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The Incredible Shrinking Law School

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THE INCREDIBLE SHRINKING LAW SCHOOL

*Phillip J. Closius**

IN the academic year 1999-2000, the University of Toledo College of Law faculty and administration performed a task that may be unprecedented in modern American legal education. During a series of luncheon meetings (that's not the unprecedented part), the group focused on the topic of enrollment—what size student body should we have given the realities of our market and the pedagogical goals we wish to achieve. We analyzed this issue without either an extensive reliance on revenue stream or the risk of losing resources if we admitted fewer students. Since we administer both a full- and part-time (mainly evening) program, we also discussed our obligation to serve our metropolitan community (almost all of our part-time applications) in addition to the dictates of establishing a regionally recognized full-time program. We had been targeting an evening entering class of 50—a large number in a metropolitan area with a population base less than 400,000.

We concluded that our ideal size was 430 students—approximately 110 part-time and 320 full-time matriculants. That enrollment would allow us to target entering classes of approximately 120 full-time students and approximately 30 part-time students. These insights provided the basis for a strategic plan that embraced the downsizing (from approximately 525 students), contained specific quality goals, and detailed a resource commitment from the University. The plan was eventually adopted by the University Board of Trustees. The major resource concession made by the College of Law was a reduction in the tenure track faculty from 32 to 28. This reduction had been voluntarily accomplished by a University implemented buy-out plan for senior faculty members. We are now almost a full year away from that process. This article is an attempt to indicate the considerations that led to our decisions and to begin the process of analyzing the effect the strategic plan will have on the College.

I. GOOD THINGS COME IN SMALL PACKAGES: THE ADVANTAGES OF SIZE REDUCTIONS

The primary benefit of downsizing is an increase in the quality of the entering class. While reducing numbers will not, by itself, improve the entering credentials for the long term, the reduction will buy a school some time to improve other areas of its academic program. We hope that the immediate benefit gained from admitting fewer students will enable us to implement programs and marketing strategies that will continue to increase the quality of entering classes over time. Toledo, like most law schools, experienced a drop in applications as the national market declined in the 1990s. While we were able to maintain the quality of the top of our entering class during that period, the credentials of the bottom quartile dropped to a level that we believed required corrective action. The immediate impact of downsizing has been a significant increase in the credentials (especially LSAT score) at the 25th percentile level. As will be noted later, we believe that improvement of the bottom

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of our class will help us in some areas that have been problematic for the College for the last few years.

In addition to improving our admissions profile, downsizing has enabled us to implement a number of programmatic improvements. Our first year sections of approximately 60 in the day and 30 in the evening provide an environment conducive to learning. As part of the strategic plan, we will increase the number of our research and writing instructors. Our first year writing program will therefore be taught in even smaller sections than before our downsizing. We have also implemented a new upper class writing requirement that requires every student to complete a portfolio containing five writing units. Each student's faculty advisor is required to review the portfolio and certify completion of this requirement before graduation. We were able to adopt this system because of the improved student faculty ratio created by downsizing. Since upper class courses will also be smaller, our students will have more and better skills training experiences. We believe that we have significantly enriched the academic experience at Toledo as a result of these curricular reforms made possible, in part, by the reduced enrollment.

We are also convinced that downsizing will improve the employment record of our graduates. Although our percentage of graduates employed after nine months of graduation has been high in recent years, the elimination of the bottom of our entering class should improve the overall quality of employment positions reported by the class. We do not anticipate that the lessened enrollment will negatively impact the abundant employment opportunities that have been historically available to the top of our class. Employers have responded positively to our downsizing by forgoing rigid percentage formulas (interviewing only the top X percent of the class) and instead interviewing by grade point criteria. We therefore anticipate that the average and median salaries of our graduates will rise, even if adjusted for the recent dramatic increase in starting associate salaries.

We also expect that the entering class reduction will ultimately increase our bar passage rate in the state of Ohio. Although we have done well in bar passage rates in other jurisdictions, our passage rate in Ohio has fallen as the state raised the score required for passage. In response, the College has implemented a number of new programs and informational sessions to assist third years in preparing for the examination. However, our experience indicates that failure on the bar is directly related to law school GPA and that LSAT score corresponds to law school GPA. Therefore, raising the qualifications of the bottom 25th percentile of our entering class should eliminate those graduates who are experiencing the most difficulty passing the examination. As we studied bar passage rates among other schools in the state, the LSAT score of an institution's lower quartile seemed to correlate directly with passage rate on the bar. Reducing the size of the entering class will also help us avoid the need for increased academic attrition rates at the end of the first year. If a school keeps placing additional students in academic jeopardy, the admissions office is usually required to admit larger classes in the succeeding year. Unfortunately, in the market of the 1990s, more students usually meant less qualified students. This in turn necessitated higher attrition. We hope that our downsizing will help us avoid this spiral.

In addition, reduced enrollment is appealing to state funding agencies and the local bar. There is no political appeal in the argument that the country does not have

enough lawyers. In fact, complaints are frequently made regarding the quality of law school graduates and the younger members of the bar. Some governmental agencies in Ohio have applauded our downsizing as a responsible reaction to a declining applicant pool and a perceived decline in the quality of recent graduates. The practicing bar will frequently encourage downsizing because of its own economic self-interest in decreasing competition. Thus, fewer law graduates is a politically popular move and is frequently applauded in the local media.

We did worry that reducing our enrollment would limit the access of many underrepresented groups to the profession. However, upon further reflection, we wondered how real the problem of access is nationally, given the reality of fewer applications and an increased number of seats in law schools (especially if you count unaccredited and provisionally accredited schools). We determined that a reduced student body actually reinforced our commitment to a diverse student body. Furthermore, a smaller class would enable us to provide more academic assistance to students with difficulty adjusting to the demands of law school. Also, if recruitment and admission initiatives remained constant, the actual percentage of minority students would increase. As a result, available scholarship funds would be accessible to a larger segment of the class.

We found that, despite the reduction in the size of the student body, the demands of our community and non-traditional students, usually focused on our evening program, could still be met. The decision to reduce our evening admissions from 50 to 30 was consistent with our belief that the latter figure was the appropriate annual number of actual part-time students in a metropolitan area of our size. In order to reach our old goal of 50, we frequently accepted day applicants into the evening class. This practice caused numerous dislocations in the part-time program. The reduced class will produce a group of "true" part-time students and allow us to provide programs specifically geared to their needs.

Our initial concern about the effect of downsizing on our clinics and student community service projects also appears to be unwarranted. For example, we engaged in a major renovation of our clinical structure and offerings in conjunction with the downsizing. Although there will probably be fewer students taking a clinic in absolute numbers, we are convinced that the students enrolled in our clinic will have a much better clinical experience. Success of this kind will actually make clinics more appealing to a larger segment of the student body. Our student body also continues to be active in a number of service and public interest projects. We believe that we will get more dedicated students participating in such activities. Hopefully, this will eliminate students engaging in such activities for "resume value" and replace them with individuals truly committed to the project or task at hand. We also believe that our existing grants and internship opportunities will reach a broader percentage of the class.

A college of law must be a certain minimum size to maintain the level of curricular excellence and community involvement that should be expected from a serious academic institution. The enrollment figure of 430 is our minimum target. We do not intend to get any smaller. We believe that the projected demographics for 22 year olds, the vibrant legal employment market, and our own efforts to market and improve the College will significantly increase our applications in the coming years. If this occurs, we have decided to employ the rise to improve the overall

quality of the entering class' credentials rather than return our enrollment to prior levels. Although we could envision the total headcount increasing 10-15% above our minimum, such an increase would represent the maximum growth we could foresee at this time.

II. CONVINCING THE UNIVERSITY

A strategic plan such as ours cannot be successful without the support of the University administration. In many academic settings, universities have utilized the law school as a "cash cow," with "excess" law income being used to fund other programs at the University. In recent years, the income flow generated by the law schools has diminished, given the rising costs of technology, student scholarships, and expensive pedagogical programs (e.g. skills training and legal writing). Downsizing clearly decreases the revenue generated by a law school and harms the University financially. The harm may be in a reduction of "excess" income or in a budget that is actually running a deficit. We did not think that getting into arguments over the actual amounts of net dollars generated by a law school was a useful endeavor. Such discussions seem to bog down in an endless series of accounting exchanges regarding overhead allocation formulas, state subsidy models and similarly amorphous concepts. Instead, we thought it best to concede that downsizing will clearly cost the University money and needs to be seen as an investment in the law school. Certain arguments helped us persuade the University administration that such an investment was a wise decision.

In a large, public institution such as ours, the College of Law budget is, in reality, a small portion of the overall University financial picture. In that context, financial concessions to the law school have less impact on the University than adjustments in larger colleges could have. This reality is accentuated if the University can be convinced that measurable, highly visible improvements in the quality of the law school will result from the investment in downsizing. We therefore concluded that our strategic plan should include specific goals that could be attained in the course of a few years. In order to convince the University to make the investment in us, we needed to be willing to be judged. Our strategic plan provides a benchmark that the University administration will use to evaluate the success of the College of Law faculty and administration in 2004. Our willingness to supply such a standard and to verbalize goals that struck all levels of the University community as unquestioned qualitative improvements was a crucial part of the final adoption of the strategic plan.

In the university context, law schools have the advantage of always being more trouble than they are worth. Colleges of law are the academic equivalent of an NFL quarterback—they get too much praise when they win and too much blame when they lose. Law school successes are frequently trumpeted in local and regional media. A regionally or nationally prominent legal institution can be a magnet for speakers, symposia and other high profile events. Similarly, failures or poor performances are highly visible. In addition, law alumni are disproportionately wealthy, powerful, and vocal. These realities indicate that a university investment in improving the quality of its law school is frequently a sensible decision. If a

university is committed to augmenting its academic reputation generally, the law school may well be the best place to start.

In the process of formulating our strategic plan, we also realized that we needed to acknowledge our role as part of the University community. At the same time we were planning to downsize, the administration was actively and publicly seeking a large enrollment increase for the entire University. We strenuously argued that the law school could not directly help the University in this effort, but the University could seriously harm the law school. If we were required to increase our enrollment by 20%, the additional 100 students would be a small drop in the bucket for a University already at approximately 20,000 students. However, the additional 100 students would severely inhibit the law schools efforts to improve. We therefore maintained that the best way to solve both the University's and College of Law's problems was to downsize the College, but become involved in the University's efforts to increase overall enrollment through the establishment of a pre-law major in Law and Social Thought. Thus, we committed, as part of our strategic plan, to offer our support to the University in establishing this new major in the College of Arts and Sciences. If the new program is successful in attracting new students to the University, we have contributed to overall enrollment growth while downsizing our individual College.

In the actual negotiations with the University, our major concession was four tenure track faculty lines. The timing for such a concession was ideal because a number of our senior faculty had decided to take advantage of a University buy-out retirement program. Our ranks had actually been reduced by more than four as a result of this initiative and a University hiring freeze. We therefore had an appropriate occasion to assess the number of full-time faculty needed to service a student population of 430. The strategic plan concludes that 28 tenure track teachers, five Research and Writing Instructors and four clinical staff attorneys are sufficient to achieve our quality goals given a student body of that size. The salary savings generated by reducing the faculty from 32 to 28 was perceived by the University as significant. By making the somewhat extraordinary offer of sacrificing faculty slots, we convinced the University that we were willing to do our part to create the quality college that we envisioned. The strategic plan was therefore perceived as a partnership agreement with the University, rather than a unilateral grab for a greater share of precious resources.

III. CONCLUSION

Downsizing may not be appropriate for every school. Private institutions, especially those that are free standing, may perceive themselves as too dependent on a tuition based revenue stream to seriously consider a major enrollment reduction. However, given the market lessons of the past decade, reducing the size of the law school population appears to be a sensible alternative for many schools. The expansion of faculties and facilities in the application boom of the late 1980s produced a cost in student quality when the cyclical nature of the applicant pool turned down in the 1990s. As we enter another demographic upturn in the twenty-two-year old population, law schools should seriously examine using the projected increase in applications to get better instead of merely bigger. Our experience

indicates that positive results are possible if law colleges overcome their traditional reticence to give up some resources and engage in a meaningful dialogue with university officials on improving the school of law. Although the formulation and implementation of our strategic plan is too recent to evaluate meaningfully, we remain convinced that the concepts formulated therein are the most appropriate means to improve our College given the market realities we face and the limits of our metropolitan location.