Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management

R. Lisle Baker

Consider two lawyers. The first is an able young attorney who takes a job after law school with a good firm. The lawyer tries working in litigation, then real estate, and finally corporate law. Nothing clicks, and after several years he quits the firm, leaving a number of uneasy clients behind.[1] The second is a junior partner in a small firm whose senior partner has just died. With no training and little experience, he finds himself suddenly responsible for running the firm. Overwhelmed, he misses a key deadline and faces a malpractice claim. If this were a law school exam, a standard question might focus on the legal issues in each case and how the lawyer should handle the problem. A more interesting question—which a course on planning and managing a law practice could help answer—is how he could have avoided the problem in the first place.

I. Legal Excellence As a Management Challenge

Law practice management courses in law school remain relatively scarce, perhaps because law faculties either misperceive what such a course might involve or have not yet considered the management dimensions of the legal excellence and lawyer competence to which legal education aspires. Some faculty see their curricula already stretched out of shape with proliferating electives and perceive management instruction as more appropriate for the M.B.A. degree than the J.D. Others think the real aim of law practice management courses is to help practitioners make money, or if not, they

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1. A recent study, spanning twenty-two years, of four classes from seven northeastern law schools indicates that "[l]ess than one-fourth of the three earlier graduating classes are still in the same organizations in which they first worked after law school." Leona M. Vogt, From Law to Career: Where Do Graduates Go and What Do They Do? at iv (Cambridge, Mass., 1986). At the same time, "70 per cent of the respondents are currently residing in the same metropolitan area as their first job after law school." *Id.* The statistics may indicate either a normal career progression or a quest for better alternatives. Nevertheless, graduates and employers share an interest in reducing the number of job changes that result from a poor fit between the attorney and the practice setting.

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think such courses deal with administrative issues that law firms delegate to nonlawyers. Law practice management, both views suggest, is about business management, not "real lawyering."[2]

I would argue, however, that although law practice management requires an understanding of marketing, production, personnel, and finance, it also involves an understanding of the lawyering process. Its aim is to make business concerns and effective lawyering work together so that clients and the administration of justice are both well served. In other words, the practice of law is both a profession and a business, just as the law itself is both substance and procedure. Although the professional aspects—service to clients and the public interest—have to remain dominant, the professional and business aspects can and must coexist. It is the task of every lawyer, from solo practitioner to senior partner, to manage them both. Thus, it might be useful to characterize law practice management as constituting ways of thinking and acting about the practice of law (as distinct from the law itself) to assure delivery of high quality legal services to the clients who need them. So defined, it may find a more welcome place in law school curricula.

Most legal educators would agree that part of our function is to help students learn to see legal issues, to know (or find), articulate, and shape legal standards to decide the issues, and to determine and evaluate the facts in the light of the standards in order to render a reasoned judgment—in other words, "to think like a lawyer." Although learning this kind of analytic skill is necessary, it may be insufficient. Thinking like a lawyer is worthwhile, but in the meantime practicing lawyers have pressing work to do—whether counseling clients, advocating causes, negotiating agreements, drafting documents, preparing cases, finding and organizing evidence, deposing witnesses, or undertaking research. Even though the work requires considerable thought, its emphasis on action makes it useful to call it "acting like a lawyer."

Much of learning the lawyer's craft has traditionally occurred on the job; young lawyers have gained experience in "acting like a lawyer" under experienced seniors. Competitive law firm economics, however, make it increasingly difficult for firms to take or staff "training cases." Thus, assuring lawyer competence and legal excellence is itself becoming a management issue not only for the practicing bar but also for the profession in general. In partial response to the challenge, many law schools now offer more action-oriented courses, such as experience-based trial and clinical instruction, and special skills-oriented courses, such as negotiation and client counseling. Nevertheless, the division of labor for producing lawyer competence and legal excellence remains largely unchanged: law professors are responsible for instruction in "thinking like a lawyer"; practitioners for "acting like a lawyer."

2. Perhaps such an attitude is understandable: most law teachers have little involvement with institutional management tasks. Except for law teachers who become deans and who must therefore worry about recruiting students and raising funds, we who dwell in the groves of academe enjoy little or no responsibility for watering and feeding the trees.

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As the law becomes more complex and client service becomes a management as well as a legal question, the current allocation of professional resources may no longer be adequate. Lawyers find themselves acting like managers as well as a lawyers, but law schools are not yet teaching students how to "think like a manager." Law schools do not provide enough of the basics of management to help young lawyers grasp quickly how they might assure high-quality client service in a specific practice setting. Because few law schools offer instruction in law practice management, young lawyers limp along, picking up law practice management learning piecemeal, much as their predecessors did with the law itself before the advent of formalized legal education. Law schools also miss the opportunity to insure that the young lawyer's introduction to business issues takes place within the context of instruction about professional responsibility. Thus, if one of the first principles of management is the proper organization of people to accomplish an objective, both the academic and practicing branches of the legal profession have managed poorly. Should we not individually, institutionally, and as a profession, ask how we are undertaking to deliver the services we so prize? As lawyers, are we managing well the work we do, whether in the classroom or in the courtroom?

II. A Law Practice Management Course

One course does not a law practice manager make. It is, however, feasible to give students some awareness of the management issues involved in law practice by asking them to determine what kind of legal service they might best and most enjoyably deliver and then to plan how they might make it a viable law practice. A course that focuses on a student's strengths and preferences recognizes that the most important component of the delivery of legal services is the individual attorney. Many lawyers, however, whether by disposition, skill, or ability, do not fit well the practice environment in which they find themselves. Nevertheless, law firms often screen and even hire associates because of "brand" signals—such as law school, class rank, or honors—and not because of a clear mutual understanding of the likely congruence of the individual attorney and the roles he or she is going to play.

Law firms at least have some selection mechanisms in place. Clients are much less able to make informed judgments. Are clients well served by a new attorney who hangs out his shingle and takes what comes along, as so many young attorneys are advised to do? Rather, an attorney who has thought about and been trained to serve a particular need would serve them better. Thus, one way to initiate the study of law practice management is to ask students to start by considering how and where they might best fit into the legal profession.

Because students often know little more than that they want a job when they graduate, they need to do research on both themselves and the profession they will enter. Assessment instruments, such as the Myers-Briggs Type Indicator, or a more individualized written statement about skills, values, and interests help students develop criteria for evaluating

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professional opportunities. At the same time, library research and field interviews with practicing attorneys help students define the professional role that would make the best fit.

Students find the exercise intellectually and personally challenging, not only because it involves unusual data, but also because it asks them to look at their own "case," not someone else's, for perhaps the first time in law school. They are also able to apply in a different context skills that they have been developing throughout their legal education, especially the capacity to abstract from disparate fact patterns general standards for making decisions. The result of the process is a preliminary but greater focus on a preferred situation—type of client, type of legal work, practice setting, location—that is apt to be far narrower than the one most students take into the workplace. The focus should provide students with a better chance to achieve real legal excellence, because their work for clients will be grounded in a positive sense of the kind of legal service they most enjoy and do best.

Once the students have defined the field in which they wish to practice, the next management issue is how to serve the targeted client not just competently but well. Students need to think through the nature of the attorney-client relationship and to consider, for example, the problem of the lawyer who is an able technician, proud of the quality of his legal work, but insensitive to client concerns, including the client's need to be kept well informed. To learn how they can best serve their targeted clientele, from initial interview up to the last bill, students need not only to read available material but also to interview practicing attorneys once more, this time focusing not on what attorneys do but how they do it. Practicing lawyers who face an unfamiliar legal matter do this kind of research all the time; indeed, it is even an ethical obligation in some situations.[3] The interviews also provide students with experience in a time-tested practice-management technique: find someone who has done it before, ask how, and then adapt what you learn.

In traditional courses, law students concentrate on issues that individual cases raise, one case at a time, whereas a law practice management perspective requires them to consider cases in the aggregate. How, for instance, might they organize their offices to handle the flow of a multitude of matters? Also, students are asked to imitate good practice habits: they keep logs of the time they spend on the course (in and out of class) and submit periodic "invoices" for it, and they draft model operational documents, such as client engagement letters that set forth the work that is to be done and the basis of fees. Students must also consider the benefits and burdens of a firm, including the need to manage relations with seniors, peers, and juniors, both formally through such devices as partnership agreements and informally through firm hiring policies or office design. When students think about the details of working in a firm, they begin to understand that representing clients requires the support of an enter-

3. "A lawyer offered employment in a matter in which he is not and does not expect to become . . . qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter." Model Code of Professional Responsibility EC 6-3 (1989).

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prise that itself exists in a competitive environment in which clients have many choices, not only among lawyers but also among alternatives ranging from nonlawyers to self-help. Thus students benefit from interviewing people who can provide a client's perspective, individuals who either buy legal services in the students' chosen area or advise people who do. By conducting market research, students can determine what clients want from their counsel and can gain a sense of unmet client needs.

A law practice management course will also provide students with some awareness of the business issues that underlie a practice and that either facilitate or hinder the kind of service the practice provides. Most students want to jump to the middle of the problem; they ask the usual questions lawyers ask, such as "how do I advertise?" Instead, the question should be framed more carefully: how can a lawyer ethically help clients who need the specific legal service to find and then select one lawyer from among a host of apparently indistinguishable attorneys? Students with a clearly defined focus of their own can help clients choose more sensibly; they may also learn to avoid following herdlike such conventions as buying advertising that their targeted clientele may rarely read or heed.

Focusing on how legal services are delivered also allows students to realize that ethical conduct is something that can be enhanced by good management practice. How many firms have good systems to minimize the risk of conflicts of interest or to ensure that client confidentiality will be maintained? In addition, students need to consider how they will plan to minimize the risk of malpractice in their chosen field.

Finally, a practice management course will expose students to the concept of practice "fit": how they market, staff, finance, and organize their practice should fit their overall legal service focus. For example, a personal injury firm will need to be planned and organized very differently from a firm specializing in real-estate conveyancing—from office design to cash-flow management.

Most of the students are not likely to start their own law practices right out of law school; they are advised to obtain further training and experience before taking such a step. But undertaking the planning effort—culminating in a written law practice plan that includes some simple financial projections—provides students with a valuable framework for managing current and future law practice, as well as experience with a powerful management tool, the planning process. In addition, the planning effort reinforms the earlier preliminary practice focus by adding a management dimension. Students can now read potential practice opportunities with a much more sensitive eye for the impact of management issues.

So far the management course has been offered as a seminar to a small number of upper-level students in a two-semester sequence. The students have reported that they find the work arduous but empowering. Indeed, the course is a useful capstone because of the synthesizing character of the work. Students must use all their intellectual and interpersonal skills to seek and impose structure on new information, much of which they cannot find in an easily accessible library.

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The course also suggests a wider level of partnership between the academic and practicing branches of the profession. Just as students who have been exposed to legal theory in the academy need the grounding in its application that they receive in practice, so do young lawyers need grounding in how the management learning they acquire is implemented in the particular practice setting in which they find themselves. The practicing bar has been an enormous help and offers a taste of a wider educational partnership that can benefit both teachers and practitioners.

Members of law faculties usually identify themselves with and by reference to a substantive course. Teaching a law practice management course helps make us aware that in addition to teaching a subject, we also teach students. How we go about it may be as important as the content. For instance, at the Harvard Business School, class participation counts for almost half the student grade. Not only is this a valuable incentive to student preparation, it also makes especially attentive listeners of the instructors, leading them time and again to model for their students one of the most important management skills. In the law practice management course, the weight given class participation in grading enhances student discussion and the instructor's commitment to hearing and responding.

The competitive advantage of the coming decade, some suggest, will come from the ability to learn faster than our competitors. Offering a course in law practice management can provide powerful perspectives to enhance a broadened vision of lawyer competence and legal excellence for both instructor and student alike.

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