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## Teaching Leadership in American Law Schools: Why the Pushback?

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TEACHING LEADERSHIP IN AMERICAN LAW SCHOOLS: WHY THE  
PUSHBACK?

Martin H. Brinkley\*

*In September 2020, I participated in a panel discussion with several other deans<sup>1</sup> at Baylor Law School’s 2020: Vision for Leadership Conference. The subject was “Leadership Programming in Law Schools.”*

*My assignment was to account for why teaching leadership might meet with resistance from inside law schools, despite widespread agreement that lawyer-leaders have always been and are always likely to be critical to the survival of American democracy, as well as our fellow citizens’ hopes of living meaningful, satisfying lives.*

*This essay endeavors to memorialize and expand on the views I expressed on the panel.*

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<sup>1</sup>My co-panelists were Deans Bradley J.B. Toben of Baylor (chair), Robert B. Adieh (Texas Tech), April M. Barton (Duquesne), Lee Fisher (Cleveland Marshall) and D. Gordon Smith (Brigham Young). I am grateful to each of them for their insights, generously shared.

## INTRODUCTION

When I was appointed dean of UNC Law in the spring of 2015, our then-Chancellor, Carol Folt, who had come to Chapel Hill less than two years before from Dartmouth College, told me she considered our law school the cradle of North Carolina's leadership class. As a lifelong North Carolinian, former president of the state bar association and graduate of the law school, I probably knew more about what she meant than she did.

A simple example of our contributions to the state's political leadership illustrates the point. Of the nine governors North Carolina has had in the past six decades, five<sup>2</sup> have been graduates of UNC Law. I expect the law schools of other states' flagship public universities could say similar things about the legislators, executive branch officials and judges they have educated—to say nothing of the leaders of local governments, the organized bar, charitable, religious and educational institutions large and small, and on and on through every walk of life. All this is in addition to the leadership lawyers give from myriad volunteer positions in which they use their legal educations, matured through years of experience, to advance the interests of clients and, indirectly, American society and the American economy.

All of this is so obvious that an outsider might be forgiven for assuming that every constituency of every American law school would see teaching leadership as a win-win. After all, training leaders is what great numbers of law schools themselves *claim* to do. A 2016 survey documenting the mission statements of 209 American law schools showed that 81 of them—including the likes of Berkeley, Columbia, Harvard, Northwestern, Notre Dame, Stanford, UCLA, Wisconsin, Vanderbilt and Yale—use the words “leaders” or “leadership” in describing their hopes and intentions for the training of their students.<sup>3</sup> My own school's mission statement, which is fairly typical of the genre, says this:

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<sup>2</sup>They are Terry Sanford (1961-65); Dan K. Moore (1965-69); James E. Holshouser (1973-77); James B. Hunt, Jr. (1977-85; 1993-2001); and Roy A. Cooper (2017-present). A UNC Law graduate has occupied the Governor's Mansion in Raleigh for 32 of the last 60 years.

<sup>3</sup>Irene Scharf & Vanessa Merton, Table of Law School Mission Statements (2016), [http://scholarship.law.umassd.edu/fac\\_pubs/175/](http://scholarship.law.umassd.edu/fac_pubs/175/). Two-hundred and nine law schools have a mission statement of some kind. Of the 81 schools that reference lawyer-leadership in their mission statements, twenty-two are associated with “flagship” or other prominent state university campuses: UC Berkeley, Indiana-Bloomington, Louisiana State, Michigan State, SUNY Buffalo, Arizona, UC Los Angeles, Idaho, Kentucky, Maine, Maryland, Missouri, Nebraska, New

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UNC School of Law aspires to be a great public law school. Toward this end, it pursues a fourfold mission:

- To prepare outstanding lawyers *and leaders* for the bar, the bench, all public and private law settings and public service,
- To make nationally and internationally significant legal and policy contributions through an ambitious agenda of research and scholarship,
- To instill lifelong ethical values, dedication to the cause of justice and a lasting commitment to pro bono and public service and
- To serve the legal profession, the people and institutions of North Carolina, the nation and the world.<sup>4</sup>

In light of what many law schools aspire to do, grounding students in basic leadership skills might seem the very least we could accomplish in the three years they spend with us.

And it is not just a matter of what law schools say is important. Every year, when I welcome our new first year class, I hand out a 9x12 index card and a pencil. The students are asked to spend one minute thinking silently about why they have come to law school. They are then given two minutes to write down what is on their hearts. (I time them.). The index cards are passed down the rows and collected for me (no student is required to write a name on the card), and I read them. Every year these cards inspire me—to say nothing of the material they provide for my speeches and dean's columns in the alumni magazine—because of the eagerness virtually every one of our students expresses about some aspect of enhancing justice, reducing injustice, and making the world a better place. Their messages are about their desire to lead and flow from the highest motives.

Yet with a few rare exceptions, law schools do little to help students become the leaders they want to be or that the world needs. Instead, we

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Hampshire (Franklin Pierce), North Carolina, North Dakota, Oklahoma, South Carolina, Virginia, Washington, Vermont and West Virginia.

<sup>4</sup>*Mission*, UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW, <https://law.unc.edu/about/mission/> (last visited Oct. 28, 2020) (emphasis added).

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devote ourselves primarily to teaching students how to “think like a lawyer” by inculcating analytical, oral and written communication skills using legal materials. In fairness, we also, to greater or lesser degrees, try to expose students to the social policies on which the law’s justices and injustices are premised. It is surely not that we don’t care about the leadership roles our students will play. My faculty colleagues at Carolina routinely encourage students to run for office someday, in order to change public policies that need reform. Our law students take on leadership of law journals, run moot court and pro bono programs, and preside over vigorous student organizations. But beyond these laudable and useful experiences, law school does little that is overt to prepare students to become lawyer-leaders.

At the Baylor conference, I suggested several reasons why formal leadership teaching might meet with resistance from faculty, administrators, or other actors in the profession. After listening to my colleagues at the conference, I have reflected on the challenges and possibilities of leadership training in the law school setting. What follows are a few meandering reflections, offered in a spirit of humility.

A word about that humility is in order. The more I have thought about it, the more it has seemed to me that none of us, whatever our backgrounds or lived experiences, can know what kind of formal legal education will best prepare every apprentice lawyer for a satisfying professional life. The role of the American lawyer, and of the legal profession in a country uniquely dependent on lawyers, is a pluralistic one. What our society needs from lawyers grows more complex and diverse with society itself.

Too often, I confess, I have deluded myself into thinking that, after more than two decades in private practice, extensive work in the organized bar and service as a law school dean for over five and a half years, I have a perspective on what my students need to know to lead meaningful professional lives that is superior to the views of those who have spent nearly all of their careers in academia—or, for that matter, than my former law partners, who believe they understand better than law professors what new lawyers need to succeed in “the real world.” My own experience, like every other individual lawyer’s, fails to offer much in the way of guidance. I am a prisoner of my own choices and the experiences they gave me. I must seek out the insights of others, both as a curb on my own blindness and as a path to wisdom, if wisdom is possible.

While I represented many individual clients in pro bono cases in my private practice, the vast majority of my clients were businesses and

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nonprofit organizations. My practice was conducted in a large (at least by North Carolina standards) corporate law firm. My professional orientation was shaped and ingrained by that milieu. It took form root in my unconscious mind. My investment in that life was so deep, so long, and so foundational to my professional identity that it came to define me to a significant degree, however I might have tried intellectually to cultivate other perspectives. The sort of ambitious people who typically become lawyers seek validation for their life choices as eagerly as they sought an A on the first-year property exam. They yearn for the emotional equilibrium that flows from that validation. The often unconscious believe in the rightness of our choices guide us like a torchlight through life's fogs.

And yet how often are we blind to the ways in which our choices limit us? Some examples from my own professional life illustrate the point.

I once served on the board of directors of North Carolina's statewide legal aid nonprofit corporation. But with the best will in the world, I still know little of what it really means to be an underpaid legal aid lawyer struggling to manage an impossibly demanding caseload. I once handled a few minor criminal cases and pro bono criminal appeals in my early years of practice (including one death penalty case). But with the best will in the world, I scarcely know what it means to represent human beings whose liberties and reputations rest on the outcome of a single judicial proceeding in an underfunded justice system. I spent time in the halls of our state legislature, both as an officer of the bar and as the dean of a flagship state university law school. But I have never run for office or attempted to support my family through law practice while serving as a legislator far from home for months at a time. I have worked alongside lawyers at the Federal Trade Commission and the U.S. Department of Justice's Antitrust Division, but I have never been a government regulator. I once clerked for a judge, but I have never had to decide a case on my own.

Every one of these is a proud calling within our profession. Each represents a vital type of lawyer-leadership within a multifarious profession. I hope I am capable of appreciating and admiring them all. But my lived experience has not prepared me to speak with any comprehensive authority about what my students who may someday choose these callings truly need from their formal legal educations.

Further complicating the picture are institutional and psychological shackles of which we who live inside the academy may not be conscious. These constraints, which I suggest are the result of tensions deeply

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embedded in legal education, operate to restrain curricular innovation. Some of them flow from the history of American legal education. Others reside in the psychic makeup of those who influence the academy, particularly law faculty but also members of the bar who hold sway over student employment and provide law schools with philanthropic support.<sup>5</sup> Still others stem from practical realities of resource allocation within law schools.

I will attempt to describe these embedded tensions. I will also offer some thoughts on what could be done about them. I will reveal what I have tried to do, both successes and failures, at my own school. I ask whether all of the responsibility for educating lawyer-leaders can or should rest with law schools. And I offer some tentative thoughts on a path forward—a path that might even see leadership training redefined training in the development and nurture of inclusive human relationships across difference.

#### I. FIRST EMBEDDED TENSION: FAILURE TO AGREE ON WHAT LAW SCHOOLS ARE FOR

When I was asked to be a candidate for the deanship at UNC in the winter of 2015, I prepared for the interviews by re-reading the influential 2007 report of the Carnegie Foundation for the Advancement of Teaching on legal education,<sup>6</sup> in which my predecessor at UNC Law, Judith Welch Wegner, played a critical and prominent role. I owe much of the grounding and subsequent reflections that have informed my work at UNC to the Carnegie Foundation Report. The report's introduction and its chapters on "Bridges to Practice: From 'Thinking Like a Lawyer' to 'Lawyering'" and "Professional Identity and Purpose"<sup>7</sup> are worthy of more than a few re-

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<sup>5</sup>By seeking to identify these areas of tension in light of my own professional experience, I offer little in the way of originality. This is an essay, not a work of scholarship. Hence I have made no effort to canvas the literature on legal education, preferring instead to pluck volumes from my own shelves and memories of past readings from the recesses of my mind. Yet I will endeavor to give credit to those works as they occur in the course of this writing.

<sup>6</sup>WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, Carnegie Foundation for the Advancement of Teaching, Preparation for the Professions Program, 2007 (hereinafter, the "Carnegie Foundation Report").

<sup>7</sup>*Id.* at 1–20 (Introduction); 87–125 ("Bridges to Practice"); and 126–61 ("Professional Identity and Purpose").

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readings, with their memorable description of the legal profession's place in American society and incisive statement that American law schools "form[] minds and shape[] identities"<sup>8</sup> of American lawyers.

The report notes that "lawyers have long held prominent positions in American society," as has been clear from Alexis de Tocqueville's observations in the nation's first few decades of existence; that the United States leads the world in the number of lawyers; and that the law is "a particularly public profession," with lawyers as officers of the court charged with "making the legal system function." The report suggests that "American society has become more dependent on the legal profession for its functioning than ever before."<sup>9</sup> Americans have good reason to take an interest in how law schools train their students for positions of public trust and responsibility.

A little essay is no place to recount the history of American legal education: its parochial origins from colonial times through the early years of the Republic in arrangements where young men "read law" by swotting up volumes of Blackstone as boarders in the homes of lawyers and judges; the founding of law schools associated with established universities that offered little more than lectures preparing students for casual viva voce bar examinations before judges; and the vanquishing of these systems by the Socratic case-dialogue method of instruction introduced by Christopher Columbus Langdell at Harvard in the 1870s. But I think it irrefutable that the system of formal legal education American law schools have evolved over the last century and a half still lays primary value on inculcating analytical and rhetorical skills—the ability to "reason and argue in ways distinctive to the American legal profession"<sup>10</sup>—over virtually every other achievement.

We rarely acknowledge how much of the tenacity of the traditional law school curriculum is about the schools themselves, not their students. Law schools are still seeking a place for themselves in the elite, research-oriented university Charles Eliot sought to build at Harvard on German models in the late 19<sup>th</sup> century. Tension in law school identities remains very much with us, cloaked at my university, as in many others, by lumping the law school in with the medical school and business school under the

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 1.

<sup>10</sup> *Id.* at 2.



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nebulous title of “professional school.” The debate is an old, well-plowed field. Are law schools here to train students for practice? If so, does this make them mere “trade schools” with no real place in the university? Or should law schools be specialized graduate schools, taught by PhDs for whom a law degree was a side endeavor and law practice an experience to be eschewed—places that put teaching second and focus on research blending abstract theory with social policy (derisively characterized by some as the “law and [fill in the blank]” phenomenon)?<sup>11</sup>

The most prestigious law schools, particularly those associated with heavily endowed private universities and public-in-name institutions that privatized their law schools in the middle decades of the 20<sup>th</sup> century, adhere to the graduate school model. This is so however much they claim to bridge the gap between theory and practice. Working our way down the prestige chain, we find numerous schools working to resemble, as closely as they can, the top schools by rewarding faculty primarily for scholarly achievement. Faculty at these schools wish their institutions looked even more like Yale or Stanford (particularly desirable as a reflection on themselves), resist or ignore any trade school taint, and worry about whether they are “real” academics like their arts and sciences colleagues across campus. Elsewhere, in a less rarefied part of constellation of American legal education, the value structure flips over to a model in which teaching and service trump research. Despite these differences, all American schools teach largely the same curriculum and adhere to the same accreditation requirements.

Those who defend keeping law school’s *teaching* function focused on developing students’ ability to “think like a lawyer” have legitimate points to make. Law schools demand no “pre-law” courses from undergraduates as conditions to admission; there is no organic chemistry for law school. They attract students with a wide range of interests, intellectual experiences and academic skill sets, many uncertain what they want to do with their law degree. Hard working and able, new law students must learn how to communicate effectively about legal materials and problems with their teachers and each other, so that they will be able to talk to the practicing lawyers and judges before whom they will ply their craft. These basic

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<sup>11</sup> See generally ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S (1983), especially chapters 3 (“Harvard Decrees the Structure and Content”) and 4 (“Harvard Sets the Style”).

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analytical and rhetorical skills are not easily acquired. They consume the entire first year and remain under refinement throughout the second and third years, when much of a student's time is taken up with courses that provide a basis for bar examination success and the first glimmers of expertise in a focused practice area. This combination of first-year basic analytical and communication skills with upper-level subject matter specialization goes far towards assuring satisfaction of the ethical duty of competence in practice. Those who defend the limited nature of formal legal education reasonably contend that law schools are not staffed or financed to provide much more than this.

Although we have begun to acknowledge the importance of context-rich, experiential preparation for the profession over the past few decades, law school has never purported to provide more than a fraction of the training a lawyer needs to be effective in representing a client. Our profession has always left critical parts of the lawyer's apprenticeship—the acquisition of values-imbued craft and expertise, professional judgment and wisdom, and participation in civic professionalism—to an unstructured, chance-ridden set of arrangements that only take purchase after a law degree is earned. The contrast between law and medicine, with its system of internship, residency, and subspecialty fellowships stretching on for years after a physician earns the M.D. degree, could not be more marked. No physician is ever allowed to practice without some organized post-medical school training. By contrast, lucky new lawyers wind up with jobs in which they are assigned tasks by experienced practitioners who care about mentoring the young. Every new lawyer is in theory perfectly capable of arguing a complex case in the Supreme Court or taking a company public on the New York Stock Exchange. But such rarefied matters, and most less exalted ones, are never handled by newly licensed attorneys. This is more a testament to market expectations than to professional standards.<sup>12</sup>

## II. SECOND EMBEDDED TENSION: THE QUEST FOR CASTE AND PRESTIGE

Another tension, far less freely acknowledged, conspires with the traditional curriculum to keep legal education structured as it is. This has nothing to do with forming students' minds or shaping their professional

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<sup>12</sup>My view of law schools' competencies and failures was shaped by DEREK BOK, *HIGHER EDUCATION IN AMERICA* 271–86 (2013).

identities. But it has everything to do with the legal profession's obsession with caste and status.

Exclusionary notions of greater and lesser prestige hold sway over law faculties and, in different guises, exercise a powerful influence over the practicing bar. A rigid pipeline of faculty identification ensures that persons entering the academy are the people the academy has already embraced—that is, those who did well in law school themselves. Perhaps unconsciously, embryo faculty seek to return to a place and time where they were personally validated, in contrast with a practice world in which broader skills are needed and rewarded. They see existing structures of legal education as inherently defensible and correct, if liable to criticism at the margins.

I remember my shock when attending one of my first meetings as a new member of the American Law Institute long ago. Seated at dinner with the former dean of a prestigious law school, I heard him express the view that he would never have hired a faculty member who had spent more than two years in practice, on the ground that too much practical experience ruins scholarly mind. This was when the “Law and Fill in the Blank” phenomenon was in its heyday at American law schools during the 1990s and 2000s. Although the crisis in legal education brought on by the Great Recession encouraged greater collaboration between the academy and the practicing bar, today it remains the case that few faculty members have spent enough time in practice to understand what the profession or society at large might actually need from newly minted lawyers.

Tensions around caste and prestige are not limited to the academy. They are embraced, in different guises, by the practicing bar and affiliated institutions—judges and courts, law firms and bar associations. Corporate law firms typically secure their talent from among the students with the highest academic achievement in law school, coupled with law review membership—regardless of whether such achievement is a real predictor of a lawyer's ability to serve a client. Judges mete out coveted clerkships in the main to these same students. The profession does not talk nearly enough about the highly successful practitioner who scraped by in law school, but whose ability to relate to clients or tell a compelling story to a jury was never tested or valued there. Nor do we talk enough about the corporate general counsel whose academic performance in law school was mediocre, but whose political adroitness and business acumen far exceeded those of

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former law review editors ensconced in firms as high-priced technicians. I know whereof I speak.

The degree to which the profession one-shot law school examinations as a winner-take-all system to mete and dole unequal privileges among otherwise gifted people is shameful. It is obvious to anyone who has seen the profession from more than one or two angles, that law school performance is no crystal ball for professional success as a lawyer and leader. Is it so greedy, or so bold, to suggest that—with so much in the American constitutional experiment riding in the balance—law schools might actually find a way of encouraging the leadership portion of the equation, even in those whose academic performance does not augur success? The precious lives we of the faculty hold in our hands are surely worth a broader framing of our task. But with our own egos, successes and life choices at stake, we let the battle be harder than it should be. We've been at it since 1870, when Christopher Columbus Langdell became dean at Harvard. In the sesquicentennial year of his deanship, could we envision doing better?

### III. THIRD EMBEDDED TENSION: THE BELIEF THAT LEADERSHIP STUDY IS INHERENTLY LIGHTWEIGHT

Two weak further objections to leadership education for law students are sometimes heard. First, teaching leadership is said to be inherently impossible, because leadership is an inborn talent that manifests itself in the face of real challenges. Second, leadership courses are seen as inherently “soft” and insufficiently important to become part of formal legal education.

As to the first objection: How would we react if told that a talented violinist ought to be able to perform the Beethoven concerto at a high artistic and technical level with no guidance from an experienced teacher? The suggestion can be dismissed out of hand. Inborn talent needs good teaching and mentoring to develop the student's maximum potential. This is true across every discipline known to us.

What I find particularly curious is the second proposition, the notion that formal education in leadership lacks academic rigor. This idea is confounded by educational practices in America and Europe that long antedate the modern American law school—practices one would think our law schools, shunning trade school identity, would readily embrace.

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When Hugo Black entered the United States Senate from Alabama in 1927, he set about filling gaps in his formal education. Black had graduated from the University of Alabama Law School but not from college. “I’m trying to use what the Greeks and Romans did,” he said. As his biographer wrote: “He was on familiar terms with Herodotus, Thucydides, Plutarch, Seneca, Cicero, and, of course, Aristotle and Plato. Hearing one of Hugo’s infrequent speeches, studded with references to such worthies, a press gallery wag said he sounded like a talking encyclopedia with a southern accent.”<sup>13</sup> The future United States Supreme Court justice knew that formal study of leadership, through rigorous training in the languages and literature of ancient Greece and Rome, had been the dominant form of education in Western universities for centuries.

If leadership education is soft and unserious, so must have been studying the successes and failures of the leaders of Athenian democracy as revealed into the works of Plato, Thucydides, and the Attic orators; or of the consuls and tribunes of the Roman republic and empire in the speeches of Cicero, the histories of Tacitus, and the biographical sketches of Plutarch. The word “classics” as denoting the study of the ancient world might as well be a direct synonym for “leadership.” The works of Greek and Latin poets, of Homer, the Athenian dramatists, and Virgil are full of lessons about leaders who succeeded and, more frequently, those who failed. That classics was for centuries the preferred mode of education for European and American lawyers, and was thought to be the basic preparation for a career in public life until well into the 20<sup>th</sup> century, suggests that there is irony in the notion that leadership education is an enterprise for lightweights.

Moreover, it is not as if formal education in leadership for lawyers lacks a respectable academic pedigree. For years now, scholars led by Stanford’s Deborah Rhode have argued in articles and books that formal education in leadership is critical to forming a lawyer’s professional identity in light of American society’s traditional expectations that lawyers will occupy positions of prominence and influence other leaders in similar positions.<sup>14</sup> Casebook materials have already been assembled for a leadership course.<sup>15</sup>

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<sup>13</sup> ROGER K. NEWMAN, HUGO BLACK: A BIOGRAPHY 125–26 (1994).

<sup>14</sup> See, e.g., DEBORAH L. RHODE, LAWYERS AS LEADERS (2013); DEBORAH L. RHODE & AMANDA K. PACKEL, LEADERSHIP: LAW, POLICY AND MANAGEMENT (2011); and other works cited in Deborah L. Rhode, “Teaching Leadership” in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD at 297 n.6 (2015).

<sup>15</sup> See RHODE & PACKEL, *supra* note 14.

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As was the case with experiential education, it will take a herd movement within a number of law schools, including some prestigious ones, to make leadership curricula and programming widely acceptable.

#### IV. FOURTH AND FIFTH EMBEDDED TENSIONS: TIME AND MONEY

##### A. *Time*

Law school is three years long. Whether that is too long or too short (an endlessly debated question), the incontrovertible fact is that those three years are for most students a frenetic blur of academic requirements, time-intensive extracurricular activities, fraught efforts to secure employment after graduation, and bar examination applications. The chances of law school getting any longer, in an age of ever increasing internal costs, rising tuition and living expenses, and escalating student debt are practically nil.

For law students, time is the precious commodity. Experiential education in the form of clinics, field placements and pro bono programs is now a formal requirement for the J.D. degree and for law school accreditation by the American Bar Association.<sup>16</sup> These experiential requirements have, justifiably, taken time away from traditional upper level doctrinal courses and seminars. The demands on students to make good grades in their coursework, participate on a law journal or moot court team, interview for summer clerkships and secure post-graduation employment, are as great as ever. All this industriousness is emotionally draining, all the more so when long-term legal jobs are thin on the ground, as has been the case for long parts of the last two decades and may well be so again when the full economic effects of the COVID-19 pandemic are felt. The fear that law school has no room for any more required courses is very real.

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<sup>16</sup>Under Standard 303 of the *ABA Standards and Rules of Procedure for Approval of Law Schools, 2020-21*, law schools must offer a curriculum that requires students to satisfactorily complete at least six credit hours of experiential education in the form of a simulation course, law clinic, or field placement. Law schools must provide “substantial opportunities” for law clinics, field placements, and student participation in pro bono legal services. *See Chapter 3: Program of Legal Education*, AMERICAN BAR ASSOCIATION, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2020-2021/2020-21-aba-standards-and-rules-chapter3.pdf) (last visited Dec. 5, 2020).

*B. Money*

After I had been dean of UNC Law for a year, I sought out former Harvard University president and Harvard Law School dean Derek Bok—whom I had known slightly as an undergraduate in the 1980s—for counsel. I remember well our conversation in his office at the Kennedy School in Cambridge. “Even at Harvard, with our \$45 billion endowment,” he said, there is never enough money.”

No law dean in the country, however well endowed the school, would confess to possessing an abundance of resources. Every law school worth its salt has ambitions that would spend every dollar three or four times over. Law schools are quintessentially human enterprises, communities of faculty, staff and students engaging with one another. The overwhelming bulk of the expense budget consists of faculty and staff salaries. New curricula and programs always require an ongoing investment in human capital. Procuring that investment falls to the dean and the development staff, who seek philanthropic support, tuition increases or, in the case of public law schools, legislative appropriations for new initiatives. The alternative, always distasteful and often downright damaging to the institution, is to shift funding from existing personnel and programs that inevitably command allegiance from some element of the community. No wise dean makes such a move without strong support from the faculty and staff. It is far easier, and usually far better, to do new things with new money.

In my experience of deaning, two practices have served me well. First, do not rob worthy existing programs of financial resources—even the ones that could use improvement—in order to do something new and shiny. Doing so is destabilizing, undermines trust, and is dispiriting and unfair to those who have committed time and talent to building up those programs. Second, do not establish any new program without having secured a reliable, dedicated, permanent revenue stream to support its basic operations. In legal education, “if you build it, they will come” just doesn’t work. Potential donors want to be involved in the creation of the programs they are being asked to fund.

In running both a capital campaign and ordinary course annual giving and philanthropic efforts at UNC Law, I have found that leadership education as a concept commands great interest from alumni, especially those with more than ten years’ experience. These people have learned from practice that effective lawyering is about far more than what you learned in

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law school. Out of the best of motives, they are eager to share their battle scars with students. On the other hand, they do not remember what it was like to be a law student and do not understand how to design curriculum or programs that capture students' interest and meet them where they are in their life journeys. Alumni need to be in dialogue with experienced faculty about what is being taught and why. And faculty need the perspective of practitioners used to integrating the habits of legal reasoning with organic facts, interpersonal skills and awareness that legal problems are rooted in human narratives. Effective deans builds bridges between the practice community and the faculty. The dean seeks to the exploit both groups' core skill sets in support of new programs, while insisting on financial stability and the health of the institution over the long term.

#### V. A DIM PATH FORWARD?

I close with a few thoughts on how law schools might break the ice on these embedded tensions, and share some of my thin personal experience in that vein.

We assume that we must find a way to wedge leadership training into an already jam-packed law school student experience. As the Carnegie Foundation Report observes, “[l]aw school provides the single experience that virtually all professionals share. It forms minds and shapes identities.”<sup>17</sup> If leadership training is so important, why not seek to embed it in the one place where it can command every lawyer's attention, before they scatter to the wider profession's many winds?

For reasons already discussed, law schools may not be realistic loci for significant leadership programming, even where there is broad support for it in the school community. Resource constraints are the obvious culprit. Given the dearth of consensus over what law schools should teach after the first year, I wonder if we should ask whether law school is the only answer, for teaching leadership. Bar associations<sup>18</sup> have undertaken leadership training programs, often for small numbers of participants selected through competitive application processes. We ought to ask ourselves whether

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<sup>17</sup>Carnegie Foundation Report, *supra* note 6, at 2.

<sup>18</sup>For example, the North Carolina Bar Association has sponsored a leadership academy for young lawyers for the past 10 years. See Jessica Junqueira, *2020 Leadership Academy: Leadership in Times of Transition*, NORTH CAROLINA BAR ASSOCIATION (Aug. 19, 2020), <https://www.ncbar.org/news/ncl-2020-08-leadership-academy/>.



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collaborations between law schools and bar associations that take advantage of summer vacations, spring breaks, the period between the bar examination and the start of a new job, and the early years of practice, could fill the need.<sup>19</sup> Before deciding that institutions other than law schools should be wholly responsible, however, we should recognize that inconsistent, scattershot approaches that reach too few lawyers will be the likely result.

If leadership is to be a matter to be taught in law school, the faculty will expect to control the scope of the teaching. This is a basic matter of academic freedom, which means that faculty support is essential to any leadership programming that carries academic credit. And yet, as I have tried to say, faculty members often lack the experience and perspective needed to design leadership courses. They need practitioners and lawyer-leaders from the field to collaborate in an appropriate curricular design.

On the other hand, if lawyer-leadership is only a program, not a course carrying academic credit towards the J.D. degree, the calculus changes considerably. Here the dean and administration will have a freer hand in the arrangements. The downside of a purely programmatic approach, however, is that in the hierarchy of prestige that animates American law schools, anything that lacks curricular status will be viewed as optional and less than vital.

About two years ago, UNC Law received a generous gift from a philanthropist, not himself a graduate of the school (or even a lawyer), who felt grateful to the lawyers who had assisted him in building and, ultimately, selling a large business. The gift was unrestricted, leaving me as dean free to decide its purpose.

Before the COVID pandemic forced us to focus on immediate concerns, I formed a working group of faculty members to read Deborah Rhode's *Lawyers as Leaders* and consider the possibility of a leadership curriculum or program at UNC Law. As I noted in the early part of this essay, ours is a venerable school with a rich track record of producing lawyer-leaders for North Carolina and the nation. I feel a deep responsibility here. Although our efforts are on hold until the pandemic subsides, I have committed a significant portion of the gift to support our school's diversity, equity and

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<sup>19</sup>We should anticipate that such collaboration will be challenging to implement. Volunteer bar association leadership is inherently transient. Staff will be needed to ensure continuity and statewide bar associations are hesitant to invest resources in programming that appears to benefit one or two of the multiple law schools in the state. There are ways around these barriers, but those designing the program would be well advised to acknowledge and plan around them.

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inclusion efforts—including the hiring of a full-time mental health counselor and other related programming.

I did this in view of the testimony I heard in discussions with community members who were persons of color or who identified themselves with traditionally marginalized populations. A reasonable criticism was that administrators often speak the right words about diversity, equity and inclusion, but allow competing institutional considerations to get in the way of action. I hoped that making a commitment of substantial long-term resources would encourage our community to think big about what we could do to become a more welcoming, caring, worthy school.

We have made progress, but there is much more to be done. I hope that as the demands on faculty and alumni created by the pandemic subside, we will be able to return to this task. In the meantime, I feel that committing resources to our efforts at inclusion is consistent with the goal of training effective lawyer-leaders. I had always envisioned that diversity, equity and inclusion would occupy a prominent space in the kind of training any leadership curricula or programming we might devise.

The COVID-19 pandemic's effects on the wider economy are not yet understood. Funding will be significantly constrained across higher education for the next several years. As is often the case, differently situated law schools will confront the crisis under divergent circumstances and with different tools in hand. It will be a difficult time for law school deans to envision new initiatives, unless philanthropic support can be brought to bear.

My experience is that generous benefactors are keenly interested in the broad question of how better leaders can be trained for America's future. The weeks after the 2020 presidential election showed Americans that for the lawyers and judges responsible for upholding the rule of law in our country, truth and facts matter. The value of training leaders who refuse to be cowed in their obligation to uphold the rule of law has never been more important. I encourage my fellow law deans to explore this rationale for philanthropic support of teaching leadership in our schools.