

## SIZE MATTERS

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### I. INTRODUCTION

WHATEVER delusions one may hold about its importance in other settings, size matters in the administration of law schools. In two years of service as Dean at the University of North Dakota School of Law (“UND”), one of the nation’s smallest law schools,<sup>1</sup> I’ve been struck by the mixed effects that are associated with that size. In some respects, our small size enables us to be and to do things that would be difficult, if not impossible, at larger schools. In other respects, our size presents challenges that can at times seem insurmountable. Were it not for the substantial benefits that accrue to our size, the disadvantages could very well prove to be disabling.

In the following pages, I identify five strengths that can be linked to our small size, as well as five challenges that our size creates. A couple of cautionary notes, though. First, the ten items on this list of size-related features are not ranked, nor are the features weighted. This should be considered a set of observations rather than a scoring metric. Second, I don’t pretend that these features are unique to UND, nor do I contend that size alone is determinative. Schools of different sizes may share these characteristics to a greater or lesser degree, and these features are underdetermined by size. Nevertheless, with the belief that the more carefully we look at any one school, the deeper the insight we may be able to gain into the enterprise in which we are all engaged, I offer these matters of size in support of the proposition that size matters.

### II. STRENGTH: THE INTIMACY OF THE EDUCATIONAL EXPERIENCE

In a school with fewer than 250 students, it’s nearly impossible for any student to get lost in the crowd or ignored. While it is true that faculty are accessible to students, that is not necessarily a function of the size of the school. What our size gives our students and faculty is the opportunity to be able to appreciate each person as an individual, and that has a positive effect on the interaction between faculty and students. An important part of not being lost in a crowd is the

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1. During the 2004-2005 academic year, which was my first year as Dean at UND, the school had 203 students. In 2005-2006, the student body grew to 224. For 2006-2007, our enrollment is 239. Our physical facility imposes a practical constraint on growing much larger than 245. These numbers do not include approximately 15 exchange students from the University of Oslo who spend the spring semester in Grand Forks.

heightened sense of being in a collaborative enterprise in which contact with faculty outside of the classroom does not carry with it the impersonality of limited office hours. An individual faculty member's open door policy is likely to be a more meaningful enhancement of the educational experience when the student who appears in that office door is more than a name on a class roster.

Enrollment in individual courses is affected by the overall size of the school in two ways. The first-year courses and the high-demand lawyer literacy courses have fairly large enrollments,<sup>2</sup> due to our inability to offer multiple sections of most courses. Outside of those components of the curriculum, however, our size often translates into relatively small enrollments for the more specialized elements of the elective curriculum. Although this small enrollment phenomenon can initially be unnerving to someone with experience teaching at a larger school, that nagging sense of insecurity is quickly overcome by delight in the practical ability to offer many more courses in a seminar-like setting.

### III. STRENGTH: THE SENSE OF COMMUNITY

The strong sense of community that exists at UND is undoubtedly a result of many factors, including a long-standing commitment to recognizing its importance and to the Midwestern regional ethic. But the breadth and the depth of the sense of caring about the well-being of others that exists within our school is positively affected by our small size, where it is a matter of responding to the needs and concerns of individuals, not a matter of processing the problems of fungible students.

That sense of community is illustrated by two situations in recent years. The husband of one of our students was activated and deployed overseas while she was pregnant. The members of her class came together in a concerted effort to provide a support network that extended from prenatal assistance to babysitting assignments to permit the new mother to attend her classes. The class immediately behind that one similarly displayed a collective response to one of their classmates who was physically injured early in the first semester. His classmates' support was an important part of his success in remaining on track academically.

I could go on to list many illustrations of the caring relationship that exists within our school among students, faculty, and staff. I don't mean to suggest that students at larger schools are not supported by networks of friends and classmates, nor would I deny the importance of real supportiveness displayed by individual faculty members and administrators at those schools. The distinctive feature of the sense of community at our school, it seems to me, is the perception that the support is a shared obligation that we owe each other because we have come together in this educational venture. Having seen the character of some schools change for the worse in the course of my thirty years in legal education, I

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2. Although cutting down on the in-class interaction, this phenomenon increases the bonding among members of a class, as described below.

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can attest to the strength of the sense of community at UND and can appreciate people's conscious commitment to maintaining its strength.

#### IV. STRENGTH: THE PERSISTENCE OF THE CONNECTIONS MADE WHILE IN LAW SCHOOL

The practice at UND has been to offer a single section of the substantive courses in the first-year curriculum, with smaller sections of the legal writing courses. The sense of "we're all in this together" is heightened when each of the members of a class shares the experiences that are involved in making the transition from their prior activities and accomplishments to the initial stages of their careers as legal professionals.

In touring the state and meeting many alumni, I've been struck by the way that the bonds that were formed in law school have remained important to our graduates years and even decades after their graduation. Those connections are unsurprisingly most apparent at class reunions, but they manifest themselves as well at alumni functions where conversations often turn to keeping each other up to date on the personal and professional happenings of people with whom they were in school. As someone who attended a law school with more than 1100 students and who has taught at schools with enrollments ranging from 525 to 875, I attribute the persistence of those connections in part to the fact that the bonds were formed among the members of a relatively small class during an important stage in their education and development.

#### V. STRENGTH: THE OPPORTUNITY FOR EVERY INDIVIDUAL TO MAKE A DIFFERENCE

Just as no one gets lost or ignored in a school with an enrollment of between 220 and 245 students, the contribution that each student makes to the quality of life within the school matters to a greater degree than it would in larger schools. Because we are also so understaffed, the substantial impact of each individual's contribution is even more pronounced for the faculty and the staff.

I am sure that this situation is seen as a heavy responsibility just as often as it is viewed as an opportunity, but it could be an attraction if understood in the right way by someone who is willing to take on the challenge of making a difference. I can imagine that the effect could be similar to an athletic program's recruiter who can offer a promising prospect a chance to be a starter at an earlier time than would be possible in a larger program with depth at the various positions. We're writing our legacy as we go along, and that can be gratifying to people with imagination and industry, and who have the work ethic to follow through on good ideas.

#### VI. STRENGTH: THE POSITIVE IMPACT OF FUNDRAISING AT THE MARGINS

A Dennis the Menace cartoon of many years ago showed Dennis and his friend Tommy operating a sidewalk lemonade stand with a sign that said "Lemonade \$100 a glass." The caption had Dennis saying to his dispirited friend, "Like I

keep telling you, all we have to sell is *one* glass.”<sup>3</sup> As we look ahead to initiating a law school capital campaign in the next couple of years, the magnitude of the fundraising task can evoke on alternating days either Dennis’ optimism or Tommy’s discouragement. The cost of the big ticket item in our capital campaign—a major expansion of our facility—is almost certainly going to run to eight figures. That’s a lot of lemonade!

The most notable size-related feature of the law school’s fundraising in the last two years has been the positive impact of the annual giving campaign that we initiated in 2004-2005. Operating against a historical background in which the law school had been able to succeed by relying heavily on public funding, we have been able to grow significantly the number of donors and the total contributions in each of the campaign’s first two years. While the amounts that have been raised may seem negligible in comparison to fundraising successes at larger schools, each of those contributions has been meaningful to us. Because we are so small, we can fund substantial improvements in the quality of life in the law school with relatively small amounts of money.

Like Dennis, we won’t abandon the hope that the \$100-a-glass buyer will be attracted to our lemonade stand. But unlike Tommy, we won’t become discouraged when we continue to sell most of our lemonade for a much smaller price per glass, because the effect of each of those glasses quickly adds up to the point where we can dramatically increase our ability to support people and programs in ways that enrich the experience at our law school.

#### VII. CHALLENGE: THE BREADTH AND DEPTH OF THE CURRICULUM

No greater challenge exists for a small school than the maintenance of a curriculum that offers the full range of subject matter, pedagogical variation, and skills training that a sophisticated legal education demands. The fact that we’re able to maintain such a curriculum as well as we do is attributable to a number of factors.

First, our basic teaching package is four courses per year for a full-time faculty member. While our scholarly productivity would benefit from the regular practice of reduced teaching loads at other schools, the negative impact on our curriculum precludes that practice at present.

Second, our curriculum is enriched by an array of courses offered by talented judges and practitioners who share their experience and expertise with our students on a regular basis. I’ve observed the work done by adjunct faculty at other law schools, including those in larger metropolitan areas, and I can honestly say that I’ve never seen as valuable a contribution to a school’s curriculum from the professional community of any size, let alone one as small as exists within a reasonable radius of our law school.

In spite of these positive factors, it is nonetheless true that course planning at a school as small as ours feels like a perpetual tightrope walk. Just as the

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3. The cartoon panel is referred to at The Official Flash Kellam Joke of the Week, <http://www.io.com/~flashlk/jokes.htm> (last visited Mar. 3, 2007).

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contribution of everyone matters, the loss of anyone's contribution can be dramatic. Thinking back to times I served on hiring committees at other law schools, I have fond memories of hiring to add to existing strengths or to initiate new programs. Because our size stretches our curricular resources so thin, staffing the core is often the more pressing need of the moment.

#### VIII. CHALLENGE: THE DISTRIBUTION OF FACULTY GOVERNANCE RESPONSIBILITIES

The faculty governance responsibilities within a small school are no less varied or important than those in larger institutions, but those responsibilities are spread across a much smaller population. When the small size of the faculty happens to coincide, as it does at UND, with a generational shift in the demographics of the faculty, those governance tasks that require more extended experience as a legal academic are even more disproportionately allocated with the faculty.

How long a school can continue to operate in this fashion is a serious concern, particularly when teaching quality and scholarly productivity expectations are an important part of the culture. The risk of burnout is real, and managing that risk requires a willingness to take advantage of our size by setting realistic priorities and then by experimenting with imaginative structuring of the ways of responding to the highest priority items on our agenda. Within a small school, the opportunity for inclusive conversation can serve as an essential alternative to a rigid committee structure that overtaxes faculty time and energy. In such an environment, what is perhaps the most precious resource in higher education – trust—is even more critical to success in shared governance.

#### IX. CHALLENGE: THE HIGH FIXED COST PER STUDENT

Becoming dean at UND has been an introduction to the diseconomies of scale. My academic career prior to assuming the deanship had been spent at schools that had made substantial investments in the administrative infrastructure that supported faculty, students, and staff in their professional endeavors. A comparable investment had not been part of the UND history, and my initial assumption on taking the job was that the small size of the school made that situation correctible only at the margins, if at all. Overstretching resources, particularly the energy and talent of our personnel, seemed to be the state of affairs to which our size consigned us.

The reality turns out to be quite the opposite. When I became dean, for example, we had no Associate Dean for Academic Affairs. My initial inclination was that asking someone on a faculty as small as ours to divert time and effort into administrative work was a luxury we could not afford. The external demands of a deanship today are so critical to a school's success, however, that within a very short time, I came to understand that doing without a faculty member in that role was a price we could not continue to pay.

The inescapable fact of legal education administration today is that there are certain demands that must be met, and met well, if a school is going to flourish.

While deans may have been able to succeed in the past with a skeleton administration where undertrained people drew on their experience to perform multiple functions, operating in the same way today is simply not an option.

Again, an illustration will support the point. When I arrived, the school had no admissions professional on staff. One staff member assembled admissions files (as one among many other duties) for a faculty committee that reviewed every file. The biennial catalog, which had been improved considerably in its latest edition, could charitably be described as four-color if three of those colors were shades of gray. The effect of this shoestring operation was clear; the school reported the smallest applicant pool in the country.

By the beginning of my second year, we had managed to create new administrative positions of Director of Alumni & Public Relations, Director of Admissions & Records, and Administrative Secretary for Admissions & Records. Experienced professionals were recruited into each of those positions, and the results are amazing. Publications with significantly improved content and production values reflect the quality of what we have to offer, and the admissions process is administered efficiently and effectively. In a year when national law school applications declined, our applications increased 45%. The success in projecting the positive image of the school produces other benefits that are just as real, as we have significantly increased fundraising on every measurement, including the number of donors, total contributions to annual giving campaigns, and additions to endowments.

Law school administrations today need to include professionals whose talents and innovations enable a school to offer services that are essential to support the individual and institutional successes of the school. The initial investment in that administrative infrastructure translates into a considerably higher cost per student than it would in a larger school. While the average cost is projected to decline somewhat as our enrollment grows because of these activities, there is still a very small margin for growth.

The financing of a sophisticated administrative operation of a small law school places strain in two areas. Pressure to increase tuition is constant, creating a risk of undercutting the competitive edge that we currently enjoy. And in an era in which public funds for higher education are just barely able to keep base salaries creeping ahead, basic operating expenses of the school are necessarily being shifted from public to private sources of revenue, making our support from alumni and other constituents essential to maintaining those core functions.

#### X. CHALLENGE: THE IMPACT OF RESOURCE (RE)ALLOCATION MODELS GIVING HEAVY WEIGHT TO FTE AND SCH

Deans who report to central university administrators can find themselves sitting at a table with representatives of other schools and colleges discussing budget models. Because the inherent tendency of such discussions is to focus more on counting things than on the more difficult task of figuring out what really counts, resource allocation models often attach considerable significance to such easily quantifiable measures as the number of full-time equivalent students (FTEs) or the student credit hours (SCHs) generated by the unit.

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The strongest effect of basing reallocation decisions on these factors is to promote and reward growth in student population. For many parts of a university, such growth is desirable and feasible. For law schools, particularly ours, growth is more problematic for a number of reasons.

First, our physical facility places constraints on how much we can expand our student body. We've been able to capture some more usable space by modest reconfigurations, but without a substantial addition to the facility, I'm concerned about our ability to deliver an evolving educational program to a student body of our current size, let alone a larger one.

Second, the student-faculty ratio is a significant feature of the quality of legal education, especially in our school which emphasizes the intimacy of the educational setting. Without adding faculty positions, increasing the number of students we enroll adversely impacts that ratio.

Third, without a critical mass of faculty, the curriculum can become sparse and stale. Increasing the size of the student body would require splitting more courses into multiple sections, particularly in the first year. Placing even more faculty resources into the first-year curriculum would place an unacceptable strain on our ability to maintain and diversify the rest of the curriculum.

The challenge is to identify in a compelling manner the less quantifiable measures of the value that a law school adds to a university. I'm fortunate to be able to respond to that challenge in a setting with decanal colleagues from other schools and colleges who are a delight to work with and who consistently put the good of the university above our more parochial interests.

#### XI. CHALLENGE: THE PLAYING WELL WITH OTHERS FACTOR

A friend of mine used to say that those of us who self-selected into law teaching tended *not* to be the ones whose elementary school teachers marked our report cards "plays well with others." Playing well with others is not an attribute that is highly valued in higher education, but it assumes a huge importance on a faculty on which there aren't many others.

This final challenge is the evil twin of the strength of a small school in which each person's contribution has the capacity to make a positive difference in the quality of life in the school. The disruptive effect on productivity and morale is magnified on a small faculty, when the success of all of us is so dependent on the encouragement and moral support provided by each of us.

#### XII. CONCLUSION

So, size matters, but how it matters is the result of how we manage a complex matrix of factors that are interrelated in multiple ways and that can shift over time in what may be unexpected ways. Being the dean at a small school does not mean that there are fewer balls to juggle. Being the dean at a school with the characteristics of UND means that the juggling is shared among a community of dedicated and hard-working people whose good humor and grace are both an inspiration and a blessing.