

ITAC members also remarked on the classification and measurement phase of FASB's project on accounting for financial instruments as the committee reiterated its support for the use of fair value in measuring financial assets even though the IASB favors the option of using amortized cost or fair value.

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ITAC member Mark LaMonte, a managing director at Moody's Investors Service, said the committee believes that "good accounting is more valuable than convergence for the sake of convergence."

Seidman said that in recent deliberations, the board has leaned toward thinking that amortized cost might be appropriate in some cases for measuring financial assets and that there was general agreement among the public comments received that some financial assets should be carried at cost. She added, however, that many constituents have expressed a preference that more items be carried at fair value than currently required under International Financial Reporting Standard No. 9, "Financial Instruments." (For prior coverage, see *Tax Notes*, Sept. 20, 2010, p. 1232.) ■

TAX ANALYSTS EXCLUSIVE

Conversations: Loyola Law School's Tax LLM Faculty

Interviewed by Jeremiah Coder

As Loyola Law School in Los Angeles celebrates 10-plus years since beginning its graduate tax program, it is taking bold steps to offer educational programs it believes are responsive to changes in the legal market.

Tax Notes contributing editor Jeremiah Coder recently spoke with several members of the Loyola law faculty about the school's approach to tax and legal education. The professors also discussed issues in tax policy.



Theodore Seto is a professor of law and William Rains Fellow at Loyola Law School. A graduate of Harvard Law School, where he served as executive editor of the *Harvard Law Review*, he clerked for Judge Walter Mansfield on the Second Circuit before spending 14 years in practice as a civil litigator and tax attorney with Foley, Hoag & Eliot LLP in Boston and Drinker Biddle & Reath LLP in Philadelphia. He joined the Loyola faculty in 1991. His research interests include tax theory and jurisprudence.



Photo courtesy of Brian Costello

Katherine Pratt, a professor of law, joined Loyola's faculty in 1997. She spent several years working as an associate with Rosenfeld, Meyer & Susman LLP in Beverly Hills, Calif., and she began her teaching career in 1990 after earning LLM degrees in tax law and corporate law from New York University School of Law. Pratt has taught at New York University School of Law, St. Louis University School of Law, and New York Law School, and her scholarly interests include the federal income tax treatment of medical expenses and employer-provided healthcare, food excise taxes, obesity regulation, and federal budget issues.



Photo courtesy of Brian Costello

Jennifer Kowal is the director of Loyola's graduate tax program and a clinical professor of law. Previously, she was a lecturer, and the deputy director of the international tax program, at Harvard Law School. She practiced law with Irell & Manella, in Los Angeles and Ropes & Gray LLP

in Boston, advising clients on the taxation of business transactions, including cross-border, partnership, and corporate structures. Kowal holds a BS with distinction from the University of Kansas and a JD from UCLA School of Law, where she was a member of the Order of the Coif.

All three, together with Paul Caron (author of the TaxProf blog and a professor at the University of Cincinnati College of Law) recently published two articles on the state of tax LLM programs: "Pursuing a Tax LLM Degree: Why and When?" and "Pursuing a Tax LLM Degree: Where?".

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Tax Analysts: Loyola is celebrating the 10th anniversary of its tax LLM program. What about the program is unique?

Theodore Seto: When we put together the tax LLM 10 years ago, we insisted that it have an academic focus, not just serve as a cash cow. We therefore set rigorous admissions criteria: Our LLM students generally have credentials that would place them in the upper half of our JD class. This is not typical of most tax LLM programs. Most schools view LLM programs primarily as a source of revenue. That isn't our approach.

As a consequence, we have really good students and can maintain a rigorous program. Our goal is to produce lawyers who can go out there and do the work, giving them skills, not just classes.

Over the past four years, we've added three full-time faculty, the visiting assistant professor program, a tax policy colloquium, and three experiential labs, so there's a lot going on. The key to a top-notch LLM program is dedicated faculty. We all care about making this a really good program; that kind of energy can't come from the dean or adjuncts.

The large number of tax lawyers with expertise in the LA area is a big plus, because we can incorporate their experience into our program. We are committed to using the LLM revenue stream to adding more full-time faculty. Having a smaller LLM program helps make it individualized, yet we are big enough to offer a good range of courses.

TA: Loyola recently announced a three-year joint JD/LLM program. What prompted that decision?

Seto: Big law firms are tired of paying to train new attorneys for the first several years while they get their legs under them, and clients are now refusing to pay for that time. We decided we wanted our program to make our graduates practice-ready, so their time would be billable immediately.

We surveyed private practitioners about the skills attorneys should have within the first three years of practice. Our idea is to put together a curricular track that will ensure that our students possess the necessary skills upon graduation. For example, a Loyola graduate should be able to walk in the door of a law firm, be handed a case file, and go take a deposition. Under the standard model, most recent law school graduates would ask, "What is a deposition?" The idea is to give students the practical skills they need during the first few years of practice, while at the same time continuing to develop strong theoretical skills.

Our latest initiative is the joint JD/LLM program. We want to graduate practice-ready tax lawyers after three years of legal education. That can't happen with only six semesters of training. So we came up with the idea of an intensive summer tax bootcamp after the first year. I mean *intensive* — students shouldn't plan on watching TV. At the end of the summer, they come out knowing basic tax, timing, taxation of property transactions, and corporate/partnership — the core of business taxation.

Educationally, it's a really interesting structure. For my first summer course, I used the same exams I'd given in past semester courses and was surprised to find that the summer students actually did better. There is a significant advantage to having so much of the subject crammed down your throat — you're living and breathing it. You come out of the summer as a tax lawyer, not just someone having taken a tax course. This should give students a real leg up.

TA: So the joint program is a response to changes in the legal market?

Seto: There is a lot of thinking going on in legal academia about how to adapt to the changing demands of the legal market. If students are practice-ready, firms can make a better case to clients that they are not paying for training time. The practice-ready model is a difficult model to work through — we're just beginning here, but we'll get there. Schools that emphasize scholarship over training won't go that route. So firms are going to have to decide whether they want associates who come out of "prestige" schools, or associates who can actually do the work. It used to be that no law

schools produced attorneys who could do the work immediately. But if we give firms that option, it should create an interesting tension in their hiring decisions. My guess is that clients will favor the latter, but we'll have to see.

From an academic perspective, I don't think teaching will need to change much to match education to what the tax bar needs. There will be some need to incorporate skills-based courses, but it won't require a radical transformation. Faculty can still pursue scholarship; a practice-ready legal education just requires attention to the goal.

TA: How does the tax LLM program fit into Loyola's educational structure?

Katherine Pratt: The LLM program benefits the JD students because they can take our advanced tax courses as well. During our last round of American Bar Association self-study, we discovered that half of the seats in our LLM classes were filled by JD students. The LLM program benefits the whole community because it expands the educational opportunities available here.

Our tax research and writing requirement gives students a tax-specific writing sample that looks like actual work product. They get substantive feedback and end up knowing what to put into a memo.

TA: What do you recommend students interested in a tax LLM program look for?

Pratt: Just like law firms, tax LLM programs have distinct personalities. No one program is right for everyone. Students should seek a good fit with their overall educational and practice goals.

TA: Explain some of the tax LLM program's recent experiential course additions.

Jennifer Kowal: We have recently introduced a lot of new experiential offerings, including three new live client clinics. One is particularly unusual. We now offer a clinic with the IRS where students represent the government in Tax Court small cases. We also offer traditional low-income taxpayer clinics both in Tax Court and before the State Board of Equalization. Another new clinic, offered in conjunction with Public Counsel, allows participants to get transactional law experience by assisting nonprofit clients. Students can also partake in simulated problem-based courses exploring international tax issues, estate planning, and business tax law. We really push our students to take one or more of these because we want them to know how to apply theory to practice. Experiential coursework gives students a valuable context for understanding the relevance of doctrine.

TA: How does the LLM program blend full-time and adjunct faculty?

Kowal: While we have six full-time tax faculty, we also rely heavily on adjuncts. We believe in

using both full-time faculty and adjuncts because each excels in different ways. The mix is important. Adjuncts bring the cutting-edge practice perspective, while full-time faculty have time to think through the best ways to bring students up to speed on the basics and to advise students on curriculum, career paths, placement, etc. We also train our adjuncts how to teach; we don't just dump them in the classroom and say, "Go to it."

While all of our full-time faculty members are tremendous scholars, we all have practice backgrounds and maintain strong relationships with attorneys in private practice. We all feel it is an important part of our job to help students in their careers. We want to think creatively to match students up with the right alumni.

At the end of the day, we want to give our students good value for their money, so we are responsive to changes in the legal market. We are nimble and can quickly implement new ideas.

TA: What political elements are missing today that helped achieve the passage of the 1986 Tax Reform Act?

Pratt: Bipartisan leadership on tax issues is missing. TRA started with bipartisan support, but you also had strong leaders with a lot of tax experience. To get fundamental tax reform, you have to sell the American public on the benefits of base broadening, which is difficult to do.

The nation needs to find a lot of money as the baby boomers retire. Provisions in our current tax code create huge behavioral incentives and misallocations that drive up the costs of healthcare. That is one element driving the long-term fiscal gap. Politicians need to understand how tax policy interacts with health policy. In addition, misconceptions about how the tax system works get spread around, making it difficult to agree on coherent reform proposals that majorities would probably agree are in the best interest for the country.

Perhaps the biggest problem right now is tax expenditures — like the home mortgage interest deduction — because they create an entitlement mentality. We have to cut off the spigot on the tax expenditure side, in order to slow down the siphoning off of money.

Seto: That's right. The numbers are so big, you can't solve the deficit problem without solving the tax expenditure problem. Congressional committee chairs were much stronger back during the 1980 tax reforms, which allowed them to exercise leadership. Congress has become much more democratic — in a small "d" way — in that backbenchers can disregard the wishes of leadership. Nationally, both parties appeal more to their base and less to the center, so it becomes harder for the two sides to

come together. With a mixed government, it's unlikely we'll get solutions. It's just too hard to cut political compromises in the current environment.

TA: What is one recent trend in tax administration you have noticed?

Seto: There is now a move to have tax preparers serve as the primary line of enforcement in the tax system. Practitioners have been enlisted into the fight on the government's side — a tendency I'm not in favor of personally, but I understand the need for it.

TA: What tax issues will be front and center in the coming new legislative session?

Seto: I see two big issues looming over the body politic: the Bush tax cuts and healthcare reform. I don't see a consensus forming on either of them, perhaps because I'm a political pessimist. Things are going to get much more head-to-head before anything happens in these areas. The impulse that has led to the Tea Party is real and genuine, and until that energy exhausts itself, the Tea Party and Democrats won't find common ground. And as long as the Tea Party pushes Republicans to the right, we won't see resolution. This movement has to run itself through the body politic, and that won't be quick. So we'll probably be in a holding pattern on those two issues for quite some time. ■