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## Collaboration in Studying Law

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# LAW SCHOOL DEVELOPMENTS

*Once a year this department will carry figures on law school registration. In addition it will provide a medium for the description of experiments in curriculum, teaching method, and administration. Like "comments," the typical law school development note will be characterized by brevity and informality; unlike them, it will be descriptive rather than argumentative and will deal primarily with devices which have been tested in actual operation. As a general rule, the authors will gladly answer inquiries and, to the extent available upon request supply copies of materials referred to.*

## COLLABORATION IN STUDYING LAW

THOMAS L. SHAFER \*

Consider four facts which are probably provable:

1. Students find the study of law, particularly in the first year, to be demanding, anxiety-producing and difficult. I believe it is often also fun, but it is obvious that students don't always find it to be fun.
2. Law School in most schools is becoming a win/win game; it is progressively less and less a win/lose game. Most of us are accepting only superior students; it has become widely true that no law student need fail out. Everybody can make it. Those who do not make it fail in spite of the system.
3. In a win/win game, the most successful strategy is a cooperative or collaborative strategy, rather than a competitive strategy. Solid reward in social psychology offers good evidence that students who work together in studying and understanding and being tested on difficult material do better when they assist and accept assistance from one another.
4. But something there is which compels competitive strategies, even when collaboration works better. To put that most pragmatically, cooperation in studying law is a *winning* strategy, but, despite this fact, students often choose to compete. This is especially true of those who decide and are chosen to study law.

The behavioral issue, then, is why students in law school compete, and compete even to destructive extremes, when cooperation, mutual support, asking and giving help to one another, succeed better. The applied behavioral issue, for those who care to consider it, is how we legal educators might go about suggesting alternative behavior to our students, and, beyond suggestion, how we might convince students to attempt more collaboration.

There is a bias here, of course, in favor of collaboration. It is an educational bias in goal and in environment. To use a useful but misunderstood

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label, it is a bias in favor of humanistic legal education. My view of humanistic legal education is that it fosters a learning community within the law school, in which:

- The functional distinction between teacher and student is blurred, in favor of a learning function in each;
- Students learn from one another and teachers from students;
- The best learning is discovery learning;
- Models of the lawyer-client and lawyer-lawyer professional relationship are developed and idealized in the relationships between (among) professors and students in the law school;
- These models exhibit a bias in favor of lawyers who work for change in the society (but who do it from private professional practice); who are responsive to human need when it is presented to them; and who are compassionate counselors to their clients and compassionate consultants to their communities;
- All of this suggests a law-school learning community in which it is possible for a learner to experience joy in doing his best among people who care about him.

American law schools have, by and large, not been learning communities in this biased sense of the term. As educational environments go, law schools are relatively rigid and formal—much more so, say, than graduate departments of behavioral science and even more so than many medical schools. The teaching model has been one which stresses dominance and control in the professor. The direction of learning has been kept obscure—or at least it often appears to students that it is obscure. This fosters a feeling in the student that he is being manipulated, that only the professor knows what is happening, and that the system intentionally hides its goals. Law schools, particularly in first-year programs, also tend to the muffled use of threat and stress and confusion, on the theory, explicated or implicit, that threat and anxiety are motivators.

Stern systems of this sort tend to foster, or at least to coexist with, what Erving Goffman calls secondary adjustments. When the educational system is highly structured, a less structured system tends to grow up within it, a sort of sub-society. The law-school sub-society is more of a learning community than the law-school primary society is. The student, leaving a class session with a sense of having learned something, of having filled out his case briefs and mastered a tidbit of the law, might notice, for instance, that the information which went into his notes came more from his classmates than from his teacher. What has happened is that the process of testing and drill in classroom discussion has also proved to be a process of secondary collaborative learning by the students. This process carries over into bull sessions among students, which are traditional and common in law schools and which may account for the fact that lawyers are compulsive shop-talkers. There are a number of other indications of collaborative learning at this secondary level: Law students seem to admit, at least to themselves, that no one in the community is so self-sufficient that he needs no help, and that other students are useful and more or less available resources for providing help. Students receive emotional support and identification from one another, often in subtle, even convoluted ways. (“If *he*, who is so smart, doesn’t un-

derstand that, maybe I don't need to feel so bad after all.") It is my impression that the individual resources of students for mutual support and collaborative learning receive some play in the secondary adjustments that students make to law school, and that these resources provide a place from which one might begin to discuss collaborative learning as a primary, explicit structure for legal education.

In 1971 we began at Notre Dame a modest, low-profile experiment in suggesting cooperative student strategies to incoming first-year students. The experiment begins with a two- or three-hour session during orientation, in which we use adaptations of human-relations-training techniques to convey information on competition and collaboration and to provide to the students an experience-based opportunity to consider collaboration as an alternative to competition in their first-year courses.

The theoretical part of the meeting, which is compacted into two ten-minute talks, is essentially what this paper has said to this point; we suggest that the dilemma for students who wish to collaborate is in the fourth fundamental fact: Law students tend to compete even when the way to win is to cooperate. The object of the experience-based activities is to focus on that fact in its immediate and interpersonal dimensions.

My speculation is that this session comes at a time when competition has already been chosen as a strategy. This is partly because entering law students are unusually competitive people long before they come to law school, and partly because the first hours of entering a new law class intensify competitive feelings. One of the perennial gasps of astonishment at first meetings of entering law classes has to do with the fact that the room is full of threatening peers—valedictorians, magna cum laudes, student body presidents, Phi Beta Kappas, and all species of genius, competence and verbal aggression. The suggestion that collaboration is a winning style is probably, inevitably, a resisted suggestion; the most one can hope for is that the idea will be planted, and may be experienced, and a tendency to identify with one's peers can be officially validated. (It may help, in this last respect, that our sessions are conducted by the dean of the law school.)

The theory of collaborative effort, drawn largely from Morton Deutsch, is this:

Collaboration involves *mutuality*. It is not like my choosing a doughnut for breakfast, because, in that case, the doughnut does not choose me. It takes two of us to choose to work together. Mutuality seems to have two components—coordination and trust. Coordination is in part business of the faculty; it is part of the Faculty's duty to provide opportunities for collaborative study (group study rooms, team projects, offers by professors to meet informally with study groups) and to explicitly validate the idea.

The interpersonal issue is less coordination than *trust*. Trust is a matter of choice and the personal/interpersonal issue is what causes me to make (or not to make) a trusting choice. The answer seems to involve *uncertainty* and *confidence*. Deutsch gives the example of a parent who leaves his child with a babysitter. That is a trusting choice in which uncertainty as to the child's welfare is overcome by confidence in the sitter. The example illustrates that the matter involved in a trusting choice is serious. It is not like gambling. If I am sane, I only gamble with what I can afford to risk;

I cannot afford to risk my child. Confidence, not chance, explains my trusting choice in the babysitter situation. In a trust case, I cannot risk a bad outcome. (The negative side of this is that a non-trusting or suspicious choice is a choice I make when the risk is too great, or confidence too small.)

Confidence, which justifies trust, is related to *perception of intentions*. Deutsch's example is the old-fashioned, rural custom of neighbors' helping to build barns for one another. If mine is the first barn, I needn't worry about trusting the four neighbors who come to help me; but if mine is the fifth, I must be able to perceive the intentions of my four neighbors in such a way that I am confident that my barn will eventually be built.

Perception is a matter of information. There are two ways to obtain information about the intentions of a potential collaborator: One is to guess about it (assumption) and the other is to ask (communication). My guess is that collaborative strategies are often not chosen by law students because the student operates on assumption rather than on communication.

I think it works best to break this bit of theory into two parts. The orientation session begins with a ten-minute theoretical explanation of the idea of learning community, then moves into some ice-breaking activities. This is followed by a ten-minute theoretical explanation of the Deutsch theory of cooperation and competition, which is then followed by activities designed to generate personal information about collaborative choice.

The ice-breaking involves milling around the room for a few minutes, the choice of a partner, and two get-acquainted exercises with the partner—one at a cocktail-party level and the other involving an attempt to exchange immediate feelings about beginning law school.

After the second theoretical input, I ask the partnerships to consider a series of five questions. Each question is put to them in three ways: (1) I read the question (and have it written on newsprint) and talk a little about my reaction to it, (2) Each student jots down his own reaction, without talking to his partner, (3) The partners exchange their reactions and talk about them. This process takes five to ten minutes for each question.

The questions, my explanation (outside parentheses) and some undiscussed, written student reactions:

*First question: How do I know when I need help?* What feelings tell me that I need help? When my car won't work and I cannot figure out why? When I am sick and cannot get better on my own? When I am lost in my tax return. In those cases, I seem to tell myself "Damn it! I would rather do this alone, but I can't." In more subtle situations—where I can still get away with choosing to work alone, but I realize that I would benefit from seeking help—something seems to push me away from the intelligent, pragmatic thing to do. (Student reactions: "When I am not succeeding in the task at hand, after much effort and sincere trials." "When my knowledge is too restricted and I feel a need for further information." "When I am unable to proceed with a minimal amount of efficiency and success." "Uncomfortable. Panic comes sooner." "When I become frustrated, because of a lack of knowledge, or when I can proceed no longer for lack of know-how." "When the law of diminishing returns catches up to me, or when I know I am spinning my wheels." "When I can't reason out a solution." "I always need help—ideas, discussion, etc.—but seldom physically, until I arrive

at a point of not *knowing how*." "When I don't know what I'm doing, or can't foresee problems.")

*Second question: What does needing help feel like?* Sometimes it feels good—as, for instance, when I finally decide to take my sickness to a doctor, to put myself in his hands. Part of my feeling is the knowledge that help is available. Sometimes it feels tense—as, for instance, when I am upset or anxious or depressed, and know that it would help to talk out my feelings with someone who cares about me, but still can't bring myself to do it. (Student answers: "Relief, appreciation." "Safe, and intelligent, and calm, when I go to a professional; when I go to just another human being, I have a feeling of frustration, that, while a new approach and ideas will be generated, the problem will not be patently solved, as it would be by a professional or expert." "Complete frustration, because I know I can't help myself." "Frustrating." "Help from someone who is close to me is somewhat desirable and appealing, if I can return the help in some other way. Help from a stranger, with financial strings attached, is frustrating." "Depends on what I expected of myself, and whether needing help can be seen as a failure or lack on my part." "Sense of dependency on others, which is not always to my liking; also a sense of incapability, or support." "It should never be a feeling that 'help' was a last resort. Rather 'help' should be a healthy thought, giving you a certain uplift." "Desperation, helplessness, sense of futility.")

*Third question: What do I do when I need help?* Sometimes I avoid it, which is a stupid choice because I know that seeking help usually works out well for me. It is a case of opposing forces producing a status quo, and the issue is what are the forces. (Student answers: "?." "Repeated attempts to reach a solution on my own. If the problem persists and I think it is important, I'll find someone who is likely to be able to help." "I ask someone whom I feel confident is competent to solve my problems. If I am slow to ask, often this will lead me into unknown areas." "What can I do? Seek it quickly—faster, more efficient." "First, I would formulate clearly the problem, then my ideas, then go to seek help.")

*Fourth question: What would happen if I ask for help?* This is where my assumption and fantasies are. Maybe it would work out badly—I would be turned down, or scorned. Maybe it would turn out all right. (Student answers: "I'd do a lot of listening, taking in all that was said. Then afterward, on my own, I'd evaluate the advice or opinion. More ideally one should be critical when talking with the person from whom he seeks help—not afterwards." "Unless the person I asked was familiar with my topic, I might receive good advice on a topic unrelated to my problem." "Bad! They'll think I'm dumb. Good; Relief: getting closer to solution; usually sense of good far outweighs bad." "Fear of imposing on another's time." "I would become very hurt if I were turned down, or if I got 'half-assed' agreement from the person asked." "I would at least feel better informed and more capable of dealing with my immediate situation." "I probably wouldn't need help anymore." "Usually, or in most cases, people are happy to help because of a mixture of altruism and ego boost." "It will depend on who I ask. If it was a friend, or I was paying for the service, help would most probably be rendered. If it was an acquaintance who saw little in it for him, it would most probably depend on the individual." "I almost always receive

help. People are willing to help, expect to help; often it is an insult to refrain from asking, when you need it, and know someone who can help.")

*Fifth question: What would happen if I were asked for help?* Here, because I can predict my behavior pretty well, I am operating more on communication than on assumption. It is a good idea to level with your partner when you discuss this, because he may ask you for help some day. (Student answers: "Drop whatever else I was doing and sit down to listen to the problem. Probably from there I'd ask the person a lot of other questions to pin-point the problem. Then I would offer my ideas and think about it later and offer ideas again, or other sources." "Hopefully, I would answer succinctly, instead of rambling on for hours. When I don't understand a topic and must express views on it, I ramble." "Happy to help, if I could." "Be very glad to help." "I would be flattered." "Meditate upon what it will cost me, and if cost seems too high, seek an alternative, but if that fails and my help is absolutely necessary, I'll give in and help." "I would render the aid to almost any extent if I believed that the help would have been rendered if I had asked." "Helping is a natural response. It gives a feeling of satisfaction and brings one full circle. Helper—helped—once they are merged—this whole human problem of needing help becomes simple.")

It is obvious, of course, that these students—and all of us, I guess—are more willing to help than to seek help. There are subtle layers of feeling involved; as one of the 1971 group of students put it, the circumstances in which I ask you for help, or you offer help to me, may mean that you have "your dipper in my bucket"—that is, you are draining my self-esteem. It is clear, too, that these students have a protective layer of self-sufficiency and independence—and, in some cases, moralism—which will affect their willingness to collaborate. Beyond that, these answers suggest an interesting subject for research, but my object was not research. (One useful device, I think, is to point out before Question Four that the questions and answers provide a useful insight into the way clients feel in approaching lawyers. This tends to spruce up flagging interest as the session goes into its second hour.)

When the questions are completed, the partnerships are asked to form into quartets, and each person is asked to spend a minute introducing his partner to the new members of the quartet. The quartets are then asked to merge into groups of eight, and each group of eight is asked to compose a paragraph entitled "Collaboration in the First Year of Law School." This paragraph is to be turned in; I announce in advance that I intend to use the paragraphs in my administrative planning and in discussion with the law faculty.

Here are the 1972 essays on Collaboration in the First Year of Law School (one of the groups, which worked most of an hour on its paragraph, told me that they found their rhetoric to be stale in comparison with the discussion; I suspect this was true of other groups also.)

A. "Collaboration in the first year of law school is valuable because of the insecure situation we are all in. Intensive collaboration will arise when necessity calls for it. We could succeed better if there wasn't such a highly competitive atmosphere. There is little that can be learned in the classroom; to pick up the material takes a degree of studying and collaboration. We organized ourselves to meet again next Friday to exchange our impressions."

B. "Law school life can be regarded as a microcosm of life outside. When one needs help and realizes he needs help, he generally gets it, and

presumably the problem is resolved—to the point it can be dealt with. When asked for help, the individual generally renders as he receives. Generally, collaboration and trust help remove suspicion and distrust.”

C. “Collaboration is advisable, but not an absolute necessity to ‘get through’ law school. Collaboration is more valuable than isolated study, however, for several reasons: First, we will develop numerous friendships in the process. Second, we will have occasion to expand our own perspectives as we exchange insights which will vary as a result of our varied backgrounds and experiences. Third, the study of law will simply be more pleasurable and thus more bearable. Fourth, we will tend to be reinforced as we recognize the fact that others are not totally self-sufficient either. And, fifth, becoming people-oriented at this early stage of our law careers will be invaluable to us in our future relationships with clients and fellow lawyers.”

D. “A wise old man once observed, ‘When you are up to your ass in alligators, it’s hard to remember that your original idea was to drain the swamp.’ After a few weeks of study, most first-year law students will feel that they are literally ‘up to their ass in alligators.’ It seems that the only way out of the quagmire is to relieve the accumulated tensions through some form of collaboration. Perhaps the true value of law school lies in the erasure of the line between ‘helper’ and ‘helpee.’”

E. “We feel a willingness to collaborate is helpful in learning law. We feel we need help when confidence is slipping, or time is running out on us in solving a problem. Collaboration has to be a give and take thing; you have to be able to contribute. ‘True collaboration’ should begin before time runs out, however.”

F. “We all agree that cooperation and collaboration are desirable and necessary. To make such a process effective mutual trust is required; trust in one another’s contributions. Motivation is the key to the process; since the central goal is the sharing of acquired knowledge, this should be first in our minds. Yet trust is earned, and each person owes the others demonstration of trustworthiness. In the absence of complete proficiency in matters of law, first-year law students will find it mutually advantageous to seek collaborative efforts.”

G. “We were surprised at how actively Notre Dame is promoting cooperation and collaboration. We are delighted and much more confident about our ability to take advantage of a spirit of community. The faculty made it seem really true that they were happy and willing to help, beyond one weekend, and into the semester. We hope to be able to use the faculty and each other now that the ice is broken.”

H. “Personal, continuous, one to one collaboration is necessary. Assuming an obligation, i. e., willingness to help one another, a trial period of structured collaboration will be pursued.”

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This orientation program is followed by small-group sessions in the dean’s office, over the first semester, in such a way that every student can be in one of the groups if he wants; by small-group advisory sessions with members of the faculty (eight students to each member of the faculty), often in an informal setting in the university club or the faculty member’s home; by small-group sessions with an upperclass advisor, in whatever setting and



with whatever frequency the group agrees upon; and by two additional whole-class meetings in which students have an opportunity to discuss progress in their studies, to clear the air with the law-school administration, and to report their impressions on the progress of the law school's effort to endorse collaboration. Our experience in the first year of the program was that the whole-group sessions tend to focus on complaints and questions about policy—the sort of thing law deans experience in “gripe sessions”—and that the small-group meetings tend to focus more on personal and interpersonal feelings and on obstacles to collaborative study. In these small-group settings, we gently announce that counselors within the law school, and in the university's counseling center, are available to help with personally disturbing problems, and that the university maintains a psychological services center to provide psychotherapy on a medical model. These services are not discussed at length; our objective is to indicate a spectrum of assistance, from course-oriented and skill-oriented discussions within the law school to private counseling and group counseling, and to serious emotional disturbance in work with clinical psychologists and psychiatrists. (Our general impression is that the current generation of law students is not seriously diffident in seeking what Ann Landers calls “professional help.”)

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