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Indeliberate Practice:

How the Business of Law Will Make You Mediocre (If You Let It)

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I. INTRODUCTION

> *"Talent is insignificant. I know a lot of talented ruins. Beyond talent lie all the usual words: discipline, love, luck, but most of all, endurance."*
>
> —James Baldwin[1]

What if we're wrong? What if excellence is not just a matter of hiring the most talented people and giving them experience?

We all use the same model, law schools and law firms alike. But what if we're wrong about how to develop peak performance in lawyers and maintain it over the long haul?

Elite schools and institutions rely on extensive testing and interviews to find the most talented applicants.[2] They focus on identifying and selecting students who possess the necessary innate talents that would allow them to reach expert levels with adequate experience.[3] Indeed, the leadership of Harvard University historically believed in "an aristocracy of talent."[4]

This obsession with identifying talent reflects the dominant view that achievement in a given domain is limited by innate factors that cannot be changed. At bottom, we believe that limits on attainable performance are determined by one's basic endowments, such as abilities, mental capacities, and innate talents.[5] But what if we're wrong?

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[1] Jordan Elgrably, *James Baldwin, The Art of Fiction No. 78*, 91 THE PARIS REVIEW 49, 77 (Spring 1984).

[2] ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 35 (1983).

[3] K. Anders Ericsson, *et al.*, *Deliberate Practice and the Acquisition and Maintenance of Expert Performance in Medicine and Related Domains*, 79 ACAD. MED. No. 10, S70 (2004) ("*Expert Performance in Medicine*").

[4] *Id.*

[5] *Id.*

What if individual differences in professional development are not primarily a function of giftedness? What if those differences depend upon whether and how you train? And what if age-related declines are not a product of the inevitable aging process? What if those declines result from running on autopilot for too much of professional life?

K. Anders Ericsson and his research colleagues hold to the view that experts are made (not born), and experts decline when they rely on automaticity.[6] Their belief is based on research into how expert performance is attained over a broad variety of domains from medicine to music to chess to science.[7] Yet we in the law (like most of our culture) seem content to stick with the "God-given-talents" model. Indeed, the financial incentives inherent in the business of law penalize the conduct shown to create and preserve expertise over time.

If legal expertise is acquired and maintained like expertise in other fields, then the business of law encourages automaticity, which leads to mediocrity and early decline. Section II. of this article compares skill acquisition by master performers to methods used in ordinary skill acquisition. Master performers engage in an extended apprenticeship involving deliberate practice, a specific method for acquiring new skills that is defined in Section II.B. In contrast, naïve practice and automaticity enable only a set level of mediocrity that declines inevitably with age. (Section II.C.).

Section III. makes the case (if only anecdotally) that deliberate practice was present in legal training and in the lives of our legal heroes. But deliberate practice almost completely disappears when we leave the law school to take our first jobs. Section IV. argues that deliberate practice has gone from rare to endangered in the modern age, due in large part to the increasingly commercial nature of law firms. Section V. concludes that one must make the

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[6] *Id.*

[7] *Id.*

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