The practical work consists of working through the inferential process step by step, recording the findings in an inference network and finally evaluating the overall strength of the case as reflected in the inference network.

The first stage is to identify the factual hypotheses that require proof. The difficult thing here is to make sure the students do not confuse factual hypotheses with legal conclusions. The legal conclusions are drawn only upon proof of a number of factual hypotheses. Next the students prepare a list of all the available evidence. Before beginning to construct an inference network, it is crucial to understand how the pieces of evidence interrelate and how they relate to the hypothesis. The precise nature of the interrelationship will be reflected in the inference network. Writers have recognised that the process of inductive reasoning and the chain of inference depend on the use of intermediate assumptions often referred to as generalisations. Generalisations are assumptions about the course and causes of events in the world based on our shared understanding of human affairs. Most of the remainder of the class is spent evaluating the case on a partial basis and finding the best answer to the question of whether to settle, make a counter-offer, or go to trial.

The remainder of the class is spent considering other aspects of proof, principally the rhetorical and psychological aspects of the subject. Once we move from pre-trial evaluation to proof in the courtroom, there are obviously some important aspects of trial work, which do not depend solely on logic and probability. The role of narrative and storytelling in the art of persuasion is one. This leads on to discussion of the role of rhetoric in advocacy and considerations such as: the impact of the order in which evidence is introduced; the phenomenon of transitivity, whereby successful attacks on the credibility of a particular piece of evidence may also damage the credibility of other evidence and potentially the entire case even though the discredited evidence is not logically connected to the remaining evidence and may even be peripheral to the case as a whole; and the advantage of primacy and recency which accompanies the right to the first opening statement and the last rebuttal.

Why do law schools largely ignore the science of evidence and proof in favour of the legal rules of evidence? In a surprising number of cases, teachers are simply unaware that other dimensions of the subject of evidence exist. It cannot be denied that knowledge and understanding of the rules is very important to practice, as well as crucial to success in examinations. From there, it is probably a simple question of supply and demand. We give the students what we and they perceive they need. The examination requirements will always be with us, but an EPF class makes for a challenging and useful elective.

The format of the class is ripe for further development. There is much that could be included in a class on evidence, proof and facts. But whatever detailed approach is taken, the aim is to give the students a sound understanding of the basis on which judicial trials proceed, a method of analysing facts in a practical way and a method of proceeding from analysis to case evaluation.

INSTITUTIONS & ORGANISATIONS

The sorting function: evidence from law school
R A Ippolito
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In a path-breaking book Michael Spence advanced the rather startling proposition that higher education may not add value in the conventional sense of conferring learning, but rather may mostly act as a sorting device. In its starkest form the model portrays institutions of higher learning as places that erect a series of hurdles. The more capable applicants anticipate clearing the hurdles with relative ease, thereby encouraging less capable individuals to reveal their comparative disadvantage by sorting themselves out of the applicant pool for higher education.

It is possible to subscribe to this idea without abandoning the idea of learning. Colleges and universities would more efficiently employ their resources by erecting hurdles that both provide a sorting function and confer some learning. Additionally, there must be a time dimension to the sorting process. Presumably almost anyone might be willing to do enough work to pass some arbitrary test that lasts one week or one month. But the prospect of having to incur these costs over a long period is an important component to the sorting.

Presumably, other attributes besides IQ and SAT scores must be importantly related to success in the labour market. In this sense, the sorting problem for universities is twofold. First, universities must devise acceptance criteria that add value to simple selection based on some metric like the SAT or LSAT. Second, they must employ a grading system that awards the highest grades to the most capable students, the next-best grades to the second-highest group of students, and so on, all the while ridding this hierarchy of as much noise as possible. Universities that are good sorters gain a reputation in the labour market as reliable places to recruit entry-level professionals.

If law schools are providing a sorting function for future employers, then presumably grades importantly reflect hidden character attributes, like internal discount rates or preferences for work versus leisure. The problem for empirical study is that students do

not post their character attributes on their forehead for ready reference, nor is it obvious that they reveal these traits in standard applications for admission. The information must be teased from the available data. If measures of character traits are found that affect grades, the inference follows that grades also incorporate other character attributes that are unmeasured.

Performance in law school is a key variable that employers consider in hiring new talent. What is embodied in class rank? If it is raw ability, employers could hire new talent on the basis of IQ. If it is the amount of legal knowledge assimilated by students, employers could hire new recruits on the basis of a kind of postgraduate LSAT. While law schools presumably confer information about the theory and practice of law, it is likely that they also perform a sorting function.

Law schools presumably ascertain the level of excellence that each student is capable of, or intent on, achieving. While ability is an obvious factor that determines ultimate success in law, students' underlying character attributes are perhaps a more important predictor of success. We might think of these factors as reflecting either students' motivation or their willingness to place professional success high on their list of priorities.

If law schools could measure these factors in the application forms they receive from prospective students, the entering class might be quite different. As it stands, the inability to measure important character attributes in the admissions process is one reason that law schools add value. That is, students' GPA and class rank in law school provide information that is not apparent from inspection when students first enter.

Students' unobserved traits are importantly related to their promise as lawyers. The data show that these behavioural patterns are gradually subsumed in students' grad point averages as they proceed through law school. By the time they become job applicants in the legal market, they have revealed much of what is important in a single measure, namely class rank. Put differently, class rank measures likely success more accurately than raw scores reflecting ability, and this information represents an important source of value added by law schools.

JUDICIAL EDUCATION

Judiciary school: a proposal for a pre-judicial LLM degree
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In the United States the judiciary is the least understood branch of government. Necessary corollaries to the judicial function, such as judicial independence, are daily assaulted and criticised, or defended and praised. Although educational programs are available to judges after their ascent to the bench, an American system for the education of judges before any judicial service is nonexistent. The author proposes an academic degree program, an LLM for prospective judges.

Most of the existing programs for sitting judges are not degree programs and are limited in duration and scope. Judicial education is not now a requirement for judicial selection in this country. With minor exceptions judges have no formal preparation for judicial service other than law school. After law school a career in private practice, government service, or legal academic — or some combination thereof — forms the basis on which a judicial selection is made. Because no jurisdiction in the US requires judges to have an academic degree in judging, nor does any jurisdiction offer such a degree, the qualifications to become a judge often begin simply with the requirement that one be a lawyer. Whatever the process of selection, formal pre-judicial training for prospective judges would assist the selection process.

Legal education in the civil law systems is marked by early career definition and a focus on judicial education before judicial service, rather than continuing professional education after becoming a judge. Instead of pre-service judicial training, common law countries prefer in-service and continuing professional education for judges already selected and serving. As a result of these historic patterns, the emphasis on judicial education in common law countries is the peer-group educational model, and in civil law countries, the law school education model. The new LLM program would partake of both models.

How much more sense it would make to improve the American judiciary by improving the educational background of the pool from which judicial candidates are drawn. A pre-judicial education program could attract candidates from throughout the profession, not bound by political forces, partisan obligations or elitist expectations, but free to explore the judicial process in an academic environment.

A university environment allows a judge to acquire new information and explore new pathways of thought, using a different learning methodology from that used when experience is the teacher. Professional and/or political experience, without the benefit of academic training in a university setting, fails to realise educational opportunities that would be particularly effective for future judges.

Emphasis on an academic degree is appropriate because of its objectivity. An academic degree signals not only successful completion of a course of study, but some expertise in the subject matter of the curriculum. Moreover, in an academic program students would be at liberty, before they became judges, to question and explore the ideas of many legal writers