

Do Best Practices in Legal Education Include an Obligation to the Legal Profession to Integrate Theory, Skills, and Doctrine in the Law School Curriculum?

**Reporter's Notes on
"Is 'Thinking Like a Lawyer' Really What We Want to Teach"**

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The "issue" framed for our session requires a simple "yes" or "no" response. The unanimous answer was: Yes, we *are* obligated to the legal profession to integrate theory, skills, and doctrine in law school teaching. The discussion thus focused on the unstated but critical follow-up questions: How well are we doing? Can we do better? What should we do better? How can we come to do better?

The presenters, and to a lesser degree the participants, differed in their responses to the question of how well we are doing at present. Dean Bice, for example, observed that law schools succeed well in teaching students to interpret and use legal materials to serve client interests through a variety of legal processes and by reference to various normative principles. Dean Rapoport, in contrast, observed that law schools may train students to "think like a lawyer," but there is more to law practice than thinking; one should also learn research and writing, team work, statistics, and psychology, for example. Professor Siegel took a middle ground: this question has been asked for two decades, and we are doing better now than when the question was first posed.

The presenters and participants nearly unanimously concluded that we can and should do a better job of integrating skills into the law school curriculum. As a group, we generated a daunting and yet, undoubtedly, incomplete list of skills to work on: writing, oral communication, understanding of people and institutions, incorporating wisdom from related fields, strategic thinking, and team work, for example. Two of the presenters observed that we must think broadly in determining which skills to integrate into the law school curriculum. Professor Lien reported that law firms have specific hiring and evaluation criteria, which could, and perhaps should, inform the discussion within the legal academy. Professor Siegel reminded us

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that there is no single work life for people with J.D. degrees; indeed many people with J.D. degrees do not practice law.

Finally, there is the question of how we can come to do a better job of integrating skills with theory and doctrine. Presenters and participants discussed a variety of institutional forces and practices, such as faculty hiring, that impede widespread skills teaching in some law schools. Professor Coughlin observed that incremental change may be the most effective and certainly the most immediate. The following are among the “baby steps” she and others noted:

- Integrate writing assignments into doctrinal courses, such as a contract in Contracts, a demand letter in Torts, and a complaint in Civil Procedure.
- Introduce realistic deadlines and time-keeping into Legal Writing (so students begin to understand efficiency and productivity).
- Use “war stories” (I prefer “peace stories”) in any course, both to illustrate how legal doctrines are used in practice and to demonstrate the power of narrative.
- Involve doctrinal faculty in coaching of competitions, in which student engagement in skills training is very high.
- Create advanced mandatory writing courses that are designed around various practice settings, e.g., litigation, transactional, judicial, and academic.

Among the more interesting comments made by a participant (Professor Richard Neumann) was a rhetorical question: For whom are law schools run—the university (the “owners” in an analogy to a corporation), the faculty (the “employees”), or the students (the “customers”)? Most seemed to think that the best answer was the “students,” and through them the bench and bar. Perhaps the next time this issue is posed, we will focus on those for whom law practice should be run—the clients.

This discussion relates to a “study” that I conducted along with my fellow deans at William Mitchell College of Law. We interviewed over fifty lawyers in our community about the skills and values they need to operate effectively and ethically on a day-to-day basis. We grouped lawyers by practice setting, and we engaged them in a free-flowing discussion over breakfast or lunch. What struck me about this discussion was their emphasis on three areas that I have come to label “communication,” “context,” and “character.”

According to the lawyers who participated in the discussions, one fundamental and under-taught skill is the ability to communicate effectively, orally as well as in writing, in a wide variety of settings, both informal and

formal; indeed, communicating in informal settings is more common and important than communicating in formal processes such as trial and appellate argument. Another fundamental and under-taught skill is the ability to fully understand context: the client's context, the context of the legal process through which the client's problem may be solved, the context of a team of lawyers and non-lawyers working together. Finally, to succeed in a particular practice setting, one must have a certain character; the key traits were both similar and different across practice settings, as follows:

- Large-firm litigators must be honest, civil, innovative, disciplined, and dedicated.
- Large-firm transactional lawyers must have a sense of humor and be diligent, productive, organized, and curious.
- Lawyers in solo or small practices must be mature, energetic, curious, reliable, resourceful, compulsive, kind, engaged, and self-aware.
- In-house corporate counsel must possess ethical fortitude and be diligent, practical, and efficient.
- Government lawyers must be fair-minded, curious, efficient, and honorable.
- Lawyers in legal services, public defender offices, and public interest firms must be imaginative, hard-driving, empathetic, passionate, curious, and committed.
- Individuals in non-traditional practices (consultants, human resource managers, financial planners, etc.) must be responsive, gracious, truthful, diplomatic, patient, empathetic, compassionate, and fair.²

2. For a web site link to the brief article of the study, see William Mitchell College of Law, *Deborah Schmedemann's Bibliography* <<http://www.wmitchell.edu/facultystaff/biblios/schmedemannbiblio.html>> (last updated Dec. 2001).