

## Why Law Students Lose Their Potential for Leadership

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The world has countless stories about ordinary people who became leaders and accomplished extraordinary things. In the United States, there is Candace Lightner, a real estate agent, who established Mothers Against Drunk Driving (MADD) after her 13-year-old daughter was killed by a drunken hit-and-run driver as she walked down a suburban street in California.<sup>1</sup> In 1987, there was then eight-year old Tara Church and her Brownie Girl Scout friends who founded Tree Musketeers, Inc., the nation's first youth environment organization, after they learned about the wasting of trees and the effect it has on the ozone layer.<sup>2</sup> Recently, in Pakistan, after she was gang raped on the orders of her village court as a punishment for her brother's falsely accused crime of rape, Mukhtar Mai, a village woman with no education,<sup>3</sup> founded the Mukhtar Mai Women Welfare Organization (MMWWO). Her organization uses education to fight for women's rights and combat oppression.<sup>4</sup> These ordinary people, whom the world would not have singled out as potential leaders, met a challenge and rose to the occasion. In the process, they became leaders. Such stories prove that the belief that "leaders are born, not made" is just an age-old myth.<sup>5</sup> These ordinary people are living proof that leadership is everyone's business and that leadership can be learned. They prove that everyone has leadership potential in them and, with training, the leader will emerge.

Law students, no different from anyone else, possess leadership potential and many come to law school wanting to be leaders and to make a positive change in the community and the world.<sup>6</sup> Law schools appear to be ideal places for such purpose. Robert Mathews, former President of the Association of American Law Schools once stated, "Leadership is an integral function of membership in the legal profession.

Because of our training and understanding of the operation of government, lawyers have a greater responsibility than other citizens to assume functions of leadership.”<sup>7</sup>

Today, however, the number of lawyers who serve in leadership roles in the communities has greatly declined.<sup>8</sup> It appears that today’s lawyers have trouble becoming leaders and the legal profession is in crisis.<sup>9</sup> One reason is that, prevalent among the nation’s lawyers, there is a decline in professionalism – exchanged for hostility, selfishness, and a win-at-all-cost mentality.<sup>10</sup> How does one explain this disturbing trend? Valeri, a lawyer and management consultant, asserted that legal educational process plays a part in lawyers’ inability to lead.<sup>11</sup> Not only have law schools done an inadequate job of preparing lawyers to assume leadership roles,<sup>12</sup> today’s legal training itself debilitates against the formation of leadership qualities.<sup>13</sup> Studies show that law students began law school equipped with some of the desired qualities of a leader: confident in one’s abilities, engaged and enthusiastic, and motivated by intrinsic values such as the desire to help others and contribute to the society. However, during law school, many students experience a profound loss of self-esteem and confidence. They become disengaged, cynical, insecure and unsure about the future. Their former intrinsic values are quickly replaced by externals such as grades, money and prestige. This transformation does not end at graduation, but persists beyond law school.<sup>14</sup>

This paper will explore the reasons for adverse transformation of law students. Our goal is to spark a debate on the effect of the current legal education model on law students, and to move individuals into a position to effect change to reform legal education.

Part I explores what it means to be a true leader. Part II discusses the crisis faced by the legal profession, lawyers and law students. Part III explores some of the forces contributing to the crisis, namely law school's grading system policies, exams, and curriculum. Part IV proposes institutional and individual changes that might help law students achieve their leadership potentials.

## **I. What is a leader?**

Leaders are people who get the right things done. True leadership involves the pursuit of good, just, honorable, and desirable ends.<sup>15</sup> Over the years, research data shows that, among other characteristics, a good and effective leader must be honest, forward-looking, competent, inspiring, and a team player.<sup>16</sup>

The most fundamental and important quality of all is honesty. "Character" and "integrity" are often used as synonyms with "honesty". People will follow a leader they can trust and who will not mislead them. True leaders have strong integrity. The successful leaders are people who have strong ethical standards and values.<sup>17</sup>

The second aspect of leadership is the ability to be forward-looking. Individuals who are forward-looking have a vision, a dream of what the future could be. They have a sense of direction, of where they want to go and what they want to accomplish.<sup>18</sup>

The third important quality is competence. In order to be successful, a leader must be competent in his or her work in order to guide others in his or her crusade.<sup>19</sup>

The fourth essential characteristic of good leadership is the ability to be inspiring. In order to inspire others, leaders must be enthusiastic, energetic and confident. They

must be positive about the future. They encourage others to move upward and forward, and to carry on even when people become exhausted, frustrated and disenchanting.<sup>20</sup>

Fifth, a leader must be able to work in a team. Great leaders are team players who use the word “we” more frequently than the word “I.” They habitually give credit to the team, instead of themselves. They care for the team success, rather than their personal triumph. Great leaders possess the ability to bring out the best in others and to enable others to act. They make it possible for others to do good work. They make others feel strong and capable, rather than weak, dependent, or alienated.<sup>21</sup> Great leaders genuinely care about the welfare of others.<sup>22</sup> As the ancient Chinese philosopher Lao Tzu once said, “The best of all leaders is the one who helps people so that eventually they don’t need him.”<sup>23</sup>

## **II. Legal profession in crisis**

### **A. Practicing lawyers in crisis**

The legal profession is suffering from a crisis of moral and emotional detachment, a disconnect between personal values and professional life.<sup>24</sup> This is one of the reasons why modern-day lawyers have trouble becoming leaders.<sup>25</sup>

The sharp decrease in the overall well-being of modern-day lawyers is troubling. Studies show that career dissatisfaction and unhappiness among practicing lawyers are wide spread. As a result, lawyers suffer from stress-related diseases such as depression, anxiety, heart disease, alcoholism and substance abuse, at a rate 5-15 times more than the general population. The suicide rate is exceptionally high as well.<sup>26</sup> A Johns Hopkins study found that, when adjusted for socio-demographic factors, lawyers topped the list,

suffering from major depressive disorder at a rate 3.6 times higher than employed persons generally.<sup>27</sup> Researchers attribute this crisis of the legal profession to the prevalence of commercialism and the loss of character, service commitment, and professionalism among many lawyers.<sup>28</sup> The public is also increasingly dissatisfied with the legal profession. In her speech on “Professionalism,” US Supreme Court Justice Sandra Day O’Connor remarked, “Lawyers have increasingly been the subject of public derision. Few Americans can even recall that our society once sincerely trusted and respected its lawyers. The public stereotyping of lawyers is unflattering. In economics, lawyers are described as creating “deadweight loss.” Today’s popular films portray lawyers as “miserable human beings, either unethical or incompetent at their jobs.”<sup>29</sup> Lawyers are commonly associated with shallowness, greed and hyper-competitiveness.<sup>30</sup>

### **B. Law students in crisis**

Sheldon and Krieger’s study on law students echoes the findings of elevated emotional distress among practicing lawyers. Their study shows that law students do not start out with poor emotional well-being. Upon entering law school, law students’ psychological health is no different from students in other professional fields. In fact, law students began with a higher subjective well-being. During their first year of law school, however, students experience declining happiness and mental health. Many suffer from anxiety, depression, hostility, and paranoia. The decline in the students’ well-being continues into the second and third year of law school, and may even persist into their subsequent law careers.<sup>31</sup> Even students from elite schools such as Harvard Law School had not escaped this plight. According to a student’s essay published in the

Harvard Law Review, “by the second year, a surprising number of Harvard Law students come to resemble ‘the walking wounded’: demoralized, dispirited, and profoundly disengaged from the law school experience. What’s more, by third year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world’s challenges head on. They become subdued, withdrawn, insecure, and uncertain of their own self-worth over the course of their legal education.”<sup>32</sup>

Law student symptoms apparently result from something more than just mere hard work. As compared with students in medical school, another difficult professional program, law students experience poorer mental health.<sup>33</sup> Further, emotional distress in medical school appears to abate over time, once the medical students grow accustomed to the rigorous demands of their studies.<sup>34</sup> Not so with law students.

The negative trend in the well-being of law students can be explained by the shift from the students’ intrinsic motivations for attending law school to more extrinsic motivations. Many law students come to law school motivated by their commitment to ideals and causes, to be leaders, to help others and contribute to society, or to effect personal growth. All these intrinsic goals tend to make a person happy and confident of his or her self-worth. As they proceed through law school, however, law students become more motivated by external values – grades, money, prestige, and image – that correlate with a decrease in well-being and sense of self-worth.<sup>35</sup>

Where law students begin their legal education happy, healthy, confident and motivated to become leaders and to make a positive change in the world, but then proceed to become demoralized and insecure, giving up their earlier dreams in favor of

money, prestige, and appearances, and go on to become unhappy lawyers who are dissatisfied with their life and law career, one must look to the legal education process for an explanation.

### **III. Detrimental effects of legal education on the formation of law students' leadership qualities and overall well-being**

#### **A. Grades: the detrimental effect of law school's forced curve and students' ranking**

It is no secret that grades are one of the major sources of anxiety in a student's life. From the time a student enters kindergarten, he or she has to deal with grades. Although all students necessarily think of grades quite often, law students are among the students who are the most preoccupied with their grades. Law schools and law firms make it necessary for law students to elevate the importance of grades to the highest level.

Grades are double-edged swords. On one hand, grades are useful to establish and enforce standards of quality for student's education. They provide a means to communicate those standards to the outside world. They help students gauge the effectiveness of their learning. Up to a certain point, grades provide a powerful incentive for a student to study. On the other hand, since grades are extrinsic motivators, an education system that puts too much emphasis on grades can produce a detrimental effect on effective learning by undermining long-term, deep learning. In these situations, students' primary motivation is to get good grades, which is not necessarily the same as motivation to learn. Instead of studying for the love of learning and enjoyment of effortful accomplishment – healthy intrinsic motivators – students focus on strategies for

short term learning and on findings shortcuts to success.<sup>36</sup> Further, although grades are poor indicators of ability, schools' overemphasis on grades can cause students to regard their grades as a definitive statement of their academic prowess and their potential as professionals.

Law school grades are one of the major sources of students' anxiety and decrease in well-being, precisely as a result of overemphasis on grades. Although elite law schools such as Harvard, Yale, and Stanford have concluded that ranking and normalization of grades using curves overemphasizes grades unnecessarily and is counterproductive to effective learning, many law schools, especially schools among the lower tiers, continue to use such grading systems.<sup>37</sup>

Proponents of the normalization of grades argue that the curves are necessary to insure consistency in grading, to even-out differences among faculty in grading practices and therefore provide an equal playing field in the students' sorting and ranking process. They also point out that law students are highly competitive and they expect to be ranked. Furthermore, they assert that because large law firms generally screen applicants based on their rank, eliminating grade ranking will be a risky proposition for law school placement program.<sup>38</sup>

In favoring the forced grade curves and ranking, the proponents of such grading systems overlook the significant costs those policies impose on law students and future lawyers. First, as one educational critic observed, "It is not a symbol of rigor to have grades fall into a "normal" distribution; rather it is a symbol of failure – failure to teach well, and to have any influence at all on the intellectual lives of the students."<sup>39</sup> Second, grade normalization and ranking policies overemphasizes grades by measuring students

against each other, rather than against an objective norm. Such grading systems promote the values of competition and control at the expense of learning and professionalism. They create and intensify a cut-throat, competitive learning atmosphere in which self-worth and status is measured solely by the grades one receives.<sup>40</sup>

The forced grade curve has an especially traumatic effect on law students who, as a group in their pre-law days, were high achievers accustomed to being on top. The forced curve sends the students a loud and clear message that they must compete with each other and perform flawlessly in order to make top grades. When the students are told that only a small fraction of students – usually 10% – will get A, and only the top 10% will get interviews with large law firms, and only the top 10% will receive honors at graduation, success is defined as being in the top 10%, which means 90% are set up for failure.<sup>41</sup> As grades provide students with the only indication of their performance, when they receive their first term grades, many students are shocked at not coming out on top, and begin experiencing profound loss of self-esteem and confidence.<sup>42</sup> Instead of encouraging students to work harder, the forced curve causes students to give up and withdraw, as they believe they stand little chance of winning – of getting an A grade. As a result, law schools prematurely lose some of the bright minds who could become great leaders and lawyers. As for many of those students who stay in law school, the feelings of failure and inadequacy perpetuate and escalate as they march through law school. By graduation, many students doubt their abilities and capacity to control their own future.<sup>43</sup> These experiences greatly impair law students' development of their ability to be forward-looking and inspiring.

Competitive grading systems promote a competitive learning environment which undermine intrinsic orientations toward study and encourage competitive behaviors among peers. This modeled the very conditions that are causing lawyers to drop out or burn out at a higher rate than ever before.<sup>44</sup> Many law schools' forced curves not only impose a mandatory limitation on the number of A's in the class, they also require a percentage of the class to get a C minus or below (usually 10% to off-set the 10% of A grades). As a result of the demoralizing message that 10% of the first year class may be cut, many law students quickly learn to "smoke out" students who would likely be placed at the bottom of the class. Instead of helping those "likely bottom" students to succeed, as any great leaders would, the students employ a variety of vicious maneuvers to ensure that those "likely bottom" students will stay at the bottom, thereby forming a shield to protect others from the "axe."<sup>45</sup> Competition for grades leads to the development of behaviors designed to gain unfair advantage ranging from subtle and not so subtle undermining of peers by discouraging active learning, or hoarding of materials, to outright cheating.<sup>46</sup> The prevailing complaint about law school is that competition among students is so intense that many classrooms are actively hostile.<sup>47</sup> The forced grade curve provides a disincentive for students to help one another in their studies. They fear that those they help might end up edging them out of their A grade. This type of competition advanced by forced curves destroys the tendency to exercise and develop empathy and altruism, characteristics much needed in a leader.

Effective leadership involves teamwork. To be a competent team player and lawyer requires effective interpersonal communication skills. Competitive learning structures advanced by the forced grade curves hinder rather than promote this skill. It

promotes individualism rather than cooperation or teamwork. In order to compete effectively, one must objectify one's opponents and turn them into a rival.<sup>48</sup> Hence, in order to survive law school, students develop and perfect the "battle" mentality. The end result is that law school becomes a very lonely process, rather than being an exciting and exhilarating experience that it should be. Many students end up suffering from emotional distress and depression. As one student remarked, "Even though you are around people all the time, you don't get in touch."<sup>49</sup>

Law schools' forced grade curves and ranking policies not only help destroy students' aspirations and potential for leadership, but help morph many decent, and happy students into unhappy and insecure people filled with despair, hostility and loss of civility, all of which then translate into the decline in professionalism of the legal profession. The enormous costs, damages and disservice the grade normalization and ranking policies inflicted on law students, future lawyers, and on the legal profession outweigh any benefits these policies might have. Dean Roger Abrams' characterization of legal education eloquently drives the point home: "We select the best, the brightest, and the most interesting and diverse group of students, and then we proceed to transmute this gold into straw, a reverse alchemic process."<sup>50</sup> It is emphatically wrong, ethically and morally, to subject human beings to such treatments.

### **B. Law School Standard Exam Format and Its Impact on Developing Lawyers into Future Leaders**

Among other characteristics, a good and effective leader must be honest, forward-looking, competent, inspiring, and a team player.<sup>51</sup> In addition, the leadership qualities and skills possessed by the most admired leaders are: integrity, credibility, charisma,

communication, decisiveness, risk-taking, ability to listen, innovation, accountability, ability to cooperate, problem solving, and collaboration.<sup>52</sup> This section examines whether the dominant law school final exam process develops the leadership qualities and skills necessary for future lawyers in their future practice or professional career.

Certainly the nature of the work requires a good lawyer to develop different skills sets than those required of a good leader. For example, lawyers must be able to analyze issues well, and thus their training in law school leading up to the final exams revolves largely around the process of “IRAC” (Issue, Rule, Analysis, and Conclusion). However, many theories and researchers have established that the development of law students focusing on how to do well on law school exams, and eventually the bar exam, is not sufficient to develop a well-rounded lawyer. “Based largely on the theories of Maslow (1970), Krieger (1998) proposed that the dominant beliefs and practices in legal education thwart natural human needs for growth, personality integration, and internally based motivation, potentially explaining many of the negatives noted in legal education. . . . [I]ntense pressures and competitive success norms at most law schools begin a process that reorients students away from positive personal values and towards more superficial rewards and image-based values, leading to a loss of self-esteem, life satisfaction, and well-being.”<sup>53</sup> While law school tests attempt to measure issue-spotting and legal analysis – two skills that are certainly important to the practice of law – real law practice generally allows a lawyer the luxury to ruminate on a client’s problem for more than just three hours. Furthermore, factors such as interpersonal skills, perseverance, rain-making, and attention to detail – all of which are crucial to the success of any lawyer – are not measured effectively, or at all, by law school exams.<sup>54</sup>

A typical exam process generally revolves around preparation, including a lot of stress and anxiety, leading up to the in-class exam (usually comprised of a 3-hour period), with the focus on an IRAC structure.

The preparation phase usually begins with organizing one's reading notes, class notes, horn books and other sources of commercial outlines into a large document for the course, commonly named an Outline. A typical law student would then spend several days for each class studying the Outline containing the rules for the course, and applying these rules to a sample set of facts, with the goal of spotting the issues.

The actual exams are typically structured for a 3-hour period, and the ability to score well is nearly always based on the ability to apply the IRAC structure:

- **ISSUE:** the law student must identify the legal issue;
- **RULE:** this is a shorthand reference to the legal principles that govern the issue at hand;
- **APPLICATION OF LAW TO FACTS (ANALYSIS):** This is the most important part of the analysis; the law student should not simply restate facts. The law student should not simply render a superficial and conclusory application of law to the facts, and must apply the rule stated earlier;
- **CONCLUSION:** this is the least important; the law student needs not spend much time deciding which arguments should prevail but should simply tell relative strengths and weaknesses.

Nearly all required and bar-subject courses are structured this way, with the course grades based on a final exam. Notable exceptions are LARAW (Legal Analysis Research and Writing), Advocacy, and a few seminar or practice group type of courses,

where the course grades are based on a legal brief, a writing project, or oral arguments. Not surprisingly, many law students surveyed believe that law school is unfair, based on their experience with the dreaded “final exams.” “It’s unfair that your entire grade for most classes rests on how well you perform during a single 3-hour test. It’s unfair that your professors rarely tell you how to excel on their exams. And it’s certainly unfair that your school probably will implement a strict grading curve where the difference between an A and a B can rest on 1/100th of a point.”<sup>55</sup>

Even those students who answered that they accepted the typical law school exams as the necessary training and conditioning of a good future lawyer nevertheless professed a heightened level of stress and anxiety during the exam period. Who can blame them? A 3-hour period of performance is counted as a grade for the entire semester. “There is almost nothing about the typical law school examination that is really designed to test the skills involved in law practice. And many aspects of exams are positively perverse. Take time pressure, for example. By their nature, exams are time-limited, usually to about three or four hours, during which it is necessary to assess the problems, decide on the answers, marshal the material (whether strictly from memory or from an “open book”), and then write hopefully coherent answers. There is no opportunity for reflection, research, reconsideration or redrafting. You simply dash off your answer and hope you got it right.”<sup>56</sup>

The dirty secret (if it is a secret) is that law schools rely on exams primarily because they are easy to grade. The intense time pressure guarantees that the answers will be relatively short and, even more important, that quality will differ significantly. Exams do a great job of dividing test takers into measurable categories, even if those

categories measure nothing more than an ability to take tests in an artificial, non-lawyerly setting.<sup>57</sup> “In essence, the law school exam process is part and parcel of a gladiator training model of future lawyers. The gladiator model values toughness, intellectual rigor, and competitiveness. This model perpetuates the traditional view that crisis management, damage control, and high profile battles constitute the glamour work of lawyers. Success is defined as winning, especially against the odds.”<sup>58</sup> Thus, the typical law school exam is the current prevailing system of evaluation: issue spotting, timed exams, and an emphasis on abstract analytical reasoning. “All of these aspects of dominant law school culture are highly individualistic in their mode of learning, performance, and evaluation.”<sup>59</sup> While dominant, this system is contrary to the development of leadership qualities such as collaboration, and problem solving.

The law school examination system, with its focus on issue spotting and quickness, devalues other aspects of successful performance that may be as or more important to successful performance as a lawyer.<sup>60</sup> Law students entering the law exam period may have thoughts such as: “My career hangs in the balance while professors do the grading. I’m speculating about how the professors will grade: how much does neatness count? Is an original thought good, or does it run the risk of sounding like panic-inspired raving? How do professors possibly come up with a consistent grading method?” Other gloomy thoughts may also plague their minds: “If it’s this bad for a class exam, what the bar exam like?” Compounding the anxiety of doing well, or just surviving the coming exam, is also the acknowledgement that there would be no feedback process for the course, there would be no feedback process – after it is over students don’t want to look back on the class.

The law school exam process fosters a competitive atmosphere – students' worth is measured overwhelmingly by their academic performance relative to other students in the class.<sup>61</sup> Furthermore, it hampers a law student's development and learning due to a concerted refusal by professors to provide students with the degree of feedback on their performance that would allow them to prepare themselves intellectually and emotionally for the rigors of final examinations.<sup>62</sup> This is particularly true for first year students preparing for the final exams, as the stress is compounded by the fact that first year grades are the criteria and foundation upon which law firm recruiters base their hiring decision – it's the filter process for summer employment for many, if not most, large law firms.

Thus, the standard law school exam method basically encourages students to memorize the main rules, practice writing exams, work quickly under pressure, sift through fact patterns to identify issues, and analyze law concisely to the set of facts. As a result of this process, there literally is no development of critical leadership skills, such as collaboration or creative problem solving, because such efforts and skill development do not get counted or tested. Further, law students do not feel ready to practice law in the real world. The real learning and development is done in the law offices, where they will likely spend a long time in isolation, researching and drafting documents, and for the most part, getting very little interaction with clients or business partners.<sup>63</sup>

To be sure, the analytical skills developed in the preparation for the final exams are very important traits for a good leader. However, there are other essential skills that law students do not have the opportunity to develop through this exam period, or for that matter, through the duration of their legal education. “While exams provide a rough

measure of a student's ultimate success as a lawyer, they do not and cannot measure all of the necessary skills for a practicing lawyer, much less of a leading lawyer."<sup>64</sup>

For a leading law institution to groom and develop future leading lawyers, a dominant evaluation and feedback process, currently called final exams, must provide more. "The demands of the global economy and technology have created tremendous economic uncertainty and have led to significant change in the internal governance of corporations. Recent economic trends are destabilizing organization boundaries, creating large pools of temporary workers, and altering managerial practices. The workers of the future, including legal workers, need to be highly trained and flexible synthesizers, integrators, and collaborators who work in teams at all levels of production."<sup>65</sup> The new model of a lawyer includes counseling, mediating, advising, planning, problem-solving, and facilitating transactions. Yet the current model of law school exams undervalues students with the capacity to excel in these areas.<sup>66</sup> Lawyers functioning in an organizational context, within corporations and non-profit organization, may be assuming greater power and importance. These lawyers are developing a different model of lawyering: the lawyer as problem-solver.

Many classes at law schools, including the required core and the first year courses, incorporate a mandatory midterm exam, which would count between 10% - 30% of the final grade, to get feedback on a class' understanding of the subject thus far, as well as to evaluate a teacher's method. At a minimum, midterm exams help those students who have no idea about what they should put on a final exam to realize that fact at a time when they can take corrective measures. Other classes, such as Legal Writing and Analysis, Advocacy, and several other practical skills courses, do not require exams;

instead the required deliverables of the courses are projects, legal briefs (sometimes with a co-author, or a partner), oral arguments, or participation in a seminar. In essence, if law schools structured significant portions of the learning environment so that students interacted in task-oriented, inter-dependent projects, this could create conditions that would promote successful collaboration.<sup>67</sup>

The current law school model fails to equip students with the tools needed to function effectively in a changing and uncertain world. Law schools have a strong incentive and moral imperative to maintain their leadership role in helping equip entrants to the profession to adapt to new challenges, and to help the legal profession reclaim its moral status as a profession. Law schools have yet to take adequate account of the move toward team-oriented, context-driven, interdisciplinary practice that has begun to take root in corporations and non-profit institutions. They also have yet to redefine their culture and mission in ways that include and fully take advantage of the diverse group of students that now occupy law school classes.<sup>68</sup>

### **C. Law School Curriculum**

Law schools tend to highly recommend or even require that students take courses in subjects that will be tested on the bar exam. The traditional law school bar-subject course is taught by requiring the students to read cases from which they will attempt to glean the rules upon which the court is basing its decisions, and not by sampling practical methods of problem solving. This only adds to the level of stresses law students are subject to, and contributes little to their professional development as leaders in the community. Add to this the emphasis on being granted admission to the Law Review, or

being selected to participate in Moot Court competitions, and students are receiving a message that they must compete directly with their classmates for a few juicy entries on their resumes. Some schools have only recently put an emphasis on students' development of practical lawyering skills, often in response to complaints from law firms that recent graduates are not adequately equipped to function in the "real world." Mastery of these skills, however, is not given the same, if any, recognition that the competitive activities are.

While passage of a bar exam is the ultimate goal of nearly every student who enrolls in law school, that should not be the entire teaching focus of the school. In a study by Kennon M. Sheldon and Lawrence S. Krieger comparing the approaches of two different law schools, graduates of a school that offered substantially more skills courses had overall higher scores on the Multi-State Bar Examination than did graduates of a school that placed more emphasis on the traditional case-based theoretical courses.<sup>69</sup> Providing practical training, along with other identified differences in the schools' approach to teaching, may contribute to producing better learning mastery in students.<sup>70</sup> One of the oft-emphasized qualities of a leader is that of competence – teams will not voluntarily follow a leader who does not have a high level of understanding of the subject matter. Faculty with experience as practitioners in the field may tend to impart more of their practical knowledge to their students, rather than only emphasizing academic or theoretical "book learning," and this can tend to enhance the engagement of the students and their level of understanding of the material.<sup>71</sup> Material that is "excessively abstract or unrelated to the actual practice of law" can cause students to become emotionally

distressed and unhappy, creating students who have a more difficult time mastering the information.<sup>72</sup>

One author suggests that law schools have developed a “gladiator” style of teaching, “organized around an adversarial, litigation model aimed at using tools of analytic reasoning to advance a claim and win an argument.”<sup>73</sup> Large, hierarchical classes emphasize quick thinking and performance, instead of measured consideration and communication, sending students a message that they must win the battles to be successful lawyers.<sup>74</sup> This only tends to teach students that they must also act this way as attorneys in practice, causing the increasing trend of the profession to adopt the same “gladiator” mentality.<sup>75</sup>

When students must attempt to learn by focusing on court opinions in appellate cases, the manner in which most first-year and other bar-subject courses are taught, they lose sight of helping real people with real problems – probably the reason they were attracted to the study of law in the first place – and become resigned to the system.<sup>76</sup> However, some law schools consider turning the focus of legal education away from the theoretical and towards the practical to be a lowering of expectations, responding that “If you can’t take the heat, get out of the kitchen.” Other schools ask, “Why can’t you put a fan in the kitchen?”<sup>77</sup> Law school should not be entirely “touchy-feely,” but neither should it have a completely hands-off disregard for the future lawyers’ inevitable contact with real, human clients. Leaders must learn how to develop empathy towards those they work with and for, and that doesn’t come from reading case law. Schools must include some emphasis on “actually providing students with the necessary skills and attributes of character necessary to practice law.”<sup>78</sup>

While some schools have begun to incorporate more skills-based courses in their curriculum, the perceived emphasis is still on competitive activities such as Law Review and Moot Court. This is not entirely the fault of the schools, as top-level employers frequently favor applicants who have been granted admission to one or the other of these elite institutions. Competitive settings, however, can tend to foster hostility among students, preventing them from seeking opportunities to work together at problem solving.<sup>79</sup>

At many schools, Moot Court is in itself explicitly a competition. The year typically starts with 64 competitors (who may have had to win a preliminary competition just to get one of those coveted spots in the first place), but in the end, there can be only one – one “Best Oral Argument”, one “Best Advocate”, one “Best Brief” – who is touted as the “winner.” In some programs, students may work in teams or pairs, and while this does help develop an understanding of the need for cooperation and collaboration between colleagues, there is still the overlay of winning the competition as the ultimate goal. Schools assist in fostering this emphasis on competition and winning by providing public recognition of the competitors, while virtually ignoring students who have mastered other practical skills such as counseling, negotiation, and collaboration.

#### **IV. Proposal for Institutional and Individual Changes**

In order to foster the development of future leading lawyers, law schools need to evolve from the traditional law school model of grading, curriculum, and exam structure that currently are still based on the traditional law study program set in place decades

ago. The global world is changing rapidly and the unique skills of lawyers have never been in more demand. Yet, as we examined above, lawyers are increasingly unhappy, and the perception of the legal profession continues to degrade. Lawyers yearn to make a positive change, to be part of a leading team, yet the skills learned and developed in law schools do not necessarily assist them in becoming the leading lawyers or the creative problem solvers that they can be.

At the institutional level, there must be changes or additions to the current structure, including the grading system, the dominant exam process, and the largely traditional curriculum. Law schools should promote a cooperative rather than competitive learning environment. In a cooperative learning environment, where peers help each other to succeed, students feel safe and accepted. A cooperative atmosphere gives students the courage to participate in class without fear of ridicule, and empowers them to take risks and think outside the box. In order to create such cooperative learning opportunities, law schools can enact several measures.

First, while grades may still be needed for the evaluation of students' performances, the importance of grades should be deemphasized. Grades should not be a deciding factor for access to law school programs, such as Law Review, or Moot Court, or other competitions. Each student should be given an equal chance to compete and learn. The forced grade curve must be abolished. Law schools should eliminate the demoralizing grading policies that force professors to give only a small percentage of A's and a certain percentage of failing grades of C minus and below. Instead, schools should implement a pass/fail, or honors/pass/fail, or regular letter-grading system. Schools should also stop sorting out students for large firms, in a practice reminiscent of grading

eggs for the market, that adds nothing to the students' education. Furthermore, law schools should stop sending students messages that success only comes from being in the top 10% of the class.

Second, at a minimum, law schools should incorporate more midterm exams or quizzes to help give students feedback on their understanding of the subject much earlier in the courses. Further, as much as possible, there should be assessment based on projects, legal briefs (sometimes with a co-author, or a partner), oral arguments, or participation in a seminar. In essence, significant portions of the law schools' evaluation and feedback of the students' performance should be structured so that the students are evaluated according to how they interact in task-oriented, inter-dependent projects, the type of activities and that would promote successful collaboration.

Third, courses should not focus entirely on a sterile analysis of musty case law, but instead should include exercises on what the students thought they were signing up for when they applied to law school – practical information and techniques that can be used to problem-solve and help real people in real situations. Skills-development courses should be emphasized, if not required, with as much public recognition given to students who demonstrate mastery of these skills as is given to those who demonstrate mastery of competitive skills, such as Moot Court.

At the individual level, a law student can take comfort in the fact that there is a common level of stress and anxiety that all students experience. To control stress anxiety and other negative emotions, Seligman recommends that law students practice “learned optimism,” which entails using the “disputing technique.” He suggests the following steps: first, identify disruptive thoughts you have, and the circumstances under which

they occur (for example, a law student receives a low grade that he or she has never seen in his or her pre-law life. He or she may have this catastrophic thought: “I am a failure.”) Second, treat the negative thoughts as if they were uttered by a rival whose mission is to make your life miserable. Third, learn to marshal evidence against the catastrophic thoughts (in our example, the student may think of his or her prior accomplishments. He or she may also tell him- or herself, silently, or better yet, out loud in front of a mirror, “I am a smart person, not a failure. Fact: I am in law school. Fact: only the best and brightest students have the privilege to attend law school.” The student may also ask him- or herself, “Did I do the best that I can?” If the answer is an honest “yes”, then he or she can proudly say, “The grades I received do not matter, for I have a great work ethics. With my great work ethics, I will be successful in anything I choose to do.”)<sup>80</sup>

In addition, while the current structure demands that a law student conform, the law student can try to evolve him- or herself by, as frequently as possible, choosing classes that provide more opportunities for practical training, collaboration with peers, and the potential for creative problem solving, such as clinics, negotiation, or leadership-focused courses. It is the lawyer who used his or her legal training, but combined with his or her other passions, inspirations, and causes beyond a legal problem, who propels him- or herself toward a leading role, and who in turn, finds the most rewarding life pursuit.

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**END NOTES:**

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- <sup>1</sup> “Candy Lightner: A grieving mother helped America get MADD.” *People Weekly*, 1999 (March 15), 110. (MADD raised public awareness of the serious nature of drunken driving and promoted tough legislation against the crime.)
- <sup>2</sup> Kouzes, James, and Posner, Barry. *The Leadership Challenge* (2002), 116. (In 1987, a year during which California was plagued with severe drought, Tara Church’s Brownie Girl Scout troop needed to decide whether they should use tin dishes or paper plates for an upcoming camping trip. Their scout leader, Tara’s mother, discussed with them the pros and cons. They discussed the excess use of paper, the wasting of trees and forest destruction and their effect on the ozone layer. Their leader said that “someone had told her that scientists were already looking for ways for the human race to live underground after the atmosphere is gone.” Gloom and despair enveloped the troop until Tara came up with the idea of planting a tree. Two months later, the troop planted their first tree which they dubbed Marcie the Marvelous Tree. They also founded the Tree Musketeers, Inc., a non profit organization where kids are the boss, whose mission is to “empower young people to be leaders of environmental and social change in Earth communities.” Today, the organization has a worldwide network of millions of young people.)
- <sup>3</sup> Jahangir, Asma. “Mukhta Mai: Challenging a Tribal Code of Honor.” *Time Asia*. October 4, 2004. April 4, 2007. (In June, 2002, at a remote village in Pakistan, Mai’s then 12-year-old brother was accused of raping a girl from the powerful Mastoi tribe after he was seen walking with her. On the orders of the village court, the Mastoi men brutally and publicly gang-raped Mai in order to avenge their “honor.” To further humiliate her, and make an example of those who would defy the power of local strongmen, she was paraded naked before hundreds of onlookers. Despite of further threat of violence, Mai fought back in higher court and, against all odds, won. Then Mai, who had never seen a school before, used her damages awards to open two schools in her village to open the children’s minds and end oppression with education.)  
[http://www.time.com/time/asia/2004/heroes/hmukhtar\\_mai.html](http://www.time.com/time/asia/2004/heroes/hmukhtar_mai.html).
- <sup>4</sup> “Mukhtar Mai Wins Global Leadership Award.” *The Saturday Post*. Issue 84: Apr 6-13, 2007. (Mai received her award in April 2006. The Global Leadership Awards are an annual initiative of Vital Voices, “to celebrate and honor courageous women leaders from around the world who have made outstanding contributions in promoting democracy, strengthening economies, and safeguarding human rights.”) [http://www.thesaturdaypost.com/spotlight\\_37\\_mukhtar.html](http://www.thesaturdaypost.com/spotlight_37_mukhtar.html).
- <sup>5</sup> Kouzes, *supra* note 2, at 383.
- <sup>6</sup> Williams, Gregory. “Teaching Leaders and Leadership.” *AALS Newsletter*, April 1999.

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<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Valeri, Donald. "Leadership: why lawyers won't lead (and what they can do about it)." ABA, Law Practice Management, 1994 (April). Vol. 20, No. 3, Pg 50.

<sup>10</sup> O'Connor, Sandra Day. "Professionalism." 78 Or. L. Rev. 385 (1999).

<sup>11</sup> Valeri, supra note 9 at 51.

<sup>12</sup> Williams, supra note 6.

<sup>13</sup> Valeri, supra note 9, at 52.

<sup>14</sup> Sheldon, Kennon, and Krieger, Lawrence. "Does legal Education have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being." Behav. Sci. Law 22:261, 262-264 (2004)

<sup>15</sup> Augustine, Norman. "Twelve Qualities of a Leader." Based on a presentation at The Colloquium on Leadership, Creativity, and Values, 1999 (April).

<sup>16</sup> Kouzes, supra note 2, at 24-28.

<sup>17</sup> Norman, supra note 11.

<sup>18</sup> Id.

<sup>19</sup> Kouzes, supra note 2, at 30.

<sup>20</sup> Id. at 31.

<sup>21</sup> Id. at 18.

<sup>22</sup> Gerson, Raymond. "Leadership Crisis in America." Ezine Articles. April 01, 2007. April 08, 2007. <http://ezinearticles.com/?Leadership-Crisis-in-America&id=511092>.

<sup>23</sup> Clawson, James. "Leadership Theories." Darden Business Publishing. Darden Case No.: UVA-OB-0379.

<sup>24</sup> Heineman, Ben Jr. "Lawyers as Leaders." February 16, 2007. April 14, 2007. <http://yalelawjournal.org/2007/2/16/heineman.html>

<sup>25</sup> Valeri, *supra* note 9, at 51.

<sup>26</sup> Sheldon, *supra* note 14.

<sup>27</sup> Seligman, Martin, Verkuil, Paul, and Kang, Terry. "Why Lawyers are Unhappy." 23 *Cardozo L. Rev.* 33 (2001).

<sup>28</sup> Sheldon, *supra* note 14.

<sup>29</sup> O'Connor, *supra* note 10, at 385-386 (1999).

<sup>30</sup> Sheldon, *supra* note 14, at 264.

<sup>31</sup> *Id.* at 262.

<sup>32</sup> Student Author. "Making Docile Lawyers: an Essay on the Pacification of Law Students." 111 *Harv. L. Rev.* 2027 (1998).

<sup>33</sup> Sheldon, *supra* note 14, at 262.

<sup>34</sup> The observation of medical students' well-being is drawn from the author's previous medical education experience and from informal polling of colleagues and other medical students.

<sup>35</sup> Sheldon, *supra* note 14, at 264, 281.

<sup>36</sup> Fines, Barbara. "Competition and the Curve." 65 *UMKC L. Rev.* 879, 882-885 (1997).

<sup>37</sup> *Id.* at 888.

<sup>38</sup> *Id.* at 889-897.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Bahls, Jane Easter; "Humanizing Law School: Some professors are helping their students march through law school with their values and self-esteem intact – en route to becoming happier lawyers.;" *Student Lawyer*, Vol. 31, No. 3. November 2002, April 21, 2007. <http://www.abanet.org/lsd/stulawyer/nov02/bahls.html>,

<sup>42</sup> Student Author, *supra* note 32, at 2033-2034.

<sup>43</sup> *Id.* at 2042.

<sup>44</sup> Fines, *supra* note 36, at 907.

<sup>45</sup> Students recounted how other students negatively psyched them out in order to make them feel more insecure. The vulnerable students are the most likely target. Students snicker when they speak up in class. Some students even rudely predict and inform the vulnerable students that they would probably get cut by the end of first year. Students routinely refuse to share their class notes with others who need and ask for them. Taking the advantage of law students' perpetual feeling of always being behind schedule, some students exaggerate their study effort and accomplishment in order to cause others to feel inadequate, leading to discouragement and despair.

<sup>46</sup> Fines, *supra* note 36, at 901.

<sup>47</sup> Bahls, *supra* note 41.

<sup>48</sup> Fines, *supra* note 36, at 905-906.

<sup>49</sup> Bahls, *supra* note 41.

<sup>50</sup> Fines, *supra* note 36, at 898.

<sup>51</sup> Kouzes, *supra* note 2, at 24-28.

<sup>52</sup> Santa Clara University Leadership for Lawyers, Spring 2007, Professor Robert Cullen.

<sup>53</sup> Sheldon, *supra* note 14 at 263.

<sup>54</sup> Keating, Daniel, "Ten Myths about Law School Grading", 76 Wash. U.L.Q. 171.

<sup>55</sup> The author cited this comment based on a survey of nearly 70 students at Santa Clara University, Spring 2007, and several law web blogs pulled from the internet. The author does not claim that this sentiment is representative of all law students.

<sup>56</sup> Northwestern Law Professor Steve Lubet, who runs the clinical programs at Northwestern, has an article in the American Lawyer arguing that traditional law school essay exams are in need of major reform.

<sup>57</sup> *Id.*

- <sup>58</sup> Sturm, Susan P; “From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession.” *Duke J. Gender L. & Pol’y* 119, at 128. As last viewed 4/21/07.  
<http://www.law.duke.edu/shell/cite.pl?4+Duke+J.+Gender+L.+&+Pol'y+119#H1N1>.
- <sup>59</sup> *Id.*
- <sup>60</sup> *Id.* at 131.
- <sup>61</sup> Schuwerk, Robert, “On law student stress and teaching approaches for working with minimizing stress.” September 30, 2002. April 21 2007.  
[http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/images/studentstress.pdf](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/studentstress.pdf).
- <sup>62</sup> *Id.* at 1.
- <sup>63</sup> Seligman, *supra* note 27, at 42.
- <sup>64</sup> Keating, *supra* note 54, at 4.
- <sup>65</sup> Sturm, *supra* note 58 at 134.
- <sup>66</sup> *Id.* at 135.
- <sup>67</sup> *Id.* at 142.
- <sup>68</sup> *Id.* at 142-143.
- <sup>69</sup> Sheldon, Kenon M, and Krieger, Lawrence S., “Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory.” at 24.
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.* at 33.
- <sup>72</sup> Sheldon, *supra* note 14, at 262.
- <sup>73</sup> Sturm, *supra* note 58, at 128.
- <sup>74</sup> *Id.* at 128.
- <sup>75</sup> *Id.* at 131.

<sup>76</sup> Bahls, *supra* note 41, comments by Daisy Hurst Floyd, professor at Texas Tech University School of Law.

<sup>77</sup> *Id.*, comments by Barbara Glessner Fines of the University of Missouri – Kansas City School of Law.

<sup>78</sup> Schuwerk, *supra* note 61.

<sup>79</sup> Sturm, *supra* note 58, at 142.

<sup>80</sup> Seligman, *supra* note 27, at 33.