ADMISSION TO PRACTICE

Felling the giant: breaking the ABA's stranglehold on legal education in America
H D Vest
50 *J Legal Educ* 4, 2000, pp 494–503

Like today's dynamic economy, the modern practice of law is evolving at breakneck speed. Lawyers are being called on to practise in more diverse subject areas, in multiple states and even around the globe. Clients also are seeking a range of services beyond traditional legal services. The current debate on multidisciplinary practice is evidence of the growing interest among both clients and lawyers in having legal services available in conjunction with other professional services. It will be increasingly important for lawyers to be able to think outside the box of traditional lawyering in order to meet their clients' various legal and business needs.

Traditional legal education, however, is not keeping pace with the changes. While some more forward-looking law schools are beginning to emerge, the legal establishment that controls most law schools remains fixed on an out-dated approach to learning that does far less than it should to prepare students for the realities of lawyering today and in the future. The establishment is, of course, heavily dominated by the American Bar Association, whose law school accreditation standards have achieved virtual monopoly status in shaping legal education in America. As the nature of legal practice continues to evolve, so too must legal education. An important first step would be for states to look beyond the narrow confines of ABA accreditation in determining what types of legal education are sufficient to earn admission to the bar. A second equally important step would be for jurisdictions to reassess the content and administration of their bar exams. States must begin to recognise alternative methods of teaching and learning the law and of measuring lawyers' competence if the profession is to serve businesses and consumers effectively in the twenty-first century.

While legal practice has changed greatly, legal education has changed less. To be sure, law schools are offering students more opportunities to develop practical skills. But even practical or clinical experience is not enough. The reality is that modern legal practice demands an increasingly wide array of skills — some of the 'practical' but many of them ranging beyond the law to encompass business, technological, problem-solving and other skills. In other words, the profession needs to take a hard look at its system of legal education and to begin innovating and updating it now. And the major impediment to any innovation is the ABA Accreditation Standards.

The ABA's accreditation requirements, both procedural and substantive, have imposed a virtual monopoly over legal education in America for well over half a century now. Like any other monopolist, the ABA has been able to wield its power to protect the status quo and stifle competition in its industry — in this case, through its standards for law schools to obtain and maintain accreditation. Over time, the ABA's dominance over legal education has been perpetuated and reinforced in a number of ways.

First, the ABA has consistently opposed attempts to change or waive bar admission rules to allow graduates of schools not accredited by the ABA to take the bar examination. This is hardly surprising. It almost goes without saying that limiting bar admissions to graduates of approved law schools benefits the ABA by consolidating its regulatory power and control over legal education in America. Further entrenching the ABA's dominance is the fact that the US Department of Education has recognised the ABA as the only accreditation agency for law degrees.

The ABA's control over the accreditation process — and its effectively monopolistic dominance over legal education in America — has had a stifling effect on innovation and competition among providers of legal education. During the 1960s and early 1970s, for example, the number of applications to law schools grew tremendously, but existing law schools could not accommodate all of the new demand for legal education. Critics of the ABA accreditation system contend that the rigidity of that system prevented new schools from opening in response to the change in the legal education market. States' requirements of graduation from an ABA-accredited law school, combined with the onerous requirements on schools to become accredited, also create a monopoly by the ABA on the supply of lawyers. This monopoly has as its consequence the perpetuation of higher legal fees to the public than would otherwise be the case.

The ABA's standards also have suppressed potential new law schools that would offer cheaper, more efficient legal education. For example, the ABA's blanket refusal to accredit correspondence schools means that this convenient and low-cost means of getting a legal education is effectively unavailable to most people who desire to practise law. Similarly, the standards effectively discourage the provision of part-time and evening courses of study for would-be law students. Standards such as minimum requirements for full-time faculty, law libraries, and course hours all hinder schools' ability to provide flexible education programs for students who wish to pursue legal careers but who must work full time to support themselves and their families. Finally, of course, many of these same standards operate to deter the hiring of adjunct or part-time faculty, which would allow schools to offer lower-cost legal education.

These restrictions on the way law schools may provide legal education have very real effects on would-be law students, and thus on the population pool

from which lawyers are drawn. The average age of students entering law school has increased over time, demonstrating that more and more lawyers are transitioning into law from other careers. These students are more likely than fresh-out-of-college colleagues to have financial commitments such as families and mortgages, which likely require them to continue working while they attend law school. To ensure that the legal profession is constantly invigorated with lawyers form different professional and social backgrounds, it is important that law schools be able to provide alternative programs of study.

Continued adherence to the ABA's stultified standards will only perpetuate these problems, and legal education in America will be increasingly out of step with the modern practice of law. Recent developments in technology have prompted the emergence of some alternative methods of teaching and learning law, but, not surprisingly, the ABA's current standards do not recognise these methods as acceptable.

In addition to the ABA's accreditation system, another impediment to necessary changes in the training and licensing of lawyers is the continued administration of the bar exam in the states. If the purpose of requiring aspiring lawyers to pass a bar exam is to protect the public from incompetence, it is a laudable goal and should be pursued with great vigor. The first step in doing so should be to identify the core competencies that lawyers should have and the minimum level of knowledge required to be judged competent in those subjects. If the bar exam is properly designed, administered and graded, it should not make any difference how applicants acquired their knowledge. Simply put, there is no logical reason to require applicants to have attended ABA-accredited law schools. If the bar exam does not test applicants adequately in the core competencies, perhaps there is no justification at all for requiring aspiring lawyers to take the exam.

Each state — not the federal government or the ABA — exercises control over the requirement for admission to its state bar, including who may take its bar examination. However, most states have blithely deferred to the ABA's standards for decades, requiring graduation from an ABA-accredited law school in order to sit for the bar examination. There is a pressing need for innovative legal education in the rapidly evolving practice of law. Rigid adherence to ABA standards will only perpetuate the ABA's monopoly, and lead to more of the same. Instead, it is time for states to consider which values reflected in the ABA's standards for legal education actually match each state's own values, and to substitute the state's judgment as to what can constitute an effective and sufficient education.

ASSESSMENT METHODS

Calculating rank-in-class numbers: the impact of grading differences among law school teachers
P T Wangerin
51 *J Legal Educ* 1, 2001, pp 98–117

Everyone who has carefully observed grading practices in higher education knows that the overall grade point averages earned by students in different classes tend to be significantly different. All careful observers know, for example, that teachers in the hard science and mathematics departments generally give significantly lower grades than teachers in the social sciences and humanities departments. What is not so widely known, however, is that differences in mean grades are not the only grading differences that exist among teachers. Some teachers, for example, give virtually all of the students in their classes the same centre-of-the-scale grade and only a handful of students a higher or lower grade. Conversely, some teachers give lots of very low and very high grades, but few grades in the middle of the scale. When these differences occur, then the variance of these different teachers' grades will be dramatically different.

Despite the grading differences, anecdotal evidence suggests that most people associated with most universities do not see grading differences such as these as being much of a problem.

For years, statisticians and educational researchers have explored grading-differences problems in complex statistical studies of grading data. Unfortunately, there are three problems with the previous studies of grading-differences issues. First, all previous studies have reported information only about the effects of grading differences on overall groups of students. Second, the statistical methods used in previous studies of grading issues — and the reports about the findings — are enormously complex. Third, and perhaps most important, adjustment methods proposed for addressing grading—differences problems in virtually all cases require reference to factors extrinsic to individual students.

The present study addresses those shortcomings of all previous research. The statistical methodology used is extremely basic — a methodology that any university teacher or administrator can readily understand and easily replicate. The adjustment procedure used involves very simple mathematical calculations and no reference to extrinsic factors.

'General Law School', the source of the grading data discussed here, is located in a not-small city in the United States, a city that contains courts and the offices of numerous lawyers and government officials. General Law itself is a moderately large law school. Though General Law School attracts some students nationwide, many of its students come from its own general geographic region. The first year program at General Law is comparable to the first year programs in most US law schools. All entering students take the same required