

THE AMERICAN-STYLE LAW SCHOOL

By Professor William M. Wittman*

Welcome to a day at Independence Law School(ILS), an American-style law school.¹⁾ Our guide today is Professor Lady Justice. She is the department chairperson for the Independence Law School Academics and Bar Admissions Committee.

After she is introduced to all of us on the comparative legal education team, Professor Justice explains that ILS, is an integrated, auxiliary college of Independence University. The charter document of ILS includes vision and mission statements with a constitution that defines administrative, faculty, academic and disciplinary matters.

As to organizational functioning, ILS follows the administrative pattern of the law school dean serving by appointment of the university president for a term of years, subject to renewal of term by a joint faculty and president's office review. Internal law school faculty and administrative and disciplinary matters are formulated by various law school, joint dean's office and faculty

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1) The author utilizes a story-telling method to describe some aspects of American-style law school management and challenging areas of functioning. The names of the faculty and school are fictitious.

committees, subject to harmonization with university policies. The dean's office and staff supervise daily functioning and compliance with policies.

Aside from the usual politics of budget allotments and line-item allocations, ILS has not experienced any significant management crisis. Part of the success of this record is the relative autonomy of the law school from that of direct university control. A "federal" system of management organization exists wherein the university and its various colleges are all related in integrated vision, mission and general budgetary matters of funding, allocation and auditing, but each college entity is responsible for its own internal business and academic objectives. Student and institutional policies often naturally overlap because of the integration of tiered group, leadership dynamics that are related to a common educational vision and a five, ten, fifteen and twenty-year physical plant and institutional growth plan.

Our first appointment is the dean's office, where the revised curriculum is undergoing a final review before submitting it to the American Bar Association(ABA), Council of the Section of Legal Education and Admissions to the Bar²⁾ for provisional approval.³⁾ ILS is a new law school within its first year of founding and has successfully commenced its provisional application with the ABA.

Because ILS is located in the United States, it is eligible for approval by the ABA Council of Legal Education. The Council was approved in 1952 by the U.S. Department of Education as the recognized national agency for the accreditation of professional schools of law.⁴⁾

Prior to entering ILS, a law student candidate is required to have completed

2) <http://www.abanet.org/legaled/standards/chapter3.html>

3) <http://www.abanet.org/legaled/standards/chapter1.html>; Standard 102. PROVISIONAL APPROVAL. (a) A law school is granted provisional approval if it establishes that it is in substantial compliance with each of the Standards and presents a reliable plan for bringing the law school into full compliance with the Standards within three years after receiving provisional approval.

4) <http://www.abanet.org/legaled/standards/foreword.htm>

a four-year undergraduate program terminating in the receipt of a bachelor's degree. Generally, students applying to ILS have come from different university degree programs. Some entrants have completed a "pre-law" program that encompasses a four-year general studies program of English, history, philosophy, sociology, economics and political science courses. Other students have studied in the fields of business, literature, music and the arts, engineering, architecture, computer science, medicine and science, etc. Actually, there are a great variety of disciplines that entrants have studied which in turn gives them abroad perspective as to society's needs and concerns.

Additionally, an applicant for admission to ILS is required to take the Law School Aptitude Test(LSAT)⁵⁾ The LSAT is a half-day examination that measures an applicant's acquired reading and verbal reasoning skills.⁶⁾ This examination is only one factor the Admissions Committee reviews prior to applicants being accepted for admission. Other factors considered are the "... undergraduate course of study, the grade-point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome," as recommended in Standard 503, Admission Test, Standards for Approval of American Law Schools.⁷⁾

As approved by the ABA, ILS offers a four-week pre-admission course that is taught by ILS faculty. This course includes American-style case briefing, legal analysis and training in presentation skills. Additional course work includes a summary of the American Legal System, the American Government and its Procedures and a brief review of the History of American Jurisprudence. The program concludes with an examination of the subjects taught and an appraisal of preliminary student skills to assess the potential of students to succeed in their law education, admission to a bar and to become a

5) <http://www.lsac.org/>

6) <http://www.lsac.org/LSAC.asp?url=lsac/about-the-lsat.asp>

7) <http://www.abanet.org/legaled/standards/chapter5.html>

competent professional.⁸⁾

Finally, ILS will require a personal interview of an applicant to review specific areas of personal, work or general background experiences and professional student goals to render a final admissions decision.

In order for its graduates to be well prepared for American state bar examinations that typically last two and one-half to three days, ILS has provided core courses in Constitutional Law, Contracts, Criminal Law, Evidence, Real Property and Torts.⁹⁾ These law subjects will be tested on the Multistate Bar Examination(MBE), a one-day, multiple-choice examination. The MBE is drafted and administered by the National Council of Bar Examiners(NCBE).¹⁰⁾

Comprehensive instruction in additional state specific substantive law courses will include, but not be limited to, Agency and Partnership, Commercial Paper, Conflict of Laws, Corporations, Criminal Procedure, Civil Procedure, Decedent's Estates, Family Law, Federal Civil Procedure, Sales, Secured Transactions and Trusts and Future Interests.

These latter courses, or other state-specific required courses, will be tested by a second, one-day essay type examination drafted by the state board of bar examiners, or their designee. In some states that designee is the NCBE, which drafts the Multistate Essay Examination.¹¹⁾

Another requirement for state bar admission is to pass an examination on the rules of professional ethics for lawyers. Generally, state boards of bar examiners rely upon the NCBE in its administration of a sixty-question examination called the Multistate Professional Responsibilities Examination(MPRE). ILS has included in its curriculum a course on Professional Responsibilities as required by the ABA.¹²⁾

In constructing a curriculum for ILS, Professor Justice has had to give diligent

8) <http://www.abanet.org/legaled/standards/chapter5.html>

9) <http://www.ncbex.org/tests/mbe/mbetxt.htm>

10) <http://www.ncbex.org/tests.htm>

11) <http://www.ncbex.org/tests/mee/mee/be1.htm>

12) <http://www.abanet.org/legaled/standards/chapter3.html>

attention to the curriculum requirements of the ABA. These requirements include:

Standard 302. CURRICULUM.

A law school shall require that each student receive substantial instruction in:

- (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession; and
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
- (5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.

A law school shall offer substantial opportunities for:

- (1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;
- (2) student participation in pro bono activities; and
- (3) small group work through seminars, directed research, small

classes, or collaborative work.¹³⁾

After discussing the curriculum with the dean, it was decided that an international law component should be added to the curriculum. A suggestion was made by an exchange professor from Handong International Law School, an American-style law school located in Pohang, Korea, to study their curriculum for reference.¹⁴⁾

This added emphasis of the international law component to the curriculum was deemed to be important due to the scope of modern day globalization and the tendency of many American law schools to unduly emphasize state-oriented legal preparation and U.S. federal law, while ignoring the “global village” challenges of international businesses, multinational treaties, conventions, customs and the harmonization of laws.

In addition to the meeting with the dean, Professor Justice has scheduled visits to two professors’ classes to review class content, teaching style, teacher-student interaction and student participation. The ABA guidelines for faculty and classroom teaching state in part:

Standard 401. QUALIFICATIONS.

- (a) A law school shall have a faculty that possesses a high degree of competence, as demonstrated by its education, classroom teaching ability, experience in teaching or practice, and scholarly research and writing.
- (b) A law school shall take reasonable steps to ensure the teaching effectiveness of its faculty.

13) <http://www.abanet.org/legaled/standards/chapter3.html>

14) A sample of Handong’s curriculum as Exhibit A is attached for review.

Interpretation 401-1:

A faculty committee on effective teaching, class visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, and colloquia are among the means to accomplish this objective. (August 1996)¹⁵⁾

One of these professors uses the classic, American law school “Socratic” teaching method, in which the teacher asks the law student a series of “directive” questions about a particular appellate case that the student has studied and “briefed”. As the student answers, in due course by Socratic discussion, he or she understands the case and arrives at a legal conclusion. The University of Chicago Law School explains the purposes of its use of the Socratic method: “The goal is to learn how to analyze legal problems, to reason by analogy, to think critically about one’s own arguments and those put forth by others, and to understand the effect of the law on those subject to it.”¹⁶⁾

One of the first skills that a student learns at ILS is how to brief a case. As mentioned above, “briefing” a case involves the student reading the assigned case and preparing a summary of the court history or procedural steps that have brought the case to an appellate court level. In so doing, the student condenses a summary of the material or relevant facts that gave rise to the legal dispute between the parties. In preparing the summary of relevant facts, the student is asked to define the legal dispute or “issue” between the parties. Usually, in briefing the case, the student will discover that the appellate court’s written opinion will state in some manner the legal issue or dispute between the parties and the “rule of law” the court relied upon to resolve the dispute in a just way.

The student brief is also expected to summarize the legal reasoning or analysis that the court developed in defining the issue, the rule of law used,

15) <http://www.abanet.org/legaled/standards/chapter4.html>

16) http://www.law.uchicago.edu/socrates/soc_article.html

and how the rule of law resolved the dispute between the parties. Finally, the student will state in the brief the appellate court's "holding" and "decision". The holding is the appellate court's application of the rule of law to the issue that arose from the relevant facts and the decision or conclusion are the instructions given to the lower court or administrative agency as to the appellate court's opinion of the lower tribunal's action.

If the appellate court affirms the decision in the lower court, then the lower tribunal's decision stands uncorrected. If the appellate court disagrees with the lower court, then the lower court's decision is reversed and the appellate court's decision substituted or the case is remanded for a new trial or other corrective procedure. Sometimes this student briefing process is referred to by the acronym, "F.I.R.A.C.", i.e., Facts, Issue, Rule, Analysis, and Conclusion. There are a variety of methods to brief a case therefore other methods have their own acronyms.

One general criticisms of the Socratic method of teaching is that it is a time-consuming method by which the student works his or her way through to distilling a rule of law. Those who support the method laud the salutary goal of imparting the "legal mind" or skill of legal analysis to the student. Others believe it is too time consuming and often ineffective in teaching the subject matter of the law.

Another professor at ILS utilizes the court simulation method to teach core courses such as Torts, Property, Family Law and Professional Ethics. This method involves the student in the briefing process of analyzing an appellate level case, but adds the challenge of opposing party, "appellant" and "appellee" legal positions to argue before the court justice.

An advantage to the "simulation court" is the efficiency and development of the combined skills of adversarial legal argument, presentation, rebuttal and spontaneous response. The obvious disadvantage is the challenge of time management and coverage of subject matter. The professor of this class limits the amount of time each student-attorney is allowed to present his or her case

or rebuttal. To facilitate overcoming the typical Socratic-based weakness of students' varied abilities in analysis, public speaking and legal argument, the professor has interjected mini-lectures on relevant law subject matter coupled with appropriate study handouts.

Other teaching methodologies practiced at ILS include lectures in code-based law. In these courses, class lectures are punctuated with mini problem solving questions and review of sample answers. In this manner, student participation is facilitated by open class discussion. The challenge of the lecture-style class is its tendency toward monologue and one-way communication. Later memorization of materials with little emphasis on immediate in-class processing would seem to limit the greater student potential for more in-depth, out-of-class analysis and synthesis.

Speaking of discussion-style class dynamics, some courses at ILS are skills oriented, such as Alternative Dispute Resolution(A.D.R.). These courses are conducted via workshop discussion groups with the students and professor exchanging role-playing models.

Writing assignment classes designed for beginning, intermediate and advanced legal research and writing are standard methods for teaching and developing legal writing skills. Additionally, these courses introduce the law students to the drafting of various kinds of legal documents: attorney-client letters, memoranda of law, pleadings, motions and appellate briefs.

During a summer vacation period of the three-year, professional law school experience, students are required to participate in a six-week pro bono (without remuneration) internship in a law firm, legal clinic, NGO/NPO, judicial clerkship or government agency. The internship enhances classroom learning with real-life training under the supervision of experienced attorneys.

Finally, advisor professors routinely use supervised independent studies for drafting and presenting senior papers for law review or symposium presentation, either one on one, or in small groups of three to four students. These studies concentrate on in-depth legal research and professional-level

writing skills.

After lunch, Professor Justice indicates to us that this week she will be reviewing the current ILS Financial Committee report for cost-benefit analysis of the law school pertaining to entry level-law salaries as compared with law school tuition levels, annual student living expenses and student financial aid. One of the top concerns of the committee is the escalating price of a law school education vis-à-vis the level of income generated by the law degree and the percentage of loan repayment ratio to starting salary.¹⁷⁾ Additionally, Professor Justice sits on the ILS Student Employment Placement Committee. A major concern of this committee is an ongoing analysis of the time frame between student graduation and actual job procurement. This study includes a comparison of law school qualifying entry tests and standards, law school GPAs and successful, early versus later, employment achievements by the graduating students.¹⁸⁾

As our tour of ILS and our discussions with Professor Justice regarding effective law school management and related challenges draw to a close, we return to the professor's office for a concluding discussion on career tracks for ILS graduates. The professor indicates that there is considerable optimism for increased levels of hiring Juris Doctorate recipients in corporate America. Recent trends seem to indicate that a broader range of jobs in the field of business is available.¹⁹⁾

Typical career patterns include private, government and corporate practice. A percentage of graduates will elect legal education or business ventures. A smaller number of lawyers will eventually, usually after a period of time of practice, select career service as a member of the judiciary.

The greatest number of lawyers in private practice are associated with multi-member law firms composed of senior partners, junior partners and

17) Comparative source study: <http://www.ilrg.com/schools/analysis/>

18) Comparative source study:

<http://www.ilrg.com/rankings/law/index.php/1/desc/EmployGrad>

19) <http://partners.nytimes.com/library/financial/07055grad-schools-edu.html?Partner=A...>

associate attorneys.²⁰⁾

The public perception of the lawyer has changed to accommodate a more preventive, as opposed to remedial, professional responsibility for the individual and for business and government. Lawyers are increasingly known as advisors, planners and negotiators and not just litigators.²¹⁾ As with most professions, specialization has become a more frequent professional phenomenon. Certification by official certification agencies is available to accommodate lawyer-advertising interests.²²⁾

As we close our time with Professor Justice, she wishes you a very good day and hopes that all of us are able to enjoy a professional partnership in creative, legal education reformation.

20) An Introduction to the Legal System of the United States, 3rd. Edition, page 25, by E. Allan Farnsworth, Oceana Publications, Inc., New York (1996)

21) Ibid, page 26

22) Legal Ethics, page 226, by Kent D. Kauffman, West Legal Studies, New York (2004)