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Maurice Zilber

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# THE RECORDER

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### Teaching the Business of Law

Maurice Zilber

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"Are your students using anything that you taught them?" This not-so-innocent question from a reporter for the *Recorder* set me wondering. I had no good answer for her. I had heard from time to time from a few students asking for references, and I occasionally saw a student from the year before in the halls, but I really didn't have a clue whether the 16 weeks we had spent together had any real impact on their professional lives.

After a successful career as a business lawyer and a commercial arbitrator, I decided to give back to the profession by bringing my experience and wisdom to the classroom to prepare the next generation of lawyers for the business challenges they would face as they entered practice. I began my career as an adjunct professor eight years ago, co-teaching a course on business planning at Golden Gate University School of Law with a tenured professor who was an arbitrator colleague. While the students, particularly the night students, were bright and interested, there was a very low likelihood that they would begin practice in one of the large firms in town; those firms tended to look to UC-Berkeley, Stanford, Hastings, Harvard and other so-called tier one schools for their associates. What these students could use was a course that taught them about going solo or forming a small partnership with friends. Even if they did join a firm, their knowledge of the business aspects of practice would give them a leg up.

So, six years ago, with the blessing of the dean and the curriculum committee, I started a course entitled "The Business of the Practice of Law." Much of what I taught was based on my more than 20 years in the management of my old firm in Boston, seven of them as managing partner.

Students are divided into teams of two to four, depending on the number in the class in any given year. Half of their grade is based on team projects and half on individual effort. Students, among other things, individually, keep time sheets and a journal, and prepare a resume and life plan. As a team, they select an entity in which to practice, outline the provisions of a partnership agreement or shareholders' agreement, and prepare a client representation letter and a three-year business plan.

Most students are third-year day or fourth-year evening students, but I have had some graduate students, as well as second-year day and third-year night students. All have had courses in professional responsibility and business organizations, but we cover many topics in professional responsibility as they naturally arise. In different years, I have had guest lecturers on marketing, space planning and technology, and most recently, I have had a life coach come at the beginning and end of the course to discuss values

and life balance.

To answer the reporter's question, I recently surveyed the students who have completed the course. Some students did not intend to practice law and are engaged in what they talked about in their life plan: government civil service, money management, human resources and political consulting. One entered a Masters of Laws program after having been a contract attorney for an Am Law 100 firm. Two are Assistant U.S. Attorneys, who expect to go into private practice in the future. One is in the Honors Program at the Justice Department. Two opened independent paralegal practices while waiting for Bar passage; one of them is in a bankruptcy support firm, too busy at the moment to go into law practice. Three are working in medium and large firms in California and eight are in solo or two-person practices either by design or necessity. In addition, two students who did not respond to the survey have informed the school that one is in solo practice and one is with a large firm.

Regardless of what they are doing, all said the course gave them the confidence to go into practice, particularly the business plan exercise. Many who are in practice say they consider most valuable the teaching about billing, retainers and when not to accept a client. Most kept their course books, and some have even referred to them. (I use Jay Foonberg's excellent book, "How to Start and Build a Law Practice, Fifth Edition" (ABA 2004), and the "California Guide to Opening and Maintaining a Law Office," an excellent book recently released by the California Bar Association). Nearly all said the course should be mandatory to prepare students for the real world of law practice.

Which brings me to the American Bar Association. Last year, the Standards Review Committee of the ABA's Section of Legal Education and Admissions to the Bar adopted changes to a number of the ABA's standards to shift the emphasis for law schools from input measures (e.g., faculty size, budget, physical plant) to output measures (e.g., bar passage rates and what students take away from their education experience).

Standard 301(a) states: "A law school shall maintain an education program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession." The present interpretations for that standard provide that a law school "shall maintain an education program that prepares its students to address current and anticipated legal problems" (Interpretation 301-1) and that such education program may be "designed to emphasize certain aspects of the law or the legal profession" (Interpretation 301-2). However, judging from the other interpretations of the standard, it seems that the major emphasis is on bar passage rates. (See Interpretations 301-3 and 301-6.) While Interpretation 301-2 may be read to include instruction in the business aspects of the profession, the overall emphasis is on knowledge of substantive law and professional responsibility, both clearly important and necessary for both bar passage and "responsible participation." However, I would maintain that an understanding of the business of practice is equally important for "responsible participation" in the profession.

Standard 302(a) provides in part that a law school shall require that each student receive substantial instruction in:

- "(1) the substantive law ...;
- (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
- (3) writing in a legal context ...;
- (4) other professional skills generally regarded as necessary for effective and responsible participation in

the legal profession ...;"

Interpretation 302-2 provides: "Each law school is encouraged to be creative in developing programs of instruction in professional skills related to various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302(a)(4)."

All of the items listed in Interpretation 302-2 are indeed necessary skills. But they are not sufficient for a lawyer going out on his or her own. There is nothing here about budgeting, accounting, taxes, fee collection, marketing, personnel, space, technology, insurance and trust accounts among the myriad of other issues involved in running an efficient, effective, profitable professional practice. Furthermore, it ignores the pressures on young associates of larger firms to be more than just good workers if they are to make partner, without giving them a clue of what more that may entail, including business development and billing concerns.

Given the seismic disruptions in the profession in the past few years, I would hope that when future revisions to the standards are considered, they would reflect the need for instruction of some of these "practical business aspects" of the profession.

*Maurice Zilber is an adjunct professor at Golden Gate University School of Law and a full-time arbitrator and mediator, as well as managing director of Maurice L. Zilber & Associates, a management consultancy for professional firms. He may be contacted at [mlzee@earthlink.net](mailto:mlzee@earthlink.net) or through [www.adrresolutions.com](http://www.adrresolutions.com).*