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TRAINING THE MENTOR: IMPROVING THE ABILITY OF LEGAL EXPERTS TO TEACH STUDENTS AND NEW LAWYERS

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I graduated from law school in 1973 and am sorry to say it has taken me almost fifteen years to confess how frustrating I found those three years to be.¹ Many of my classmates shared my disappointment. Lawyers in practice told me that, after the first year, law school was a waste of time. I suspected that my concerns were not shared by legal educators, but after having the good fortune to return to legal education as a teacher I discovered an informed and long running debate within the Academy itself, focusing on the differences which had caused so much unhappiness and frustration for my classmates and myself. Within legal education we are not yet decided whether it is the function of a law school to generate scholarship or rather whether it is instead to prepare students to be practicing lawyers? Lack of agreement about our goals, together with questions about how we go about accomplishing those goals,² has caused confusion and unhappiness for generations of students.

I believe that most law teachers, when we discuss what function we think is most appropriate for a law school, do not focus on whether practice or scholarship alone is the correct answer. Instead, we attempt to persuade each other just what the correct balance between scholarship and practice ought to be.

Some faculty place themselves at one end of an imaginary continuum, believing that generating scholarship is the sole function of a law school, while for the rest, the debate expands and shifts to refocus the discussion onto teaching. What are the essential subjects which must appear in the curriculum? What is the proper sequence in which to offer those subjects? What is the correct balance between substance and skills? What techniques are most effective in reaching all our students?

Without reaching a final decision regarding where on the continuum Vermont Law School (VLS) should collectively place its answer,³ the faculty of VLS

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1. This author attended Boston University and wishes to make it clear that her frustration in no way reflects on BU for any of the unique characteristics which it possesses. In fact, BU probably provided the quintessential law school experience, at least for students of the '60s, which we certainly considered ourselves to be. She acknowledges that she probably would have been just as frustrated at any other law school.

2. Dean John O. Mudd, in *Beyond Rationalism: Performance-Referenced Legal Education*, 36 J. LEGAL EDUC. 189, 191 (1986) says, "Much of the history of legal education centers on the tension between those who view law schools as part of the university's scholarly community and those who see them as training grounds for new lawyers." Readers need look no further than Dean Mudd's article for a summary of the range of answers which have been offered in response to the question; What is the function of a law school?

3. While each of us has our own perspective, and even the most committed scholar may not be willing to advance in public the notion that it is not his or her role to be teaching practicing lawyers, it is also important to remember that the possibility of an institutional response may allow more than one answer. In fact, Vermont Law School's current answer reflects the mixed view of our faculty. While some individuals

decided in the spring of 1984, to add a full semester external clinic, the "Semester in Practice," to the curriculum.⁴ The Semester in Practice option allows a limited number of upperclass students to study with a mentor judge or attorney for one full semester of credit. Beginning with the 1984-85 academic year, the Semester in Practice Directors⁵ matched and supervised an average of twenty students per semester. Students studied with mentors as close to the law school as the village common only one hundred yards away and as distant as The Hague in The Netherlands.

We call the supervisor at the off campus site a Mentor.⁶ Mentors are selected for their excellence, their experience, their love of their work, and their passion to convey what they know to others. They are busy, successful people who make time for students. Generally, they are not professional teachers or people with substantial training as supervisors. In order to ensure consistently high quality teaching in the Semester in Practice, we offer mentor training in how to supervise legal work. Our primary objective in providing mentor training has been to leave mentors with the ability to critique effectively the legal work of the students⁷ working and learning under their direction. This Article discusses VLS's model for Mentor Training.⁸

I. TEACHING EFFECTIVE CRITIQUE

The basic and essential characteristic which we seek in selecting mentors for the Semester in Practice is legal expertise. Each individual must be someone

advance scholarship as our reason for being, starting with the academic year 1987-88, we added a General Practice Program (GPP) to our curriculum. In the GPP all first year students are required to take a course which cuts across traditional disciplines and draws upon many aspects of lawyering traditionally associated with skills courses. In the second year a small group of students will be allowed to select a specialization in General Practice. See Ferber, *Getting a Law Degree In General Practice*, THE COMPLEAT LAWYER, 46 (1987) for a more thorough discussion of the General Practice Program.

4. Professor Heather Wishik, now in private practice in Vermont, suggested VLS model the Semester in Practice on the semester away option then offered at UCLA, Oregon, and Stanford. That model was used as a starting point for developing a course offering which would take into account the fact that Vermont Law School is located in rural northern New England.

5. The course was taught in the beginning by two adjunct faculty, each devoting a day a week. They were assisted by an exceptional secretary who spent one quarter of her time on the course. It became obvious almost immediately that more professional and support time was necessary. In the second year, one eighty percent time clinical faculty member and one-third of one secretary managed the course with enrollment limited to twenty per semester.

6. The term "mentor" was chosen for the field supervisor, to indicate the various roles he or she was being asked to play. They were not asked simply to be supervisors, because supervisor too often has a negative connotation associated with petty bureaucracy and exercise of power for its own sake. They were not designated faculty because they were not to be selected or passed upon in the traditional fashion, by the hiring committee or the faculty as a whole. We could have asked them to be teachers, but we wanted to convey a sense of even broader responsibility. We wanted them to take the students under their wings and pass as much of their hard acquired wisdom, judgment and insight as is humanly possible in fifteen weeks. Mentor, friend of Odysseus, entrusted with the education of Telemachus—trusted counselor—seemed to best summarize the role we were asking the field supervisors to play.

7. Mentors appreciate the fact that in learning to supervise and teach law students, they are also learning to better train the new attorneys or judicial clerks with whom they work.

8. In the late 1970s, the Legal Services Corporation developed a training program originally designed for Managing Attorneys, known by the acronym PaWS. In working on the design of those materials, as well as with the Legal Services materials on Training of Trainers, and with the National Training Laboratory in Bethel, Maine, this author was first introduced to many of the ideas common in training and adult education which are now incorporated in the mentor training model under discussion here. The VLS model changes incrementally each semester. Through discussion and exchange of ideas with faculty at other schools of law we expect that the entire model will continue to improve and develop.

who is acknowledged by the legal community, within which he or she practices, to be expert in his or her area(s) of concentration. They know their substantive area(s) very well and, just as significantly, they know how to get things done. What we needed, in order to guarantee that our mentors would also be exceptional teachers, was to make sure they knew how to convey their fund of knowledge to the students in an effective and useful fashion.

Simply because people are knowledgeable, it does not automatically follow that they will be able to teach. Many factors influence whether someone is a good teacher. Two extremely important variables are time and desire: mentors must have the desire to teach and the time to do it. In selecting mentors, we work only with those individuals who have indicated a willingness to make the time in their practice and who recognized how important it is for their own continuing professional growth to work with students.

Even after we identified people with these two essential qualifications, we were concerned that these exceptional people might manifest two basic behaviors which could prevent them from most effectively conveying what they knew. First, we were concerned that they might not be able to articulate their expertise. Second, we were aware they might not know how to get the information to the student, without confusing the feedback with so much emotional charge that the student had trouble remembering and using the information in the future. With experience, we found that the first area, difficulty articulating, has not presented a major problem for the mentors whom we have selected. As with capable judges and attorneys generally, we are working with people trained and experienced in the area of written and oral communication. It is in the second area, effective critique, that we found mentors wanted and needed to improve their own abilities. It is in this area that we focus our mentor training.

In order to teach effective critique, we need to do three things: 1) persuade our mentors, the participants in the training, that people really do prefer to learn in different ways;⁹ 2) teach a basic technique for giving feedback; and 3) allow the mentors to realize the benefits of planning in teaching as well as practice. We address these issues in an intensive two day long session, working in small groups, talking, listening and practicing.

II. ADULT LEARNING THEORY

Mentors at a supervision training frequently begin the session asking why we believe it is important to pay attention to how people prefer to learn. They reason that it does not matter how one prefers to learn, just how much one learns. We respond by pointing out that evaluating only at the bottom line, the "how much is learned" standard, is helpful when the teacher's remedy is to give a failing grade to the students who do not learn "enough". In discussion they acknowledge that this approach is not as effective when a newly employed lawyer is being trained. After an employer incurs the substantial expense of hiring, a successful employer is not one who fires two out of three new lawyers for poor performance, but rather, one who turns the new lawyer into as good a lawyer as he or she can possibly be. A successful employer is very often a successful teacher. Once we

9. We also teach this to our students before they leave campus. Using essentially the same techniques we use with mentors, we encourage student understanding of the fact that their mentor may start out teaching them in a way that is intimidating or confusing.

reach agreement on this basic premise we can move on to discuss how one becomes a successful teacher.¹⁰

It is neither possible nor appropriate to discuss the development of human understanding about how the brain works or how people learn in this brief Article.¹¹ For the purposes of training mentors we have summarized adult learning theory into one simple statement—different adults prefer to approach learning new subject matter in different ways. Imagine a wheel, slowly spinning on its side, like a merry go round on a playground. Some adults¹² want to “get on” by listening to a lecture, or reading about the new area; others want to watch the activity, while still others want to start “doing.” In order to fully master the new area, each adult will have to watch and do, read and reflect. If the initial exposure is not positive and reinforcing, however, the adult may conclude that he or she can’t learn the subject, or at least can’t learn it well. One example will help to illustrate how learning preferences play out in a legal environment.

A friend of mine had been hired as a new attorney by a large federal regulatory agency. At her first day on the job, after the initial introductions and a brief tour, she was taken to her new office. Her supervisor showed her three very substantial volumes of regulations, numbering thousands of pages, and suggested that my friend spend the next few days becoming familiar with the regulations. This young lawyer dutifully sat down and started to read. After about an hour she was certain she had made a dreadful mistake in her choice of employer. In another hour she was mentally revising her resume, ready to begin her job search again. More time passed. When she realized that she was thinking her choice of law as a career had been a mistake, she stood up, opened the door and approached her neighbor in the office across the hall. Saying, “Hi. What do you do?” she started learning in her preferred manner. She talked about the agency, she was introduced to a specific case and she began working on a small project. She read the regulations eventually, as they applied to her work, and she was very good at her job. As she became well established in her job she watched her supervisor whenever he had to learn something new. He would take all the written materials he could find and escape to a quiet place to sit and read. Many of us miss that opportunity to watch how we learn something, and compare it with how a co-worker learns.

As law faculty we teach and reinforce for mentors the principal that for effective

10. Neither is the failing grade approach useful when the mentor is working with a student prescreened by the law school and when the mentor’s commitment is to teach that one individual student all that the student can learn in fifteen weeks. That is not to say that if a student doesn’t work, he or she can’t be penalized. We simply ask that the student try as hard as possible.

From the mentor’s point of view, it is also extremely important to have high expectations of the student/lawyer. Beginning with Dr. Robert Rosenthal’s work on the Pygmalion principal, educational psychologists have demonstrated the significance of the teacher’s expectations in student success. Rosenthal, *On the Social Psychology of the Self-fulfilling Prophecy: Further Evidence for Pygmalion Effects and Their Mediating Mechanisms*, An MSS Modular Publication, Module 53, 1-28 (1973). In brief, the higher the expectations of the teacher, the better the student’s performance will be.

11. Nor does this author pretend that she could present such an overview, even given the space of a textbook or two.

12. Many educational psychologists believe that some, most, even all of the current thinking about adult education applies to children as well as to adults. As fascinating a proposition as that is, unless we start admitting law students directly from high school, the question of whether or not our law students (and certainly our mentors) are adults should not be in issue.

teaching it is essential to proceed on the assumption that people learn differently. With difference in learning preference established as the norm, the mentor faced with a student who doesn't seem to be learning well, will not conclude that the student is not as bright as he or she ought to be, but instead will search for another approach to the subject matter.¹³

How do we accomplish this teaching and reinforcement? Lawyers and judges are not noted for their trusting acceptance of everything which is presented to them. In working with this understandably skeptical group, we have found that using an instrument that is well accepted in another field or discipline, a test that has been administered many thousands of times, helps in persuading mentors of the solid underpinnings of the theory we are teaching. In designing our training segment on adult learning preference we had a number of instruments or tests from which to choose.¹⁴ We selected the Myers-Briggs Type Indicator.¹⁵ Mentors are given the Type Indicator (a questionnaire) in advance of the training event and the instrument is scored before the session. At the training, adult learning theory is covered in lecture format. Then each mentor is given the results of his own inventory and a discussion of type and its effects on learning preference ensues.

People considering using the Myers-Briggs may agree with mentors whom, at the initial presentation and discussion of the Myers-Briggs Type, often comment that we are asking them to use something akin to an astrological chart. At the beginning of each session, I find myself wondering if, this time perhaps the participants are right and the Myers-Briggs profile will not be helpful. By the end of this segment of the training, however, we find mentors are comfortable and conversant with an approach to learning which supports accommodation to learning preferences other than their own.

In the course of the ordinary semester, unless the mentor has become very interested in the Theory of Type, we do not expect that the mentor will discuss Myers-Briggs type with their students.¹⁶ We do return to a specific description of type in those rare situations where the teaching environment becomes tense. Under those circumstances a discussion of differences based on Myers-Briggs type can diffuse tension which might otherwise be attributed to more "personal" differences.¹⁷ We are teaching busy judges and lawyers, not classroom teachers.

13. During the training, we do not go into detail describing different teaching techniques. We do discuss with mentors a variety of techniques preferred by different types of learners.

14. The Kolb Learning Style Inventory (LSI), available from McBer and Company in Boston, used in conjunction with D. KOLB, *ORGANIZATIONAL PSYCHOLOGY; A BOOK OF READINGS* (2d ed. 1974) and D. KOLB, *LEARNING STYLE INVENTORY TECHNICAL MANUAL* (1976) is another useful instrument which others might find helpful in future work.

15. Form G, by Katharine C. Briggs and Isabel Briggs Myers. Consulting Psychologists Press, Inc. Palo Alto, CA. C. 1976, 1977 by Isabel Briggs Myers. Copyright 1943, 1944, 1957 by Katharine C. Briggs and Isabel Briggs Myers.

16. In each session, whether with students or mentors, the Myers-Briggs type/scores are discussed openly. Each person is free, however, to keep their type confidential should they so desire.

17. One question frequently asked concerns whether or not the Myers-Briggs type is used in making matches between students and mentors. In using the Myers-Briggs we emphasize that, by understanding one's own learning preference, one can develop the ability to learn more easily in another fashion. Indeed, the lessons of Myers-Briggs can go far beyond learning preference. Very capable and successful people often understand instinctively the value of doing legal work with people who bring a perspective different than their own. Myers-Briggs can reinforce that instinctive understanding and we encourage students and mentors of different types to learn from each other.

If we can persuade them to keep an open mind on their students potential then, should a problem arise, they can turn to the Director of the Semester in Practice, or another member of the faculty for guidance and suggestions on approaching a difficult situation.¹⁸

III. FEEDBACK

Once mentors begin to work with the idea of learning preferences, we move on in the training to a basic approach to feedback. Feedback is a term which originated in electronics but is now a concept people in many fields have found useful and made their own. In performance evaluation, it refers to an appraisal of an activity. The person being evaluated may be a colleague, a senior partner or a secretary. When someone asks "How did I do?", they are asking for feedback.

The basic pattern we use to teach feedback is quite straightforward:

First, describe the activity.

Second, interpret the activity.

Third, put your feelings about the activity into words.

Finally, respond with a suggestion for change.

Let me illustrate the pattern with a non-legal example. If I want to give feedback to Noah, my oldest son and a student of the piano, on his practice session I would follow the four steps as follows:

Step One: Description—I would describe that portion of the piece I was addressing. "Noah, I couldn't hear each note as a separate sound." I would then give him a chance to respond. For example, he might say "Yeah, my finger action wasn't very strong." In the alternative he might say nothing in which case I would proceed to . . .

Step Two: Interpretation—"I wonder if your soccer practice and homework has kept you from your piano practice this week?" and he might say that, indeed, he had been too busy, or he might correct my interpretation and tell me it was his infected finger which was causing the trouble. Also, he might not be responsive in which case I would proceed to . . .

Step Three: Feelings—"I feel frustrated when you don't practice early in the week and then spend an hour practicing at the time you would ordinarily set the table." This might elicit an apology or an explanation, or even an offer to help after supper. It won't make him slam down the lid and swear to give up piano forever.¹⁹ Sometimes, and especially when the person giving the feedback has some expertise that the student does not have, then it is appropriate to move to . . .

Step Four: Response/Suggestion—"What do you think you would like to do about it?" If he isn't ready with suggestions, we can discuss it together. He

18. For those mentors who want to learn more about the subject we recommend reading D. KEIRSEY & M. BATES, *PLEASE UNDERSTAND ME: CHARACTER AND TEMPERAMENT TYPES* (1984) or I. BRIGGS MYERS & P. MYERS, *GIFTS DIFFERING* (1980).

19. This assumes I am working with Noah as an adult learner. Sometimes, and especially when the person giving the feedback has some expertise that the student does not have, then it is appropriate to move to . . .

might suggest, "Tomorrow is Friday and there's no soccer. Maybe I can practice one half hour Friday, Saturday and Sunday to be ready for the recital on Monday." If a question of expertise is involved, the teacher can suggest changes beyond the student's experience or knowledge. "Try holding your hands squarely above the keyboard and moving each finger independently."

A simplistic description of this sort is not sufficient to convey the intricacies of feedback. There are a number of basic questions to be considered concerning questions of timing, how strictly to follow the model, the relationship between the parties, the sensitivity of the area on which the student is working, and how easily the student accepts suggestions for change. Simply making a descriptive statement without conveying a sense of judgment is difficult. Nevertheless, in a two-day long session, participants generally master the concepts and, when given the opportunity to practice, find the technique to be of continuing value.²⁰

IV. PLANNING AND EVALUATION

Planning is the third major element to mentor training. When we talk about planning we mean planning for learning and planning for performance. We begin and end the training session discussing planning.²¹ In some ways planning is the most familiar of the three cornerstones of the design, and yet planning is honored more in the breach than in the observance.

Planning is included because it serves two indispensable functions. First, planning requires the student's involvement in the curriculum for the semester, making the learning process more effective.²² Second, we need to plan in order to evaluate how successful the student and mentor have been. How do we know if a student has learned, has improved? In the classroom we can give tests.²³ In the world of performance, we often have an intuitive sense of improvement, an instinct honed by experience. In the Semester in Practice, we develop our own measure, the Semester's Plan.

Before a student leaves campus for the Semester in Practice, he has completed a thorough period of counseling, selection and orientation. In addition, he or she has completed a Myers-Briggs inventory of their own and has developed a draft plan for the semester.²⁴ The essentials of planning a Semester in Practice

20. We use two ways to reinforce the basics of effective feedback. First, the Director of the Semester in Practice works with the mentors, on the phone and on site visits. Second, and most effective, we encourage two or more people from one office or court to attend. When two or more participants are from one work site there is an opportunity for mutual reinforcement when back in the office setting.

21. Ken Kreiling's thoughtful article on supervision, *Clinical Education and Lawyer Competency: The Process of Learning To Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981), forms the foundation on which we base our discussion.

22. The role of choice in shaping effective learning experiences is the topic of many articles and the subject of substantial research. E. Langer's article, *How Students Learn*, II ON TEACHING & LEARNING: J. HARV.-DANFORTH CENTER 5 (1987), is particularly thought provoking. The premise is that the more choice a student is given, the more effectively he or she learns. It might prove fascinating to develop some experiments on choice in the learning opportunities available to a law student.

23. Without going into great detail it is only fair to acknowledge that testing is not necessarily the useful measure we would like it to be. See Feinman & Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985).

24. A copy of the planning documents currently used in the Semester In Practice may be obtained from this author by contacting her directly at Vermont Law School.

are simple. We encourage the student to attempt only what he or she can reasonably expect to accomplish in fifteen weeks. We try to help the student realize that it is not possible to become an expert in a semester's time. We encourage each student to develop a clear sense of what skills they have. Finally, we identify resources, in addition to direct help from their mentor, which will help them to learn.²⁵

This entire process of planning for the semester is macro-planning. The student is developing an individualized semester's curricular plan. The student discusses and revises his or her plan with the mentor before the semester begins, and again after five and ten weeks into the semester. The plan is used again to evaluate the student's final progress at fifteen weeks.

In addition to macro-planning, we encourage the students and mentors to develop micro-plans for each of the projects and tasks they undertake. These need not be detailed, or written out, but in order to learn the most from activity, the student needs to know why they are undertaking a task, what they should be learning from that task, and to reflect on their involvement.

In the training session we tell the mentors what preparation a student has undertaken before beginning the semester. We teach mentors how to work with the student in turning the student's draft plan for the semester into a realistic plan for the semester. This agreement, modified at intervals throughout the semester, provides a clear and solid basis for evaluating the student's work of the semester.

V. CONCLUSION

The organized training of legal mentors is in its infancy. It is the purpose of this Article to describe what the faculty of Vermont Law School has done thus far. Mentor training will continue to develop and become more sophisticated as we work with experts in teaching, share experience with others in the field, and gain more experience with our own students and mentors.

Educational psychologists know a great deal more about learning now than they did even a decade ago. Lawyers in large firms and small are devoting more attention to training young associates. Faculty at law schools around the United States and Canada are rethinking curricular offerings. The outcome of the scholarship-practice debate combined with the anticipated scarcity of tuition dollars may find more schools considering incorporating a practicum component into their curriculum. When they do, training mentors in basic feedback and planning techniques will be something that should seriously be considered.

25. As an example, we may give them selected readings on a topic of interest or in a substantive area, we may help identify Bar sponsored Continuing Legal Education events which may be of interest, and we may suggest other activities such as attending legislative hearings or appellate arguments to enrich their semester.