

# **The Role of Strategic Thinking in Legal Training**

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New York Law Journal  
2013-04-22

Leaders of law firms and law schools today find themselves relentlessly focused on where law practice is headed. If they are not building structures that prepare aspiring professionals to thrive over several decades, then they are not doing their jobs. Yet such leaders must readily acknowledge that their own careers within the legal profession offered insufficient formal training in the skills and habits needed to plan strategy for the world of 2025 and beyond. For those entering the profession today, this is one of many aspects of core preparation that absolutely must change.

As the path to professional success is re-imagined, the starting point for lawyers hoping to flourish is that they be responsive to client needs and sensitive to public values. The question is how can new lawyers both within law schools and law firms be best trained to ensure that client concerns are paramount and that an appreciation for the public good informs legal advice. Of course, the hallmarks of great lawyering will always remain: knowledge of the law, rigorous analysis, strong listening skills, and clarity of written and oral communication. However, more is needed to educate tomorrow's first-rate professionals. Indeed, challenging and imaginative education in school and at work constitutes the best solution to the current struggles confronting our profession and America's law schools. Here are some ways to improve lawyer training.

## **Strategic Thinking**

No one should doubt that a lawyer best serves her client when she understands and can help the client plan a strategy for achieving the client's objective. Consider, however, how the hallmarks of legal analysis within a law school classroom not only ignore, but may actually impede, the student's growth as a strategic thinker.

The well-regarded case method places the student or young attorney in the place of the appellate judge. All the facts have been gathered; the precedents surveyed; and the principal skill required is an evaluation of which of the available outcomes will best fit with existing law.

The virtues of this analytical situation should not be overlooked. The student will learn to sort relevant information from irrelevant commentary. He will see quickly that the unfolding of unanticipated events poses new questions hiding within seemingly settled matters. And he will come to appreciate how disputes between individuals often implicate broad choices between values, such as whether a court should follow a contract as written or seek a broader approach to the intent of the parties. Put simply, current legal training produces experts who have no rivals in identifying and coping with ambiguous

situations that arise in a settled framework.

Strategic thinkers, however, must focus not just on resolving ambiguity, but on navigating uncertainty. In the rapidly changing economy in which clients function and lawyers seek to prosper, the only constant is that tomorrow will look different from today. Accordingly, the strategic thinker must begin by identifying achievable objectives and planning a course to reach them. Questions such as the meaning of a statute or the reach of a case feel very different from questions such as in what markets is success likely to be found; which areas of business (or practice) are likely to grow; in what locations should an enterprise expand; or how is technology likely to transform business. Lawyers confront the latter sort of questions every day, and must move swiftly to ensure that junior lawyers and law students become more comfortable addressing such strategic challenges.

Step one involves data. Lawyers have long been familiar with the painstaking work of building a case or negotiating a deal through careful assembly of relevant information. This differs greatly from what students see in law school classrooms, which is why clinical education and the immersive field placements Northeastern University School of Law and schools with similar programs employ are so valuable. But institutional leaders must go well beyond case preparation to determine what facts must be gathered to formulate a strategy. They must assemble teams to seek out such relevant information. The comfort of the appellate opinion gives way to the task of identifying potential customers and predicting their needs; selecting relevant competitors and measuring their tactics; and devising metrics to determine whether the institution is on track. The lawyers of tomorrow must be increasingly familiar with the tools for assembling and analyzing data that will be second nature for their clients.

The harder challenge is one of mindset. The tough, critical analysis demanded from attorneys makes it child's play for the lawyer on a project team to find holes in the links between data and strategy. When the business strategist suggests opening a branch office in a nearby city due to population growth, the lawyer may be the first to ask whether the buying habits of the newcomers can demonstrably be shown to warrant expansion. Lawyers by their very nature are often cautious about the sorts of inferences business people rely upon to move things forward. Young lawyers must be able to overcome such professional prejudice. In today's world, let alone tomorrow's, the better solution to problems lurking within available data is to gather more and better data. It's far cheaper and easier to obtain and analyze data than it was 20 years ago, and these costs will keep falling. Lawyers helping clients manage legal risks must embrace the need for quantitative assessments even as they retain their well-honed flair for qualitative analysis.

### **Economics of the Profession**

Law schools or law firms that fail to nourish aspiring lawyers cannot expect to succeed. But this doesn't mean each new lawyer can be sheltered from economic reality. Junior lawyers are expected to understand that clients are paying the bills. Even the soundest legal analysis, if delivered at too high a cost, does not represent excellent client service.

Lessons in the economics of law offices should start at the outset of law school when every student should learn much more about the role that lawyers play in society, who pays the bills, and how access to justice might be enhanced. These lessons should continue in the workplace as lawyers are taught to provide top quality service while also paying attention to the bottom line. Lawyers should not divorce themselves from how much the work product costs and where efficiencies may be obtained. Law firms representing business clients should insist that starting attorneys make it standard practice to read The New York Times business section or The Wall Street Journal. This will help them become better acquainted with their clients' business along with the evolving thinking in the operation of professional service firms. By the time a lawyer reaches a position of institutional leadership, she should be as comfortable reading spreadsheets as she is perusing case law, even though she understands that there is more to practicing law than the bottom line.

### **Teamwork and Project Management**

Business schools have long understood that executives who know what needs to be done are worth little to customers unless they also know how to get it accomplished.

Developing lawyers must acquire the same habits of sound execution. A good start is to recognize that the intellectual gladiator culture long nourished in law school classrooms is far less useful to law practice in

2013. Certainly every client is entitled to a courtroom champion willing to give no quarter in pursuit of client objectives. But teams of lawyers who understand how different aspects of the law fit together may often provide better service to clients seeking to traverse a complex regulatory structure.

Certain aspects of legal culture that block successful team efforts must be confronted head on. Students often get to law school after being judged the smartest kid in the class. The humility that should be engendered when joining other equally accomplished classmates sometimes comes slowly to those who succeed in law school and land plum jobs in top firms. But law schools must do all in their power to pair healthy competition with a deep appreciation for the power of cooperation. For example, Northeastern places every first year student in a "law office" in which students are evaluated collectively on how they complete a group project offering advice to an organization seeking legal guidance. Similarly, law firms should tie some aspect of attorney evaluation to ensuring that lawyers can work together to serve client needs. Stroock includes "upwards" reviews of attorneys to capture how those more senior—partners and associates—exercise their supervisory functions. Simply being smart will not suffice in the long run if you can't work effectively with others.

Teamwork, of course, is not enough to guarantee sound client outcomes. Developing lawyers should also take advantage of the increasingly sophisticated literature devoted to explaining how to bring a complex project to completion. Writing an appellate brief might be readily managed with time-tested techniques of research, drafting, editing, and refining. But merging two large firms or reviewing thousands of documents—tasks at either end of the complexity spectrum—requires a kind of systematization from which

attorneys can learn from colleagues in the business world. Firms should bring in consultants on practice leadership and legal project management to help develop best practices for how to combine areas of needed expertise in efficient ways.

## **Multicultural Competence**

Our nation's history demands that every American recognize the significance of opening professional doors to a diverse workforce as a matter of social justice. However, the ability to embrace, understand, and work closely with people from different backgrounds will also become a crucial competitive advantage for the next generation of professionals. Institutional leaders can help by factoring aspects of diversity into their myriad activities. But, for those efforts to take hold, new approaches must be developed to encourage cross-cultural collaboration from the moment students enter school and from the moment lawyers first walk through a law firm's door. The process should not end at these initial points.

There is no magic formula for recruiting and retaining a diverse work force. Yet a few things are certain. People of good faith will often encounter challenges working with people from different backgrounds, even if everyone involved is sincerely committed to the enterprise. Being a person of good faith absolves no one from making extra efforts to see things from different points of view. Training programs that focus only on helping people avoid illegal forms of discrimination are not likely to be a true source of building cross-cultural competency. Accordingly, law schools in particular have an important obligation to develop meaningful education that equips students to work with partners and provide outstanding service to clients whose backgrounds are as varied as one might find at a meeting of the United Nations.

## **Technology**

It is clear that some of the most profound changes coming to the legal profession are through technology. The lawyer of the future will be increasingly comfortable using interactive websites and social media to attract clients; using databases to manage information; using statistical analysis to inform strategic decisions; and using software to help draft documents. It should be clear that early exposure to varied technologies must be part of the toolkit for the developing lawyer.

## **Capacity to Succeed in Multiple Fora**

The prototypical performance experience for today's law students, as it has been for years, is the simulated appellate argument affectionately known as moot court. In this intellectually challenging experience, the greatest fear is that a well-briefed, keenly analytical judge will ask a question proving either that the student has missed some key concept or worse yet that the student has failed to read or remember a relevant case or footnote. Such anxiety is a strong motivator, and it makes for a worthwhile beginning to a

career of public performance. Consider how far afield moot court is, however, from the workday life of most attorneys. Attorneys often speak to audiences who are busy, unprepared and far more likely to misunderstand a lawyer's argument than to trip her up with a tough question. In such settings, simple may be better than subtle; brief better than thorough; and clear better than well documented. It's not that being subtle, thorough or well documented is innately "bad," but law schools do aspiring professionals a disservice if they don't coach students on handling a variety of audiences.

## **Ethics**

This is perhaps most in need of attention. Something has gone terribly wrong with the profession's ability to communicate the ethical core of what it means to be a lawyer. Perhaps the error began when law schools frequently chose to cabin ethics into a single course aimed at the multiple-choice test most states require as part of the bar exam. Maybe the wrong message is sent by drilling students on compliance with a series of professional responsibility rules, thus leading them to believe that ethics is more about rule-following than confronting hard choices. Certainly, young lawyers are not inspired when they read of attorney complicity in financial scandals. But wherever things went off the rails, the profession's leaders must work passionately to restore both the self-confidence of the profession and its good name in the broader community. Ultimately the public's respect for lawyers is critical to continued respect for the rule of law, something every lawyer holds dear.

That discussion of ethical issues should take place throughout the law school curriculum. This approach is explicitly authorized by the ABA standards, and it can be adopted in schools with or without the required course now called "professional responsibility." Students should be explicitly encouraged to speak openly about the ethical pressures they will face and how they intend to respond. Professors and members of the practicing bar should share stories about hard choices, remembering that the desire for open discussion can be no excuse for playing fast and loose with confidentiality requirements. Of course, students must also learn basic, non-negotiable precepts, such as not to mix client money with one's own. But equally important, students, and new lawyers too, must be shown the need to bring a strong ethical compass, even to situations where the rules are at best unclear. At Stroock, the entering class' orientation week includes an interactive session examining ethical issues in real-life business settings—the idea being to help them spot developing issues so that problems may be headed off.

In the end, adherence to the highest ethical standards is worthwhile for its own sake. But lawyers with their feet firmly planted on ethical ground are more likely to develop the self-confidence and professional judgment that clients will seek out for the best assignments.

## **Conclusion**

All lawyers must understand that the profession is facing considerable dislocations as new technologies and an increasingly cost-conscious client base transform the practice of law. Educating future lawyers not just in the law but also in strategic thinking is essential to law firm management and in legal education moving forward. Those who confront ethical challenges directly and think strategically, understand the profession's economics, work well together and with those from diverse backgrounds, and master technology are far more likely to succeed in the marketplace.

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