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From: John Gear, Committee Member
To: OSB Alternative Pathways Committee (distribution list attached)
RE: Reducing the Odds That Alternative Pathways Lead to Dead Ends

What, more reading?!

I apologize for offering my fellow committee members yet more to read. But writing this lets me offer these ideas to the group without using up our limited meeting time. I will do my best to keep it short while still covering the subject.

I write to to share something that is highly relevant to the questions we are charged to consider: whether people should be able to become Oregon lawyers with only two years or maybe even zero years of law school.

We should not just look outside Oregon – we should look outside the law too

I propose that we should look not just look at sister states and their bar admissions pathways. Instead, we should also consider what we can from other institutions. I am thinking particularly of an institution far removed from the law but which is easily among the best in the world at giving young people – almost none of whom have any prior relevant experience before entry – into trusted professionals with a world-class track record of consistent excellence in rapid application of complex theories under difficult, demanding, and stressful settings.

I refer to the U.S. Navy's Nuclear Power Training Program (NPTP). This is the training program that has had an outstanding record of success and that has produced tens of thousands of nuclear-trained officers and enlisted sailors since the 1950s, graduates who have produced an unmatched record of safe operations.

I had the highly unusual experience of having this extremely demanding training program twice, once as a high-school grad who enlisted and then, after attending college on an NROTC scholarship, as an officer. And, after each time through the program as a trainee, I was selected to serve for as a trainer in the program.

Thus, I had what is perhaps a unique opportunity to twice experience, reflect on, and then learn to apply training and learning techniques that have made the program so successful.

Of course, not everything from the NPTP would translate into preparing new lawyers. But since, to a remarkable extent, the NPTP is a “self-study” program, it offers us a model that is highly relevant to our task of designing a “Writing for the Bar” program most likely to lead to success and not a dead end for the participants. In this memo, I want to focus on just three major ideas that could be most useful for us; many other aspects of the program could be borrowed as well, but I think these three are the most critical.

Three key ideas to steal for preparing candidates for admission to the bar

1. “You can’t get what you want (‘til you know what you want).”
2. At key trainee milestones, evaluators must be independent of the trainer.
3. Never rely on written tests, they are poor substitutes for oral examinations.

“You can’t get what you want (‘til you know what you want)”

Perhaps the most important aspect of the NPTP is that the entire program is based on the premise that adult learners are very different from children and that the most important ingredient of adult learning success is that the student be able to self-direct the learning as much as possible. To make that possible, the NPTP has developed comprehensive “topical learning objectives” that break each area of study down to the fundamental knowledge, skills, and abilities that the student can know, apply or demonstrate if the student has “learned” the material. The format of these objectives is based on learning theory and makes it possible for each learner to self-teach the material and to know without doubt whether they have attained the required knowledge, skill or ability.

A sample knowledge objective for our purpose might be

Given a fact pattern combining serious injury to a person in the presence of the person's family caused by the negligence of another, the student must be able to:

- a. Identify all the claims suggested by the given facts;*
- b. Identify all the defendants against whom suit could be properly brought;*
- c. Identify the plausible defenses suggested by the facts for each claim;*
- d. State the categories of damages, if any, that could be awarded;*
- e. State the jurisdiction(s) and venues in which suit could be filed;*
- f. State the applicable statute(s) of limitation that apply to each claim;*
- g. Find or draft appropriate jury instructions for each claim and defense;*
- h. Identify any limitations on damages suggested by the given facts;*
- i. Identify any rules of evidence directly applicable to the given facts and explain how they apply to the given facts.*

Of course, the curriculum for students preparing themselves for admission to the bar would have hundreds of these objectives, including those that describe the required standards of performance to demonstrate having acquired the skills and abilities learners must master for admission to law.

With the required JD curriculum broken down into such learning objectives, it makes the entire corpus of the curriculum available to students from start, and it allows all trainees and tutors to have a defined standard against which to measure their progress in preparing the student for the ultimate objective.

Independent evaluation at key trainee milestones

Another very useful aspect of the learning objectives approach used by the NPTP is that it lets professionals in the field know exactly what the student is supposed to have mastered. This allows the use of independent examiners – people who have nothing to do with the student's tutor – to test the student fairly to determine whether the self-study or directed learning is effective. In the NPTP, at key milestones, students wanting to advance are tested using examinations (drafted in strict compliance with the learning objectives) that are created by and graded by persons who have no role in the student's training. In this way, problems with the tutor are not allowed to hide under the shield of the tutor's own lack of knowledge. I believe this will be critical for us in devising alternative pathways to replace an entrenched model that, regardless of its intrinsic merit, is "how it's done." Independent examiners make for credible evaluation of student progress.

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Never rely on written tests, they are vastly inferior to oral examinations.

Although the NPTP uses written examinations, they are only used as preliminary checks on readiness of the student to proceed to the final test, where the actual determination of whether the student has mastered the required material is made. The final tests, known as “qualification boards” are always conducted as an oral exam by a board of at least three members, with all but one consisting of persons with no connection to the student’s training and preparation. That is, those who not connected to the student’s training can form a majority of the board members.

The oral examination is a far superior method of determining a student’s knowledge for the same reason a deposition is far superior to written interrogatories – the ability to probe the response and to ask penetrating follow-up questions that make it impossible for student misunderstandings or confusion to remain hidden. Using the learning objectives and their own experiences in the profession, board members craft hypotheticals for the student to respond to, and they are able to judge not just the student’s theoretical mastery of knowledge but also the student’s demeanor and ability to communicate, which a closed written examination cannot possibly accomplish.

Summary

There is much more that could be said (and if prompted I would probably say it at excessive length). But I want to stop here by summarizing the main points:

1. Self-study and study with tutors/guides for rigorous and demanding professions is not only possible, but routine and highly successful where there is careful attention paid to the design of the curriculum.
2. A classroom-free or classroom-light study program for admission to the bar is an opportunity to develop practice-ready attorneys who far surpass the quality of those who undertake the traditional law school study course.

Cordially,

s/ John Gear

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