

The Value(s) of Legal Education

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The Value of Legal Education



Cool under
cabin pressure.

PREPARATION

Pass It On.

VALUES.COM THE JOURNAL OF
LEGAL EDUCATION

The Value(s) of Legal Education?

Inspirational **VALUES**

ACHIEVEMENT **AMBITION** **APPRECIATION** BELIEVE
BELIEVE IN YOURSELF **CARING** CHARACTER **CHARITY** CIVILITY
CLASS AND GRACE **COMMITMENT**
COMMON GROUND COMPASSION COMPLIMENTS
COMPROMISE CONFIDENCE COURAGE COURTESY
DEDICATION **DETERMINATION** DEVOTION
DO YOUR PART DRIVE EDUCATION ENCOURAGEMENT
EQUALITY EXCELLENCE **FITNESS** FORESIGHT FORGIVENESS
FRIENDSHIP **GENEROSITY**

The Value(s) of Legal Education...



Wright Brothers

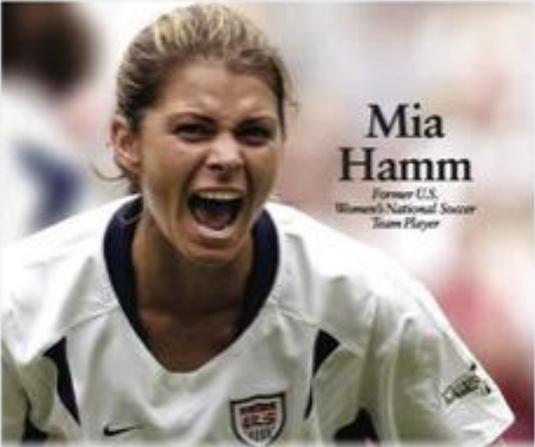
The right idea
will fly.

INNOVATION

Pass It On.

VALUES.COM THE FOUNDATION FOR A BETTER LIFE

This advertisement features a black and white photograph of the Wright brothers on a grassy hill. One brother is standing on the ground, while the other is perched on a large, boxy, winged aircraft model that is suspended in the air, appearing to be in flight. The text 'Wright Brothers' is positioned to the right of the image. Below the image, the slogan 'The right idea will fly.' is written in a serif font. Underneath that, the word 'INNOVATION' is enclosed in a red rectangular box. At the bottom, the phrase 'Pass It On.' is written in italics, followed by the website 'VALUES.COM' and the tagline 'THE FOUNDATION FOR A BETTER LIFE' in a smaller font.



Mia Hamm
Former U.S.
Women's National Soccer
Team Player

Kicked her way
to the top.

PASSION

Pass It On.

VALUES.COM THE FOUNDATION FOR A BETTER LIFE

This advertisement features a color photograph of Mia Hamm, a former U.S. Women's National Soccer Team player, shouting with her mouth wide open. She is wearing a white soccer jersey with a USA crest. The text 'Mia Hamm' is written in a serif font, with 'Former U.S. Women's National Soccer Team Player' in a smaller font below it. Below the image, the slogan 'Kicked her way to the top.' is written in a serif font. Underneath that, the word 'PASSION' is enclosed in a red rectangular box. At the bottom, the phrase 'Pass It On.' is written in italics, followed by the website 'VALUES.COM' and the tagline 'THE FOUNDATION FOR A BETTER LIFE' in a smaller font.

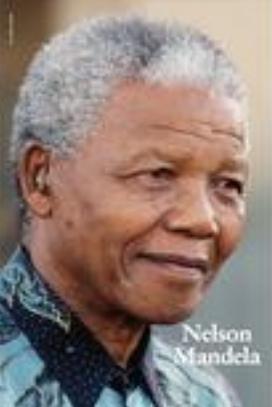
The Value(s) of Legal Education...



Never, never,
never, give up.
-Winston Churchill

COMMITMENT
Pass It On.

VALUES.COM THE FOUNDATION FOR A BETTER LIFE



What can one
person do?

Nelson
Mandela

INSPIRATION
Pass It On.

VALUES.COM THE FOUNDATION FOR A BETTER LIFE

Today... I hope to

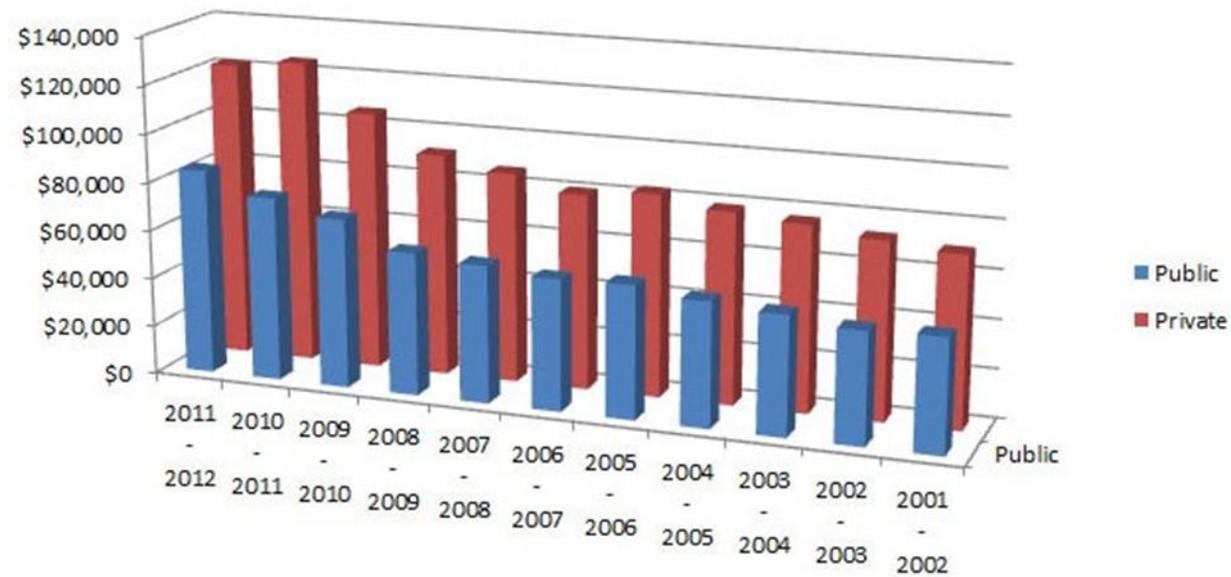
- Convince you that we need to recognize important ambiguities when considering the “value” of legal education
- Sketch out several distinct sets of values that I hope will be useful in the discussion to come
 - Economic value(s): a personal perspective
 - Institutional value(s): liberal education v. professional preparation
 - Educational value(s): of outcomes and assessment
 - Ethical value(s): of ethics, professionalism, and professional identity
 - Social value(s): the future of the profession and the public good
- Engage you, so as to foster reflection and conversation in our time together

Economic Value(s)

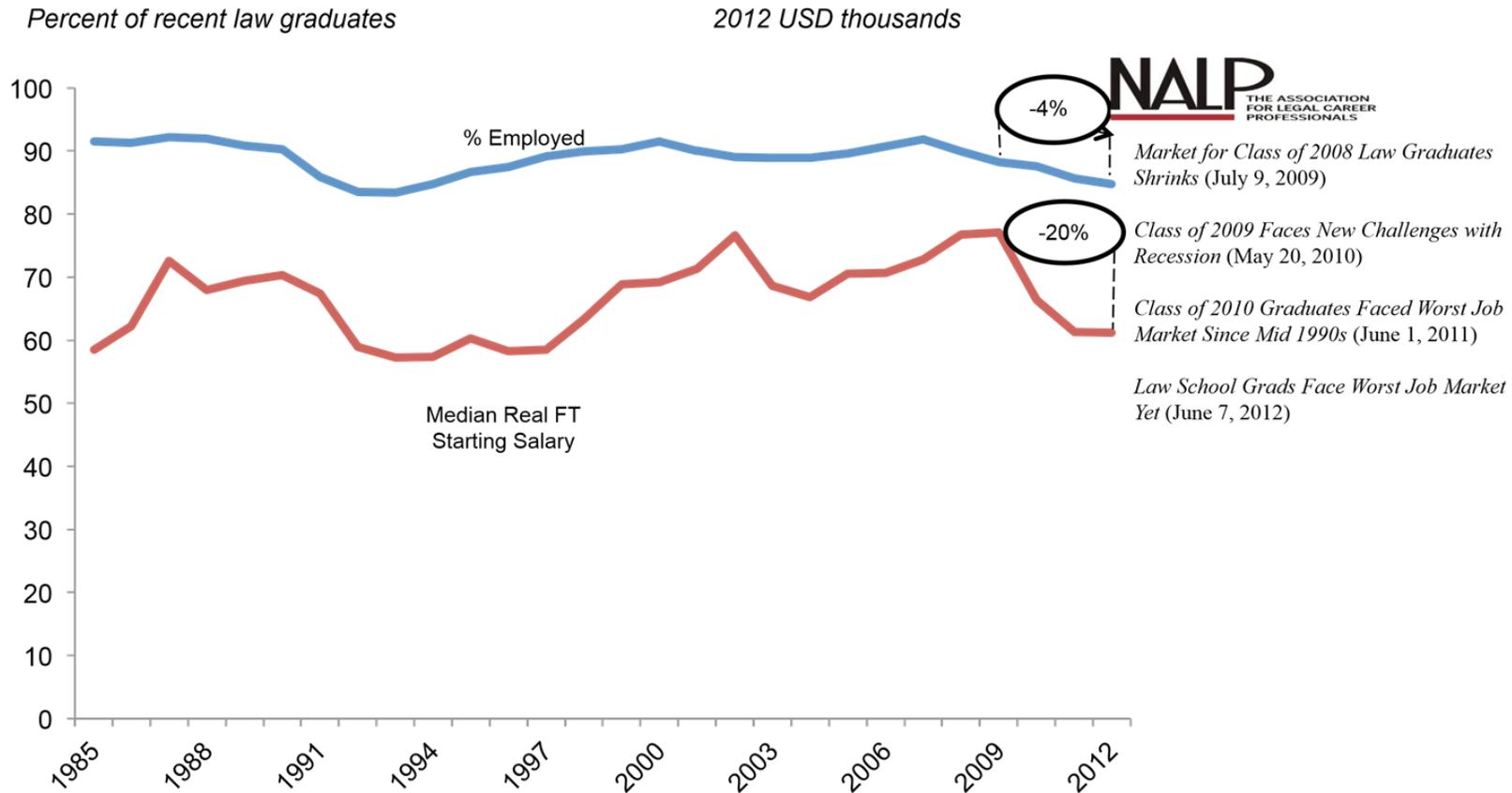
Economic Value(s): Current Concerns

- Recent questions: “is law school worth the investment?”
 - Raised... by
 - Some law faculty (especially those interested in economics):
 - e.g. Tamanaha, *Failing Law Schools*
 - *New York Times*
 - Students: especially with changing job prospects
 - Law graduates
 - Prospective students

Particularly Given Recent Realities: Debt



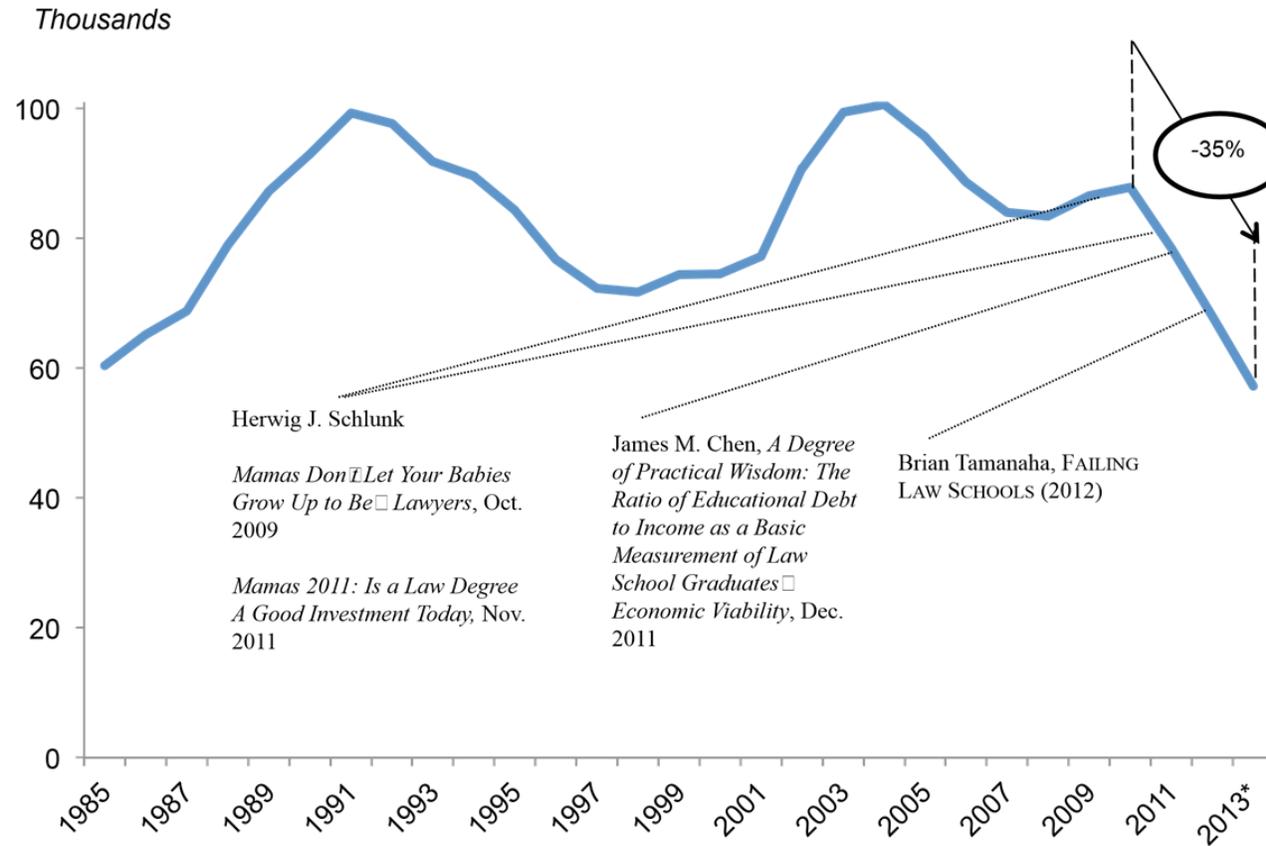
Particularly Given Recent Realities: Jobs



Particularly Given Recent Realities: Transparency (or lack thereof)

- www.lawschooltransparency.com
- US News and World Report
 - Rankings
 - Based on ABA required data
 - Methodology re “prestige” and high cost, not quality/efficiency
- American Bar Association (ABA) Data Collection
 - New Requirements: Certified Consumer Information
 - Audits
 - Censorship

And...Applications Have Fallen Dramatically



Critiques: Will They Stem the Tide?

- Simkovic & McIntyre (2013): economists
 - Questions others' economic analysis (e.g. assumptions re inflation, debt rates, repayment patterns, return on alternative investments)
 - Takes longer-term view about value of investment over life-time
 - Takes broader view: law v. other options (liberal arts BA, Ph.Ds)
 - No evidence that recent patterns re employment affect those with law degrees differently than those with bachelors' degrees)
- Garth (2013): social scientist, former American Bar Foundation, "new realist": attend to history and don't try to scare off those with limited means or eliminate the schools they may attend

Economic Value(s): Observations

- Student expectations changing: for ill? or for good?
- Increased tuition and debt: why and what to do?
 - ABA Task Force:
 - Reduce merit scholarship cross-subsidizes
 - Not all law schools should focus on faculty research
 - Change some accreditation requirements (no more tenure?)
 - Different models: 3+3, on-line/executive options, 1 year M.S.L., size
 - Other interventions:
 - Better preparation? Loan repayment schemes? Downsizing and collaboration?

Institutional Value(s)

Institutional Value(s), Institutional Choices

- Important institutional questions in difficult times
 - Changing nature of higher education and view of its purpose (preparing citizens for community v. economic benefit for individuals and job linkage)
 - Diversity of higher education institutions, other providers, formats
 - Responsibility of academy v. “on-the-job” learning v. individual responsibility for learning
 - Research-intensive v. teaching-intensive missions
- LETR report seems well aware of these issues
 - Survey results in particular reflect differing views on balance of liberal arts and professional education, likely tied to individuals’ history, experience, and vantage points

Insights from United States: Some History

- Pressures on higher education generally
 - Post WWII “research universities” but cut backs in federal funding?
 - Current context: role of arts, humanities, social sciences v. “economic development” and “tech transfer”
- Historical evolution of legal education (with thanks to Robert Stevens)
 - Increasing demands by accreditors representing state supreme courts
 - LLB to JD degree (liberal arts to liberal arts + separate professional degree)
 - 7 years’ education beyond high school
 - Additional requirements and expense and standardization
 - Bar examination as distinct requirement
 - Power of accreditors: federal loan aid eligibility plus eligibility to sit for bar

The Carnegie Foundation & Its Role

- Andrew Carnegie and Congress's Role in Founding
- Foundation's Centennial and Leadership of Lee Shulman
- Focus on preparation for the professions
 - Studies of engineering, clergy, law, nursing and medicine; comparisons
 - Learning and teaching rather than other policy questions
 - Open windows of insight for educators, assuming they would respond
 - Parallel work on teaching, Ph.D. education, liberal arts, civic education
- Working assumption: there is (or should be) a **connection** between **professional education** and what **professionals themselves must do**

Premises: Across All Fields Studied

- There is (or should be) a **connection** between **professional education** and what **professionals themselves must do**
- Professional education should respond to “**commonplaces**”
 - **Fundamental knowledge & skills** (academic base)
 - Capacity to **make decisions under conditions of uncertainty**
 - Capacity to **engage in complex practice**
 - Capacity to **learn from experience**
 - Ability to **create and participate in responsible professional community**
 - Ability and willingness to **provide public service**

Professional Dimensions as “Apprenticeships”

- “Apprenticeships”: metaphor not literal prescription
 - Influenced by understandings from “learning sciences”
 - Lave & Wenger: “situational” insights
 - Dreyfus & Dreyfus: expertise develops in stages, based in part on tacit learning
- Three key Apprenticeships
 - Cognitive (“thinking like a lawyer”)
 - Skills (“acting/doing like a lawyer”)
 - Identity (“believing like a lawyer”)
- Importance of integration and spiral development

Teaching and Learning Matter

- “Signature pedagogy”: public performance among peers, friction
- Carries its own messages/import
 - Typically germane and emulates actual professional activity
 - For all its power, leaves something out (“shadow”) that needs to be addressed
- American legal education: “case-dialogue method”
 - Powerful way of building critical thinking (parallel to “Bloom’s taxonomy”)
 - Engaging introduction, but used early and lack of further progression
 - Without attention, can risk loss of attention to skill development and values

Institutional Value(s): Observations

- Important to recognize differences in institutions & animating values
 - “Academic” institutions v. “professional” institutions
 - Dividing duties: liberal arts and professional preparation?
 - Choices based on institutional values but also expertise?
 - Complexity in UK context because
 - Multiple entry points and focus during “college” (law v. other; UK v. EU, etc.)?
 - Multiple specialized law-related profession(s)?
 - Changes in the profession(s) of law as it evolves
 - “Lawyers “for the city”, for individuals in need, in other contexts?
 - Who decides?

Educational Value(s)

Educational Value(s)

- Traditional focus on educational content and inputs (teaching)
- International moves to emphasize outcomes
 - Rationale?
 - What are pertinent outcomes?
- Strategies for assessing outcomes
 - What is important?
 - What is feasible?

Educational Value(s): Initial Thoughts

- Historically, might have expected cultural differences
- Increasingly, common issues and lessons from others' contexts
 - Content: Australia's "Priestly 11" v. UK v. US subjects on bar exams
 - Shifts from inputs to outputs... arising in K-12 education and then pushed to college levels, for educational reasons but most of all for accountability
 - Attention to "competence" because of job/economic orientation
- May be worth probing wisdom, but
 - Clarity for faculty and students is beneficial
 - Momentum for such changes seems undeniable and fairly universal
 - There are lessons to be learned from others' experimentation, e.g., Australia

Educational Value(s): Outcomes Examples from Australia

TLO 1: Knowledge. Graduates of the Bachelor of Laws will demonstrate an understanding of a coherent body of knowledge that includes:

- (a) the fundamental areas of legal knowledge, the Australian legal system, and underlying principles and concepts, including international and comparative contexts,
- (b) the broader contexts within which legal issues arise, and
- (c) the principles and values of justice and of ethical practice in lawyers' roles.

Educational Value(s): Outcomes Examples from Australia

TLO 2: Ethics and professional responsibility: Graduates of the Bachelor of Laws will demonstrate:

- (a) an understanding of approaches to ethical decision-making,
- (b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts,
- (c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and
- (d) a developing ability to exercise professional judgement.

Educational Value(s): Outcomes Examples from Australia

TLO 3: Thinking skills. Graduates of the Bachelor of Laws will be able to:

(a) identify and articulate legal issues,

(b) apply legal reasoning and research to generate appropriate responses to legal issues,

(c) engage in critical analysis and make a reasoned choice amongst alternatives, and

(d) think creatively in approaching legal issues and generating appropriate responses.

Educational Value(s): Outcomes Examples from Australia

TLO 4: Research skills. Graduates of the Bachelor of Laws will demonstrate the intellectual and practical skills needed to identify, research, evaluate and synthesise relevant factual, legal and policy issues.

Educational Value(s): Outcomes Examples from Australia

TLO 5: Communication and collaboration. Graduates of the Bachelor of Laws will be able to:

(a) communicate in ways that are effective, appropriate and persuasive for legal and non-legal audiences, and

(b) collaborate effectively.

Educational Value(s): Outcomes Examples from Australia

TLO 6: Self-management. Graduates of the Bachelor of Laws will be able to:

(a) learn and work independently, and

(b) reflect on and assess their own capabilities and performance, and make use of feedback as appropriate, to support personal and professional development.

LETR's Insights

- Areas needing attention: competence in
 - Communication skills
 - Legal research and digital literacy
 - Commercial and social awareness
 - Management skills
 - Equality and diversity outcomes
 - Professionalism and ethics
- Specific educational outcomes:
 - In school v. in workplace
 - Specialists
 - Continuing education
- Implications and responsibilities?

Educational Outcomes: Assessment Strategies

- How to assess key educational outcomes?
 - Framing outcomes in detail
 - Setting standards with rubrics
 - Measuring “competence”

Shultz & Zedack: Working Backward

- Purpose of efforts: admissions strategies and more
- Fruits of efforts: 26 lawyer “effectiveness factors”
- Expertise to develop consistent, measureable standards
- Compare work of Epstein & Hundert referenced in LETR

Effectiveness Factors

Intellectual and Cognitive:

- Analysis & Reasoning; Creativity/Innovation; Problem-Solving; Practical Judgment

Research and Information-Gathering:

- Researching the law; Fact finding; Questioning/Interviewing

Communicating

- Influencing and Advocating; Writing; Speaking; Listening

Conflict Resolution

- Negotiation Skills; Ability to see world through eyes of others

Effectiveness Factors

Working with Others

- Developing relationships within legal profession; Evaluation, development, mentoring

Planning and Organizing

- Strategic planning; Organizing one's own work; Organizing & managing others

Client & Business Relationships

- Networking & business development; Providing advice and counsel; and Building relationships with clients

Character

- Passion & Engagement; Diligence; Integrity & Honesty; Stress Management; Community Involvement & Service; Self-Development

Shultz & Zedack

- Critical dimensions:
 - Articulating different levels of performance
 - Testing standards of performance so that can be reliably applied
 - Grounding standards of performance in real-world judgments that can be empirically tested, defended and counted on
- Broader implications for assessment of effectiveness?
 - Should not use “normative” assessment (grading curves) but rather “criterion-referenced” (absolute) evaluations
 - Important to teach self-assessment as well as peer-assessment and top-down assessment

Educational Value(s): Observations

- Focus on outcomes: definitely the mode of the moment
 - “Outcomes” have benefits for teachers and learners to guide attention, but...
 - Can “outcomes” be clearly defined, taught, learned, and demonstrated in increasingly sophisticated arenas (compared to grade schools)?
 - Is “competence” the best way of framing touchstone for outcomes?
 - “I know it when I see it” versus measurable, reliable, consistent?
 - Can “competence” be divorced from substantive context (expertise tied to context; how does expertise relate to “competence”)?
 - Stages of development over time (expertise): where does responsibility lie?
- New assessment strategies go hand in hand

Ethical Value(s)

Ethical Value(s) and Professionalism

- What are the ethical values we expect lawyers to respect? How are they understood in practice? How do they relate to “professionalism”?
- How might ethical values and “professionalism” best be taught?
 - The role of professional identity?
 - Fresh teaching and learning strategies?

Ethical Value(s): Initial Thoughts

- Why do lawyers express concern about ethical values and professionalism but raise doubts about requiring instruction?
 - Someone else is the one who's failing?
 - Cognitive instruction re standards versus personal subjective commitment versus “culture” building the community?
 - Carnegie insights: ability to create and participate in a responsible professional community v. knowledge of the substantive law of lawyering?

Professional identity at the core

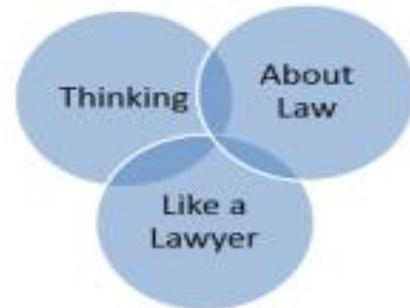
- “Professional identity”: nexus of professional values/practices and personal values/practices; “professional formation” with spiritual resonance
- Strong resonance for readers of Carnegie Report, overcoming prior views
 - “I shouldn’t force my personal values on students”
 - “Someone who has practiced should teach that”
 - “My teaching method and teaching materials don’t include coverage and I don’t have time”
- Why the change of heart?
 - “Professional identity” a gripping concept and an observed need of students
 - “Signature pedagogy” as strategy has opened doors: 2 examples

“Becoming a Professional” Seminar

Welcome: This Course in Context

Models for Legal Education?

**Traditional Legal Education:
Thinking Like a Lawyer**



**Becoming a Professional (BAP) &
Center for Creative Leadership**



The Course Evolving

BAP 1.0: Virtual Transition

Focus



Features

- Collaboration:
 - Schools
 - Academics & Lawyers
 - Student Teams
- Assessment
 - Reflection essays
 - Presentations: team & solo
 - Projects: pro bono or other project to be developed as might do early in career

BAP 2.0 (with A2J)

What's new

- **New partners**
 - NC Legal Services team
 - Co-teacher from NCLS
- **New options for projects**
 - Recovery of
 - Personal property
 - Security deposits
 - Car repair claims
 - Certificates of relief/expungement
 - Debt collection cease & desist
- **Possible new task:** plain English TED/ignite videos on related topics?

Opportunities/Challenges

- **Concrete options for students**
- **New range of skills to be taught in applied ways**
 - Talking with clients
 - Logical thinking & drafting
 - Teamwork (pairs)
- **New insights into assessment**
- **Evaluate potential use as part of sustained pro bono efforts**
- **Platform to engage faculty in other substantive fields and types of courses?**

Giving Voice to Values

- <http://www.babson.edu/Academics/teaching-research/gvv/Pages/home.aspx>
- Model developed by Prof. Mary Gentile for business students post *Enron*
 - Focuses on getting students to name and engage with their values and work goals
 - Teaches importance of brainstorming, mental rehearsal, practice & collaboration
 - Uses real-work case studies
 - Has much about it that resonates with law teaching (e.g. “moots”)
 - Has been modified for use with law students at Australia National University, Univ. of North Carolina and elsewhere

Ethical Value(s): Observations

- Do we adequately appreciate the real dilemmas of ethics and professionalism as experienced v. rules as preached?
- Do we recognize that to be strong, professional identity has to be tied to personal values and community values of the profession?
- Have we identified the “signature pedagogies” that work best in developing ethical values and professional identity?
- Should we worry that the shift from “professional” to “commercial” priorities will mean we lose our cherished moorings? Might some techniques being developed for business students be worth adopting?

Social Value(s)

Social Value(s): The Future of the Profession and the Public Good

- We live in “interesting times” with great changes afoot for the law and lawyers
 - What changes are in store for the profession(s)?
 - What are the implications of those changes for the profession(s)?
- What are the implications for the public good?
- How can the public good best be protected: a question for regulators, the public, and us all?

What 3 issues pose greatest challenges for lawyers?

- ___ Competition from non-lawyer providers of related services
- ___ Economic changes affecting the costs of delivering legal services
- ___ Changes in technology affecting the delivery of legal services
- ___ Changing expectations regarding jurisdictional boundaries affecting delivery of legal services
- ___ Costs of delivering legal services
- ___ Cuts in federal, state, and local budgets for the courts and legal services organizations
- ___ Levels of debt affecting the salary expectations of beginning lawyers
- ___ Changing dynamics regarding entry-level versus lateral hiring of legal talent

What 3 issues pose greatest challenges for lawyers?

- _____ Economic changes affecting the ability of middle class and lower-income clients to pay for legal services
- _____ Expectations by senior lawyers regarding compensation levels
- _____ Economic downturn
- _____ Growing inequity in the distribution of wealth around the world
- _____ Lack of public trust in lawyers and the legal system
- _____ Unreasonable expectations regarding workloads and time spent on the job (v. personal time)
- _____ Inadequate preparation of beginning lawyers by law schools
- _____ Organizational changes affecting the economic delivery of legal services

Your answers please...

- Lawyers?
- Law students?
- Regulators?
- Members of the public?
- Don't assume that all who answer will see the world the same way...
- Clark Kerr: What the railroads were to the 19th century, the professions are to the 20th century..... And what about the 21st?

The Future of the Profession...

- LETR's prognostication about the future....
- Sir Richard Susskind: commerce and technology
 - Change from “bespoke” to commoditized services
 - New job niches related to technology
- Professor Carrie Menkle-Meadow: human needs, justice, problem-solving
 - How do we approach distributive and equity notions of justice?
 - What general problem-solving skills can be enhanced (problem definition, instrumental and multidisciplinary approaches to solution generation)?
 - What lessons can be learned from others' evolution: architecture, business consultation

The Public Good...bear in mind

- Reflect on the “public good” with a critical eye that sees beyond what benefits the legal profession(s)
- Remember our obligation to provide tools and leaders to build a better, more just society
- Recognize the increasing challenges arising from growing wealth inequality in western societies, & differences in opportunity around the world

Protecting the Public Good: Take Care

- Risks of seeing the “public good” through eyes of self-interest
 - Faculty members? Legal professionals?
 - Regulators? (some cautions from the American experience)
 - Aptitude test developers: test what is easiest to test not what is most important?
 - Accreditors: with best intentions, define “quality” very narrowly, leading to high costs, limited innovation, self-perpetuation
 - Bar examiners: build a uniform test that will likely have unintended consequences and may limit diversity and range of abilities within the legal profession(s)

Social Value(s): The Future of the Legal Profession and the Public Good

- If we forget social values and our roles in engaging with them, we will have lost our legitimacy and our history as lawyers
- We live in challenging times and the legal profession(s) must embrace change, and acknowledge our risk averseness and conservative tendencies
- We must understand that what is good for the profession may not be in the public's best interest
- Those who seek to speak on behalf of the public good need to remember not to be blinkered by their own self-interest personally or institutionally

I hope that through this “keynote” I’ve stimulated your thinking and encouraged you to consider

- Whether there’s more than one way to think about the “value” of legal education
- How differing “values” illuminate key questions facing those committed to effective and inspiring legal education:
 - Economic value(s): who comes to study law and why
 - Institutional value(s): the role of liberal education and professional preparation
 - Educational value(s): the role of learning outcomes and assessment
 - Ethical value(s): the potential for “professional identity” to trigger fresh ideas about learning about ethics and professionalism
 - Social value(s): a necessary focus in guiding the evolution of the profession and regulatory strategies for protecting the public good

Thank you!

- For inviting me to share this time with you.
- For giving me a further opportunity to learn about legal education and the legal profession(s) in the UK.
- For copies of reference sources or other materials, please feel free to contact me at [Judith Wegner@unc.edu](mailto:Judith.Wegner@unc.edu)