

LIBERTY UNIVERSITY'S LAWYERING SKILLS PROGRAM: INTEGRATING LEGAL THEORY IN A PRACTICE-ORIENTED CURRICULUM

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I. BACKGROUND

THE chorus of voices criticizing legal education has continued to grow since the MacCrate Report was first issued in 1992.¹ The problem with the current mode of legal education in part reaches back to Christopher Columbus Langdell, who, while beginning his service as the Dean of Harvard Law School in 1870, introduced what later became the standard legal education curriculum. Langdell shifted longstanding legal pedagogy from the study of legal rules and doctrine rooted in historical and transcendent principles to an evolving standard focused on the transmission of law through judges using the case law method.² The Langdellian method of legal education did more than push law from its historical legal foundation; it also altered legal education from the training of lawyers as a trade to primarily a pursuit for academic knowledge.

The change from law as a trade to law as an academic profession was further advanced in 1921 when the American Bar Association promulgated the standards for approving law schools. The ABA “rejected a clinical (apprenticeship) component and mandated a three-year law school without an apprenticeship.”³ Skills training and values education became secondary to academia. Over time, however, market forces eventually began to demand that law school graduates be taught values and skills. Finally in 1992, the ABA recognized this void in legal education in the MacCrate Report. The MacCrate Report identified several skills and values deemed necessary to prepare graduates for the practice of law. These skills included problem solving, client counseling, negotiation, law office management, and ethics. The values deemed necessary included competent representation, promotion of justice, fairness and morality,

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1. A.B.A., SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, TASK FORCE OF L. SCHS. AND THE PROF., REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), is informally called “The MacCrate Report,” named for the Chair of the A.B.A. task force, Robert MacCrate [hereinafter *The MacCrate Report*].

2. See W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1, 11-24 (1997).

3. Patricia Mell, *Crossing the Bar—Law Schools and Their Disciples*, 79 MICH. BAR J. 1392, 1392 (2000).

improving the profession, and professional self-development.⁴ Despite the validity of these suggestions, law schools have been slow to implement these recommendations.⁵

II. SKILLS TRAINING REMAINS UNDEREMPHASIZED IN CURRICULUM DEVELOPMENT

Law schools are still not preparing lawyers for the practice of law. Recent studies published in 2007 conclude that skills training remains deficient in legal education. The Clinical Legal Education Association (“CLEA”) published the *Best Practices for Legal Education*.⁶ This multi-year study found that “law schools are simply not committed to making their best efforts to prepare all of their students to enter the practice setting awaiting them.”⁷ The Carnegie Foundation for the Advancement of Teaching published its report entitled, *Educating Lawyers: Preparation for the Profession of Law*.⁸ The Carnegie report continues the crescendo of criticism against modern legal education; it also calls for more skills training, at least in the upper-level courses. Further, a 2007 ABA Journal article entitled *Re-Engineering the J.D.* highlights the ongoing criticism against modern legal education and cites several schools embarking on what appears to be a fresh approach to legal education.⁹ The new programs of legal education addressed in the article range from an emphasis on teaching legal skills to interdisciplinary curricula drawing upon university-wide resources and adding law school faculty who do not have the traditional J.D.

While modern legal education may teach analytical reasoning, skills training continues to suffer.¹⁰ Despite the criticism against modern legal education, change has been slow. Acknowledging the criticisms against legal education is one thing; making radical changes is another matter altogether. Some faculty members are reluctant to experiment with significant changes in the curriculum. With respect to skills training, faculty may lack lawyering skills because they never practiced law or they have been long since removed from the practice of law.¹¹ The inertia of past tradition (“we have never done it that way before”) and

4. The MacCrate Report, *supra* note 1, at 138-41.

5. The MacCrate Report addressed both lawyering skills and values, but its greatest, although not immediate, influence has been in the area of lawyering skills. See Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 PACE L. REV. 105, 130, 135-36 (2001).

6. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

7. *Id.* at 19.

8. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW* (2007).

9. Jill Schachner Chanen, *Re-Engineering the J.D.*, 93 A.B.A. J. 42, 42-45 (2007).

10. See John Elson, *Why and How the Practicing Bar Must Rescue American Legal Education from the Misguided Priorities of American Legal Academia*, 64 TENN. L. REV. 1135, 1136 (1997); John Elson, *The Regulation of Legal Education: The Potential for Implementing the MacCrate Report's Recommendations for Curricular Reform*, 1 CLINICAL L. REV. 363, 384 (1994).

11. See Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J.L. REFORM, 191, 217-18 (1991) (reporting

the ABA Standards (“we ought to continue doing it the same way we have done it before”) are often powerful forces (whether actual or perceived) that have kept the legal academy from trying fresh approaches to legal education. If law schools desire to meet the demands of their alumni and the practicing bar, it will become even more imperative to train lawyers in the skills of law.¹² Law firms are getting impatient with the lack of lawyering skills in new graduates. Employers no longer want to invest large salaries in new hires while still being required to equip today’s graduates with the legal skills they should have learned in law school.

III. A FRESH START: SKILLS TRAINING EMPHASIZED IN NEW CURRICULUM

When Liberty University School of Law began to develop its curriculum prior to its debut in 2004, a great opportunity presented itself to address the need to train lawyers in the practice of law. While starting a brand new law school has challenges, it does have its advantages. A new law school can devise a curriculum from the ground up and then recruit faculty to support the program of legal education and training. When seeking to build a top quality law school, Liberty University took seriously the challenge to address the void in legal education, particularly with respect to lawyering skills.¹³

Liberty University School of Law began classes in August 2004 and achieved provisional accreditation from the American Bar Association on February 13, 2006. Liberty graduated its first class in May 2007.¹⁴ Thus, Liberty is still a very young law school. However, in the time that Liberty’s lawyering skills curriculum has been in place, the faculty and staff have been able to appreciate its advantages and realize its challenges.

that more than 20% of law professors had no practice experience prior to teaching and that the average length of practice prior to teaching for those who had practice experience was 4.3 years). The study concluded that “the vast majority of professors teaching law have had very little experience practicing law.” *Id.* at 219.

12. See Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 761 (2004). See generally Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985).

13. The focus of this article is solely on Liberty’s approach to skills training. Liberty’s curriculum also addresses values, professionalism, and the foundational principles and theories of law. Foundations of Law is a required two semester first year course that covers the historical, political, and religious foundation of law and discusses a wide array of legal theories that shaped the development of law in the Western legal tradition. Third year students may take Jurisprudence or Legal History.

14. If the evidence from Liberty’s first bar passage rates has any validity in supporting the presupposition that combining skills training with substantive legal doctrine reinforces both and provides a solid foundation for students and graduates, then thus far the assumption has proven to be correct. The bar passage rate for Liberty’s first graduating class is 89% nationally. However, this observation does not suggest that success in passing the bar is the only, or even the primary, output measure of the effectiveness of a legal education program. Many factors contribute to high bar passage rates. A school can have high bar passage rates and still produce graduates who are not prepared for the practice of law.

A. Lawyering Skills Curriculum Overview

Liberty's curriculum has three related but distinct components. These include foundations of law, substantive law courses and skills training, which Liberty calls Lawyering Skills.¹⁵ The Foundations of Law courses give expression to Liberty's legal philosophy in a similar way that law and economics, critical legal studies, or international law may give expression to a particular interest in other law schools. The Foundations of Law courses run both semesters during the first year of study. The Legal History or Jurisprudence courses can be taken during the third year of study. These courses survey the foundational suppositions and development of law throughout history, including the premises that positive law derives its authority from transcendent or universal principles. This perspective looks at "the development and study of law as a *corpus juris*, a body of law in which courses are related to one another as a logically consistent, comprehensive whole."¹⁶

The foundational principles of law are infused into the legal curriculum and lawyering skills program. The required substantive law courses are structured to have a relationship with lawyering skills so that they mutually reinforce each other.

The Lawyering Skills program is comprehensive and consists of several components: (1) a required six-semester curriculum; (2) integration of skills within substantive required and elective courses; and (3) a wide array of externships and clinical opportunities.

The curriculum teaches the skills deemed essential for every practicing lawyer. These skills include problem solving, legal analysis, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution, practice management, and professionalism or ethics. Liberty believes that the legal academy has both a duty to students to prepare them to practice law and a duty to the public to graduate lawyers who are both professional and skilled. In addition to teaching the theory of law, Liberty believes it is essential to teach the practice of law.

B. Required Curriculum

Liberty's program is unique because it requires six-semesters of stand alone courses called Lawyering Skills and denominated by Roman numeral I through VI. These six semesters comprise fourteen credit hours in skills training, which is nearly fifteen percent of a student's graduation requirement of ninety hours. The total of six skills classes span at least five of the six semesters of law school. As students progress through the lawyering skills program, they are taught an Adjudication (litigation) thread and a Planning (non-litigation, business or transactional) thread that runs throughout the skills program. The curriculum

15. See Liberty University School of Law, Preparing Students for the Practice of Law: A White Paper, <http://www.liberty.edu/media/1190/documents/CCPD-White%20Paper%20October%202006.pdf> (last visited Oct. 8, 2007).

16. *Id.*

recognizes that not all lawyers will be litigators and thus the Planning thread prepares students for the practice of law outside the courtroom. These threads recognize the difference between using law as a standard for adjudication and as an instrument for planning.

The Litigation thread teaches students to move a case from initial client interview, through trial to verdict, and through the appeal process. The Planning thread teaches students to use law as an instrument for planning and governing in both private and public sectors. This thread trains students in the areas of real estate transactions, estate planning, business associations, contracts, and drafting laws.

1. *Lawyering Skills I*

Lawyering Skills I is taught during the first semester of a student's law school career. This course is designed to introduce students to legal research, reasoning, analysis, writing, and proper Bluebook citation methods. The students are frequently given writing assignments designed to teach legal analysis. These assignments might be as short as one sentence addressing the holding of a case, or might include a paragraph summary of the case, or they might require a two page memo to the file memorializing a client interview. This course also requires an objective office memorandum analyzing the legal issues presented by a client, which will be approximately twelve pages in length. Students in this class also draft a complaint and an answer for the same problem as part of the contemporaneous Civil Procedure class. Skills training is embedded throughout the curriculum and oftentimes runs parallel with the stand alone lawyering skills courses in the other substantive required or elective courses.

Within a few weeks of beginning class, each student conducts a one-on-one client interview that is about forty-five minutes long. These interviews will be videotaped and reviewed by the primary lawyering skills instructor, sometimes with the assistance of adjunct faculty. Some of these interviews can be conducted in the lawyering skills classrooms. These classrooms consist of a regular classroom which is surrounded by series of rooms, each separated by one-way mirrors. Instructors can be situated in the middle room where they view and hear the client interviews through a one-way mirror and electronic sound system in the adjacent room. The interviews can also be captured using laptops equipped with cameras. This method allows the instructor to view the interviews at a more convenient time.

2. *Lawyering Skills II*

Lawyering Skills II is given during the second semester of the first year. This required course includes daily written exercises that continue to hone legal analysis. The students are introduced to electronic research, including research for summary judgment. Using this research, students draft a summary judgment brief of approximately twenty pages. Later in the semester, the students participate in a moot court oral argument competition based upon the summary judgment briefs. This course also requires an advisory letter to the client and a

settlement demand letter to opposing counsel, both consisting of approximately two to four pages. In addition to the litigation component, planning skills are introduced through the requirement of drafting and analyzing contracts.

3. *Lawyering Skills III*

In the first semester of their second year, students are introduced to pre-trial strategies in *Lawyering Skills III*. The students review original documents and prepare written discovery, including interrogatories, requests for production of documents, requests for admissions, and subpoenas. This course involves simulated depositions where one student acts as counsel for the plaintiff, another counsel for the defendant, and a third as the deponent. Planning skills are also integrated into this course through statutory drafting.

4. *Lawyering Skills IV*

Lawyering Skills IV exposes students to the art of negotiation. The school also offers a separate elective course in alternative dispute resolution. The adjudication component of *Lawyering Skills IV* teaches students to draft a civil motion in limine, write a brief in support of the motion, and present an oral argument on the motion. This course also requires students to draft a criminal motion to suppress, write a supporting brief and make an oral argument on the motion. The planning skills component includes drafting a business operating agreement and articles of organization.

5. *Lawyering Skills V*

Lawyering Skills V is given during the first semester of the third year and consists of trial practice. Each student represents a client in two or more civil jury trials before a sitting judge. Liberty University School of Law is blessed with three courtrooms, consisting of two state-of-the-art mock trial courtrooms for jury trials and moot court, and a large appellate courtroom that seats up to 400 people, which is called the Supreme Courtroom.¹⁷ Trial and appellate advocacy are taught in these courtrooms as each one is also used as a classroom for skills training. The students are taught all aspects of trial practice. They participate in opening statements, direct and cross-examination, and closing argument.

6. *Lawyering Skills VI*

Lawyering Skills VI can be satisfied by one upper-level class in either litigation or planning. Examples of classes which satisfy *Lawyering Skills VI* include Appellate Advocacy, Advanced Trial Advocacy, Mediation, Business

17. See generally Liberty University School of Law, *Law School's Supreme Courtroom Reflects Supreme Vision*, <http://www.liberty.edu/academics/law/index.cfm?PID=13575> (last visited Sept. 25, 2007). The Supreme Courtroom is denominated as such because the central features, especially the bench, replicate the courtroom in the United States Supreme Court.

Planning, Estate Planning, Real Estate Transactions and Development, Constitutional Litigation Clinic, and Criminal Law Externship.

7. *Integrating Lawyering Skills into Substantive and Elective Courses*

In addition to the six semester required lawyering skills program, skills training is incorporated into other substantive and elective courses. To the extent possible, the substantive, and to a lesser extent, the elective, courses are designed to track parallel to the lawyering skills courses. For example, Lawyering Skills I is taught the same semester as Civil Procedure I. Thus, the requirement in Lawyering Skills I to draft a complaint and answer is satisfied in Civil Procedure I. This parallel tracking integrates the lawyering skills stand alone courses with the other courses. The advantage of parallel tracking is that it allows students to see the practical application of the substantive course, and thus integrates the academic pursuit of law with the lawyering skills.

C. *Externships and Clinical Opportunities*

Liberty, like most law schools, also provides an array of externship and clinical opportunities. These externship opportunities run the gamut of judicial externships, prosecution and public defender externships, public policy with various legislative and government branches, legal aid, public interest law, and business. The first clinical program launched by Liberty University, in conjunction with Liberty Counsel,¹⁸ provides students real-life client opportunities in the area of constitutional law.

D. *Benefits and Challenges of a Comprehensive Skills Program*

Liberty University's lawyering skills program is comprehensive. When the law school was founded, the opportunity presented itself to establish a curriculum that filled the void that law school graduates experience when making the transition from the classroom to real-life lawyering. The benefit of the program has already been quite evident to the practicing bench and bar.

A comprehensive lawyering skills program is not without its challenges. These challenges include staffing, student work load, and the number of elective courses available to students. Skills courses at this level cannot be taught effectively in large sections and thus more staffing is required. For example, Lawyering Skills I requires each student to individually interview a client, and each must be individually evaluated. In order to evaluate each student, additional adjunct faculty members are often necessary, at least for this component of Lawyering Skills I. Additional facilities or technology to manage lawyering skills at this level may need to be added.

The student work load must also be considered and monitored. Students in skills classes are required to turn in written assignments on a regular basis,

18. Liberty Counsel, <http://lc.org/index.cfm?PID=14096> (last visited Oct. 24, 2007).

receive regular feedback, and this feedback is often in one-on-one conferences with faculty. Thus, the workload for the skills courses is similar, although slightly less, to the workload for moot court or law review.

Liberty's six-semester program constitutes nearly fifteen percent of the ninety hour required curriculum. This number of required courses is in addition to any other required substantive courses. Thus, the opportunity for elective courses needs to be continually evaluated.

Another challenge is parallel tracking the lawyering skills program to the other substantive required courses. Parallel tracking provides more scheduling challenges and is not always feasible.

IV. CONCLUSION

Legal education has been criticized for its lack of skills training. Liberty University has approached this subject by implementing a comprehensive skills training program. The lawyering skills stand-alone courses include six required courses which account for nearly fifteen percent of the ninety hours required to graduate. Skills are also integrated throughout the other substantive required or elective courses. Whenever possible, Liberty makes a conscious effort to parallel the lawyering skills stand alone courses with other substantive required or elective courses.

There are obvious benefits to skills training and there are challenges. While Liberty's lawyering skills program is comprehensive, not every program of legal education needs to be as comprehensive as Liberty's. It is easier for a young school to launch a new curriculum from the ground up than it is for an existing school to modify its curriculum. However, revamping the curricula in legal education is necessary and must start somewhere.

Legal education is improved by skills training, and hopefully more schools will implement additional skills training into their existing curricula. In order to train lawyers to meet the modern demands in the market, the legal academy must take the lead in skills training. Training students to "think like a lawyer" requires more than the theoretical study of law.¹⁹ Integrating the theory of law with the practice of law can be rewarding not only for the students but also for the faculty because it brings together traditional classroom faculty with clinical faculty and the practicing bench and bar. In the end, the legal profession and the public will benefit from the renewed interest in skills training.

19. See Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 57 (1992) ("Few seem to recognize that we cannot really teach students how lawyers think without teaching them at the same time what lawyers do. Thinking like a lawyer is a much richer and more intricate process than collecting and manipulating doctrine.").

APPENDIX

Lawyering Skills I

Daily written exercises that follow teaching of legal analysis
Research assignments
One-on-one client interview (45 minutes, videotaped)
Memo to file memorializing client interview (2 pages)
Objective office memorandum analyzing the legal issues presented by client
(12 pages) (students also draft a complaint and answer for the same
problem, but as part of Civil Procedure class)
Analyze a contract

Lawyering Skills II

Daily written exercises that follow teaching of legal analysis
Research for Summary Judgment Brief
Summary Judgment Brief (persuasive, 20 pages)
Oral arguments (both sides of the issue in a tournament format)
Draft a contract
Advisory letter to client (2-4 pages)
Settlement/demand letter to opposing counsel (2-4 pages)

Lawyering Skills III

Discovery documents: interrogatories, requests for production of documents,
requests for admissions, subpoena
Conduct depositions
Draft Statute

Lawyering Skills IV

Negotiation
Civil motion in limine, supporting brief, oral argument
Criminal motion to suppress, supporting brief, oral argument
LLC articles of Organization, Operating agreement

Lawyering Skills V

Civil jury trial: opening statement, direct and cross examination, closing
argument

Essential Skills

- Problem Solving LS I, PR
- Legal Analysis LS I, LS II, LS III, LS IV, Subs.
- Legal Research LS I, LS II, LS III, LS IV
- Factual Investigation LS I, LS III, LS IV
- Communication LS I – LS VI
- Counseling LS I, LS II, LS VI
- Negotiation LV IV
- Litigation and ADR LS I – VI (Litigation)
- Practice Management LS I – III
- Resolving Ethical Dilemmas PR, LS II, LS III, LS IV