

LEGAL PEDAGOGY: WHAT CAN WE LEARN FROM BUSINESS SCHOOLS?

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I. INTRODUCTION

BEFORE becoming Dean/President of Vermont Law School, I was a partner in a large law firm with offices in Chicago and Washington D.C. Over the years, I worked closely with inside general counsel, investment bankers, government officials, and executives of non-profit and for-profit organizations. That experience has led me to believe that law schools could do a better job of educating law students to succeed in the professional challenges they will face either as lawyers or in the business, governmental, and nongovernmental organization (“NGO”) opportunities many graduates will choose.

In this short essay, I will address the question of how legal education might be modified to better prepare our students to deal with the opportunities and challenges which are available to them.

A. Today's Legal Education Model

Law schools in 2007 have certain clearly identified traits. These include:

1. Education pursued on a solitary basis: Students study by themselves, write papers by themselves, and take exams by themselves. Some clinical experience (Moot Court teams, litigation clinic work, etc.) provide limited exceptions.
2. Case method and lectures: Class work is largely a combination of the modified case method (using the Socratic Method) and traditional lecture. This structure usually involves painstaking analysis of judges' applications of legal reasoning to a given substantive area of the law. Through inductive reasoning, the typical law school class builds a general understanding of how judges go about deciding a litigation contest involving that area of law.

In upper level courses and seminars, social science readings (usually economics, sociology, and political science) supplement this approach and involve discussion of the social impact of the area of the law being studied.

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B. *What Is Not Covered?*

Law Schools rarely provide systematic training in management skills, team building, team problem-solving, sales, economic and statistical analysis, organizational psychology, or leadership.¹

C. *What Are the Job Demands Faced by Our Graduating Students?*

The range of jobs taken on by lawyers is very wide, indeed, but certain generalizations can be made: Most sophisticated legal work is provided by large organizations with substantial income differentiation for lawyers based on sales and organization skills, as well as on traditional “legal” skills: drafting, negotiating, litigating, and legal counseling. Over the last half century, the delivery of legal services has shifted from small law firms and individual practitioners to mid-sized and large firms, “inside” legal departments of business organizations, and to government offices.² This has created opportunities for lawyer-managers, both at the top echelons of law firms and as general and associate general counsel of business entities. The ability to recruit excellent lawyers, to organize delivery of legal services, and to sell services has become crucial in the highly competitive legal services marketplace.

Working with large teams is common for delivery of most legal work. Legal projects often involve several lawyers with completely different areas of specialties and often involve a variety of other professionals: accountants, investment bankers, economists, business executives, investigators, etc. The ability to work well with others, to organize teamwork, and to call out needed specialty capabilities in an orderly process is necessary for effective project execution.

1. See *Business Is Business: The Need for and Development of Business Skills for Law Firm Associates*, LEGAL MGMT., Jan.-Feb. 2002, at 69, 69.

2. George P. Baker & Rachel Parkin, *The Changing Structure of the Legal Services Industry and the Careers of Lawyers*, 84 N.C. L. REV. 1635, 1677 (2006) (Baker and Parkin’s study of law firm size found “weak evidence of the demise of midsized firms at the expense of large firms and small boutiques, though significant evidence that the largest firms have grown substantially. We also document a significant increase in the number and geographic diversity of multi-office law firms. These trends are consistent with a move by firms to compete with in-house legal departments by offering a broader range of services, with greater depth, across multiple jurisdictions.”); Andrew J. Drucker, Note, *Explanations, Suggestions, and Solutions to Conflict Tracking and Prevention in Response to the Growth and Expansion of the Larger Law Firm*, 24 DEL. J. CORP. L. 529, 529 (1999) (noting a “marked increase in law firm size”). See also Corinne N. Lalli, *Multidisciplinary Practices: The Ultimate Department Store for Professionals*, 17 ST. JOHN’S J. LEGAL COMMENT. 283, 283-94 (2003) (“[M]ore law school graduates are seeking employment outside traditional law firms and inside corporations.”); Press Release, Altman Weil, Inc., *Corporations Are Paying More for In-House Lawyers*, New Survey Reports (Oct. 17, 2005) (“As law departments compete with law firms for legal talent, the corporation has had to pay more to recruit lawyers.” (quoting Daniel J. DiLucchio, Jr.)) (transcript of press release available at http://www.altmanweil.com/index.cfm/fa/r.resource_detail/oid/98864edb-947a-47e7-a3b6-4b712b65e807/resource/Corporations_Are_Paying_More_for_In-House_Lawyers).

D. Lawyers as Leaders of Business, Government, and NGO Interests

Lawyers are leaders across a broad spectrum of the political, business, and non-profit sectors of our society.³ Lawyers take great pride in the fact that many CEOs of the largest corporations and many high-ranking government officials were educated as lawyers. Many students chose law school because they view a JD as a generalist degree which will help them become a leader in business, government, or an NGO. Given the number of students graduating from law school, it is a good thing that many of our students have aspirations which will carry them outside of law practice.⁴

Thus, we should examine whether we are doing an adequate job of preparing our students for positions outside practice, as well as ask whether we are providing sufficient skills for excelling in practice. We might ask whether we have kept up with the kind of skills needed for those who move from law practice to leadership in business, government, or NGOs.

Also, it is clear that most law practice has become narrow and those caught in narrow specialty niches will crave new challenges after a decade or so. We ought to help our students prepare to make successful transitions.

Some might argue that dual degree programs (JD/MBA, or JD/MPA, etc.) provide the necessary training for these “law, then” or “law, and” career paths. Those routes make sense for some, but for at least two reasons, it might be preferable for law schools to offer the skills training which will assist in transition from law to business or law to public service.

First, graduate professional training is awfully expensive. Its cost has been rising faster than starting salaries and adding a year or two on top of the three years of JD training is not tolerable to most. Second, many of our JD students do not yet realize that they will face exciting opportunities outside law practice soon after graduation or may “burn out” after a decade or so of practice and then find new excitement outside law practice.

Besides, the kind of skills necessary to successfully lead business or government organizations are the same, to a marked degree, as the skills needed

3. See Norman Gross, *Introduction to AMERICA'S LAWYER-PRESIDENTS: FROM LAW OFFICE TO OVAL OFFICE*, at xv (Norman Gross ed., 2004) (“[I]t should be no surprise that twenty-five of our nation’s forty-three Presidents have been lawyers.”); CONG. QUARTERLY, INC., *GUIDE TO CONGRESS* 840 (5th ed. 2000) (noting that in “the 106th Congress convened in January 1999, 169 of the 435 representatives and fifty-seven of the one hundred senators were lawyers”). Lawyers, such as Herb Kelleher, chairman of Southwest Airlines, and Elizabeth Dole, former head of the American Red Cross, are examples of CEOs of major corporations and NGOs. See Sara Shik, *Oh, the Places Your Juris Doctor Will Go*, J. KAN. B. ASS’N, Feb. 2005, at 9, 9.

4. For the academic year 2005-06, 42,673 J.D. or LL.B’s were awarded; for 2004-05, 40,023 J.D.’s or LL.B’s were awarded. American Bar Association, *Enrollment and Degrees Awarded 1963-2005 Academic Years*, <http://www.abanet.org/legaled/statistics/charts/stats%20-%201.pdf> (last visited Oct. 14, 2007). The overall ratio of lawyers to U.S. population is increasing. *The Lawyer Statistical Report* gives the latest population/lawyer ratio for 2000 as 264/1 (1,066,328 lawyers); in 1995 the ratio was 303/1 (856,931 lawyers). CLARA N. CARSON, *THE LAWYER STATISTICAL REPORT* 1 (2004).

for the senior positions at law firms, corporate general counsels' offices, and senior government lawyers, i.e. management, organizational, and selling skills.

E. Skills: Given the job challenges which lie ahead for our students, how might we better prepare them?

1. *Group Projects*

The elite business schools have demonstrated the effectiveness of team projects to prepare their students for challenges of business. Law schools should incorporate more team problem-solving. Use of teams to formulate proposals, and respond to problems will prepare our students to interact with others effectively. For upper level students, law schools might well assign roles of the tax specialist, antitrust specialist, contract specialist, etc. to those working on a project. Law schools should consider cross-school courses with business schools, schools of engineering, schools of public administration, etc., so that problem teams might include students with each focus.

The psychological studies of how students learn consistently have found that cooperative learning (through group projects, study groups and other forms of group interaction) lead to higher level of retention and ability to manipulate information as compared to the individual and individual competitive models generally used in law schools.⁵

Therefore, both in terms of preparation for the kind of interaction most of our students will experience upon graduation and in terms of effective teaching, more work with group learning techniques would seem warranted.

2. *Analytical Skills*

A large percentage of JD students have had little or no training in the basic analytical skills of statistics, economics, and organizational psychology. Mastery of those skills will be helpful for many of the jobs of interest to our students. One approach would be to require at least basic training in these skills before entering law school. This would be similar to the science training demanded by medical schools for admission.

Another approach would be to require such training for students who do not already have undergraduate training, perhaps making the training available during the summer prior to entry into law school. Alternatively, the training might be woven into a first or second year offering, much the way legal writing training is offered by most law schools.

5. See Mary Beth Stanne, David W. Johnson & Roger T. Johnson, *Does Competition Enhance or Inhibit Motor Performance: A Meta-Analysis*, 125 PSYCHOL. BULL. 133, 134 (1999).

3. *Sales*

Virtually any path our students take will be more successfully taken if the student is good at sales. Law school already does a reasonable job at sales preparation. We teach students to marshal arguments, to listen, to cross-examine, and to speak well. Law school teaches these skills better than any other graduate education. However, law school does little to inform its students about how to use those sales skills beyond the courtroom and the negotiation table. Information about the internal law firm decision-making process—how new business is obtained, how to seek out the best mentors, how to choose an area of specialty—would increase the sophistication and the chance for success for our students. Now, most law students graduate believing that mastering a specialty in the law will be enough to lead to the independence, mobility, and financial success they hope to achieve. While that mastery is a necessary starting point, it often is not enough.

Law school professors rarely provide the advice which will lead to sophisticated choices about employment, internal firm strategies, or lateral moves. Law schools, working with their alumni office and placement office, should ask the best legal recruiters and sophisticated older lawyers to talk to students about career paths. Similarly, law schools should be sure that “rain-makers” in different legal specialties and at different types of firms discuss their experience in business development. Information about salaries as well as income and investment opportunities should be woven into the law school program so that every student who graduates has a sophisticated knowledge of how to position himself to achieve these goals.

Once graduated, today’s new lawyer can expect to have several jobs during her career. Ongoing advice and counseling and networking support from his law school may be very useful. Alumni blogs and on-line newsletters make this type of help relatively easy to provide. Alumni reunions have always provided networking opportunities. Organized presentations on mid-career job changes would be a popular and useful service for alumni.

II. CONCLUSION

The career path which leads directly to a law firm at which the lawyer remains throughout his or her career is becoming rare. The challenges for lawyers both within and outside their firms require skills which have not usually been taught at law schools.

Lawyers who have these skills will be likely to have more successful and rewarding careers than those who do not. By borrowing group project techniques of business schools and insisting that all of our students have basic competence in such areas as management, economics, statistics, and organizational psychology, our students will be better equipped to successfully navigate career opportunities. If we can also help them become more sophisticated about dealing with career challenges and opportunities, we will be likely to have helped them a great deal.