

## Symposium

# Balance in Legal Education: Pervasive Principles

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This essay reflects a perspective gained from more than three decades on a law school faculty and from brief tours of duty as a temporary or interim dean. I am sure that over time my views were shaped more by my faculty role than by the work I performed as an administrator. Nevertheless, in my tenure as a dean, it seemed important to identify qualities of legal education that I would most like to enhance during the short term of my responsibility. In the process, I identified four “pervasive principles” that were consistent with my view of what “balance” in legal education is about. I label these principles as “pervasive” because they apply to all constituents of a law school and they are most likely to be sustained if backed by full institutional support. Thus, while I started in each instance with a goal of enhancing student experience, I conclude that students are most likely to respond in kind when they observe faculty, staff, and alumni who model the qualities we promote. Further, the very principles that generate successful outcomes for students have analogues in relationship to other participants in the life of the academy.

This statement implies certain judgments about my conception of success. For students, measures include attaining knowledge and skills, gaining admission to the bar, and experiencing personal satisfaction. For faculty and staff, specific measures may be different, but central components remain the same. In traditional terms, faculty should teach effectively, work as effective scholars, and provide service to their institution, their community, and their profession. Staff should work in harmony with each other and provide the quality of service that will best support the productivity of the institution.

**William J. Rich** is Professor and former Interim Dean, Washburn University School of Law. My understanding of “balance” in legal education has been influenced by many friends and colleagues. Soon after I entered legal education I shared long conversations with Carl Monk, then the dean at Washburn Law School, about ways in which a school could preserve a traditional dedication to teaching and service while strengthening our commitment to scholarship. In that same period, I also was influenced by programs that offered a humanistic education in law, and by participants in those programs, including Jack Himmelstein, Carrie Menkel-Meadow, Howard Glickstein, and Paul Brest. More recently, I have been especially influenced by the studies conducted by Larry Krieger, and by opportunities to work with a number of individuals including Judith Wegner, Alison Anderson, Gerry Hess, and my Washburn colleague, Michael Schwartz. I am thankful to all of them for the insight and guidance they have provided.

Both faculty and staff should gain a sense of personal satisfaction from their work. Alumni also have a place within this equation: “successful” alumni maintain positive feelings toward the institution and continue to contribute their time, talent and financial support. My conception of balance in legal education can best be understood in terms of principles that generate success across this continuum.

The first of these principles grew out of a focus on the relationship between engagement and student performance. I understood from reading about and working with the Law School Survey of Student Engagement<sup>1</sup> that active student engagement in the life of the law school has more to do with student success than more obvious measures such as time devoted to class preparation. It surprised me to learn that the time students spend interacting with faculty may be more important than the time spent in rigorous interrogation during class.<sup>2</sup>

Engagement by students is directly related to participation by faculty, staff, and alumni in the broader life of the institution. At an elemental level, faculty become engaged when they care about the quality of their teaching and see the challenge of becoming outstanding teachers as a central theme of their professional life. Engaged faculty also care about their students outside of the classroom, make themselves available for individual conferences, and respond to expressions of need or interest. Similarly, staff and alumni play a daily role in assisting students who desire greater engagement. Administrators have the particular role of removing bureaucratic hurdles that otherwise stand in the way of students who have independent ideas about how to improve the life of the school. Of course, all of this means that student engagement will be directly related to engagement by other constituents of the law school community.

Valuing student engagement (and by implication, valuing engagement by everyone within the school) leads directly to questions about how to bring about those levels of activity and participation that lead to measurable “success.” These questions bring me to the second principle I would emphasize; law school success depends upon enhancing intrinsic motivations.

The person to whom I give the most credit for bringing this principle to the fore for me is Professor Larry Krieger. Working with his co-researcher, Professor Ken Sheldon, Krieger has demonstrated links between intrinsic

1. See Ind. Center for Postsecondary Research, *Engaging Legal Education: Moving Beyond the Status Quo*, Law School Survey of Student Engagement, 2006 Annual Survey Results (2006).
2. *Id.* at 11 (noting that “Student-faculty interaction was more strongly related to students’ reported gains in analytical ability than time spent studying, co-curricular activities, or even the amount of academic effort they put forth”).

motivation and positive well-being as well as the negative changes in values and motivation that characterize law school experience for a high percentage of our students.<sup>3</sup>

For generations, law schools have excelled in the development of various extrinsic motivating forces.<sup>4</sup> High grades lead to high class rank, interviews with outstanding law firms, high salaries, and high prestige. First-semester grades open doors to editing law journals and having options of judicial clerkships. The pressure can be enormous and the rewards for the few who really succeed can be equally great. Evidence that Krieger has generated, however, suggests that all of this emphasis upon extrinsic motivation may lead to long term dissatisfaction with subsequent life as a lawyer, high levels of emotional distress and depression, and high rates of drug or alcohol abuse.<sup>5</sup> In other words, although extrinsic rewards may generate short term achievement for a significant segment of the law school community, the total product of such a legal education receives failing marks.

In contrast, intrinsic motivation may be closely related to the forms of student engagement referred to in preceding paragraphs.<sup>6</sup> The successful law school should reinforce students' desires to become engaged in the life of the school because of the personal satisfaction they gain by doing so. Opportunities to work both outside and inside of a classroom with peers, professors, staff, and alumni whom they respect, and whose company they enjoy, should lead students to experience a sense of well-being.<sup>7</sup>

This leads, in turn, to questions about how a school can generate such experiences: How do we make law school experiences both appealing and satisfying. By now I assume that most law schools have discovered the wonders of offering a free lunch. A slice of pizza may induce students to participate in school activities with visiting alumni, with faculty who are willing to take their time to share personal experiences or insight unrelated to course work, and to participate in student organizations or pro bono activities. Other alternatives may take more commitment and more resources. Faculty who devote their

3. See Lawrence S. Krieger, *Human Nature As a New Guiding Philosophy for Legal Education and the Profession*, 47 *Washburn L.J.* 247, 259-60 (2008) [hereinafter Krieger, *Human Nature*]; Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being* 22 *Behav. Sci. & L.* 261, 281 (2004).
4. See Sheldon and Krieger, *supra* note 3.
5. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction*, 11 *Clinical L. Rev.* 425, 441-45 (2005). See also Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 *Am. U. L. Rev.* 1337, 1346-47 (1997) (noting high levels of dissatisfaction among lawyers).
6. See Barbara Glesner Fines, *Competition and the Curve*, 65 *U.M.K.C. L. Rev.* 879 (1997) (demonstrating that intrinsic motivation improves performance).
7. In Larry Krieger's words, "An environment suffused with operative intrinsic values creates greater well-being, dedication, resilience, and performance." Krieger, *Human Nature*, *supra* note 3, at 273.

time to training a moot court team or alumni who welcome a group of students to their law firm for meaningful interaction with lawyers who are engaged in their law practice also may have the intended results.

The lessons about intrinsic and extrinsic motivation apply to faculty and staff as much as they do to students. Faculty who become temporary scholars to achieve tenure, feeling both pressed and oppressed by the need to produce three major journal articles (published in “top tier journals”), are less likely to experience the personal enjoyment and life satisfaction associated with a lifetime of scholarship and motivated by pleasures of the scholarship experience. To the extent that a law school community enhances those pleasures, it will be more likely to achieve success. Financial rewards for production of scholarship may have intended effects of generating productive work (which also may enhance the enjoyment of scholarship for some participants), but too much emphasis upon such rewards will be likely to generate competition and complaints among faculty members who feel that their contributions to the community have not been properly recognized and rewarded. That will be especially true in institutions where faculty compete with each other for the limited financial or prestige rewards that result from producing scholarship. In other words, concern regarding over-reliance upon extrinsic motivations applies to both faculty and students.

In a successful law school, faculty and staff enjoy their life within the community. They are motivated primarily by the positive feelings generated from interaction with their peers, from seeing lights emerge out of the general haze of students who are searching for understanding, or from lights of their own that appear when lengthy research yields new insight. Unfortunately, we all know about the counter-productive impact of declining *U.S. News & World Report* rankings. While deans ignore such issues at their peril, when they dominate the culture or the values of a law school it means giving priority to extrinsic values rather than intrinsic values, and the long term impact upon the school will be predictably grim. While deans must keep in mind the tools that can be used to enhance institutional prestige, hopefully gaining a measure of personal satisfaction from working towards those ends, faculty and staff should remain focused upon enhancing aspects of their teaching, scholarship, or community service that also generate satisfaction.

This discussion of intrinsic motivation leads to a third value that I associate with the concept of balance in legal education: support for individual autonomy. There are at least two different components of autonomy support that I would emphasize. First is an understanding that individuals feel more valued and perform to a higher standard when given a degree of individual

autonomy.<sup>8</sup> We experience that difference in the classroom when we recognize the difference in performance emerging from students who participate in choices about the design or structure of a course.<sup>9</sup>

While this first reason for supporting student autonomy (and from a dean's perspective, supporting staff and faculty autonomy) can be seen simply as a tool for generating engagement, a second and more fundamental reason is based upon recognition of value that comes from our diversity.<sup>10</sup> As a general rule, multiple perspectives, properly coordinated, will generate a better outcome than the ideas that spring from an individual mind. Students cannot be expected to understand the value of diverse perspectives if taught by individual professors who act as the sole dispensers of knowledge. Studies demonstrate that group work by students will generate higher levels of participation, greater learning, and better products.<sup>11</sup> Students who gain that understanding will be equipped to take those experiences into the firm, government, or corporate environment where they spend their careers, and to gain greater success in their lives as professionals. By analogy, diversity of ideas in the context of law school governance helps to sustain the life of the institution.

During a brief recent stretch as an interim dean, I was struck by the changes that had taken place since the time when I played a similar role more than two decades earlier. Within legal education, the realm of deans now includes a large cadre of people who see themselves as professional administrators, rather than as members of a faculty who serve for a limited time in an administrative role. Based primarily upon brief observations at "deans' meetings," these professional deans seemed more distant from their faculties and often expressed themselves in oppositional terms. They addressed issues in terms of their ideas versus the ideas of the faculty, rather than as topics for collaborative resolution. I am sure that under many circumstances, professional administrators may be more efficient than the deans who look forward to their return to faculty ranks. I also do not doubt the motivational challenges faced by deans who would prefer to lead a group of contract employees rather than tenured faculty.<sup>12</sup> At the same time, however, I am convinced that the most successful schools will continue to be those where inclusive and collaborative governance thrives, and where faculty participate in governance because of their support

8. See Roy Stuckey and Others, *Best Practices for Legal Education: A Vision and A Road Map* 113 (Clinical Legal Educ. Assoc. 2007).
9. See generally Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, but Our Course*, 47 *Washburn L.J.* 367 (2008).
10. See generally Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning*, 49 *J. Legal Educ.* 448 (1999).
11. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 *J. Legal Educ.* 75, 94 (2002).
12. At meetings of the dean I heard comments about the greater responsiveness of faculty on short-term contracts to the ideas and the agenda of the deans, coupled with complaints regarding the lack of such responses from tenured faculty.

for the institution rather than because of their fear of exclusion or rejection. Returning to my original theme, autonomy support is a recognized strength of effective teaching. It also is reflected in effective faculty governance systems and in allocation of responsibility to staff.<sup>13</sup>

Underlying the values described—engagement, intrinsic motivation, and autonomy support—is a principle of respect. Faculty demonstrate their respect for students in a number of ways, including recognition that student lives have multiple dimensions and that students may have to balance conflicting priorities including family and friends as well as course or career aspirations.<sup>14</sup> Deans, faculty, and staff all demonstrate their respect when they listen before they judge, when they provide participation opportunities to others, and when they acknowledge the contributions that others have made. Individuals can have different perspectives without some being right with others being wrong.

Respect does not mean that standards should be lowered, or that students should be rewarded for mediocre work. The opposite is closer to the truth. Students respect honest appraisals of their work and they respond best to high expectations.<sup>15</sup> At the same time, faculty must accept responsibility for clarifying their expectations and providing feedback that does more than provide a rank order.<sup>16</sup> The same is true when it comes to communications between deans, faculty, and staff.

The value of learning to show respect for others is important as more than a mere statement of rhetorical virtues by high-minded administrators. In a separate essay, I addressed questions about personal qualities that characterize successful judges and lawyers.<sup>17</sup> Within that context, I suggested that law schools fail to fully prepare their students for success when they focus exclusively upon academic achievement narrowly defined in terms of high scores on final exams. That narrow focus misses important dimensions of “interpersonal intelligence,” demonstrated by the capacity to interact in responsible ways with colleagues, clients or adversaries.<sup>18</sup> Clinical students who experience how to relate to their clients and opposing counsel in meaningful and respectful ways may learn more that will be of value to their professional

13. As an extreme comparison, while I was in the middle of extensive prison-reform litigation, a warden explained to me that the differences in behavior and attitude of maximum and minimum security inmates could best be understood in terms of how they were treated.

14. See Lawrence S. Krieger, *The Hidden Sources of Law School Stress: Avoiding the Mistakes that Create Unhappy and Unprofessional Lawyers* 14-15 (self-published 2005).

15. Stuckey, *supra* note 8, at 116-18.

16. Hess, *supra* note 11, at 91-92.

17. William J. Rich, *Measuring Judicial Success: Interpersonal Intelligence and Commitment to Enduring Values*, 47 *Washburn L.J.* 35 (2007).

18. *Id.* at 37. See generally Kristen A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 *Wash. & Lee Race & Ethnic Ancestry L.J.* 1 (2005); Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 *Psychol. Pub. Pol’y & L.* 1173 (1999).



lives than they will ever gain by mastering the rule against perpetuities. In the process, they gain both knowledge and skills that enhance the satisfaction they will gain in their future careers.

Skills of interpersonal intelligence can be taught outside of the clinical context. For example, my colleague Michael Schwartz organizes all of our entering students into small groups, facilitated by trained second- and third-year students, who enhance their educational experience by learning how to relate effectively to each other.<sup>19</sup> Business school models have given similar emphasis to developing effective group interaction, and, at least according to some law teachers, do a relatively more effective job of teaching creative problem-solving skills.<sup>20</sup> In more general terms, cooperative teaching methods, including a dimension of personal interaction, produce higher achievement as well as happier and healthier students when compared to more competitive or individualistic approaches.<sup>21</sup>

All of the principles described above represent elements of “balance” in legal education. Engagement relates to qualities of participation that address the whole person and not just the limited interests of detached observers. Intrinsic motivations involve those elements of our lives that lead to personal satisfaction, in contrast to an undue emphasis upon external measures of achievement and material rewards. Autonomy support, in turn, rewards the individual strengths of all participants in an institution, rather than imposing a rigid standard for successful participation. And showing respect brings out the best in others while also contributing to professional success and personal satisfaction. The good news is that these principles not only reinforce each other, they are also components of what might be defined as a successful program of legal education. Alumni participation, student satisfaction, and even successful bar exam performance may result,<sup>22</sup> and with time even the *U.S. News & World Report* may take notice.

19. See Michael H. Schwartz, *Humanizing Legal Education: An Introduction to a Symposium Whose Time Came*, 47 *Washburn L.J.* 235, 237-38 (2008).
20. See, e.g., Carrie Menkel-Meadow, *When Winning Isn't Everything: The Lawyer as Problem Solver*, 28 *Hofstra L. Rev.* 905, 915 (2000).
21. See Stuckey, *supra* note 8, at 120 (noting that more than 600 studies have demonstrated the value of cooperative learning).
22. See Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 *Personality & Social Psychol. Bull.* 883, 891 (2007) (showing a correlation between law school programs that enhance student personal well being and improved bar examination performance).