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ARE LAW SCHOOLS SHORT-CHANGING THEIR STUDENTS?

RICHARD M. KOON*

When I was asked to write an article in connection with the *Denver University Law Review's* 75th anniversary, I was both honored and humbled ("humbled" sounds better than "surprised"). When I found out former Governor John Love, former Governor Dick Lamm, and former and present Dean Bob Yegge had been accorded a similar honor, I immediately had a vision of one of those entrance exam questions where you are given four geometric shapes or four words and asked to identify the one that does not fit with the other three. I felt like the answer to just such a question! Nonetheless, this seemed to be the perfect forum to air some questions that had been floating around in my mind about law schools and legal education. Why now, and what is the connection with the University of Denver College of Law?

Just what should law schools be doing, and are they doing it? Should they be the keepers of professorial legal intellects who churn out reams of articles on esoteric legal issues (the "Publishing Professors' Mission")? Should they provide some legal background to students who will have a good chance to pass the bar exam and, sometime after graduation, be turned into practicing lawyers through the efforts of "teachers" outside the law school (the "Middle Ground Mission")? Or should they be preparing their tuition-paying constituencies to, upon graduation, hit the ground running as at least semi-functional lawyers (the "Ready-to-Work Mission")?

Three possible law school "mission statements," and no one in their right mind would suggest we could get a consensus opinion on what is the correct mission. However, if we asked the students, clearly the oddsmakers would install the Ready-to-Work Mission as the prohibitive favorite. There are all of those student loans to repay, not to mention mouths to feed. Law students want to be as marketable as possible upon graduation. The fact that they studied under professors who are prolific publishers is not going to help. The fact that they learned to "think like a

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lawyer," passed the bar, and are ready to be trained, is not enough. Their prospective employers want to hire someone who is as ready as possible to step up to the plate. Granted, we all continue to learn and get better at what we do with each experience, but employers want to polish or elevate skills, not teach them in the first instance.

Are law schools paying attention to their students? Recent statistics would suggest not. According to a recent study of approximately 900 law firms, the ratio of lateral hires to entry level hires has increased by slightly more than 50% between 1994 and 1996.¹ While that may be good news to practicing attorneys, it is anything but good news to law school graduates. Since a lateral will command a higher salary than a new graduate, there must be some reason other than economics for this. But, wait a minute, it *is* economics. Law firms and other employers want, to the largest extent possible, immediate help with their work loads. They want to hire someone who can fill a role on the "team" formed to meet the needs of a particular client or particular matter. Those teams do not have a position designated for "the clueless beginner." Clearly, a first or second year lawyer is not expected to be able to make the contribution of a partner level lawyer, but they are expected to be able to contribute. If they have never drafted an agreement, never participated in a closing, never prepared an opinion letter, then they are a "drain," not a contributor. The job market for "drains" is going down the you-know-what. Every business must listen to its "customers" if it is to succeed. And just who are the law schools' customers? Once again, a consensus answer is unlikely, but I submit that the largest customer block of every law school is made up of its students and their potential employers (this is where the alumni come in). This is also where the University of Denver College of Law comes in. Through the years, one attribute that has set the College of Law apart from its brethren, and particularly from that "other" Colorado law school, has been its leadership in developing programs to provide practical experience for its students. Sounds good, but the fact is, the College of Law has earned its reputation largely on its *litigation* practice programs. It is time for the College of Law to fly its leadership colors and show the way by developing quality *transactional* practice programs.

Enough negativism. What should law schools do if they decide to listen to their customers and adopt the Ready to Work Mission? They need to establish practice courses where students learn, and get to experience (that is, after all, the best way to "learn") practical skills. Just as

1. For 1996 figures see the publication entitled "Employing Associates in 1997: Patterns and Practices" published by the National Association of Law Placement and based upon responses from approximately 900 law firms, and for 1994 figures see the publication entitled "Employing Associates: Patterns and Practices at Mid-Decade" published by the National Association for Law Placement based upon responses from a slightly smaller sampling than for 1996. Statistics from these publications were provided by Judy Collins of NALP.

with other curriculum, there should be courses with various points of emphasis among which students can choose. Some examples of practical course subject matter² are Loan Transactions (Lender and Borrower Representation), Mergers and Dissolutions, Business Entity Selection and Formation (Partnerships, Corporations, LLC's, LLP's), Business Sales and Acquisitions (Asset Transactions and Stock Transactions), Legal Opinion Drafting, Software Licensing Agreements, Intellectual Property Transactions, Employment Agreements, Non-Compete Agreements, and Banking Institutions (Chartering, Selling, and Purchasing). I am sure you could think of others.

Law school administrators much more experienced in such things than I could structure the courses, but I offer one example. The Loan Transactions course could involve a factual statement about a lender, the borrower, and the basic terms of the loan. Students could first draft, negotiate, and finalize a comprehensive commitment letter. The next step would be to draft, negotiate, and finalize the appropriate loan documents which would include, at a minimum, a loan agreement, promissory note, security agreement, financing statements (and where to file), deed of trust or mortgage, and a guarantee. The borrower's opinion letter could be the subject (using the same facts and the documents prepared in the Loan Transactions course) of the Opinion Drafting course. If a security interest in trademarks, patents, or copyrights, or other intellectual property is involved, it could be a part of the Intellectual Property course. If the loan is to fund the purchase of a business (assets or stock), then that underlying transaction could be the subject of the Business Sales and Acquisitions course. It could all become incestuous in a positive and educational way. In all likelihood, students would not operate on an individual basis in these courses, but would be set up as "mini law firms" to represent their "client." Ideally, as an example, a student with an interest (and background course curriculum) in taxation would be included in each "firm" in the Business Sales and Acquisitions course. Want to make these classes even more practical? We could add clients. One essential practice skill is learning how to deal with clients, how to decipher what they say in order to learn the essentials of the transaction, and how to explain the legalese and/or their options to them. If we want to get creative, we could find these clients in the university's MBA program. Lawyers will tell you that many of their clients could use a course in "How to Best Utilize Your Lawyer for Fun and Profit." The MBA program could establish just such a course and it could dove-tail into the new practice-oriented law school curriculum. Will this new curriculum require the hiring of additional law professors? Not necessarily. I suggest law schools make it clear to their professors that developing and leading these classes is valued just as highly as (might I suggest *more* highly

2. I am concentrating in this article on the transactional field, leaving to others the decision whether there are sufficient litigation practice programs, and what their effectiveness is or should be.

than) writing an article on some esoteric point of law for possible publication. Do that, and I believe course development and staffing will take care of itself.

Am I suggesting law schools abandon the teaching of real property, corporations, wills and estates, taxation, torts, evidence, and the other basics? Of course not, and those classes should be taught in the earlier years and the practice courses in the senior year. I am only suggesting that before law schools smile proudly and turn their graduating students out into the real world, they provide those students with some real world experiences in which they are forced to think about a factual setting, draft and negotiate the necessary documents, and close the deal. Then they can make the team, not go down the drain.