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A MODEST ACADEMIC PROPOSAL FOR DEPAUL

*Gordon Shneider**

In response to an invitation from the DePaul Law Review's Board of Editors, I would like to make a modest proposal. As we look to the next fifty years of the DePaul College of Law's development, the continued growth of its academic stature and reputation will aid in its mission to provide students with the highest quality legal education possible. Since my graduation from DePaul, I have spent twenty-five years teaching law in the Chicago Area. It is in the field of legal education that I believe DePaul can define a new but limited role. With this choice, the opportunity to develop a cadre of student scholars will inevitably result in an increased scholarly atmosphere within the law school. As these students continue their scholarly interests as professionals, it can only enhance DePaul's reputation in the community.

In order to explore this idea it is essential to understand the terrain of legal education in Chicago. Northwestern University and the University of Chicago serve a student constituency whose statistical indicators predict a unique ability and history of learning.¹ As a result, with appropriate motivation, these students' highly developed self-learning skills indicate very high success rates. The other four Chicago urban law schools² serve a student constituency that is more broad based. These scholars include students with statistical records indicating high levels of self-learning as well as students who have the capacity to become lawyers, but who also need substantial instructional assistance.³ These four educational programs serve as the fer-

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1. The University of Chicago Law School has a student constituency whose lowest quartile has an LSAT score which places them in the top six percent of students taking the LSAT examination. See Top Law Schools, available at <http://www.usnews.com/news/edu/beyond/gradrank/law/gdlawt1.htm> (visited April 6, 2001); LAW SCHOOL ADMISSION COUNCIL, INTERPRETIVE GUIDE FOR LSAT SCORE USERS 1-10 (2000). Northwestern University Law School's student constituency's lowest quartile is in the top fifteen percent of students taking the LSAT examination. *Id.*

2. The other four urban law schools in Chicago are DePaul, I Kent, Loyola of Chicago and John Marshall. See Princeton Review – Law Schools / Chicago, available at <http://www.review.com/law>.

3. Students in the lowest quartile of each of these schools rank substantially lower in relation to all LSAT exam takers:

tile ground for this proposal.⁴ It is my thesis that broad based student constituencies are best served, educationally, by a faculty which includes some members who have received their education in similar student constituencies.

Teaching faculty in law schools have two primary roles and two important secondary roles. The two secondary roles are service to the profession and service to the university community.⁵ They are important roles, but are only indirectly related to this paper. The two primary roles are student instruction and academic/professional scholarship. These two roles are complimentary. Inspired and valuable teachers need continuing scholarly research in their areas of expertise. They need to be informed about current ideas that are in the process of developing and they need to be intellectually challenged by testing and evaluating these ideas. Academic responsibility requires not only sharing these ideas with students, but also providing the profession with the initiation, examination, and evaluation of both new and previously tested ideas. A school served by such a scholarly faculty is dynamic and produces lawyers trained to practice their profession in a changing community.

The general wisdom has been that the graduates of “elite” law schools are most likely to be trained in, and have the basic capacity to engage in, these scholarly pursuits.⁶ The traditions in which they were trained would emphasize such scholarship. It is not clear that judgments about the selection of faculties for schools with more broad based student constituencies would parallel those of more “elite” schools.⁷ However, one would expect to find faculties of all law

DePaul	40th percentile
IIT Kent	42nd percentile
Loyola	64th percentile
John Marshall	25th percentile

See Top Law Schools, *supra* note 1; LAW SCHOOL ADMISSION COUNCIL, *supra* note 1.

4. I have no quarrel with legal education generally, nor with legal education in Chicago specifically. The law schools providing this education have trained thousands of highly qualified lawyers to serve their clients. However, if there is a means to increase the quality of this training, it should be explored.

5. See Richard A. Matasar, *The Two Professionalisms of Legal Education*, 15 N.D. J. L. ETHICS & PUB. POL'Y 99, 110 (2001)(discussing the goals of service in legal education).

6. See James R. P. Ogloff, et. al., *More Than Learning to Think Like a Lawyer: The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 133 (2000).

7. It is possible to posit that the decisional process a faculty uses in selecting its membership would include a series of rationales. First, one could expect the training received in a school emphasizing academic scholarship would prove valuable in any academic institution. Second, training received from scholarly instructors would provide persons prepared to intellectually challenge students learning about legal issues and their resolution. Third, training received from academics at the forefront of legal scholarship would prepare new teachers for the scholarly portion of their profession. And finally, scholars trained at “elite” institutions would enhance

schools with some proportion of their membership represented by graduates of “elite” law schools. How large that constituency would be, and its growth rate, could tell us a little more about the terrain of Chicago’s urban law schools.

Identifying “elite” law schools and the “almost elite” is a controversial and hazardous enterprise at best. However, for the general purpose of categorizing the J.D. backgrounds of the faculty members teaching in Chicago’s four urban law schools, an approximation will provide an opportunity to test the general hypothesis that a large percentage of them have been trained in “elite” schools. The *U.S. News and World Report* rankings provide a few useful categories.⁸ Within the survey, the top fifty schools are individually ranked, while all lower rated schools are not specifically numbered, but rather grouped into three separate tiers. In addition, the American Association of Law Schools publishes a book annually based upon information provided by accredited law schools and their individual faculty members.⁹ From this book, it is easy to identify the members of the faculty of each of the four Chicago urban law schools. By turning to their individual biographies, the school from which they received their Juris Doctor degree can be identified, as well as the date they began teaching at one of the four schools.

The following table indicates the results of tabulating this information from these identified sources.¹⁰

the reputation of the institution employing them. If this is accurate, then schools with broad based student constituencies might also choose faculties with large proportions of graduates of “elite” law schools.

8. U.S. News & World Report Law School Rankings, *available at* <http://www.usnews.com/usnews/edu/beyond/gradrank/gblawnet.htm>. I do not endorse the rankings arrived at by this survey. It is easy to identify controversial individual rankings. However, an attempt at an objective survey utilizing both statistical data and a subjective survey of legal administrators and academics has arrived at a series of categories and rankings. The criteria used in this survey include: 1) academic reputation (forty percent); 2) selectivity in student admissions (twenty-five percent); 3) placement success (twenty percent); and 4) faculty resources (fifteen percent). For purposes of identifying outstanding law schools based upon their reputation in the academic community and objective statistical data, this survey seems adequate. It is clearly superior to this author’s subjective judgments.

9. RICHARD A. WHITE, ASSOCIATION OF AMERICAN LAW SCHOOLS STATISTICAL REPORT ON LAW SCHOOL FACULTY (1999-2000). Included within this book each year is a list of the entire faculty for each law school in the country. The book also includes a short biography of each faculty member listed.

10. I have done the calculations and rounded them off to general percentages. I have eliminated a few members based on the following reasons: 1) if the faculty member received his or her initial law degree from a foreign law school, no attempt to categorize such school was made; 2) since schools use legal writing instructors and have different categories for clinical instructors, unless there was “clear” identification of tenure track I have eliminated these and other pure administrators from the survey; 3) finally, I have eliminated temporary visitors and emeritus

PERCENTAGES OF FACULTY EARNING J.D. DEGREES FROM HIGHLY
RANKED LAW SCHOOLS

	DePaul	IIT Kent	John Marshall	Loyola
Top Ten Schools	46%	64%	27%	56%
Top Twenty-Five Schools (Including Top Ten)	77%	74%	53%	78%
Second Twenty-Five Schools	<u>0%</u>	<u>14%</u>	<u>13%</u>	<u>4%</u>
Highest Ranked Fifty Schools	77%	88%	66%	82%

These statistics clearly illustrate that faculties in Chicago urban law schools are highly populated with teachers who are graduates of prestigious American law schools. The ten highest ranked law schools have substantial representation in Chicago law schools. In addition, the twenty-five highest ranked schools represent over seventy-five percent of the faculties at three out of the four schools. If one looks to more recent hires, it becomes clear that this pattern has intensified.¹¹ It is not my intent to characterize these results as good or bad. Rather, it is simply to verify the general wisdom that faculties of Chicago's urban law schools are comprised of large percentages of the graduates of "elite" law schools.

The graduates of these law schools who find their way into legal education often have additional prestigious experiences. Most often they have been law review editors, judicial clerks, and associates in law firms specializing in sophisticated legal practices. It is clear that they have the capacity and training to engage in sophisticated scholarly research and analysis. However, since few, if any, law school professors have any formal training as educators, they can only rely upon their law school experience. If these classroom experiences have been observing similarly trained teachers interacting with students who score in the upper fifteen percent of all LSAT exam takers, these experiences will be quite limited. Unless they are exceptionally perceptive or intuitional, a classroom comprised of students with more broad based basic skill levels, will not replicate their experiences. It is

professors for obvious reasons. I take responsibility for this brief survey and one should not blame the DePaul Law Review for my interpretations.

11. See WHITE, *supra* note 9. With respect to hires within the last ten years who are still on the faculty of each of the four schools:

DePaul	4 out of 4 top ten schools
IIT Kent	11 out of 17 top ten schools 14 out of 17 top twenty-five schools
John Marshall	3 out of 12 top ten schools 6 out of 12 top twenty-five schools
Loyola	6 out of 8 top ten schools 7 out of 8 top twenty-five schools

not that a portion of these students are less bright, but rather their educational needs will be different. Adapting to a classroom with such a wide range of needs is a daunting task for any new teacher.

By contrast, a law school with a broad based student constituency can be well served by a faculty including members with equally broad based experiences. It is not true that highly qualified graduates of broad based urban law schools are any less bright or scholarly than their counterparts from more elite schools. If they have scholarly motivations, they have the capacity to share their intellectual concerns and challenge their students. However, their classroom experiences and academic community associations enable them to better understand the needs of a broad based student constituency. Experiences of students in Chicago's four urban law schools can verify this hypothesis.¹² If I am correct, there is both an opportunity and need for graduates of urban law schools to be motivated and trained for an academic future.

I believe that in the next fifty years the DePaul College of Law can and should devote a limited amount of resources to identifying, nurturing, and mentoring a small continuing group of future legal educators.¹³ The responsibility for such a program would rest primarily upon DePaul's faculty. Only if the faculty shared these views, could such a program succeed. The first task in such a program would be to identify as early as possible a small cadre of students who had the capacity and motivation for an academic career. At the end of the first semester of law school, some students would have grades indicating such a potential. Certainly, at the end of the second semester, a small group could be clearly identified. Brief interviews could help to confirm their interest and motivation for an academic career. These same students would in all likelihood qualify for the law review as well. The second step in their development would be to enhance their training in scholarly research and publication. If a small group of faculty members would be willing, individual mentoring in a scholarly research and writing project for the law review would be essential. If

12. I can speak for those of us who are graduates of the DePaul College of Law. Some of our outstanding educational experiences were in classes lead by teachers who were products of urban broad based law schools. It is unnecessary to identify their names, but we know them well. I am sure that student experiences in Chicago's other three urban law schools will parallel this experience.

13. The benefits to DePaul of such a program would be at least threefold. First, the contribution that this group of students would make to the law review and their fellow classmates would be immeasurable. Second, DePaul would be servicing a valuable, if not yet perceived, need of other urban law schools. And finally, DePaul's academic reputation within the profession would be enhanced by both its faculty's efforts and its graduates' performances.

successful, most of these students would become well qualified for law review editorial work in their third year. Since the first two years of law school provides most of the critical mass of basic legal education, the mentors could help the students select a third year schedule which would not only enhance their legal education, but also provide a range of classroom and teacher experiences. If the mentors could additionally help sensitize the students to the classroom dynamics they were experiencing, their education as teachers would be beginning.

For those students who found their experience in this training as an introduction to a career that they wished to pursue, the completion of their J.D. would not end their training. There are three additional experiences that would prove valuable. Faculty mentors would prove invaluable in obtaining the opportunity to complete their training. It is not clear that any particular order for the completion of their training would be optimal. In all likelihood, the order in which the opportunities arose would become critical. Because their J.D.s would have been earned at broad based urban schools, the nature of academic selection would indicate the desirability of an advanced degree from a more elite school.¹⁴ This is not just an artificial snobbish requirement. An L.L.M. program at a prestigious school for a graduate, already admitted to the bar, facilitates at least three valuable academic benefits. First, for a student already sensitized to observing classroom experiences, a different range of opportunities in terms of academic approach and student reaction would prove valuable. Second, an opportunity to establish an area of expertise with both advanced and concentrated course work would also prove valuable in teaching and scholarship. And finally, the opportunity to prepare a major thesis under the direction of a specialized faculty member could provide valuable training and publishable scholarship.

Additionally, many teachers and scholars have had the experience of a judicial clerkship.¹⁵ With the assistance of a faculty mentor, such an experience could become a real possibility. Writing for, and under the direction of, a scholarly judge can indeed become a valuable experience. Since most law schools prefer teaching faculty to have professional experience as well, it is possible to substitute or add a few years of law practice. The writing one accomplishes in this setting is also valuable experience and training in time-critical settings. The income derived in this setting can prove highly advantageous in relation to the high cost of this extended training. It is not easy for a student, even a

14. See Ogloff, *supra* note 6, at 133 (stating that those who did not graduate from an elite law school but wished to work as a legal educator acquired L.L.M. degrees from an elite institution).

15. See Ogloff, *supra* note 6, at 133-34.

highly accomplished one, to attain all of these opportunities. In the context of a four or five year mentoring relationship, a faculty member could help to make these goals a reality.

It is my belief that the DePaul College of Law has continued to grow as an academic professional school. It has been enhanced by the experience that fifty years of law review publications has provided its students. It has been enhanced by a dedicated teaching faculty of scholars. It has produced respected lawyers, judges, and teachers. If it chooses to do so, DePaul can develop a limited program to train a community of teachers and scholars who will provide a unique value to our profession. This choice can enhance legal education in appropriate schools and increase the level of academic discourse within DePaul's community of scholars.

