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## THE EVOLUTION OF J.D. PROGRAMS— IS NON-TRADITIONAL BECOMING MORE TRADITIONAL?: KEYNOTE ADDRESS TRANSCRIPT

#### David E. Van Zandt\*

DEAN VAN ZANDT: Thank you very much for inviting me; I am quite honored. I also appreciate Dean Garth bringing all of us together here. This is a great conference that is very important for legal education. And the work that the Law Review has done on this has been tremendous; your hospitality is fabulous. Thank you very much.

It is a little funny for me to be a keynote speaker because I sat in the audience this morning listening to what everybody was saying. The wealth of new ideas that people are pursuing is really impressive. It may be that we have everybody here that is doing it, but I am not sure that is exactly right. I think there is a lot going on in legal education right now and people are becoming more and more interested.

First, I will give an overview of various innovations in legal education and some of the problems that we run into when we try to innovate. Second, I will discuss Plan 2008, which is a comprehensive strategic planning process that we finished at Northwestern Law last year and are in the process of implementing. Our accelerated J.D. is just a part of that plan.

When looking at innovation in legal education overall, we have to understand that the places to which we are sending our students are becoming more competitive at all levels. We need to change in order to compete. So every time I have thought about changes or innovations, I have always looked at the outside market. Where are the students going? What abilities do they need to have? Can I help them perform better in their jobs by making changes at the Law School?

The legal industry is becoming more concentrated. The number of dollars spent for legal services is becoming more concentrated in upper-end

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law firms which are growing and growing. They tend to be the places where most of our students begin their careers. We see changes in the sizes of the organizations. We see consolidation throughout. It means that an entire portion of the world is underserved in terms of legal services.

But this is only part of it. Underlying this is the fact that the industry is becoming increasingly competitive and this is something legal education needs to respond to.

When I graduated from law school in 1981, you could go to a law firm and if you were very bright and were willing to work very hard, you could make partner. You could have a very nice, better than upper-middle class income, equal to having tenure in an academic institution. We all know that has changed quite dramatically.

In legal education, schools are beginning to diversify a bit in their missions. There are more schools that are experimenting, which increases the variety of programs all around, and there certainly have been a number of recent announcements about the new kinds of changes that are happening.

I think of innovation in three different ways. The first I have already talked about—markets. You need to know about the external market that the school serves. Second is what this symposium is about: the delivery mechanism—trying to find the most efficient way to deliver the education. And lower costs, if maintaining the same level of quality is always better. The last is a greater focus on outcome. This means focusing on the competencies a law student has once he or she graduates from law school. Legal education is shifting this way. Northwestern focuses on these three approaches to innovation. However, there are also barriers.

Legal education is only a part of the legal profession generally, and the legal profession historically has been a guild and maintains a guild-like structure. The industry itself was and still is called a profession, but what was originally meant by a profession was very similar to what doctors did or what other guilds did in their time. People had a model view of the profession: if I was a lawyer, I could do just about anything. Imagine Abe Lincoln sitting in Springfield; he would argue a case before the Illinois Supreme Court or close a real estate transaction, and then probate a will. That is the image that the profession carried on.

Part of any guild is that it puts up barriers to entry. One of the biggest barriers to entry that developed toward the end of the nineteenth century was the move toward university-based law schools. Before then, you could have been an apprentice and, like any other guild that used to operate, you could get accepted as an apprentice and work for a few years until you became a full-fledged member of the guild. Law was structured that way. But as law schools developed, and particularly as they merged into universities, the barriers to acceptance increased and it became more difficult to get into the legal profession.

Guilds also attempt to fix prices—to agree to charge the minimum price for a particular service. This is good for consumers in the sense that the guild also agrees to a maximum price. Guild members violate the rules if they charge too much and that protects consumers to some extent.

A third and very common trait of guilds is that they are always inward looking. A guild says, "We are the professionals. We are the experts. We know best. We will tell the customer what he or she needs to know." In that environment, technical skill is important and is certainly something a particular member can focus on. A member can simply focus on technical skills and hard work and do quite well because prices are reasonably fixed. As a result, it is difficult for others to enter the market and compete because everybody is agreeing to the same prices.

Everybody thinks the guild is breaking down. This is mainly a result of substantial pressure from consumers of legal services. In the late sixties and early seventies, this pressure started at the corporate level. Large companies began hiring general counsel who had been partners in law firms and knew how the business was structured. Those businesses were able to come in and demand a more effective and more efficient cost structure for legal services.

Another catalyst of the break down is globalization. The legal industry actually is less globalized than many other industries, but there is certainly pressure. This is why larger law firms in the U.S. and elsewhere have offices spread worldwide.

The last factor is technology, which makes everything even more competitive. Technology makes it easier to enter markets and easier to accomplish any task.

We need to view legal education as a key part of this guild because we have played a significant role. We have been the gatekeepers of the profession, particularly after the teens or twenties, when the ABA was able to require education at an ABA-approved law school. That change gave us a stranglehold on entry into the profession. We were replacing the apprenticeship, which is odd when considering our traditional view of law schools today as being highly theoretical and abstract. But we are standing in the place of the apprenticeship structure.

Another issue is that we have been seeking a "one-size-fits-all" educational model. We adopted the Abe Lincoln model of what a lawyer is. And we still do to this day in many cases. We recognize that specialization

2009]

exists, and we know lawyers are focused in many different areas, but we still assume that any good lawyer can do just about anything.

And inward focus is, again, part of the guild mentality within law schools. We essentially look inside legal education to make changes, and this is problematic. We have focused on technical skill. We have focused on how to develop legal analysis and reasoning and added curriculum around these. Over time, we have added more practical skills courses through clinics, which is a positive development. But legal education remains focused on the "one-size-fits-all" idea of preparing students who can do any type of legal work.

This double-spiked graph is important in thinking about the changes in legal education.<sup>1</sup> It shows the distribution of full-time salaries coming out of law school. There is a spike at one end at about \$130,000 and then another spike down at about \$60,000 to \$70,000. The graph suggests that there is a lot of pressure on legal education. We are changing, but we also need to focus on how much legal education costs.

For example, the added value of a J.D. depends a lot on the kind of job or salary a student lands after graduation. By calculating in our tuition, which is \$45,000 per year, a graduate will need to earn \$60,000 to \$70,000 per year in order to receive any added value out of our education. In terms of tuition, we are at the very, very top. But, aside from a few state institutions, the tuition structure is not dispersed. In this calculation, we also assumed a particular income before the J.D. And there is an opportunity cost associated with being out of the workforce for three years while one attends law school. This graph presents a pretty stark message and shows that law school is only a good economic investment if one can obtain at least a median salary of about \$65,000 upon graduation.<sup>2</sup>

Now, there are many good reasons beyond just economics to go to law school. Some may just like practicing law more than what they were doing before attending law school—and that certainly is a relevant value. But this really suggests that the one thing legal education cannot do is to continue to be "one-size-fits-all." In response, there have been a number of recent announcements about law school changes. Most have focused on technical or clinical skill enhancement while others, like ours, have emphasized competency development.

I think the ABA and the AALS present some of the strongest barriers to innovation and they further influence the one-size-fits-all model. The ABA has a whole range of accreditation criteria which are based primarily

<sup>1.</sup> See infra Slide 1.

<sup>2.</sup> See infra Slide 2.

on various inputs rather than on the quality of the education of those coming out.

For example, law schools must provide certain terms and conditions for many of their employees. Distance learning is very difficult given the current regulations. Each school must invest in library collections and library space. New schools must spend a certain amount of money on library facilities to receive ABA accreditation. Schools must also have facilities that meet a specified level of quality in order to qualify. The ABA also strictly enforces admissions standards and requires the LSAT. Finally, and most importantly, is governance. The ABA and the AALS both have an image of how law schools should be governed. The rules force law schools to have a particular kind of governance, which tends to be a democratic faculty-based form of government.

Fear of change is another barrier. While law schools may be the most liberal of institutions politically, they are some of the most conservative when it comes to change. Academics also tend to be conservative overall in this regard, and I think we often have a particular position that we want to protect.

Additionally, many law schools lack external market pressure. At Northwestern, we receive 5000 applications for 240 spots. We could change nothing and still have more people wanting our degree than we have the ability to accept. In part because the degree comes out of a guild system and is a ticket into the profession people want our degree and are willing to pay for it. This remains true for many schools. While you want your school to improve and to have better students, there is no real economic pressure. This is odd because law firms now are being driven by external market forces.

Finally, the governing structure is very unyielding. Given what legal education has imposed on itself, the operational government structure is very resistant to change and is a barrier to innovation. One reason I like to see private for-profit schools emerging is that they have less of those burdens, which allows them to operate more freely in determining student needs and demand for their education.

Now I will discuss what we have done at Northwestern. As I mentioned earlier, understanding your market is one of the most important considerations. From the beginning of my time as dean at Northwestern, we have tried to understand the employment market for our students. We also have looked at the academic research market and tried to determine the key existing trends and the direction the market is headed.

We tried to create institutional flexibility to respond to the changing markets. I have not solved the governance problem completely, but we have improved our ability to respond much more quickly to changes, and we are able to make changes that are necessary.

Finally, we are constantly thinking of ways to benefit the students or to make the school a better place. No one can become self-satisfied in today's world and change must be constant.

We created a strategic plan in 1998 and have implemented several of The most important ones related to our its key recommendations. admissions process. We began to interview all of our J.D. candidates in order to assess their communication skills, maturity, and judgment and, this past year, we interviewed nearly 5000 applicants to all our programs. It is a major investment and it takes a lot of our staff's time. Our students and alumni also are involved. And it is great for our alumni because it is a way for them to participate and to tie back into the school. When I began as dean, I was puzzled as to why we and other law schools did not interview applicants because none of our students' employers would consider hiring them without an interview. Even most business schools, medical schools, and undergraduate institutions interview their applicants. In one sense, we, as lawyers, are very similar to doctors; we are a professional service organization and industry. But unlike medical schools, we have decided not to conduct interviews.

We also focused on enrolling students with prior work experience. The earlier symposium panels this morning discussed work experience in terms of part-time and accelerated programs. Our idea is to admit students who have substantial post-college work experience before they come to law school. We have been fairly strict about this with our J.D. population in which we look for at least two years of experience. Over the past ten years, we have also raised the standard of the kind of experience necessary. When we first started, merely being out of college for a while with any job bartender or ski bum—was satisfactory. Now we push for real world business people who have project management skills, know how to work with people, and are going to be effective as lawyers.

The goal of Plan 2008, which is our most recent initiative, was to identify the foundational competencies that a law student needs for a successful multi-job career. To implement the strategic planning process, we assembled a working group that included faculty, students, alumni, staff, and employers. The working group itself was co-chaired by a faculty member and an alum who is also a member of a law firm. This setup was really effective because we integrated the inside and the outside together.

We also looked at employer development frameworks. Many consulting firms, accounting firms, and some law firms are starting to utilize them. A development framework is essentially a list of skills or

612

abilities one would expect an employee to have at certain points in his or her career. For example, young associates in an accounting firm might possess certain abilities early in their career and, as they progress closer to partnership, their abilities would change and grow. You are basically building on top of previous skills. So we looked at what other industries do.

We also conducted a number of focus groups throughout the country and in London. First, we approached our alumni for their opinions about what our students need. But that alone would be fairly unsystematic since alumni often have different ideas about how to improve their law school.

So we decided to approach the managing partners of law firms as well as leaders of the legal function of companies, and leaders of governmental agencies and nonprofit organizations. We conducted focus groups in New York, Los Angeles, Washington, D.C., and Chicago, as well in London for a more global perspective that proved to be extremely helpful. After looking at the development frameworks, several industry articles, and some internal alumni career path studies, we created a preliminary list of ideas and competencies to discuss with the focus group participants. We solicited their reaction to the list and then asked what was missing. It was a very good process. There were a number of items that we initially had thought were important and that we dropped off the list after conducting the focus groups. There were also a number of ideas we had not considered that the focus groups raised. In the end, we created a final list of competencies that we feel each of our students need to possess in addition to the traditional education that we provide.

We do a very good job of training our students in legal analysis and reasoning at Northwestern, but that does not differentiate us in today's world. We do not do this any better than any of our peer schools; they do not do it any better than us. In fact, this kind of skill base is a necessity. It is an important part of legal education. It is sometimes difficult to learn, but it really is the baseline; it is necessary but not sufficient to be successful over the course of a career.

The additional competencies we identified are skills that we feel our students need once they graduate in order to be successful.

Teamwork—the ability to work well with people—is a competency that was consistently mentioned. We had always thought this was important, but the more we heard about it, the more essential it became. Teamwork is not merely working with a team of lawyers. More importantly, it involves working on a team in which you are the only lawyer. You must bring your expertise to the tasks, but you also need to listen to other people and work with them because they are experts in their areas as well. The idea that the lawyer is the smartest person in the room is counterproductive, and it embodies a guild-based attitude that is not conducive to effective teamwork. Our students need to recognize this and develop a team-oriented approach.

A second competency is communication. Communication is actually a skill we did not include on our original list. The focus groups raised it, typically in two contexts: one is simply that young lawyers do not write well. I have been hearing this for thirty years. Sometimes I think it is just the case of "everything was better when I was younger." But there may be something to it. Look at what is happening today in primary and secondary education, and even in colleges, in terms of writing ability. The other aspect to communication has to do with how you explain an issue to a client. How do you understand your client's position? How do you really understand your client's organization and business? What is your client doing? What does your client want to achieve? Considering these questions and using technical skills to provide a solution to your client's problem and explaining the problem to them carefully is what we call business exposition.

The third is basic quantitative analysis—accounting, finance, and statistics. It is very difficult to be a lawyer in any area today without a rudimentary knowledge of these skills. We found it particularly interesting that the nonprofit firm leaders placed more emphasis on accounting skills than any other focus group. I had expected that they would not be all that concerned with these skills. But they are dealing with large sums of money and they are often understaffed, so they need a very good understanding of accounting and finance to run their organizations.

A fourth competency is basic strategic thinking—the ability to understand your client's goals and how your client thinks about achieving their goals, regardless of the organization. This applies to private corporations, government organizations, and not-for-profit organizations.

Basic project management skills and leadership are a fifth competency. When a lawyer, particularly in a firm, begins, he or she must be able to take on an assignment, evaluate resources and alternatives, work with other staff or other lawyers, and complete that assignment effectively. This ultimately leads to leadership positions later. Essentially, leadership encompasses a broader set of project management abilities.

The sixth competency is globalization. There is a tendency in legal education—and also among law school applicants—to. conclude that the most important thing about international law is to offer or take a course, or many courses, that focus on the law of another jurisdiction or that have "international" in the title. According to the focus group participants, this is

#### KEYNOTE ADDRESS

not the case. Rather, it is about being effective at working cross culturally and across borders; it is about working with people from different backgrounds and who speak different languages, and understanding them. It is also about working across jurisdictions, but not in the sense that one must understand all of the laws of the different jurisdiction. Rather, it is important to understand the pressure points, leverage points, and the important economic issues. We see our graduates who are doing global work functioning as a point person who strategizes with a client in closing a transaction or settling a dispute across national borders.

Another possible competency was the technical ability to write a complaint, file a document with a court, or draft a particular motion. This is important in one's career, but it is not something we are going to be particularly good at. We can try to work at it, but it depends largely on the mission of the school. We also did not see a lot of sense in focusing on this or on a unique specialization. Sometimes entering students think they want to be an intellectual property attorney and that they should take every related class. In one sense, devoting significant resources to a specialization is counterproductive. Yet we still do it because applicants expect us to. But in terms of training and educating a lawyer at this point in their career, it is unimportant.

Underlying many of these findings was my own personal understanding of the MacCrate report.<sup>3</sup> The MacCrate report is the predecessor to Carnegie. It was a wonderful report. It was also somewhat of a Rorschach. I think the most important idea from the MacCrate report was that education, especially in law, is a lifelong process whereby a lawyer learns different skills at different points in his or her career. Law schools need to respect this. We must prepare our students to learn a range of different skills, but we do not necessarily need to teach them every skill while they are in law school.

We are now in the process of implementing these various competencies. We already have been teaching a strategic thinking course. We are working on our organizational behavior course, which examines the social science behind leadership and networking. We currently have a quantitative analysis course. And we are trying to infuse more teamwork and communication skills into the curriculum.

We also announced our accelerated J.D. program last summer, and it received a lot of press. The accelerated J.D. received a lot of attention just

3. TASK FORCE ON LAW SCHS. AND THE PROFESSION: NARROWING THE GAP, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992).

2009]

#### SOUTHWESTERN LAW REVIEW

because it was new and it was striking, particularly for a school at our level. People did not expect it. But we did it for several strategic reasons.

First, it may give us a slight edge in recruiting students. Some students may choose us instead of another law school because they can finish their degree in two years.

Second, we are trying to tap a different population of students and to expand our pool of potential applicants. We want to include people who previously were not considering law school because they thought three years was too much of an investment of time and cost. We also are trying to reach those who were planning on going to MBA programs. If they can earn a J.D. in two years, just like an MBA, they may pursue the J.D. instead because it is a more secure and broader-based type of degree.

Finally, we simply want to have a vehicle in which to test our efforts and instill some of the competencies in our students. The accelerated J.D. provides us with an experimental ground.

With the accelerated program, our goal is to enroll students with even stronger qualifications than our three-year program students in terms of academics, work experience, and interpersonal and team skills. In our three-year program, we strongly emphasize work experience and eighty-two percent of our students enroll after two or more years of work experience. However, for the accelerated program we require an absolute minimum of two years of work experience. We accept either the GMAT or LSAT as the qualifying exam. This increases the pool of applicants to include those who may be applying to MBA programs, and we have evidence that the GMAT is a reliable substitute for the LSAT. We also require interviews, whereas we "strongly encourage" interviews for all of our three-year J.D. applicants, and we interview about eighty percent of that group. Lastly, we have developed and require an employer-reference form that asks the applicant's current employer to rate them numerically on different sets of skills. This form is far more relevant for what we are trying to do. If an employer gives high ratings on this form, I have more confidence that the applicant is bringing some of the skills we are seeking.

The total curricular requirements for the accelerated program are the same as for our traditional three-year program. We require the same number of credit hours in a more compressed period. Some have expressed concern about whether the students will be able to manage the course load in two years rather than the normal two years and ten months or three years. Based on the success of our J.D.-MBA program, we have discovered that students who have the work experience can handle the workload and manage their time effectively, so we are not particularly worried about this issue. Nine years ago, we changed our J.D.-MBA program from a fouryear program to a three-year program, but we did not change the course requirements. We merely compressed them into a shorter period. Our J.D.-MBA students attend classes for two consecutive years, including the first summer, before they have a summer off to work.

Also, the curriculum for the accelerated J.D. program is a little more fixed, in part because we are requiring some additional competency courses. We require a basic business associations course, a quantitative course, a strategic thinking course, an organizational behavior course, and a negotiations course.

We are just in the beginning stages. We would like to have twenty to thirty students starting in May 2009. This is also the point at which the finances work.

People often ask me if this is something that we want to do with the entire school—all J.D.s. And I always say, "Well, I am open to that." We will see how it works. We will see what the demand for it is. I can easily see a world in which our entire program is two years. However, I can also see a world in which it stays quite limited, so this is still an open question.

This year we have had a very strong applicant pool. We have already admitted thirty-seven people to the program and we expect the yield for this incoming class to be very high. Their LSAT and GMAT scores are equal to or higher than the students we have in our other programs, and they have an average of six years of work experience at spectacular jobs. You heard at an earlier panel this morning that this really brings a lot to the classroom.

I really enjoyed being here and listening to other speakers who have gone a little farther than we have in improving legal education. We are trying to push the boundaries. To the extent that we can help others push the boundaries in legal education, it is a public service.

Now I will take a few questions.

MALE SPEAKER: Will the classes for this new accelerated program be separate from the rest of the J.D. students?

DEAN VAN ZANDT: Good question. The students will take five of the traditional required classes—property, contracts, civil procedure, torts, and criminal law—in their own section. In their first summer, they will take three of those courses—property, contracts, and civil procedure—in addition to a negotiations class and the quantitative class. In the fall, they will have three more required classes of which two will be in their own section. After that, they are integrated with the rest of the students.

The reason for this is that we want everybody coming out of Northwestern to be perceived as having the same degree and the same

#### SOUTHWESTERN LAW REVIEW

quality of degree. I am a little fearful that there might be some concerns about this. The reason I fear this is that legal education is very conservative and employers are also fairly conservative in what they look for. If they can find something objective in which to distinguish one student from another, and it is not a GPA worked out to the hundredth, they might use it. I do not want the fact that one student completes a two-year program instead of a three-year program, even though it is the same number of credit hours, to be a disadvantage.

FEMALE SPEAKER: Are regular faculty teaching those classes? And if they teach in the summer do they have a lighter load in the regular year? Also, how do you plan to sustain the program long-term?

DEAN VAN ZANDT: Yes, we have our regular faculty teaching their classes. We already run an executive LL.M. program abroad which requires faculty to travel for a two-week period. For that program, we provide an overload payment. When we started that program, I was expecting to run into some problems, but after eight years, the professors are still lining up to do it. The classes are taught as part of the normal load. I try to advocate a cultural mindset that we have teaching obligations involving a year-round teaching load, so it is more of a mentality of how we do assignments. Some faculty have discovered that if they choose to teach one semester in the summer and another in the fall, they can have a full nine months off to do research. For the accelerated J.D. program, we have not experienced any staffing problems up front. Some of our best faculty have agreed to teach them. And this is important because we want the program to do well from the start.

MALE SPEAKER: With a May start date, do you anticipate that the accelerated students will be able to compete at the same level as your three-year students in the on-campus interview program?

DEAN VAN ZANDT: Yes. We structured the program to allow our accelerated J.D. students to participate in the same on-campus interviewing program. We did not feel that we could create a program that would require students to go through the second summer without an opportunity to work. We had to have that summer free for employment.

The students will enter fall interviews with one semester of grades—an issue we specifically asked our focus group participants about. We asked managing partners at law firms how they would view a student who had only one semester of grades in the program, and the uniform answer was

#### KEYNOTE ADDRESS

that if the students are high-quality Northwestern graduates, they will hire them; it is not going to make a difference. Now, that is what they said. We are currently in an economic period with fewer jobs. We are very conscious of this and are planning a marketing effort with employers, particularly ones who participated in the focus groups, in order to ensure that these students get the same employment chances as the regular three-year students.

FEMALE SPEAKER: Is there one application? And if a student is not admitted into the accelerated program, then might he or she be considered for the traditional program? How do you deal with somebody who comes to you with a GMAT and no LSAT?

DEAN VAN ZANDT: Applicants can only apply to one program, so they need to choose and that solves the LSAT problem. If someone applies to the two-year program without the required level of work experience, we might offer to convert their application to the three-year program. It is really more our choice than the applicant's choice.

MALE SPEAKER: How do you translate your globalization goal into the curriculum?

DEAN VAN ZANDT: We have a task force working on this right now. First, we need even more students with international experience. During the admissions process, we might decide to look for students who have lived abroad in a different culture.

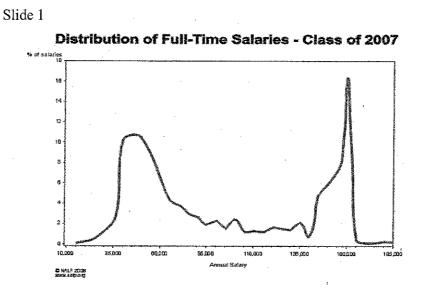
We, like many schools, also have a sizable non-U.S. population. About twenty percent of our total student body is non-U.S. and twelve percent in our J.D. program are non-U.S. We will take advantage of our existing student body. Our LL.M. students are already in the same classes, but we can place them together more effectively. For example, when a professor assigns teams in class for a particular project, he or she should ensure that there is always an LL.M. student or a non-U.S. student on each team. By doing that, students gain experience working with people who might not speak English as their first language.

Finally, we try to give our students as much experience as we can while they are in school. We, like most schools, have semester-abroad programs. But the enrollment in them is pretty small; we may have ten people who want to spend a whole semester abroad. This is partly because there is so much going on in law school—job hunting, activities, student

2009]

organizations, or other events. There is a very small window of opportunity.

So a number of years ago, we introduced international team projects, or ITP. ITP takes place in the spring term. Initially, a group of students and faculty members select a country. They divide into teams of three or four and, throughout the term, conduct research on the country's legal system and other aspects before deciding on a final project topic. During the twoweek spring break, they travel to the country with their faculty supervisor and conduct interviews with lawyers, government officials, and others before they come back and write a report. ITP forces students to travel to areas outside of their normal comfort zone and to engage with people in those environments. The students choose very interesting and challenging places. In the beginning, I thought they would select places like France or northern Italy, but that has not been the case. Instead, they have chosen places like Egypt, Vietnam, China, Thailand, and Malawi, to name a few. We also once had a group headed to Ethiopia, but the State Department came out with a warning just before they left.



Source: Jobs & JD's, Class of 2007 Note: The graph is based on 23,337 salaries. A few salaries above \$200,000 are excluded for clarity.

Slide 2

Northwestern J.D. Present Value/Break-Even Analysis

