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A Decade of Developments in Performance-Based Legal Education

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A Decade of Developments in Performance-Based Legal Education

Abstract

This tribute summarizes some of the accomplishments of William Mitchell college of Law in performance-based learning in legal education between 1986 and 1996. It first chronicles developments in the first-and second-year performance-based courses and then turns to upper-level curricular developments. At each point, it touches on course development and scholarship--the parallel tracks pursued by faculty focusing on performance-based legal education. As a result of these developments, the college is well positioned to contribute to the growth of performance-based learning in legal education nationally.

Keywords

law school, legal education, William Mitchell College of Law, legal training, law school courses, law school classes

Disciplines

Legal Education

A Decade of Developments in Performance-Based Legal Education

Deborah A. Schmedemann[†] and Christina L. Kunz^{††}

In 1995, as Dean James Hogg concluded his ten-year deanship at William Mitchell College of Law, U.S. News & World Report¹ ranked the college tenth in the nation in the teaching of trial and appellate advocacy. This recognition caps ten years of significant growth at the college in performance-based legal education, traditionally called “skills training.” This growth has been fostered by Dean Hogg and his administration, and we, as two of the faculty focused on performance-based education, are grateful for their support. Dean Hogg and his administration sent us to numerous conferences, arranged joint teaching schedules, provided research assistance and support staff for our writing projects, supported faculty seminars on learning theory, and encouraged our collaborative efforts.

This tribute summarizes some of the accomplishments of the past ten years. We first chronicle developments in the first- and second-year performance-based courses and then turn to upper-level curricular developments. At each point, we touch on course development and scholarship—the parallel tracks pursued by faculty focusing on performance-based legal education.

Legal Research and Writing. The most visible achievement within the context of the first-year Legal Research and Writing course has been the publication of *The Process of Legal Research*, (first edition 1986, second edition 1989, third edition 1992, fourth edition now in progress),² the nation’s best-selling legal research text and one of the highest selling law school textbooks. A notable collaborative effort, this book is now written

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1. *America’s Best Graduate Schools*, U.S. NEWS & WORLD REP., March 20, 1995.

2. The authors of the first and second editions were, in addition to the four current authors, Peter Erlinder, Clifford Greene, and Kevin Millard. The authors of the third edition were, in addition to the four current authors, Clifford Greene. The book is published by Little, Brown & Co.

by Ann Bateson, Matthew Downs, and the authors of this tribute. Another book-to-be, currently being taught in its second draft, is *Legal Writing as a Process*,³ a sister text on writing and analysis. In the mid-to-late 1980s, the college instituted a tutoring program for students needing extra assistance in the Legal Writing course; this program responds to the diverse backgrounds and learning styles of the College's students. Over the past decade, the three Legal Writing coordinators, Kenneth Kirwin and the authors of this tribute, have developed curricula addressing various issues of concern to the legal profession, including alternative dispute resolution, diversity, and professionalism.

Lawyering. In the fall of 1994, Roger Haydock, Ann Juergens and Peter Knapp first offered Lawyering Skills, now a required course for second- or third-year students. This new course grows out of Civil Practice and Trial Advocacy. It explores the lawyer's relationships with clients, opposing parties and counsel, and decisionmakers. The teaching methods include videotapes and live demonstrations, readings, class discussion, student performance, and critiques by adjunct professors. The class materials, both videotapes and traditional text, are under contract for publication.⁴ This publication continues a long tradition of faculty publication in the area of trial advocacy.⁵

Practicum. In 1980, John Sonsteng and Roger Haydock conceived of a course simulating a law firm practice. First offered in 1982, the Practicum has evolved considerably over the past ten years as Professor Sonsteng and other course directors⁶ have developed the law firms' cases and course materials. As with the Lawyering Skills course, the Practicum course materials are currently being prepared for publication.⁷

In the summer of 1988, three faculty, Neil Hamilton, Eric Janus, and David Prince, produced a paper outlining the

3. The authors are Deborah Schmedemann and Christina Kunz, and the publisher will be Little, Brown & Co.

4. The Lawyering Skills materials will be published by West Publishing Co.

5. For example, in 1994, Roger Haydock and John Sonsteng completed a five-volume text on *Advocacy*, published by West Publishing Co.

6. Adjunct Professor June Cicero and staff member Resa Gilats have played major roles in teaching and coordinating the Practicum course.

7. The Practicum materials are to be published by West Publishing Co.

benefits and rationale of small-group legal education. They recommended that students learn through “contextual integration”—“the deepening of skills and knowledge, not in isolation, but in the broader context of the lawyer’s work.”⁸ Innovations in the clinic and creation of the Work of the Lawyer course flowed from this study.

Clinic. In accord with the small-group study’s recommendation, the clinical course offerings are now coordinated by full-time, tenure-track faculty. Ann Juergens⁹ and Peter Knapp were hired in 1989 and have since enriched the academic component of the College’s clinic course by teaching the Civil Litigation Clinic, increasing the training provided adjunct professors, developing a cohesive educational philosophy, and strengthening the classroom component paired with the client-representation component.

Work of the Lawyer. Also as an outgrowth of the small-group study report, the college offered a new course, Work of the Lawyer, in 1988. Initially developed by Neil Hamilton and Eric Janus, and subsequently taught by many faculty, frequently in pairs, the course focuses on moral, professional, financial, personal, and political forces in law practice. These issues are explored through observations of practicing lawyers, readings, reflective written exercises, and class discussion.

Many other college courses with a primarily doctrinal focus also include components emphasizing performance-based learning. For example, Anthony Winer has taught International Business Transactions through an extended series of negotiations. Mel Goldberg’s Criminal Law class entails weekly research-and-writing exercises. During the past decade, performance-based learning methods have increasingly crossed the traditional divide between “skills” and “doctrinal” courses.

These curricular developments have been mirrored by significant success by college students in a wide range of extracurricular competitions. For example, college teams have gone to the national competitions in negotiations four times

8. Eric S. Janus, *Clinics and “Contextual Integration”: Helping Law Students Put the Pieces Back Together Again—Design for an Integrating Curriculum in Lawyer Education at William Mitchell College of Law*, 16 WM. MITCHELL L. REV. 463, 468 n.12 (1990).

9. Ann Juergens formerly had been a non-tenure-track clinical instructor.

during the past decade, and the trial advocacy team won the national competition in 1989.

What we have described here is only part of the picture, yet these accomplishments illustrate a very productive decade in the development of performance-based legal education at the college. As a result of these developments, the college is well positioned to contribute to the growth of performance-based learning in legal education nationally.¹⁰ This position is one of the enduring legacies of Jim Hogg's deanship of the college.

10. See American Bar Association Section of Legal Education and Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum (Report of the Task force on Law Schools and the Profession: Narrowing the Gap)* (1992) ("the MacCrate Report").