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A MESSAGE FOR LAW STUDENTS TO PREPARE THEMSELVES FOR LEGAL PRACTICE

NOVEMBER 10, 2020 | JOHN LANDE | 3 COMMENTS

Reflecting on my [They Should Call it Negotiation School](#) and [Law School Failures](#) posts, I wrote the following message, which you may want to share with your students. Although they may be too busy to follow up on this now, you can plant a seed for them to pursue this during the winter break.

I am a retired law school professor who has studied what lawyers do in real life and how law schools can best prepare law students to be effective practitioners. I recently 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 (the “Report” or “Study”). It shows that law schools fail to adequately prepare students to see the “big picture” in their cases, work with clients, and negotiate, as [summarized in this post](#).

Legal practice is extremely difficult and it is inevitable that lawyers will not perform adequately at times. This post suggests ways that you can prepare to minimize these problems and provide the best possible professional services you can.

The Report argues that law students should engage in continuous, self-directed learning. So here are some suggestions to help you plan your own self-directed learning to supplement what you learn in law school.

Understand Why You Need to Continuously Learn

Lawyers always have needed to keep learning. Each client brings new facts. Courts and legislatures continue to produce new law. Procedures and techniques evolve. Lawyers’ ongoing need to learn is reflected in continuing legal education requirements you may need to comply with. So you will need to be a learning machine throughout your career.

You would need to continue to learn in these ways even if the social environment remains the same. But the world is constantly changing, which makes it all the more important that you recognize relevant changes. Pick any area of law and you will find that the legal regimes have been shifting like tectonic plates. Moreover, technological changes have a major effect on the way that people live, work, and communicate. You may not detect changes from moment to moment, but you are likely to see dramatic changes during your career.

Some law schools talk about producing “practice-ready” graduates, but the Study shows that this is very unrealistic. Practicing law requires understanding and managing the “big picture,” but law school is designed to teach small pieces of the law, assuming that students will be able to integrate them in practice. It’s not enough to know the rules. You need to know how to combine them into successful strategies to advance your clients’ interests.

Appreciate the Values and Limitations of the Law

As I wrote in [this article](#), the legal system provides an essential foundation for our society.

Courts provide opportunities for the development of legal rules and precedents, discovery and publication of important facts, opportunities for intervention by persons not party to lawsuits, opportunities for structural transformation of large public and private institutions, and facilitation and enforcement of private settlements. The legal system enables economic formation and transactions, deters health and safety hazards, compensates for injuries, protects basic civil rights, and provides an important forum for debating and establishing social norms. It also serves as an essential alternative to private decision-making when parties need to enlist the power of the state to seek fair and non-violent resolution of claims. Indeed, much private decision-making would not occur without the threat of court action to validate and enforce legal claims if needed.

The legal system also is very problematic. The law is complex and many laypeople can’t understand why courts decide as they do. Litigation generally imposes substantial tangible and intangible costs on litigants. It promotes adversarial dynamics, which often are very harmful. There are serious problems of access to justice because many people can’t afford to litigate their disputes. The “haves” in society – big corporations and wealthy individuals – generally come out ahead of the “have-nots” in court.

Recognize the “Hidden Curriculum” in Law School

Educational experts use the term “[hidden curriculum](#)” referring to [powerful implicit messages in educational programs](#).

Here's the hidden curriculum in law school. Law school teaches that legal rules are the most important factor in disputes. Most cases are decided by appellate courts, "Thinking like a lawyer" is predicting court decisions. Winning is the only – or most important – thing. Lawyers and clients have the same perspectives as each other. Clients are mostly invisible bystanders in their cases. Negotiation is trivial, barely worth mentioning.

In reality, [legal rules often are not most important factor in resolving disputes](#). Most cases are not decided by appellate courts or even trial courts. "Thinking like lawyer" is developing strategies to advance clients' interests. Winning often is not the most important client goal. Lawyers and clients often have different perspectives. Clients are the central actors in lawyers' work. Lawyers negotiate all the time, much more than appearing in court.

One lawyer told me, "Negotiations don't occur in a week or a month. They occur in the entire time of the lawsuit. If anyone tells you they aren't negotiating, they really are. Every step in the process is a negotiation. You don't call it negotiation but in effect, that's what it is."

Understand that "Thinking Like a Lawyer" Really is About How You Can Help Clients Achieve Their Goals

The Study found that it was essential for lawyers to be able to gain clients' trust, gather relevant facts, and identify the clients' goals. Lawyers need to convey information and options in terms that clients can understand and help clients choose a strategy.

"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."

...

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?"

In my study, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, I interviewed respected lawyers about how they handled the cases they settled most recently. Since most litigated cases are settled, good litigators prepare for negotiation at least as much as for trial. The lawyers described how they prepare for both possibilities. They recommended taking charge of their cases from the outset, which includes getting a clear understanding of clients and their interests, developing good relationships with counterpart lawyers, carefully investigating the cases, making strategic decisions about timing, and enlisting mediators and courts when needed.

The *Building a Better Bar* report recommends that every student take at least three credits to “develop their ability to interact effectively with clients” and three credits to develop the ability to negotiate.

Develop a Strategic Plan for Your Education and Compile a Portfolio

Analyze what knowledge and skills you would need to get the kind of job you want and to perform it well. Make a list of your goals, identify ways to accomplish them, periodically review your list to assess your progress, and make any needed adjustments to your plan.

Many legal skills are transferable to various settings and require a lot of practice, so focus on developing your skills. It is important to have a basic understanding of legal rules and concepts, but the Study finds that lawyers generally will learn on the job the specific rules and procedures they need.

Your plan should involve taking appropriate courses and getting relevant jobs while in law school. You also can do this through competitions and volunteering. In courses where you write papers, pick topics that advance your strategic goals.

Professor Deborah Jones Merritt wrote an [excellent article recommending that students develop portfolios](#):

Portfolios allow students to identify, seek, and reflect upon individualized educational goals. They also encourage educators to specify a wider range of professional learning objectives. For both students and professors, portfolios shift the focus from checking off courses to developing professional expertise.

At the same time, portfolios allow students to share their achievements more fully with employers. An electronic portfolio may include writing samples, videos of classroom simulations, work-related documents, and summaries of leadership experiences. If

employers value professional expertise, rather than merely class standing, portfolios allow them to hire based on those values.

Take Clinical, Externship, and Practice Courses

Most of legal education is like learning to drive a car by parsing the car's operation manual. Clinical and externship courses give students a chance to practice driving, integrating various maneuvers needed to get from Point A to Point B. The experience working with real clients is so valuable that you probably would benefit a lot even if you are not interested in the subject of the clinic.

Courses with a lot of simulations also can be valuable in getting some of these experiences, though generally not as good as working on real-client cases.

Take Independent Study Courses and Interview Practitioners

Independent study courses enable you to choose subjects that advance your strategic educational plans. Consider designing an independent study course in which you interview practitioners who do the kind of work you are interested in. The [Stone Soup Project](#) helps faculty design courses in which students are assigned to conduct interviews. You can adapt [these materials](#) to plan and analyze your own series of interviews in an independent study course. You may want to focus on legal doctrinal issues, though this is a good opportunity to focus on practice issues.

Here's a [powerpoint from a presentation about working with clients and counterpart lawyers](#), including questions you could ask interview subjects. [This post includes questions for lawyers to ask clients about their intangible interests affected by litigation](#). You could ask lawyers how they elicit this information from clients. [This post includes questions about preparation for negotiation and mediation](#).

It can be particularly valuable to ask practitioners to describe complete cases, starting from the beginning, similar to what I did in [this study](#). Instead or in addition, you could also ask about general practices or philosophies, though this risks glossing over important unconscious assumptions and details.

For an illustration, take a look at this [article by LLM student Jeff Trueman](#) in which he interviewed lawyers, mediators, and insurance claims professionals. This is much bigger than a project you might do, but it can give you an idea of how you might design an independent study based on your interviews.

In any interviews, you should assure the interview subjects that you would scrupulously protect the confidentiality of their accounts. Ask them to refrain from providing names or other identifying information, and be sure to omit any such information in your notes or papers.

Join the ABA and Other Bar and Professional Associations

Bar and professional associations provide practice-oriented publications and educational programs. Participating in their events also is useful for getting to know people who may be helpful in your career.

[ABA membership for students is free](#) and it includes membership in five sections or other specialty groups. State and local bar associations may also provide free or low-cost membership for students and greater opportunities for interaction with practitioners.

If you are interested in ADR, the ABA and many state and local bar associations have ADR Committees. I have been a member of the [ABA Section of Dispute Resolution](#) for many years – it's terrific and very welcoming. Here's a [list of ADR organizations and other practical resources](#).

Next Steps in Your Self-Directed Learning

At the end of this semester, you probably are focused on finishing papers or preparing for exams. During the winter break, you might start developing your own learning plan. Here are some resources to help you get started in addition to the materials linked above.

- Clark D. Cunningham, [What Do Clients Want From Their Lawyers?](#)
- Marjorie Corman Aaron, [Client Science: Advice for Lawyers in Counseling Clients Through Bad News and Other Realities](#)
- Stephen D. Easton, [My Last Lecture: Unsolicited Advice for Future and Current Lawyers](#)
- John Lande, [My Last Lecture: More Unsolicited Advice for Future and Current Lawyers](#)
- John Lande, [Lawyering with Planned Early Negotiation: How You Can Get Good Results for Clients and Make Money](#)
- Michaela Keet, Heather Heavin, and John Lande, [Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions](#)
- John Lande, [Escaping from Lawyers' Prison of Fear](#)
- [This post includes a list of helpful ABA books, which you might buy or get from your library. If you are an ABA member, you get a discount.](#)
- [More information about litigation interest and risk assessment, including blog posts and videos](#)

Talk with faculty at your school for additional suggestions and whether they would supervise an independent study course for you. In addition to getting their advice, this would enable them to write more effective recommendations, which you will need to get jobs and other opportunities.

◀ FOR TEACHERS AND STUDENTS ◀ LAWYERING ◀ NEGOTIATION ◀ SEEING THE WORLD THROUGH OTHERS' EYES

3 THOUGHTS ON “A MESSAGE FOR LAW STUDENTS TO PREPARE THEMSELVES FOR LEGAL PRACTICE”

Morgan Makar

NOVEMBER 18, 2020 AT 11:12 AM

Every student entering into law school should read this. Although I am finishing up my first semester of 2L year, I will be spending some time over winter break creating my learning plan. Thank you for taking the time to share this advice and providing these resources.

Richard Esparza

NOVEMBER 11, 2020 AT 8:35 AM

This is amazing! I wish I would have gotten this advice earlier in my law school career... Thank you for the resources.

★ **John Lande**

NOVEMBER 11, 2020 AT 9:45 AM

You're welcome, Richard. It's too bad you didn't get this earlier ... and it's not too late since you need to continue learning throughout your career. Best wishes.

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