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STUDY FINDS THAT LAW SCHOOLS FAIL TO PREPARE STUDENTS TO WORK WITH CLIENTS AND NEGOTIATE

NOVEMBER 4, 2020 | JOHN LANDE | 4 COMMENTS

I previously posted an [overview of the excellent report](#) by Ohio State Professor Deborah Jones Merritt and Institute for the Advancement of the American Legal System Research Director Logan Cornett, [Building a Better Bar: The Twelve Building Blocks of Minimum Competence](#). This report is based on insights from 50 focus groups with 201 participants conducted in 2019–2020. Forty-one focus groups involved new lawyers and nine focus groups involved lawyers who supervised new lawyers. “New lawyers” were licensed mostly in 2016–2018.

This post provides excerpts (without footnotes) from the report about new graduates’ unmet needs for instruction in interacting effectively with clients, negotiation, and understanding the “big picture” of client matters.

New Lawyers Were “Woefully Unprepared” to Work with Clients

More than half of the new lawyers in the study worked directly with clients. And they were not ready for this.

[Lawyers] described three clusters of abilities that they needed to work effectively with clients:

1. The ability to gain a client’s trust, gather relevant facts, and identify the client’s goals.
2. The ability to communicate regularly with clients, convey information and options in terms that a client can understand, and help the client choose a strategy.
3. The ability to manage client expectations, break bad news, and cope with difficult clients. (p. 52)

Gathering facts from clients was especially challenging for new lawyers. In law school, one new lawyer explained, “they give you a set of facts” and “those are the only facts that exist in the world.” In practice, she had to develop the skill of “getting more facts

from the client and knowing which facts to ask for,” as well as the ability to “phrase questions to clients in a way that they understand what kind of information you’re trying to get, and they give you the information that’s actually useful to you.” Supervisors agreed that new attorneys needed to do more “fact digging” with clients, “going back to ask some more questions to get really to the bottom of what’s happening.”

Deciphering client goals was equally important. “Sometimes,” one supervisor reflected, “we don’t ask the client, ‘Well, what does victory look like? What’s your goal here?’” Another supervisor agreed that new lawyers don’t pay enough attention to client goals:

One thing that I noticed that a number of the young lawyers struggle with, which is helping a client get to yes. Which is not, ‘well the law says this, so no, you can’t do that.’ [Instead, we need new lawyers to say] ‘The law says this. So if you want to accomplish your business goal, you will need to do these things.’ . . . Clients are not looking for us to tell them what they cannot do. They’re looking for us to help them understand how to accomplish their business objectives.

Several new lawyers elaborated on the same theme. “I didn’t really understand,” a new in-house lawyer commented, the importance of “trying to understand the goals of what our business clients want to do. Just because they have a certain idea of how to do it that may not be legal doesn’t mean we can’t find something legal to do, to try to get to the same result.” Participants in another group nodded in agreement when a lawyer at a mid-sized firm observed: “we have to figure out this meandering way of getting to where they want to go that’s legal, so just asking the right questions so that you know what their actual final goal is” allows you to “get there in a way that actually makes sense.” (pp. 53–54)

New Lawyers Had Difficulty in Communicating with Clients

After three years of law school, new lawyers had serious problems communicating with their clients. We teach them to argue. Listen and communicate effectively with clients, not so much.

New lawyers in our focus groups described their need to communicate frequently with clients, especially when clients lacked experience with the legal system. “The number one complaint from clients of lawyers,” one declared, “is lack of communication, or poor communication, and not being told what the hell is going on in their case.” “Especially in the discovery phase,” he continued, clients don’t understand the demands placed on them or the slow progress of the case. Taking time to “touch base” and offer “a lot of handholding” was essential for building client relationships.

Equally important, new lawyers had to learn effective counseling skills. Several contrasted their advocacy skills with advising ones. They “felt very confident” with the former but not the latter.

. . .

Other new lawyers described learning how to “coach [clients] through a tough choice,” and helping them assess the costs and benefits of each course of action. “I do that all the time with my clients,” a new lawyer from a small firm noted, “just like laying out like these are all the possibilities and their likelihood. Do you really want to do this or do you want to walk away from it and just like call it a day?” (p. 54)

Lawyers Had Problems Managing Expectations, Breaking Bad News, and Coping with Difficult Clients

In practice, lawyer serve clients who are real people, not the two-dimensional characters who populate law school textbooks.

Some new lawyers in our focus groups grappled with clients living with mental illnesses, trauma, and other life challenges. Counseling these clients was difficult, especially when delivering bad news. “Somebody can know the black-letter law inside and out,” a bankruptcy lawyer observed, “and then their first day on the job they are sitting in front of somebody who is incredibly worried, incredibly anxious.” There “hasn’t really been any formal training,” he continued, “on what do you do when this person’s on the brink of tears and you have to take him in front of the judge.”

New lawyers in our groups had to overcome their initial desire to please clients, learning to deliver bad news candidly. “It was a really hard skill for me to learn,” a new family lawyer admitted, “because I was kind of a pleaser at first. . . . But now I don’t really care if they don’t like what I have to say and advise them. I tell them they didn’t hire me to be a cheerleader.” Another new lawyer learned to be “straightforward” about problems because his attempts to “tiptoe around” them led to misunderstandings. (p. 55)

New Lawyers Need Specific Communication Skills

The study found that “the current licensing scheme overlooks five key facets of [communication] competency.” New lawyers must be able to:

- Communicate concisely;

- Communicate in language that clients understand;
- Choose communication methods that are effective for each audience and setting;
- Attend carefully to communications from others; and
- Negotiate effectively. (p. 65)

New lawyers struggled to find the appropriate words for communicating with clients. Even “practical” law school classes, one observed, “didn’t teach us how to talk to clients, how to get someone who’s charged with some heinous event to trust you well enough to tell you what’s happening.” A prosecutor confessed: “One skill that actually I didn’t think I would need that I still don’t feel like I really have is talking with victims. It’s definitely a skill and I’m not great at it.” (p. 66)

Effective communication requires reception as well as transmission. Many focus group members faulted new lawyers for failing to attend carefully to messages sent from others. They often referred to this problem as a failure to “listen,” but it was clear that the failure could occur either in written or oral communication.

“Listening is vital,” one supervisor declared:

But a lot of new lawyers don’t seem to have that and maybe it’s maturity, but I think it’s something that can be practiced. You need to listen to what your clients are saying. You need to listen in our area to what members of the public are saying. You need to listen to what the other lawyer at the other end of the phone is saying to read between the lines, ‘what does that lawyer really want?’ (p. 68)

New Lawyers Need Skills Negotiating with Counterparts, Clients, and Others

New lawyers are unprepared to negotiate because they are trained almost exclusively to argue.

Focus group members identified negotiation as a distinctive communication style that was essential for their work. Negotiation, they noted, is quite different from advocacy. As new lawyers, they had to learn to “be collaborative,” “give a little to get a lot,” and “work together” with opponents. The “litigious” argument styles they learned in law school did not work well during negotiations.

In addition to negotiating with opposing counsel, new lawyers had to negotiate with union agents, pro se opponents, and their own clients. One new lawyer working in-house even negotiated fee arrangements with outside law firms:

- “I do a lot of labor negotiation. So it’s interesting because sometimes it is another attorney on the other side, but a lot of times it’s a business agent for a union who’s not an attorney. So I guess approaching that in different ways has been an interesting thing to learn.”
- “Sometimes negotiating with your own clients on what we’d be willing to accept on a civil case, they think it’s worth a ton of money and you’re . . . trying to negotiate them to a reasonable place because ultimately going to trial wouldn’t really benefit them.”
- “Being in-house counsel, . . . the first negotiation is getting all the executives on board with the same deal. Getting them all to agree that we should go after this deal on these terms is sometimes a bigger battle than negotiating it with opposing counsel afterwards.”
- “I remember one of my first discussions with my boss at the time and asking, he was like, ‘Reach out to outside counsel if you need to, talk about budget and things like that.’ . . . And so, that’s something that I had not done as far as negotiating price and what we can pay.”

Several new lawyers wished they had taken negotiation classes in law school; a few suggested these classes should be required. One tax attorney explained that, as someone who planned to do transactional work, he thought negotiation and mediation classes were only for people who planned to “do that for a living.” Only after beginning his practice did he realize how much time he spent negotiating with clients and colleagues; then he wished he had been encouraged or required to study negotiation in law school.

Supervisors agreed that “negotiation skills are huge,” and “absolutely important” in law practice. One supervisor observed, “What I see lacking is the ability to negotiate provisions into a contract. . . . [New lawyers] know the elements of different types of laws. It’s just the question of negotiating contracts, or just negotiating in general, that seems to be lacking. Which is what we spend a lot of time [doing].” (pp. 69–70)

New Lawyers Need to Understand the “Big Picture” of Client Matters

Law students mostly learn little disconnected pieces of the law but not how to understand the “big picture” of their cases and act accordingly.

Focus group members urged that lawyers must see the “big picture” in client matters to represent clients competently. New lawyers, they suggested, often lack that ability. One supervisor summarized this perspective by observing that new lawyers need “to think more at the forest level and less at the tree level.” A new lawyer offered a simi-

larly graphic explanation. “It took a few cases, seeing the full life cycle of the case, to really understand strategy,”

A lack of experience with “forests” or “maps,” according to our focus group members, caused at least two problems. First, without the ability to see the big picture, new lawyers could not effectively manage projects. When given responsibility for their own cases, which was common in many organizations, they struggled to manage those cases. Even when working as part of a larger team, they sometimes missed critical deadlines because they did not understand the full project’s timeline.

...

Failure to understand the big picture caused a second failing among new lawyers: they had difficulty developing strategies to guide client matters. These new lawyers knew the rules, but they did not know how to combine the rules into a successful strategy. (pp. 72–73)

Recommendations for Required Courses in Working with Clients and Negotiation

The report recommends that all law students take three credits to develop working with clients and three credits of negotiation.

Recommendation Six: Require candidates to successfully complete three academic credits of coursework that develop their ability to interact effectively with clients. These credits should focus specifically on client interaction and should include opportunities for students to practice that interaction and receive feedback. Instructors should understand that successful completion of the course signifies that the student possesses the ability to interact effectively with clients as an entry-level lawyer.

Recommendation Seven: Require candidates to successfully complete three academic credits of coursework that develop their ability to negotiate. These credits should focus specifically on negotiation and should include opportunities for students to practice that interaction and receive feedback. Instructors should understand that successful completion of the course signifies that the student possesses the ability to negotiate effectively as an entry-level lawyer. (p. 98)

Astute readers will recognize that this study reflects the importance of things that we have been advocating and doing for a long time. [This post, about the challenges of dealing with “positional negotiation,” includes a list of ABA books that address these needs.](#) Marjorie Corman Aaron’s excellent book, [Client Science](#), provides empirically-based advice for

lawyers about counseling clients when giving bad news. In this [Theory-of-Change piece](#), I argue that law schools should teach students to think strategically, which is *really* what it means to think like a lawyer. And the [LIRA book](#) helps lawyers (and mediators) work with clients to get the big picture of their cases, and to develop good litigation, negotiation, and mediation strategies.

Messages for Students

The report finds that pursuing continuous, self-directed learning is an “essential component of minimum competence.” (pp. 80–82)

In my view, law schools should incorporate this from the outset. Unfortunately, law schools emphasize external motivation so much that it can overwhelm students’ internal motivation to learn. The hidden curriculum in legal education teaches that the most important criteria of success are curved grades, competitions, certificates, law review, clerkships, prestigious jobs, etc. etc. This not only sends the implicit message to the “bottom” 90% of the class that they aren’t very good, but it also distracts students from taking the initiative to develop skills they will need in practice.

Faculty should counteract the hidden curriculum by repeatedly emphasizing that simply getting a law degree isn’t sufficient to be a competent new lawyer, and that students should continuously assess and address their learning needs, starting in law school. You might require students to read this post and encourage them to read the full report.

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4 THOUGHTS ON “STUDY FINDS THAT LAW SCHOOLS FAIL TO PREPARE STUDENTS TO WORK WITH CLIENTS AND NEGOTIATE”

Ben Crockett

DECEMBER 9, 2020 AT 7:27 PM

As a current law student I do understand where this is coming from, and tend to believe I may feel the same when when I enter practice. There seems to be some aspects of law school that do perfectly apply to the real world, making it tough to immediately succeed upon graduation. I have had the benefit of working in jobs in the past where I was constantly face to face with customers, and while it is not a perfect translation to being an attorney, it still required me to build those skills. Actual client interaction in clerkships

and other legal internships can help build those skills to ensure a smoother transition to real practice. I think requiring negotiation or other courses that require students to interact with someone acting as a client can be helpful. Requiring students to participate in legal clinics could also be a way to alleviate some of these concerns. It could be a chance to get real-world practice while being supervised by an attorney. Something like this would help prepare law students for the real world and give us the ability to hit the ground running as soon as our first job starts.

Casey Beronilla

NOVEMBER 25, 2020 AT 9:01 PM

As a law student with an undergraduate degree in business, I really appreciate this post's recognition of the importance of the soft skills required for legal work. Many of my classmates in law school have undergraduate degrees in the humanities, and I have repeatedly found advantages from having had a people-facing major in college. My comfort level in negotiations and working with clients in our pro bono clinic would not be near what it is without skills I learned in the sales classes I took for my marketing major. For instance, I learned the value of building rapport and deducing what a party really wants. I can't imagine entering into such negotiations without having a business background, but unfortunately, this is the case for many other law students. While my ADR class certainly helped advance my client skills development, it is not a requirement for law school graduation, so new lawyers may often be without any idea of how to work with clients, as this post observes. I agree that such coursework needs to be incorporated into the legal curriculum. Professional ethics require competence, but I believe competence extends beyond black-letter law to include effective client interactions. The importance of good bedside manner is always stressed for doctors; the soft skills should be just as significant in any field involving interpersonal communication.

Richard Esparza

NOVEMBER 7, 2020 AT 11:20 AM

Law student here. I would 100% agree with the notion that the hidden curriculum of legal education in the United States hinders law student performance once in the profession. Instead of focusing on key areas and skill building (such as negotiation skills and client interviewing), law students are tasked with memorizing facts for a Socratic discussion in the classroom... Now, I understand that part of the legal educational experience involves the academic analytical aspect but for a profession that is heavy on interaction with clients and problem-solving, the lack of actual practical learning in law school is surprising. Legal education needs to change. As the Report suggests, requiring practical courses (like a negotiation course) would be effective but there must be more than just courses. To truly be effective lawyers law students need actual experience in the legal

field. Here is an idea: What if we modeled legal education like the way most teachers are trained? Let's require law students to have certain supervised fieldwork placements (starting 1L year) and in the last year place law students in an internship (as part of the legal education curriculum)?

Linda Warren Seely

NOVEMBER 5, 2020 AT 11:29 AM

Can I just say how much I appreciate these comments? I worked with many law students over the course of my career at legal aid and one of the things they had to learn was how to talk to clients. It's not easy- it's particularly not easy to learn how to talk to clients, gauge their needs, and respond appropriately if you are a middle class educated person and working with legal aid clients. You can solve a lot of problems if you have money, but if you don't, as a lawyer, you need to be considerably more creative and listen closely to help craft a resolution that works for your client. I just hope the law schools are listening.

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