

(On first-year distress, grades, and educational practices; and a related thread below on "Making Docile Lawyers" and demoralization/disengagement of students at very diverse law schools)

FIRST THREAD:

From: **Christopher M. Heaps** [cmheaps@u.washington.edu]
Sent: Wednesday, October 29, 2003 9:02 AM
To: legaled@mail.law.fsu.edu
Subject: research on 1Ls

I am interested in exploring hypotheses to explain the high level of mental health problems experienced by 1Ls. For purposes of full disclosure, I should say that I am currently a 1L. Essentially, my hypothesis is that the high incidence of these problems is largely due to a lack of predictability in the 1L environment arising from both instruction and evaluation methods. Because the law school curriculum provides no general orientation to law, most 1Ls have few relevant schemata on which to build their learning, and are thus unable to fully understand the pedagogical value of many cases. Also, evaluation of student learning is done so infrequently that most 1Ls are unable to characterize their own learning and thus how to properly prepare for exams. My questions for the group are twofold. First, do these ideas seem to make intuitive sense to people who have had more experience with law school? And second, have these ideas been explored much in the literature? I obtained some relevant sources from my colleague, Andy Benjamin, but I have yet to find any attempts to experimentally evaluate the effect of changes in instruction and/or evaluation methods. Any help is greatly appreciated.

Chris Heaps

Dear all:

Chris forgot to mention that besides attending law school, he is a Ph.D. cognitive psychologist.

With warm regards, **Andy Benjamin**

From: **Molly Stuart** [mollystuart@quiknet.com]
Sent: Wednesday, October 29, 2003 9:56 AM

Chris - You might want to include info not just on the academic/learning side but on the social/psychological/interpersonal side. I just drafted an essay for my school that raises the issue and much of the administration is responding. The greatest skepticism is,

"Students need too much handholding," and "is there anything that really works to alleviate it?"

If anyone knows of any research about programs that have proven (somehow?) track records of addressing distress "successfully" (I suppose that means in actual reductions in suicide, depression, etc., or even in "feeling" more supported) that would be great info for those of us trying to address the difficulties.

From: **Organ, Jerome M.** [JMORGAN@stthomas.edu]

Sent: Wednesday, October 29, 2003 10:14 AM

Chris -

I think your intuition is wonderful. I am not sure whether there is much empirical literature that discusses it, but there is an article by Paul Wangerin that speaks to it to some extent. (I don't have it handy but will email the list with it later.) I am working on putting together a longitudinal study that tries to assess a variety of factors (faith, public service orientation, debt load to name a few, law school culture) to see whether they are ameliorative (or not) -- I don't think it would be hard to add a few questions on the extent of feedback (existence of midterms, etc.) that would allow for some assessment of the extent to which more frequent feedback impacts well being. I would be happy to discuss the project with you in a little more detail if you are interested. -Peace -

Jerry Jerome M. Organ Professor of Law University of St. Thomas School of Law MSL461
1000 LaSalle Ave. Minneapolis, MN 55403-2005 651-962-4919 (office) 651-645-5513
(home) jmorgan@stthomas.edu

From: **Lustbader, Paula** [lusty@seattleu.edu]

Sent: Thursday, October 30, 2003 8:23 AM

I am in complete agreement. Regular feedback is a necessary part of the learning process and is one of seven principles of good teaching practice that was identified in 1988 by experts in undergraduate education. Frequent and timely feedback not only helps reduce stress, but most importantly, it facilitates the meta-cognitive process of the students. Without it, they cannot adjust their study modality until after their first exams, and then the die has been cast. Not providing feedback also keeps students in a state of powerlessness because they don't know if what they are doing is working and so they lose confidence in themselves.

Many of our colleagues are using web-classroom technology to give short quizzes. These should count for some portion of the final grade. I'd also like to advocate for us to begin to develop a variety of ways to measure and evaluate performance in addition to a final exam. One oral presentation, a negotiation exercise, a client counseling exercise, visiting

court and writing a response, etc., would honor the multiple intelligences of our students and more accurately assess if they can be good lawyers.

From: **Prather, Paula** [pprather@lawschool.gonzaga.edu]
Sent: Tuesday, November 04, 2003 8:56 AM

You can read about the principles of good teaching practice mentioned by Paula Lustbader at <http://law.gonzaga.edu/ilst/7ps.htm>. The Institute for Law School Teaching has produced a faculty development video with written materials based on these principles, "Principles for Enhancing Legal Education," which is described at <http://law.gonzaga.edu/ilst/PubsResources/Princpl.htm>. This resource was created for the Institute by Gerry Hess (Gonzaga), Paula Lustbader (Seattle), and Laurie Zimet (Hastings).

Paula Prather
Program Coordinator
Institute for Law School Teaching
Phone (509) 323-3740; Fax (509) 323-5840
Gonzaga University School of Law
Box 3528, Spokane, WA 99220-3528

From: **Richard Sheehy** [richshee@hotmail.com]
Sent: Wednesday, October 29, 2003 12:00 PM

I will be publishing an article in the February 2004 edition of the International Journal of Stress Management in which I discuss a stress inoculation intervention experiment we did with 1Ls at Arizona State University. We educated a group of students about stress, stressors, and stress reactions, taught them relaxation skills, showed them how to do some cognitive restructuring around the "myths" about law school, and then practiced with role plays. Four weeks later, we found that the students in the treatment group had lower levels of personal, emotional, and general stress than the control group. We also found that several students who received the treatment tended to outperform the school's predictions of their academic performance, which were based on their LSAT scores (seven were predicted to finish in the bottom 20% of the class but at the end of the semester, only three did).

We had a very low sample (22), but the fact that we found some significant results is promising. The intervention program is not particularly complex and could be easily implemented by someone with a counseling background. I believe the study is the necessary first step in going beyond simply acknowledging that 1Ls experience high levels of stress and in demonstrating a possible solution to the problem. The biggest problem I faced was getting the students to participate. Seven actually dropped out before the study

began because they felt it was adding to their stress! Law schools need to do a better job of acknowledging the psychological issues faced by 1Ls and doing whatever they can to provide them with programs, or access to programs, that can help.

Rich
Richard Sheehy, J.D., Ph.D.
Assistant Professor, Counselor Education
Drake University
3206 University Avenue
Des Moines, IA 50311
(515) 271-3005
rich.sheehy@drake.edu

From: **Larry Krieger** [lkrieger@law.fsu.edu]
Sent: Friday, October 31, 2003 10:20 AM

I have a complementary thought on law school stress that comes from an interaction with a student I just met yesterday (and similar previous encounters with others). In an office conference about taking my program and future plans, she mentioned something about being 'embarrassed' to show a prospective employer her transcript with her 'mediocre' B-grades. She meant it. As you might guess, I chose to explore that statement a little more. It turns out she's a former high school/middle school teacher, has a master's degree in which she had an A average, and has really been deflated by the law school experience. She had family problems one semester, her grades suffered, and it's tremendously affected her class standing, etc.

The point is, she thought this was really important and reflected poorly on her. I told her, not in so many words, that it actually isn't important (the lawyer hired her and told her the same thing by the way, so apparently I was "right"!) and actually did not reflect poorly on her. Rather, I thought we in the law schools should be apologizing to our students for making such a big deal about GPA/rank, rather than them apologizing for being in a system that only seems to reward 15% of the players it accepts. This really made an impression on her.

My thought in the current context is: look how easy it is to give them relief! I find this repeatedly: if I just tell a student the truth -- that s/he is capable and much more than a gpa number -- she shines in the knowing that it is the reality. Why so many of them forget this is our problem -- we allow an educational environment that is saturated with and dominated by a number identification of student worth. Changing the system is difficult and slow work, but finding ways and opportunities to tell them that they should not internalize the system is not so difficult. I'm left thinking we ought to be doing that more -- at orientation, in P.R. and other classes, in legal writing, in clinics . . . reminding students that the law school ranking system is not the reality about them, that they knew who they

were when they got here, and that no matter how (un)successful we might be in amending ranking emphases, teaching/evaluation techniques, etc., they should not forget that they are still the same competent, bright people that were admitted to law school. . . . They need to hear from teachers that the problem is not them, as they're feeling -- it's US in the broad sense. This always seems to work for me, though I have no idea if one hearing is enough for a student (probably not). If they're in my courses or programs, they do hear it repeatedly over time. Larry

From: **Lustbader, Paula** [lusty@seattleu.edu]

Sent: Friday, October 31, 2003 3:12 PM

I too am interested in how technology is changing the way students learn. The way we approach things in sequential order will soon be outdated by web thinking.

Anyway, I just wanted to add one other idea: Creativity. We spend so much time generating an adversarial model in the law school that it does not lend itself to development of creative problem-solving or collaborative lawyering or therapeutic jurisprudence, etc. In fact, consider how we teach legal analysis: We ask, "What is the issue? What arguments can be made?" How might the profession change if instead we asked, "What are the problems, (because there usually is more than one)? What are the parties' interests? How can we solve the problem?" We focus exclusively on the left brain and leave the right brain dormant. A muscle that isn't used atrophies in time. I think many students experience high levels of stress because they don't access their right brain and because they have no creative outlet. Their intuition and experience is not considered relevant.

I have been using art in my criminal class for the past few years. I have students draw the schema of the course, draw their outline of the doctrine, draw examples of the specific cases. They have a great, fun time doing it. I believe this helps to deepen cognitive structures, increase memory, and keep the right brain engaged.

Paula Lustbader

From: **Organ, Jerome M.** [JMORGAN@stthomas.edu]

Sent: Friday, October 31, 2003 5:34 PM

One thing I tell my first year students particularly is that they need to repeat the mantra -- "I am not my grade." Again, it is a simple thing, but it seems to help them hang onto a "cognitive schema" that keeps grades in an appropriate context.

My sense regarding "contributing factors" to the stress and overemphasis on grades is that the students get so involved in law school -- with time and energy -- that they have little time and energy left for the other things/people in their lives who used to provide validation for who they were as people. With many of those things/people squeezed out of their lives by the perceived demands of law school, the students can't access their traditional "means of affirmation." It isn't surprising that students cut off from their traditional means of affirmation would look within the law school environment for validation of who they are as people -- and that they would turn presumptively to the common "validation tools" within the law school environment -- grades -- as the means for seeking personal validation. As all have noted, however, this is a recipe for disaster for the vast majority who do not end up in the top 25% or so and as a result feel like a failure.

-Peace - Jerry

From: **Bob Seibel** [seibel@mail.law.cuny.edu]
Sent: Thursday, October 30, 2003 10:20 PM

Some thoughts about stress and the first year of law school:

1. Many students enter law school because they are interested in people and helping people, not necessarily in a public interest sense but in the sense that they can make a good living and be of some help to people in their community. The first year of law school virtually removes people from the study of law. With the focus on analysis and the material from appellate opinions where the facts and the people are not much discussed, this is inevitable. I believe this is a significant factor in the displeasure that 1Ls feel, but one that is difficult for them to identify or associate with their stress.

2. Law school admissions put a heavy emphasis on LSAT and undergrad grades. Students often feel the pressure of this with each step in the education process -- those who do well in high school often go to "the best" colleges, . . . those who do well in college and then go to law school find themselves in a yet-more competitive environment where their credentials are likely to put them at the middle rather than the top of the class.

3. I believe that Paula has made a very significant point when she says that we need a variety of ways to evaluate performance. We need more evaluative tools, but we also need to evaluate a larger variety of types of performances and the knowledge and skills that go with them. We also need to acknowledge differences in learning styles and communication methods as they relate to evaluation methods.

4. The first year of law school also causes great confusion between intelligence (smartness) and experience (knowledge). I shocked first year students a couple of times by telling them that most of the teachers that they were in awe of had probably entered

law school with credentials lower than their own. I told them they should not be surprised that a faculty member who had taught the course 10 times would have a better and more complete understanding of the material than the students, even if the students were smarter.

5. If you have read this far your reward is that I saved the best and most important for last. We have to start re-evaluating the fundamental thinking skills that we accept as the norms for legal analysis and problem solving. We use a couple of forms of fairly linear analytical thinking almost exclusively. One of the reasons for this is the influence of the scientific model within academia. But another reason has to do with our heavy reliance on print media. Students coming up through the education system now are increasingly using the internet and computer programs for their learning. This means that they are not just reading, but they are using images and sounds as an integral part of their cognitive schema (thanks Chris). More importantly, they are using hyperlinks -- they no longer have to move in a linear way through the material, but instead can jump around in many ways.

We have in our minds the tried and true forms and models of persuasive argument and they are heavily bound to words and linear thinking. We may think that e-filing of documents is just a technical matter of converting words from paper and ink to bits and bytes. But we are not that far from the day when court filings will contain true pleadings (a video clip of the plaintiff telling the other parties and the court why she needs relief in this lawsuit, and perhaps showing something of the impact of her injuries on her activities and life). E-filings will also have embedded links to materials of many types, either on the world-wide-web or on the CD or flash disk that contains the material being filed. These things will not be the products of the technology, they will be the result of methods of thinking that were made possible (or prevalent) by the technology.

Bob Seibel
CUNY School of Law
718 340 4206

From: **G. Andrew H. Benjamin, J.D., Ph.D.** [gahb54@u.washington.edu]

Sent: Tuesday, November 04, 2003 10:15 AM

Please consider the following from a recent annotated bibliography created by ABA Commission on Lawyer Assistance Programs Law School Outreach Subcommittee: Connie Beck, Bruce Sales & G. Andrew H. Benjamin, Lawyer Distress: Alcohol - related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers, 10 J.L. & Health 1, 1-60 (1996).

Depression is not the only awful affliction that impacts the legal profession. Alcohol and drug abuse also plays a prominent role, and endures past law school graduation. In fact, the findings of this cross-sectional study of lawyers across practice years suggest alcohol problems are progressive in nature and profoundly affect the profession. In this large,

stratified random sample of lawyers that used well-validated, reliable measures, 70% of the lawyers in active practice had a lifetime prevalence of clinically significant negative consequences related to alcohol abuse. Another set of surprising findings showed that for female lawyers, positive relations within a primary relationship served as stress protector. But the percentage of divorced female lawyers proved to be twice that of physicians and three times that of teachers. Female lawyers are the least likely to remarry of these occupational groups. When compared with the findings of a normal population, female lawyers remain significantly more angry in their primary relationships while male lawyers remain significantly more stressed.

With warm regards, Andy

G. Andrew H. Benjamin, J.D., Ph.D.

Affiliate Professor of Law

Director, Parenting Evaluation/Training Program (PETP) University of Washington William H. Gates Hall Box 353020 Seattle WA 98195-3020

T: 206.616.6220

SECOND THREAD:

-On 'Making Docile Lawyers' – a law student article on the demoralization of law students-
note: the article is at 111 Harvard Law Review 2028 (1998)

From: **Dolovich, Sharon** [mailto:Dolovich@law.ucla.edu]

Sent: Wednesday, October 09, 2002 8:36 PM

To: 'legaled@mail.law.fsu.edu'

Subject: Making Docile Lawyers

Hi folks. I am sending this message to the subscribers of this listserv at the suggestion of Larry Krieger. I am currently on the faculty at UCLA, but more importantly for the topic of our shared interest, when I was a student at Harvard Law School I published a student Note in the HLRev called "Making Docile Lawyers: An Essay on the Pacification of Law Students." The piece was basically a social psychology analysis of what happens to students at HLS to transform them (as routinely happens to entering students) from enthusiastic, engaged 1Ls into fatalistic and pacified upper year students. The focus of the piece was Harvard in particular, but my sense was that at least some of what I wrote there would resonate with people who attended other law schools.

Because of HLR policy, the piece was unsigned, which has meant that the only feedback I have ever received has been from friends or colleagues who knew I was the author, or from the occasional mention in an article, like Larry's recent piece in the Journal of Legal Education (which I commend to those of you who haven't seen it). This has been too bad

from my perspective, because I am very interested in hearing responses that others who may have read it have had to the piece. I am also interested to know if there are others besides Larry who regularly assign it in their classes and if so what reactions have been. I myself regularly assign the piece to my legal ethics students, and so have received some student feedback that way, but my sense is that the response is likely skewed by the fact that they know I am the author.

Anyway, Larry suggested the possibility that some subscribers to this listserv might be familiar with the piece and might have some things to say. I send this message in the hope that this turns out to be the case, and I look forward to hearing from any of you who have any thoughts on the piece (positive or otherwise) that you are willing to share.

Sharon Dolovich
Acting Professor of Law
UCLA School of Law

From: **Maura A. Flood** (mflood@lawschool.gonzaga.edu)

I first read Sharon's article a couple of years ago, and thought it was terrific. I am certain that the effects she describes are felt by nearly every law student in nearly every law school. I remember having many of the feelings she describes, and students I've spoken with at three different law schools report very similar experiences. I agree with Larry that Sharon's article is particularly powerful - and helpful - because it is the work of a student, and that is why I have recommended it to some of my students. (Thank you, Sharon!)

Do law professors set out to create docile and demoralized lawyers? Of course not, but somehow it happens anyway. We need to try to pinpoint what it is about the first year of law school that does this to our students. Could it have something to do with the fact that "justice" is a word that seldom makes its way into the first-year curriculum? I think it might. So many of the articles on first-year malaise, or law student angst, mention that students end up feeling set adrift from their values and beliefs, or made to feel that those values and beliefs are irrelevant. While they may be irrelevant to determining whether a particular plaintiff has acquired title to a particular piece of land by adverse possession, they're not irrelevant to the larger questions of why the law awards title to an adverse possessor, or whether it should do so. I encourage discussion of these larger questions in the classroom, so that students can begin to understand how it is that law serves society's goals, but also so that students can apply their own values to the legal concepts they are learning about. This is a very small thing, though, and it's not enough to stave off the angst that first year students feel.

Are there any schools that include in the first year a course on Law and Morality, or Justice and Society, or the like? It seems to me that such a course would give students an opportunity to explore what law means, what justice is, how justice is served by law, and what all of this means to them in light of their own values. The study of law brings about an emotional reaction in a lot of students, and it raises many questions that are

never addressed in contracts, property, torts, etc. Perhaps if we had a course in which such questions could be explored, and in which students could be assured that morality and justice are important elements of law school and law practice, the deleterious effects of the first year could be minimized. I'd love to hear what others think about this, and if any schools have tried including such a course as a required part of the first-year curriculum.

Maura

From: **Krieger, Larry** [LKrieger@law.fsu.edu]
Sent: Thursday, October 10, 2002 6:25 AM
Subject: RE: **Making Docile Lawyers : How I use it in class**

I was excited to receive an email from Sharon a few days ago. I had tried to wedge the name of that article's author out of the HLR a few years ago, with no luck. When I read the piece originally, thanks to a note from Calvin Pang, I thought she was describing precisely the profound problems that students at most other law schools experience as well, and found this confirming of the belief that it's a relatively universal phenomenon and hence might be at least partially responsible for the mess so often observable in the legal profession. Since then this has been one of the articles I assign in "Unit X" of my classes, which discusses the health and "professionalism" problems of lawyers and how to avoid them. About 95% of my humble-Southern-public-law-school students for the past 7-8 semesters tell me, in writing, that their experience is indeed very similar to the description of Harvard Law students (minus the universal fallback of lucrative big-firm jobs for the 'pacified' majority Sharon describes). This was what I expected to hear, though I think it would greatly surprise most of the other professors here.

A further confirming note about the processes of deflation, disengagement, and surrender of ideals and values described in her piece: in the empirical study recently completed by Ken Sheldon and I, both the negative effects, and the precise sequence of their occurrence over the first three semesters were manifest in our data. The whole confluence of this information is quite a neat package it seems. I had organized the study to test the theories/observations in a '98 article I did; her article was roughly simultaneous and described from a student perspective, the same phenomena; and hence the study ends up quite confirming of both. But the greatest benefits of his article, in my experience, are that it has immediate credibility as coming from another student; it really rings true for my students, hence validating their experience strongly; and because it's describing Harvard, it shows them simultaneously that they are not 'the problem' individually, nor would things be better if they could have only gone to a 'better' school. This gets us ready to think about the dynamics involved and how to deal with them constructively. L

END

