

NNLSO Session on Experiential Learning in Legal Education

Speaker: Michael Wishnie, Deputy Dean of Experiential Learning at Yale Law School; Judith Calvert, Executive Director of NNLSO and Assistant Dean and Registrar at Yale Law School

Deputy Dean Michael Wishnie first commented that he thinks of registrars as “inexhaustible magicians,” which drew a laugh from the audience.

In this time of turmoil in legal education, due in part to the state of the economy, there are many challenges for law schools. Legal educators are being charged to rethink the legal model.

Dean Wishnie explained some terms that he would use during the discussion:

Clinical – meaning clinical program, using live clients/in house clients

Simulation – simulated trial, for example (no live clients)

Experiential learning experiences within legal education capture everything but traditional classes.

How can administrators help with experiential learning? Administrators provide the ability for institutions to offer, record and report experiences. When changes become necessary because of curricular demands and/or mandates by boards of law examiners or accreditors, the administrators make the changes possible from an administrative perspective.

The California bar will require (effective 2017) that the JD degree must reflect at least 15 credits of experiential credit (1 semester equivalent). Questions remain about several things: what the effective year means (by graduation class, entering class, or other)? How are we to keep these records? How do we report this information? Who verifies the information? Law schools will need to answer these questions.

Currently, the ABA Council on Legal Education states that accredited law schools in the US must require 6 credits of experiential learning toward the JD degree.

There is consideration of changing this minimum to 15 hours the requirement. Further guidance from the ABA will be forthcoming.

This process with the ABA began in 2008. Many legal education professionals did not voice reservations until late in the process. Possibly, too late.

With requirements changing, institutions will have to determine if they can support experiential experiences for all of their students. Do various agencies have time to support large numbers of students in the third year so they can enroll in these experiences? Right now, New York and California are in the news. What other jurisdictions will follow?

Defining course content, along with what the components of the various classes are (traditional vs. experiential with simulation within class) will be very important for schools needing to give credit to students for experiential learning experiences in an effort to meet bar requirements.

Some issues that will pose challenges:

- Quality control is very important and will be a challenge to ensure. It will be important to ensure good quality experiences and supervision.

- Pressure from bar associations to increase experiential learning may come with costs: financial; pressures to find good experiences, quality of experience, good supervision. Much of this can be done through externship credit (a cost effective credit mechanism). Full time clinical staff shall supervise no more than 6 to 8 students (per ABA/AALS rules).

Dean Wishnie said that we should trust schools to encourage, but not mandate these types of experiences. Mandating experiential learning may curb experimentation within legal education. Large parts of degree requirements may be taken up by experiential learning, thus limiting the other curricular options that can be taken by students.

Yale Law School does not currently have an externship program. Currently, 70-80% of the class takes at least one clinic. What will be the result if the other 20-30% is required to complete a clinic. The quality of the experience is at risk,

should the additional students be compelled to participate. In addition, requiring the experience might mean that the quality of work and attitude of the student may suffer.

An important question will need to be answered: How are we going to find experiences for all students?

Mandates take away the opportunity for students to shape their own curriculum and experience. Simulation options seem to be a better option than externships. Yale has developed a suite of simulations (for example, transactional). Alumni have been asked what they would have benefited from as students that they did not have. Externships can devolve into labor instead of actually benefiting students.

It is important to note that the rules among bars across the country are a patchwork.

Law Schools should be aware they should advise students (first year is recommended) to plan ahead for the bar. It is important to encourage students to learn what is required in the jurisdiction(s) they plan to apply to. Judith Calvert mentioned that she uses attributes in Banner to show what courses satisfy various requirements. Admissions offices should be cautious about what they include in admissions materials about becoming licensed. Some students will end up falling through the cracks and not being eligible to sit for an exam bar.