

**Review of Master of Laws and Doctor of Philosophy Degree
Programs, School of Law, University of Washington**

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INTRODUCTION

Our review of the graduate programs of the University of Washington School of Law identified a number of strengths, some potential strengths, areas of weakness, and overarching concerns that must be addressed if the law school is to enhance its reputation for quality and move up in the national rankings. This report sets forth our observations and assessment, makes recommendations about specific graduate programs, and notes other major issues that require attention by the School's faculty and leadership.

As we reviewed the materials provided by the Law School, met with faculty, staff and students, and drew on our individual experiences, a number of significant areas requiring the School's attention became clear. They include the need to: (1) incorporate the graduate programs—and decisions concerning them—into a strategic vision for the school; (2) get beyond a focus on the Pacific Northwest and become a truly national/international law school; (3) be much more actively engaged with the rest of the university, drawing on strengths and perspectives in the UW community as a whole and facilitating the ability of faculty and students to work across disciplines and across the campus; (4) aggressively generate financial resources beyond those from the state and from tuition to support research, provide student financial assistance, and attract and retain the highest-quality faculty; and (5) maintain the emphasis across the board on research and teaching excellence, the connection with the profession, and involvement in the important issues of our time, features that characterize the elite law schools. Addressing these concerns is, in our judgment, critical to the Law School's ability to be a strong contributor to the reputation of University of Washington as well to enhance its own reputation among its peers.

We sympathize with and encourage all efforts to move the University of Washington Law School up in the rankings and to enhance its quality. Based on our observations of the top tier Law Schools, key to this endeavor is synergy between research and teaching. The great law schools are producers of highly qualified practitioners of the law but also of important and path breaking scholarship. There is, of course, some fine research that emanates from the UW Law School. However, except in a very few subfields, the UW Law School is not generally considered an intellectual leader despite a number of faculty of very high quality. Our review suggests that this is a fair assessment of the standing of the UW Law School, which has

considerable room for improvement in advancing a first-rate research agenda. This report represents an effort to help the Law School as it works to raise its intellectual quality and profile.

The Committee's Charge and Background Work

The Graduate School requires a decennial review of the programs it supervises. The last review of the Master of Laws (LL.M.'s) and Ph.D. programs the Law School administers was in 1990. Thus, in the fall of 1999 the Dean of the Graduate School appointed a review committee, composed of five members, three from the University of Washington faculty and two externals. The charge given to the committee included the specific tasks of evaluating the current LL.M. and Ph.D. programs, but Dean and Vice Provost Marsha Landolt, Associate Dean John Slattery, and Associate Provost Debra Friedman also encouraged us to recommend how to best assist the Law School in its efforts to improve itself and to enter the top tier of law schools nation-wide.

This wider responsibility took on greater significance given the weakness of the self-study report proffered by the Law School and the lack of attention to the LL.M. and Ph.D. programs in the Strategic Plan. More useful were Dean Roland Hjorth's memo on the "Proposed Endowment for the University of Washington Law School", the memo from Professor Veronica L. Taylor (January 5, 2000) concerning the Asian Law and Comparative Law Program, and the November 1996 Report of the Accreditation Committee of the American Bar Association (ABA). The ABA report is largely descriptive rather than evaluative, but it does offer assessments relative to a checklist of objective standards that every accredited Law School must meet. The emphasis of the ABA report and the 1999 follow-up by the Accreditation Committee is on the inadequacies of the physical plant. However, the Accreditation Committee did note as regards the LL.M. and Ph.D. programs, "These programs have been commenced independently in response to windows of opportunity or individual faculty interest rather than as a part of a strategic vision of the role

of graduate education in the Law School (p. 15)." The ABA group cites an earlier self-study urging "harmonization" and serious strategic consideration of the role of graduate education and mentions promises of such an effort by the Graduate Studies Committee (p. 15). We found little evidence of attention to these larger concerns in any of the documents provided us by the Law School.

The Committee interviewed Law School faculty, administrators, and students on May 18 and 19, 2000 and offered a preliminary and oral report on May 19 as part of the exit interview (see Appendix A for the agenda of the Committee).

FINDINGS

The primary emphasis of the Law School has been on its J.D. program and in preparing the next generation of legal leadership in the Northwest region. This is admirable but not sufficient. One of our aims in this report is to lay out some guidelines for how scholarship can and should be better integrated with the J.D. program. The various goals of the UW Law School need not be contradictory or produce tensions for the faculty, students, or alumni; research and teaching should be complementing each other.

There are three audiences for this report. The first is, of course, the Graduate School and the Office of the Provost, which mandated this review. The second is the Law School faculty, administrators, and students. The third is the future dean, who can use the information gathered here to help assess the strengths and weaknesses of the current offerings.

BACKGROUND

There are two very different kinds of LL.M. degrees, those that are oriented towards the research training of potential law school faculty and those that emphasize the provision of additional legal skills to practitioners. Using the LL.M.'s and graduate programs to leverage the research capacity of the Law School is one key, albeit not the only or necessarily best means, to enhancing the intellectual reputation of the Law School. LL.M.'s exist at all the great law schools in the U.S. and are touted in their publicity and on their web pages. And many LL.M.'s are money trees, bringing in fees from foreign students and local attorneys.

The UW Law School has not used its graduate programs to full advantage. The School appears to suffer from a lack of sufficient strategic vision, an inadequate or poorly formulated conception of clientele, and a tendency towards intellectual insularity. Most of the graduate programs have an ad hoc and particularistic history rather than an intellectual *raison d'être*, an assessment consistent with that of the ABA Accreditation Committee (p. 15). Thus, it is not surprising that these programs tend to ebb and flow with the energy and presence of particular faculty. In the worst cases, they are hobby programs.

The major exceptions are Asian and Comparative Law, which has grown into a major asset of the Law school, and the Tax LL.M., which promises to be a source of income and outreach. Also promising is the new Center for Advanced Study and Research on Intellectual Property, which is proposing an LL.M. in "Intellectual Property and Technology" in addition to the J.D. There are also some other potential bases for building strength, and we shall discuss these below.

Inadequate strategic vision

The Law School lacks a strategic vision ensuring that research, the LL.M., and other graduate programs are a part of the core mission. Dean Hjorth's wish list begins to outline such

a vision, but there needs to be even more systematic thinking about the integration of research and teaching. Such a strategy is nowhere evident in the reports and published documents of the School, nor did we get a sense of such a vision from the administrators or the faculty. There are certainly lots of ideas floating around, and some of the initiatives at the School represent very innovative and exciting new thinking. Still missing are a coherent vision and a plan that incorporates that vision.

Narrow conception of clientele

The programs and centers need to have a broader and more integrated conception of clientele for the graduate programs and perhaps for the J.D. itself. Right now there tends to be a focus either on local clientele or on Asian students. Yet, there are tremendous opportunities for building on regional and resource strengths that provide the UW Law School with comparative advantages nationally, internationally, and even internally within the University. Some of this is beginning to happen, as exemplified especially by the development of programs in Law and Commerce and in Health Law. But these are beginnings that demand administrative support and resources that are on-going.

Insularity

Law School faculty and students complain that the Law School is isolated from the central campus, and others on the campus, interested in legal issues or the legal context of problems under study, complain of the impermeability of the Law School. Geographical location of the School is but a partial explanation and, frankly, a bit of an excuse; there are faculty, such as John Haley, Patricia Kuszler, Joan Fitzpatrick, and Anita Ramsastry, who have effective presences on central campus. While faculty on central campus tout the importance of the Law School Library as a resource, they decry the lack of faculty interaction. There is also a complaint that efforts to

facilitate rapport are stymied by the interminable time it takes to gain formal recognition as an adjunct faculty after being voted that status and by the difficulties encountered in arranging courses that are co-taught by a member of the law and another faculty. There is some feeling that the Law School administration, past and present, has never given high priority to the facilitation of interaction between those at the School and those on central campus.

Significant impediments also exist for students wishing to take courses on upper campus and for getting students from upper campus to the Law School. Concurrent degree students particularly suffer. To the extent this is the consequence of geographical distance imposed by the location of the Law School, the new building will solve some of the problem. However, a good part of the difficulty is bureaucratic, having to do with grading techniques, class times, prerequisites, poor advising, etc. Some of this can be overcome with greater flexibility and attention to facilitating cross-entry and, for the concurrent degree students, adequate support and advice.

In addition to intellectual insularity from the central campus, the Law School seems to be intellectually insulated from the larger legal scholarly community. According to several Law School faculty who have spent time at major law schools in the United States, the Law School initiates and holds comparatively few conferences.

There is a final form of insularity. The School is historically and occupationally embedded in the Northwest region. This is appropriate and not necessarily problematic. But to be in the top tier, its students and faculty need to link to ideas and people in other parts of the country and the world. There has been some focus on Asia, of course, and Dean Hjorth deserves considerable commendation for his impressive efforts to extend and take advantage of that long-standing relationship. However, there could also be better links with Europe, particularly given

the development of programs, such as Comparative Studies in Law and Society, on the upper campus.

Closer to home, students need to have occupational ambitions that include the rest of the United States. The job market in Seattle is now a national market, drawing from a wider array of students than those trained at the UW. The students at the UW need to become part of that national market and be more willing to compete for jobs outside the Northwest.

Other problems

Lack of support

There was a consistent complaint that the graduate programs lack administrative support. This puts an excessive burden on faculty who run the programs, and it reduces their time and capacity to work with students and other faculty in building an improved research and teaching capacity. Inadequate attention to graduate students in the advising and career counseling offices puts a further burden on faculty and creates disaffection among students.

The programs also lack fellowship and student support, thus furthering their difficulties in attracting good students and in attracting students from outside the region. For some of the programs, this is irrelevant since the programs are meant to be self-sustaining. But for those graduate programs, now and in the future, that are meant to enhance the scholarly qualities of the legal profession, this is a serious problem.

Both the lack of administrative support and the problems students face in taking classes and getting advice are evidence to the Committee of the general lack of attention the Law School gives to its graduate programs.

Faculty coherence

According to the documents put in front of us and to the testimony of some of those we interviewed, the Law School is attempting to recruit subgroups of faculty whose synergies will improve teaching and research. The relatively small size of the faculty may be one inhibitor to the creation of core groups of faculty, but other inhibitors are the lack of a sufficiently strategic vision and some difficulties in recruiting and retaining senior faculty in key areas such as commercial and intellectual property law.

SPECIFIC PROGRAMS

We recommend continued and increased support for the programs in Asian and Comparative Law and in Taxation. We recommend the discontinuation of the programs in Marine Law and in Sustainable Development. We are optimistic about the proposed International Property and Technology LL.M. and the initiatives in Health Law, but these will need to be integrated into a larger intellectual vision to be truly successful. All of the on-going programs will require increased administrative support.

Asian and Comparative Law

The Asian Law Program has a distinguished history, and it also has high potential for enhancing the national and international reputation of the Law School. The Program has hundreds of alumni in Asia. The School's high reputation in Asia is one index of the Program's success. Although it is focused around a degree program, Asian Law is an umbrella for many activities within the School. The LL.M. is the main degree program, which attracts students from East Asia, often practicing attorneys seeking credentials for international practice. An Asian law specialization within the regular J.D. degree program caters mainly to American

students. The Ph.D. program trains the occasional student for research and teaching in East Asian institutions. The Program also comprises other activities, including an Asian law library collection and the student-edited *Pacific Rim Law and Policy Journal*. The Program is currently staffed by Professors Donald Clarke, Daniel Foote, John Haley, and Toshiko Takenaka. The imminent departure of two distinguished scholars and builders of the Program, Foote and Haley, is a severe setback, but the recruitment of Professor Veronica Taylor as Director and the current search to fill a second Asian law position, ensures the Program's future. Indeed, we found Professor Taylor's January 2000 memo to Dean Hjorth a highly persuasive strategy for the Program's development.

Given the strength of the Asian Law faculty, its superb library collection on Asian law, and the overall strength of the University in East and Southeast Asian studies, the Law School is well positioned to be a leader in the Asian legal field. But as noted by the Professor Taylor, the School has not successfully capitalized on its strengths. There is a relative lack of outreach activities such as international conferences, few strategic linkages beyond Japan and China, and insufficient promotion. An important reason for this, as with the other programs, is a lack of administrative support, perhaps an even more severe problem for Asian Law due to its size and the range of activities involved. This includes a modicum of hospitality and diplomacy occasioned by foreign students, classes and seminars that prepare and help integrate non-American scholars into the Law School classes, and special investments of time needed for the maintenance of ties to overseas alumni. An Asian Law Center, as proposed by Professor Taylor, could be an efficient vehicle for the management of these multifarious tasks.

Trends in Asian nations and in law more generally, dictate an expanded conception of the Asian Law Program, as outlined in Professor Veronica Taylor's January memo. This includes an

extension of research and teaching into the emerging economies of Southeast Asia, and more coordination between the Asian Law and the other programs (such as Intellectual Property) that also attract students from Asia. This expansion will require more resources in the form of tuition waivers, fellowships, and language instruction. To strengthen its reputation as a center for research and scholarship on Asian law, the School needs to foster more intellectual activity and place a few graduates in major American research universities. This will require visitors and conferences, fellowship support for doctoral students, and more coordination with Asian studies programs on the main campus (including faculty joint appointments).

Recommendations:

- 1) Retain the LL.M. and Ph.D. in Asian and Comparative Law.*
- 2) Provide the resources necessary for the program to sustain and further enhance its intellectual and scholarly presence at the School and to improve the quality of its classroom offerings.*
- 3) Continue the efforts to reach alumni of the Program as potential contributors to and recruiters for the Law School.*

Taxation

The major focus of the Tax LL.M. is specialized training for those already practicing or preparing to practice law. By nearly all measures it is a successful program. According to Professor Meade Emory, the program has graduated approximately 200 in its first five years of operation, been successful in placement, and generated approximately \$1,000,000 in revenue from its tuition (it charges \$14,000/student even to residents). This fee is collected by the

Graduate School, which keeps 15% as overhead and returns the rest to the program. Emory reports that the Tax program has contributed \$500,000 to create a professorship and to equip the new building with distance learning facilities.

The program is currently staffed by Emory, who is retiring, Professor Sam Donaldson, and various adjunct faculty, mostly local practitioners. However, both Professors Hjorth and Kummert will be rejoining the program when they complete their administrative terms, and there is some possibility of hiring additional tenure-track faculty.

The faculty connected to the Tax Program believe it will soon move up in the rankings and that it is already the dominant program in the Western part of the United States. However, it should be noted that the institutions cited as major competitors in the West are not first-rate Law Schools.

There are evident weaknesses in the program, however. Despite a stated commitment to build a research component and scholarly capacity, there is very little of that component or capacity yet visible. The effort to attract full-time students seems to be paying off, but the program has not yet addressed all the programs these students face. Given that most of the classes are in the evenings, it is difficult for them to integrate with the J.D. students. They also complain, as do virtually all the LL.M. and concurrent degree program students we interviewed, that understaffing leads to problems with scheduling, advising, and placement. Finally, there may be a desire to attract a national clientele and to place nationally, but the Tax LL.M. is still largely a regional program.

Tax law is not only a subject for practitioners but also a matter of public policy. The Law School has not adequately developed the public policy component as part of its program. This would require working with other tax policy scholars in public finance and related fields. The

Taxation program does have a "free trade" agreement with the Business School, but there is little effective interaction between the two. There is an expectation of cross-fertilization with Intellectual Property, but that remains to be seen.

Recommendations:

- 1). *Retain the LL.M. in Taxation.*
- 2). *Require the Taxation Program to develop a research, public policy, and scholarly component.*

Law and Marine Affairs

Professor Craig Allen and adjunct faculty Marc Hershman have shown admirable perseverance, commitment, and imagination in their efforts to sustain and build this program, developed in collaboration with the Institute of Marine Affairs, which Hershman directs. Unfortunately, there is almost no student interest, despite considerable energy expended in attracting high quality candidates. Allen also reported considerable difficulty in placing students because of the dwindling job market for specialists in this area. The placement problem, of course, makes it even harder to attract first-rank students; the implication is that there will be no change for the better in the future.

There is, however, student and faculty interest in a more generic research and degree program that would include issues of global change, natural and environmental resources, development, and marine affairs, especially if it includes an international dimension. This would bring back into the picture Professor Dan Bodansky, who previously ran an LL.M., and give a more significant role to Professor Gregory Hicks and other faculty who have not been fully involved in an integrated research and graduate program. It would also include faculty already

involved in other small LL.M. programs. By proceeding this way, there could be some consolidation of administrative support for recruiting, admitting, and placing students, in addition to coordination of teaching and research. There could also be considerable links with other parts of the University that emphasize these issues.

Recommendation:

(1) Given low student demand, limited placement, and lack of wide faculty involvement, the LL.M. in Law and Marine Affairs should be discontinued. It is not currently at the core of the School's mission, and, as organized now, it adds little in the way of prestige, research or teaching.

(2) We urge the Law School to think about taking advantage of its expertise in this general area and the corresponding expertise within the University by creating a consolidated and intellectually compelling research and graduate program that includes aspects of this LL.M.

Law of Sustainable and International Development

This is a tiny program that depends too much on a single faculty, Professor Roy Prosterman. The major teaching, a year-long seminar on "Legal Problems of Economic Development," is taught by Prosterman in collaboration with an adjunct faculty member, Tim Hanstad, whose major job and source of income is the Rural Development Institute (RDI) that Prosterman created and heads. The RDI also buys out 2/3 of Prosterman's time.

There is no evidence of real commitment by the Law School, which pays Hanstad \$2000 for the one class he teaches and nothing for helping to run the LL.M. Nor does the School, according to Prosterman and Hanstad, provide much support in terms of placement. In addition, there is no indication of involvement by other faculty at the School, especially since the

discontinuation of the LL.M. in International Environmental Law that Professor Dan Bodansky ran. The major synergy comes in interaction with the RDI, which sometimes hires LL.M. students as research assistants and some of the LL.M. graduates as staff.

In the self-study, this program did not present statistics on the number of students currently enrolled or graduated, and the students scheduled to meet with us did not turn up. Based on the oral interviews, it was the Committee's impression that this is and will remain a tiny program. Prosterman and Hanstad informed us that there are 2-5 students per year with a maximum of 6 and that there were 17 applicants this past year. The seminar has a limit of 15, but it was not clear how many students actually take it. There is virtually no enrollment from outside the Law School.

Recommendation:

(1) Given low student demand, limited placement, and lack of faculty involvement, the LL.M. in the Law of Sustainable and International Development should be eliminated. It is not at the core of the School's mission, and it adds little in the way of prestige, research or teaching.

(2) We urge the Law School to think about taking advantage of its expertise in this general area and the corresponding expertise within the University by creating a consolidated and intellectually compelling research and graduate program that includes aspects of this LL.M.

New initiatives

Summer Institute

One of the problems faced by students with foreign law degrees or inadequate or outdated American legal education is that they need background before entering the graduate programs. Professor Linda Hume has developed and been teaching a course to prepare students and to give

them background necessary to do a thesis in Asian and Comparative Law. Hume and Mary Hotchkiss, Lecturer in Law, are now experimenting with a summer institute, modeled after the Summer Institute in Business Law (SIBL) but based in the Law School and required of all LL.M.'s. They have ten students already signed up for this first year. However, they face a staffing problem for the course. The Committee discussed with them the possibility of using recaptured tuition monies to pay summer faculty or finding some other means to ensure the institutionalization of the course.

Recommendation:

Offer the summer course on a regular basis, requiring it of foreign students and of others for whom it is deemed essential. Revisit this decision in three years, to assess the success of this offering.

Center for Advanced Study and Research on Intellectual Property

The Center for Advanced Study and Research on Intellectual Property (CASRIP), created in 1992, is an exciting development for the Law School. Judging by Dean Hjorth's vision paper and by other materials provided by the School, there is a serious commitment to and recognition of the importance of this area. Recent rankings by U.S. News and World Reports already ranks the UW 13th in the country in Intellectual Property Law. There are several outstanding and research-oriented faculty actively affiliated with this program, most notably Professors Toshiko Takenaka and Mike Townsend in Intellectual Property and Professor Anita Ramasastry in Commercial Law. Both Takenaka and Ramasastry are assistant professors, and Townsend is an associate professor. There is a commitment to recruit some major senior faculty in this area, but the recruiting has not so far been successful.

The Center has proposed an LL.M. in Intellectual Property and Technology, with practice-oriented tracks in Intellectual Property Law and in Business Law. The proposal offers a compelling rationale for this degree, and our interviews with concerned faculty added to our confidence in the importance and promise of this LL.M. It offers an additional source of income to the School through the tuitions it will charge and the students it is likely to attract from around the world; in this it is similar to the Tax Program in its potential as a money tree. It is also similar in its heavy reliance on adjunct, practitioner faculty. By being a program within CASRIP, it also has significant potential for building intellectual synergy and research capacity among the faculty and students at the UW who are concerned with these issues. However, the LL.M. is conceived as a specialist degree for those who are practicing law rather than a research degree. It intends no thesis program.

There are several issues that still need to be addressed, however, as the program is implemented. The first is administrative. Without adequate clerical and administrative support, the new LL.M. will drain its faculty of energy and time for other important tasks. The second is insularity. CASRIP is reaching out to the business and commercial communities, especially in the high tech area, but it must also strengthen the links it has begun to build with other units on campus. There is consciousness of this need, but the Committee is concerned that without active encouragement in this direction, the LL.M. and the Center itself will revert to the more insular model that dominates the Law School.

Recommendations:

- 1). *Institute the Intellectual Property and Technology LL.M. and ensure that it has necessary administrative and clerical support.*

2). *Encourage CASRIP to continue in its efforts to build intellectual synergies and research capacity within the Law School and across the campus.*

Health Law

Professor Pat Kuszler, recruited in 1994, was charged to build a Health Law Program, tied into the Medical School and Public Health. In collaboration with Professor Anna Mastrionni, she has succeeded admirably. There are now sixteen courses, some cross-listed. They have forged the kinds of links across campus, across universities, and with practitioner communities that make this an exciting and significant area of research and teaching. And the focus is on some of the cutting-edge issues in health and genetics. They are attempting to create synergies with Bio-Engineering and the biotech industry as well as improve the synergies with faculty and researchers and public health and medicine.

They have not, however, created an LL.M., nor did Kuszler express much interest in doing so. There is a long-standing joint degree program with the Masters of Public Health. In the near future Kuszler hopes to formalize an arrangement that will allow a 4-year degree. What she would like is a Ph.D. track in Public Health and Health Law concentration at the Law School

Kuszler's energy appears to be boundless, and she certainly offers a model of institution building among different programs at the UW and outside. However, it was clear from our interview with her and from the materials before us that the Program in Health Law has inadequate resources for all that it wants to do and should be encouraged to do. There is the usual problem of understaffing and lack of resources for student support, especially for research. There are also obstacles created by the University and the Law School. As Kuszler noted (and as those of us on the Committee from the UW agreed), everything at the University is a hassle, starting with parking. We also learned that Kuszler received no relief from the Law School;

despite her charge to build a program, she is still expected to carry a full load of committee work, etc.

What is most disturbing about the Health Law Program is the lack of close consideration and commitment it seems to be receiving from the Law School as a whole. This appears to be a case where one or two very energetic persons were given "permission" to create something, which they have done. Professors Kuszler and Matrianni deserve commendation, but they also deserve active administrative and fiscal support.

Recommendation:

The Law School should make a deliberate decision to create and enhance its support the Health Law Program.

ADDITIONAL RECOMMENDATIONS

It is apparent to the Committee that the Law School needs to develop a stronger commitment to research. Moreover, given that most of the graduate programs would benefit from interactions with relevant faculty and researchers from other parts of campus, the Law School also has to facilitate greater cross-fertilization and interaction. This leads to several additional recommendations.

Recommendations

The Law School should develop a research infrastructure that ensures:

- 1. A research component in every program*
- 2. An intellectual agenda that integrates important subgroups of the Law School faculty and students and that also engages with others on the campus focusing on similar issues.*

This would require consolidation and creation of a critical mass of faculty and students in areas in which the UW Law School believes it has some comparative advantage.

3. Adequate staffing and resource support for graduate programs and research

Some of this going on, of course, but the tendency and energy of faculty pushing the Law School in this direction demands greater support. It is incumbent upon the Law School to determine its specialties, but our review revealed potential in at least the following areas:

1. Comparative--with an emphasis on Asian but could be extended
2. Law and commerce, which could include intellectual property, commercial, and tax law
3. Health law, including investigation of such issues as human genetics
4. Environmental and natural resources