

Being a Law School Dean in These Challenging Economic Times

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Current world-wide economic troubles are presently affecting U.S. law schools in important ways. Legal education at most law schools in the U. S. for the past many years has been characterized by an economic model which has proven unsustainable over time. Major elements of the model at many law schools were that: 1) There is an ever growing demand for legal education. 2) Students are willing to pay higher and higher tuition because the earning capacity of law graduates made the investment required to attend law school not imprudent. Lawyer jobs were relatively plentiful and attorney salaries were relatively high and were increasing at rates exceeding general cost of living increases. 3) Students' borrowing substantial amounts money to cover much of the expense of attending law school did not significantly increase the total cost of a legal education because loans were readily available at bargain interest rates and could be repaid over many years following graduation from law school. 4) Demands on law schools from the profession and from accrediting bodies to increase the amount of skills training offered could be met by reducing faculty teaching loads, hiring more faculty, and by increasing tuition or using donated money to cover the costs. 5) Demands on law schools from their universities and from accrediting agencies to increase the amount of published academic scholarship could be met by reducing faculty teaching loads, hiring more faculty, and by increasing tuition or using donated money to cover the costs. 6) Private donors and foundations will continue to be generous in their support of law schools. 7) Law school and university endowments can be invested aggressively because the potential rewards for such investments exceeded perceived risks.

The current economic recession in the U.S. has caused many, if not most or all, law schools to consider these stark new realities: 1) The demand for legal education may not, in fact, continue to increase over the longer term. 2) Students may not always be willing to pay higher and higher tuition because law graduate earnings are not increasing and law jobs for graduates are not as plentiful as in the past. 3) Students' willingness to incur large student loans to go to law school may decrease because their future earning capacity as lawyers has become doubtful because practicing lawyers are being laid off. 4) All curricular offerings and teaching methods must undergo more rigorous evaluation because teaching budgets are either frozen or are being reduced. 6) Support for travel, research assistants, and leaves must undergo more rigorous evaluation because budget funds are diminishing and endowment principle and earnings are reduced. 7) Investment strategies require reevaluation in face of newly perceived market risks.

THIS IS A PARTICULARLY DIFFICULT TIME TO BE A LAW SCHOOL DEAN

The challenge for the law school dean, of course, is to move the institution forward in the face of these new realities. No doubt, there will be some interested parties who, while willing to acknowledge, generally, that economic realities will require a tightening of belts, will insist that their particular areas of interest should be at least maintained, if not enhanced. It is unlikely that all interested parties will willingly subordinate their special interests in favor of the general welfare of the institution.

Applications for Admission to Law Schools

Applications for admission to law schools in the U.S. are, generally, counter-cyclical to economic conditions. It has been the pattern that applications for admission to law school have increased in times of economic downturn. That pattern seems to be continuing, at least so far, for admission to the entering class of 2009. Because it appears that economic recovery from the present downturn may take longer than recoveries in past recessions, it is hard to know whether the pattern of increased applications will continue over the longer term. Complicating the analysis on what the future demand for legal education is going to be is the fact that there are many press reports of lawyers being laid off from even the largest law firms in the country. These reports are likely to have some impact on students willingness to undertake three years of post-college training in order to qualify for a position in a shrinking profession. Offsetting considerations, however, include the reality that college graduates are currently facing a poor employment market generally. Rather than take a disappointing employment situation (or no employment at all), many college graduates may believe, as college graduates have believed in the past, that law school is still the best available option, and that employment prospects will surely get better by the time they graduate from law school.

New Lawyer Salaries

Further evidence is that starting salaries for law graduates will not be increasing, and that, indeed, there may be some decrease in starting salaries for law graduates. Basic principals of economics would hold that if the number of law graduates does not decrease, but the number of job opportunities decreases, that salaries for graduates seeking to enter the profession will come down. At least for the immediate future, the number of law graduates in the U.S. will not be decreasing because of the students already in law schools and the number of applicants for admission to the 2009 entering class. While the future may prove that basic principals of supply and demand do not apply to the legal employment market, it would be surprising if at least some potential law students choose to pursue other options.

Law Student Borrowing and Debt Load

Many in legal education have warned for many years that the debt burden of law graduates would exceed the ability of law graduates to repay their student loans. This fact, they warned, would require, at a minimum, that the rate of tuition increases for law schools would have to be reduced, and that, perhaps tuition levels might have to come down. There is some evidence that those warnings are now actually becoming a reality among a substantial portion of law graduates as there are increasing reports of law graduates being unable to repay their student loans. It seems very likely that tuition increases will have to moderate, if not cease, for the foreseeable future.

FINANCIAL STRUCTURE OF U.S. LAW SCHOOLS

All U.S. law schools, both public and private, depend on tuition revenue to cover a substantial part of the cost of operations. Besides tuition revenue, almost all law schools depend, at least in part, on annual donations to the law school from alumni and other individuals who are willing to provide financial support to the law school for operations. Almost all private, and many public, law schools also have accumulated funds in endowments which are invested and which produce income which can be used by the law school for operations or can be reinvested in the endowment. The size of these endowments varies substantially among the schools. Some law schools, particularly elite law schools, have very large endowments which earn substantial income which can be used for operations and programs. Other law schools have smaller endowments, with many law schools having very small endowments. In addition to tuition revenue, annual donations, and endowment earnings, public law schools also receive government appropriations to help finance operations.

Private U.S. law schools with no, or very small, endowments depend on tuition revenue to pay all, or nearly all, of the cost of operating their law schools. Tuition rates at these schools are already generally quite high. Because of this fact, the problem of funding these schools will become more difficult as competition for students increases if the U.S. applicant pool shrinks. Furthermore, if students become less willing to borrow to finance their legal educations it may be difficult for tuition dependent schools to raise tuition sufficiently to pay increasing operating costs.

Most law schools are currently experiencing a reduction in annual donations and in donations to endowments. Additionally, endowment earnings are experiencing substantially lower returns. These reductions to the income stream add to the financial stresses of law schools.

For state schools income from state appropriations are already reduced in many states, and will likely be further reduced in the future as tax revenues of the state governments are declining in the present recession.

DEALING WITH THE CHALLENGES

Law schools are certainly going to have to face up to these changes in historic patterns. The law dean is going to have to orchestrate the balancing of the new economic realities. The challenges of attracting students, maintaining a rich curriculum with an appropriate mix of skills and doctrinal courses, providing a faculty of sufficient size, supporting appropriate faculty scholarship, and providing necessary support services within law schools will require particularly imaginative and energetic leadership in the present environment.

But these economic times also present a unique opportunity for deans and law faculties to assess their personal and institutional priorities. Especially because resources are shrinking, elimination of non-essential programs and courses and ineffective practices will be critical to the survival of law schools. In the process of this vitally important assessment, there are some basic principles that ought to be forefront in the considerations moving forward. I suggest those principles include at least the following:

1. Preparation of students to enter the legal profession through a rigorous academic environment with strong teaching and a rich curriculum. We are, before all else, charged with the duty to prepare lawyers to enter the legal profession as effective advocates and counselors and who understand the legal system and how to discover and apply the law.
2. Preservation of academic freedom, diversity of thought, and publication of influential scholarship. This principle is at the very heart of what it means to be a law school. It is essential to the welfare and progress of our communities.
3. Assuring that legal education is available to students of diverse backgrounds, races, gender, religions, and beliefs without discrimination in admissions. And that appropriate financial and other support is available assure all students a reasonable opportunity for success.
4. Support for the rule of law, justice, and public service. Law schools are, perhaps, the principal place for these essential principles to be taught, nurtured, and passed to the new generation of lawyers and citizens.

These principles, while certainly not new, are at the core of what an excellent legal education is. Good law schools must be vigilant to see that these principles are protected, even in the face of challenging economic and political times. The challenges facing U.S. law schools are large, indeed. But they provide an opportunity to rediscover the essentials of what we are about and an opportunity for recommitment to our great mission.