

# Response: Time to Collaborate on Lawyer Development

Scott Westfahl

Because there are no atheists in foxholes, many of us involved in lawyer professional development are now becoming believers. This time we pray real change will happen, that amidst the rubble of rescinded offers, deferrals and layoffs, law schools and law firms will collaborate to improve not only the law school curriculum, but also the way law firms address professional development, mentoring, feedback, customized career tracks, and even work-life effectiveness.<sup>1</sup>

Daniel Thies's market-based case for law school reform is a welcome call to action. While his analysis of the market forces does not entirely justify his suggestions for reform, they are nonetheless excellent suggestions upon which to build. From the perspective of a law firm professional development director, here are some thoughts about what is missing from his model, and what further avenues should be explored.

## Issue 1: Hiring for Practical Skills

Law firms don't evaluate students based upon practical skills acquired, and will have a difficult time adjusting their hiring processes to do so. Thies contends that during the hiring frenzy of the 1980s and 1990s, law firms abandoned careful selection methods because they lacked the market power to demand that students possess practical legal skills. As his argument goes, the competition to hire more and more people intensified. Law firm hiring emphasized enticing students to join rather than evaluating and comparing the practical skills they would bring to law firm practice. All was well, though, because there was plenty of work for new associates to do, much of which required no pre-training. Thus, law schools could promise students excellent job prospects without needing to invest in teaching them practical skills.

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1. We're not praying for work-life "balance" anymore. That Eden is lost forever due to the sins of our culture, not our profession.

Now, with law firms under increasing pressure to justify their rates, Thies believes that firms will give hiring preference to those students who are more prepared to hit the ground running upon graduation because they have learned practical skills at law school. Law schools that provide the best practical skills training will be preferred by prospective students, provided that schools are forced to disclose more accurate market information about how well their alumni have fared in the job market.

In making his case, though, Thies misses an important point. Modern law firms have never used the substance of a candidate's legal education as a primary selection tool. Rather, they continue to trust the top grades from the top schools algorithm almost completely, coupled with cocktail-party style interviews that test candidates for "fit."<sup>2</sup> Why? As Thies identifies, there is clear research indicating that top grades from top law schools do not correlate strongly with long-term success as a lawyer. But the myth prevails because it is so ingrained in the culture of U.S. legal education. We have not evolved from the idea that law school is a rigorous test of an individual's "intellectual horsepower," and that small differences in GPA represent enormous gaps in potential.

This clinging to the primacy of grades and schools undermines Thies's central contention. He believes that if legal employers demand that their new hires possess practical skills, the market will force law schools to teach them. But the market mechanisms here are not aligned to force such a result. Case in point: one of the first things that happened in law firm recruiting departments as the current recession hit was an almost gleeful re-calibration of how high in the class at the best schools each firm could now recruit, given that fewer recruits needed to be hired. Very little thought has been given to selecting more effectively for candidates with strong practical skills training. Thus, a huge barrier to reform that Thies misses is that the myth of the meritocracy runs just as deep in law firms as it does in legal academia.

Yet there is hope that the recession will eventually help market forces to align as Thies suggests. Not because law firms are now going to revert to the practical skills selection criteria they abandoned in the frenzy, however. Law firms aren't looking at the right data, and even if they wanted to, it does not yet exist. How can firms hire on the basis of practical skills and readiness to practice law when, other than summer associate work evaluations, they have no data to use to do so?

Such data does not exist mostly because law school grades emanate from exams measuring legal reasoning and issue spotting under an artificial timetable, as an individual effort. They do not measure a candidate's ability to draft a motion, review an agreement, come up with an innovative way to help paralegals track discovery on a big case, or a host of other practical skills. Nor do they measure how well students work as part of a team, influence and lead

2. "Fit" of course also was formerly used to sort by gender, race and class, which, thankfully, are no longer significant barriers to entry.

others, think on their feet, present complex material orally, evaluate business terms or develop robust networks to help them to get their jobs done, and eventually to develop business.

Law firms try to find proxy measurements for some of these skills, such as law journal experience, student organization leadership, and pre-law school work experience. But these fall far short of being effective bases for comparison, and are always secondary considerations. A candidate must first meet the tried but not true top grades/top school test even to be considered for a position in this market.

So where is the hope? It lies in the fact that law firms are now intently focusing on how to develop their lawyers more effectively, because clients are increasingly resistant to paying for perceived training of junior associates. As a first step, firms have started to develop competency models to identify skill and behavioral expectations for associates, to show them more clearly how to succeed.<sup>3</sup> In doing so, they are mirroring what leading professional services firms like McKinsey & Company have done for years. Show people what you expect, and then align your hiring, training, mentoring, and evaluation processes to develop your next generation of leaders. That formula is most likely to result in law firms demanding changes in the way schools prepare students for law practice. Because as we define and evaluate competencies, law firms will want to “get what we measure” and will more easily identify gaps between what junior associates are expected to do and what they are actually capable and pre-prepared by law school to do. This will give us more insight into how to align our selection and hiring processes and to give preference to graduates who are better prepared to add economic value to our clients upon hiring.

## Issue 2: Improving Market Information

Better market information for students should be supplemented by better information for legal employers, but in the meantime, law firms will take it upon themselves to close the gap. Students choosing to invest in a law school education deserve better market information about the career prospects of graduates, as Thies contends. Yet this may not drive law school curriculum reform the way he hopes. Law schools principally recruit students graduating from college, who at any stage of the economic cycle are more likely to apply a consumer mentality than an investor mentality in selecting a law school. Consumers seek the best brand available to them, while investors carefully weigh costs and benefits. The allure of rankings and “prestige” offered by *U.S. News & World Report* will be hard to overcome, as students have been pre-conditioned by their entire educational experience to seek out the “advanced” classes and the “best” programs. A mitigation tactic would be for law schools to follow the business school model and recruit primarily people who have

3. See, e.g., Scott A Westfahl, *You Get What You Measure: Lawyer Development Frameworks & Effective Performance Evaluations* (Nat'l Assn. of Law Placement 2008), which offers a model for developing law firm competencies and integrated lawyer evaluation processes.

been in the workforce for a few years prior to law school, perhaps even requiring such experience for admission. Such recruits would be far more likely to adopt an investor mentality in choosing a law school. This strategy could be particularly helpful for law schools whose applicants are less focused on prestige factors.

This doesn't discuss the other side of the market information equation. Yet for his predictions to come true, legal employers need to have much better insight into the skills, behavioral competencies, and experiences of the students they are trying to hire. Again, law school grades and currently available proxy data do not sufficiently provide such insight. As competency models gain traction, law firms will increasingly try to "reverse engineer" their hiring processes and perhaps explore other means of selection. As an example, McKinsey's selection process relies *inter alia* upon analytical and quantitative case interviews, behavioral interviews, and observed team interactions. Skeptics who believe that law students would not stand for such testing should recall that for many years now McKinsey has been one of the most sought after interviews at top law schools.

Unfortunately, law firm selection and hiring processes, and the deep myth of meritocracy, will be slow to adapt. They certainly cannot do so quickly enough to address the concerns of clients who are increasingly unwilling to pay for junior associate time, especially in this recession. Similarly, law schools will not overnight start producing a great many practice-ready graduates.

So what can be done now? Law firms are starting to fill the gap themselves rather than rely upon law schools to provide practical training. Some large firms are taking matters into their own hands by intensifying their training programs for first-year associates and/or "carving out" first years into an apprenticeship period where billable hours are not required as well as implementing approaches like "shadowing" senior partners are being revived.<sup>4</sup> Elite firms with more sophisticated professional development and training programs are more likely to implement such solutions. It remains to be seen whether clients will accept without further complaint paying full rates for junior associates who have graduated from these apprenticeship periods. By law firm standards, it is a bold market play to believe that client concerns about the value of junior associate contributions will be allayed by a first year apprenticeship program.

This astutely points out that market segmentation exists, and that being able to prepare graduates to add value to clients immediately upon graduation will be more important for lower tier law schools than elite schools. Similarly,

4. Two major law firms, Howrey and Drinker Biddle, have recently announced specific plans to do so. See Jeff Jeffrey, Howrey Introduces Apprenticeship Program for Associates, *Nat'l L. J.*, June 22, 2009, available at [http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202431654426&Howrey\\_introduces\\_apprenticeship\\_program\\_for\\_associates](http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202431654426&Howrey_introduces_apprenticeship_program_for_associates) (last visited Feb. 9, 2010); see also Rachel Breitman, Drinker Biddle to Incoming Associates: Homeschooling for You, *Am. Law Daily*, May 11, 2009, available at <http://amlawdaily.typepad.com/amlawdaily/2009/05/drinker-biddle-sends-associates-back-to-school.html> (last visited Feb. 9, 2010).

small to medium size law firms lacking the resources to invest in intense apprenticeship training programs will be the first to apply pressure on law schools to better prepare their graduates.

Fundamentally, it is unclear whether larger law firms will ever expect law schools to graduate practice-ready associates. First, they don't trust law school faculty to teach practical legal skills, because most tenured faculty at top tier schools have very little experience practicing law. Second, law firms take a neutral view of law school clinical programs because those programs typically focus on helping the indigent rather than solving business problems.

Thies's recommendation for broad liberalization of adjunct faculty rules would boost law schools' credibility in the eyes of practitioners, who would presumably serve as faculty in greater numbers and help reduce the theory versus practice gap.<sup>5</sup> Law schools could evolve towards the medical or business school model, where a large percentage of the faculty have at one time or another engaged considerably in the professional activities aspired to by their students.

### **Issue 3: Market-based Reform will Probably not Carry the Day**

Not to waste a good crisis, Thies wisely uses the current economic upheaval to make his case. Yet there are real limits to his market-based prediction that law schools will be forced to change how they prepare their students for practice. First, as noted, he is wrong that law firms with market power will now be selecting students based upon their practical skills acquired. Law firms aren't prepared to do that yet, and the market data is not yet there. Second, economic recovery will likely occur a lot faster than law school curriculum reform can happen, removing some of the market pressures that Thies hopes will lead to such reform. Third, as larger law firms fill the gap with training and apprenticeship programs for junior associates, their clients may drop their objections to paying for junior associate time. This would obviate the market-based need for practical skills training at the mid- to top-tier law schools from which large law firms primarily recruit.

I suggest we build upon Thies's call to action by getting to the real heart of the matter. No matter the stage of the economic cycle, we should constantly evaluate how legal education achieves the twin goals of a fostering a better profession and developing more productive, successful, and self-fulfilled lawyers.<sup>6</sup> The economy should not drive whether this happens or not. Here's

5. Thies seems to contend that this theory versus practice gap at law schools has widened over the years, but that does not ring true. Practical legal skills have never been an integrated component of the case method, and law school exams for decades have typically measured only legal analytical reasoning, issue spotting, and writing, alone, under pressure. The "add-on" clinical programs do not really address the gap because they exist outside of the core curriculum, as Thies notes.
6. These goals should replace the prevailing, almost mythical concept that law schools exist to teach students "how to think" or "how to think like a lawyer." That statement is so powerfully constructed that questioning it seems like questioning the purpose of breathing. But in reality teaching students how to think like lawyers is only a small part of what law

an analogy: In my work on diversity issues within a law firm, we often appeal to the market-based, “business case” for diversity. We justify investment in diversity programs because our clients increasingly say they will pull business away if we don’t prove our commitment. But at some level this argument does not express why investing in diversity is so critical, or why our clients care about it. At some level, as David Wilkins has elegantly argued,<sup>7</sup> we need to come back to “it’s just the right thing to do” for individuals, for our profession, and for our society. That is exactly what we’re talking about when it comes to law school curriculum reform. It is the right thing to do to prepare students to succeed in their chosen profession. And it benefits our profession and our society to have them succeed.

### **Further Avenues to be Explored**

So how can we get there? To start, law schools need to think strategically in the same way that leading law firms are doing. We have first identified core competencies and measures of success for our lawyers. Now we are starting to align our hiring, training, mentoring, and evaluation systems accordingly, so that lawyers who choose to do what we do for a living have a better chance of success.

In the same way, law schools need first to analyze and define what success means for their graduates and for the legal profession. Lawyers serve and work in so many capacities. What are the core competencies they need to succeed in their roles? How can those best be developed? How can those skills and behaviors be taught and measured at a law school? At a higher level, what does the legal profession itself need to thrive and continue to be the backbone of our society, and how should law schools contribute? The resulting analysis can become a roadmap for law schools to use in assessing the merit of their curriculum and approach to developing lawyers and serving the profession.

Beyond suggesting the strategic approach, here are some thought-starters upon which to build:

#### *1. Scope*

Law schools need to go well beyond making the law school curriculum more “practical.”<sup>8</sup> The focus on “practical skills” is too narrow and misleads

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schools should be about, in the same way that legal analytical reasoning is but one of many, very teachable skills that lawyers need to succeed.

7. David B. Wilkins, From “Separate is Inherently Unequal” to “Diversity is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar, 117 *Harvard Law Review* 1548 (2004).
8. Language is more important to our profession than any other, so choosing our terms here is critical. “Practical” implies at some level a necessary evil, something mundane, and a step down from the ideal. In the same way that “soft skills” is a ridiculously poor term for things as critical as leadership and emotional intelligence, we should drop “practical” from our usage when referring to the core skills and behaviors lawyers require beyond deep analytical reasoning. “Professional skills” is offered as a substitute.



law schools into thinking that a few “add-on” clinical programs will suffice. The initial challenge for law schools is to recognize that while they directly produce excellent legal scholars and law clerks who excel at legal analytical reasoning, they too often leave their graduates on their own to achieve any other kind of success.<sup>9</sup> The first step towards rectifying that error will be to broaden the scope of what and how is taught, day by day, within the core curriculum. Integrated into what is taught and evaluated must be the professional skills and behaviors that distinguish all excellent lawyers in the real world, such as problem solving, business judgment, negotiating and influence abilities, client empathy, teamwork, networking and relationship building, and oral and written persuasiveness. Thies’s adjunct faculty—practicing lawyers and judges—can partner with tenured faculty to supply the creativity necessary to do this.

### *2. Structure*

Law schools should adopt a “pilot program” approach to test whether changes to the law school structure and experience can produce more successful graduates. Pilot programs should be run business-style, meaning that parameters are clearly defined and metrics are developed in advance and carefully tracked. Potential opportunities abound, such as:

- Partnering with business schools to teach professional and business skills;
- Experimenting with classes of students specifically recruited from a variety of businesses and government positions, with none included unless they have significant pre-law school work experience;
- Working with adjunct faculty to develop active “deal skills” training in the way that law firms are now doing;
- Organizing and grading students in teams, including 360-degree feedback, for certain courses;
- Finding new ways to measure and grade professional skills as students are learning them, to provide them feedback, and eventually to give legal employers market information about students’ broader capabilities;
- Looking at how firms like GE Capital and McKinsey develop the professional and problem solving skills of their managers and consultants, to introduce new approaches;

9. For example, while business schools often provide their alumni with an extensive array of career transition programming, executive education, and other support throughout graduates’ careers, law schools are only just starting to provide such resources to alumni. Most law school career services centers have little to do with alumni—a potentially huge missed opportunity, since alumni services are likely to result in more loyalty and increased fundraising.

- Providing accelerated, business-focused J.D. programs similar to Northwestern's new model, which requires pre-law school professional experience;
- Developing real world, problem solving courses where students work in teams and give feedback to each other while simulating lawyers' actual roles and activities, as Harvard has now done for its 1Ls; and/or
- Requiring faculty periodically through sabbaticals to engage in private sector and/or government experiences with specific goals to bridge the gap between theory and practice.

### **Conclusion**

Opportunities abound for innovation at law schools. Whether a market-based call to action is necessary or not to justify investing in curriculum reform, law schools should not delay. They should also find new ways to reach out to legal practitioners, in whom they will find willing and interested collaborators. We are indeed rethinking a lot of things in these hard times.