensitive, let me say this: No law school has a right to a certain size entering class or a class of a certain level

of credentials. The idea that a law school is struggling because it cannot maintain a size adequate to assure that the fixed costs of its faculty, its infrastructure, its financial contribution to the central campus is essentially a *non sequitur*.

The law school's structure can only be a function of how many qualified students can be persuaded to apply and to enroll. The turbulence in law school enrollment will no doubt continue and, although this will present real challenges to particular member schools as they manage their budgets, it is not the predicament which should and must occupy our attention. That predicament—the one worthy of our attention—is whether and to what extent law schools are serving the fundamental aim of providing high quality education to law students who have the requisite skills to be in our nation's law schools and who, with the benefit of this high quality education, will be able to serve clients and do justice as new lawyers. Let's make that our story, and get away from the law school deathwatch—for, at bottom, no law school deserves to live, no law school deserves to die. Indeed, there is no desert in this at all. Rather, the question is how best to assure that the architecture of American legal education is meeting the needs of a diverse, demanding public and of a profession in flux.

Because I raised the issue of cost, let me say this from the vantage point of someone who has been looking hard at law schools during the past year: Our member schools are taking significant steps to alleviate the debt burdens of our students. Tuition increases appear to be slowing; and, more to the point, the discount rate of law school tuition is increasing and, in some instances, skyrocketing. To be sure, the data here is difficult to collect and hard to parse, but there is at least strong anecdotal information to support the claim that law schools are distributing more and more tuition revenue back to students, the consequence of which is surely likely to be a reduction in average student debt. In order to sustain these economic choices, law schools are making difficult budgetary

choices, including some cuts. They are also working hard to raise external money and with considerable success in order to alleviate tuition dependence. Last, but not least, law school stakeholders, including organizations such as the AALS, Access Group, and the ABA Section on Legal Education are working hard to combat efforts at the federal level to stiffen the requirements for Income Based Repayment. In short, law schools are working hard at controlling costs and this is beginning to have a salutary effect.

But, just a moment Dr. Pangloss, not everything is rosy in law school land. We need to keep it real and reflect on the ways in which our challenges continue and, in one important respect which I'll mention in a moment, grow. Of the many concerns, I want to highlight two:

First, there are tough choices facing our member schools which are under economic stress and strain. One choice is whether and to what extent to invest in faculty development and well-being. We discuss in many venues the conspicuous issue of law school staffing—whether, for example, there will be a turn away from tenured faculty to others with less job security. But looming alongside these hot-button issues are the seemingly more mundane issues of faculty well-being. Will law schools continue to be able to support faculty research and travel? Will law faculty be assisted in their teaching work through, for example, use of technology? Law faculty members are the principal assets in the educational structure of law schools and they are at risk when law schools face economic pressure. A message made clear to me in many meetings at law schools was that the faculty is worried—not solely or even especially about their ability to keep their jobs, but about the support necessary for them to continue their important work of teaching and scholarship and thus the ability to support the core educational mission of the law school.

The second concern I want to mention is one that has emerged with verve in the past year. While we are hard at work in our



law schools at reforming and reshaping our programs in order to accomplish meaningful innovation and safeguard our core values, a number of external stakeholders have undertaken to add state-specific graduation requirements on law schools. The adoption of New York's mandatory *pro bono* requirement—a requirement imposed, remarkably, on law students, but not practicing lawyers and without the breadth and depth of input that befits such a major change—proved to be the opening salvo in a movement to impose new regulation on law schools. California is poised to drop the other shoe, with the imposition of significant new curricular mandates on law students who would sit for that state's bar.

Just taken in isolation, the new requirements in these two large states represent a real impact, and not a particularly positive one, on law schools whose graduates would look to practice in these states. Isn't this a remarkable puzzle? At the same time that the law schools' key accreditor, ABA, and its leading membership organization, the AALS, are adapting their requirements in order to provide greater flexibility and room for more innovation and in this era in which such values are important, state bar leaders, typically with minimal input from the law schools or even from the general public, are adding burdensome new mandates.

The threats of these state-by-state mandates are three-fold: First, they add significant new costs to law schools at a time in which it is imperative for law schools to work together with the bench and bar to lower costs and thereby expand opportunity and access. Second, they layer on new, often ill-thought-through regulations without accounting for tradeoffs and synergies that are important elements in considering curricular reforms in a complex law school environment. And, finally, they emerge from processes that are insufficiently collaborative, not data-driven, and, frankly, disrespectful to those who are working constructively in the law school environment to foster and implement meaningful change. It is fire-ready-aim in a period in which a much more methodical and measured approach is called for.

So, as I look back at this year of change, I am heartened, but also worried. I am proud to be part of a community of law professors and deans who are working resolutely and passionately, and under difficult conditions, to improve legal education and to accomplish real change. Yet, I fret about the growing disconnect and discord between the legal academy and important external stakeholders, in the bar, in the bench, and in the legislature. I hope that in the coming years we can develop new ways to promote engagement and a multifaceted, respectful dialogue among all those who share an interest in the well-being of legal education. My exposure to the wonderful creativity of you all, deans and faculty alike, gives me great optimism that we will be able to do exactly that.

It has been a pleasure to serve the association as its president and I welcome the opportunity to continue to serve.

