

withstand the pressures that competition often creates to act unethically in the struggle to succeed. Only when we appreciate these requirements, can we understand how much universities need to do to prepare students for the competition and to help the market function humanely and well.

SKILLS

Beyond mere competency: advanced legal research in a practice-oriented curriculum

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55 Baylor L Rev 2003, pp 55ff

During the past thirty years, law schools have responded to the challenge of adequately preparing their students to conduct legal research by placing more emphasis on research courses in their curricula. Criticism of instructional methods prompted much of this reform, as did the development, growth, and expansion of computer-assisted legal research (CALR). Some schools have expanded such course offerings, providing separate advanced research courses in specialised areas. Improvement in legal research instruction has coincided with a rather spirited debate regarding the role of law schools as training grounds for training lawyers, not merely as graduate schools teaching about the theory of law.

What we are really doing, and indeed what we ought to be doing in the curriculum, in pursuing the goal of preparing our students adequately for legal practice is not to teach law so much as to teach lawyering, ie. the development of lawyering skills and professional values in context.

The MacCrate Report recognises the importance of legal research instruction in professional development programs of law schools, and details the fundamental research skills lawyers should possess. Recognition of legal research as a vital skill, however, is really nothing new.

Baylor Law School first offered a course in Advanced Legal Research in 2001. Baylor's program is rather unique in its approach to the teaching of law. It explicitly rejects the common claim that law professors are primarily responsible for teaching students to think like lawyers, leaving students to learn the actual practice of law in other settings. Unlike students at schools employing a traditional curricular structure, Baylor law students must, for the most part, complete their courses of study in a structured upper-level curriculum, including but not limited to the third-year required courses. These requirements allow instructors in other upper-level courses to know in advance that students have had exposure to certain subject areas prior to taking the advanced courses.

Baylor's Advanced Legal Research class is a direct beneficiary of Baylor's overall approach, because 'skills courses' generally are not treated as less important and less relevant to legal education than doctrinal courses. Baylor employs a structured program during the students' first year known as Legal Analysis, Research, and Communication (LARC) that differs somewhat from similar research and writing programs at other law schools. Each of the three components of the course is taught in a separate quarter, with full-time, tenure-track faculty teaching each component. Students receive three months of concentrated instruction in research during the second quarter which serves as a bridge between written legal analysis instruction in the first quarter and oral and written communication taught in the third quarter. Given the focus on legal research in the first-year curriculum, Advanced Legal Research has been developed to be just that – advanced.

Legal research is a skill, and like other skills components of law school curricula, including trial advocacy, negotiations, and brief writing, it requires considerable resources to be taught well. Skills training requires on-

going development of detailed problems, a high faculty-student ratio, and substantial clerical and administrative support, as well as funding for new staff or the time and attention of existing faculty – all of which translates into a very resource-intensive curriculum.

Baylor's structured curriculum benefits instruction in Advanced Legal Research because the course can be designed and taught with the knowledge that the majority of students will be familiar with certain subject areas. If some students have not yet taken certain substantive courses prior to the Advanced Legal Research course, these students must take the substantive course concurrently with or shortly after the research course.

Development of the Advanced Legal Research course has also involved consideration of the six areas of concentration offered in the law school. Requiring students to complete a broad study of basic legal doctrine provides the foundation for advanced study. Once students have been equipped with this broad foundation, they are then prepared to pursue more specialised study in areas of interest. Focused study in a particular field exposes students to the depth and complexity of law and these areas directly affect the focus of instruction on the areas of specialised research.

Students are expected to focus their attention for an entire quarter on the methods for conducting research and citing sources. Instructors base grades primarily on a memorandum assignment and a final exam at the end of the quarter, both of which require students to demonstrate their ability to research a problem and cite legal authority properly. Instructors also require students to complete ten research assignments that correspond to instruction from each class. Research instructors have end responsibility for assigning and grading assignments, the memorandum assignment, and the final exam.

A common thread in the course descriptions is instruction in effectiveness and efficiency in developing a research plan. Not only are students expected to learn how to use electronic resources, but also when and why to use them, with particular emphasis on realistic options for online access. The research log is also a good tool for instructors to evaluate student progress, for students to evaluate their own progress, and for students to conduct peer-evaluation.

The second half of the Advanced Legal Research course focuses on specialised research in several areas of law. Focusing on individual subject areas promotes effective instruction in integrating non-legal sources with legal sources.

The difficulty with developing a practical problem has been resolved to a degree by requiring students to draft research problems of their own creation. Students are required to select a topic that has practical application. These topics should require students to consult a broad range of resources that would be consulted if the students were researching the problem for a brief or memorandum. Students are required to draft their own set of facts, a list of instructions for the various sources that needed to be consulted, and an answer sheet for those instructions. These projects are then reviewed extensively by the course instructor, and resubmitted to other students who are required to conduct the research as instructed in the various problems. Moreover, students are required to study the facts given in the problem, and conduct research to locate additional authority that may apply to their specific problem. The function of this project is rather similar to a peer review or peer editing process, because students are required to evaluate another student's research in order to find authority that would help resolve the problem presented.

The course project has solved, at least partially, the problem of creat-

ing significant and practical exercises. Students are required to use a fairly wide range of resources intelligently in order to develop these problems. While this caused some frustration among students, it caused less frustration than previous attempts to create comprehensive exercises and has accelerated the students' understanding of the various sources covered in the course.

The dialogue concerning legal research instruction should not end. As the availability of information continues to change, so too must the pedagogical values associated with legal research instruction. Legal information is not cheap, and the people who eventually pay for the academic community's inability to teach research skills are the students' future clients.

Truth in action: revitalising classical rhetoric as a tool for teaching oral advocacy in American law schools

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Brig Young U Educ & L J 2003, pp 299–308

Effective oral argument is crucial for success in legal advocacy. Trial lawyers must develop oral argumentation skills because they are not usually born with a golden tongue. Most trial lawyers, however, are thrown into practice without ever receiving this essential training.

It takes years of experience and consistent practice for an attorney to develop strong oral argumentation skills. Unfortunately, most law students have only one experience with oral argument, the first-year moot court competition, and even less receive actual training in oral argument during law school. In effect, each law student must 're-invent the wheel' of oral advocacy.

Both legal practitioners and scholars acknowledge that even in the last decade oral advocacy has been neglected in many ways. Why is oral advocacy not being taught? Scholars and practitioners have offered many

explanations. Some point to the sharp reduction in time allowed for oral argument in appellate court, or the crushing burdens of increased business in trial courts. Some commentators find that because attorneys' skill in oral advocacy is declining, judges neglect oral argument. Ultimately, the lack of good oral advocacy springs from the lack of a real methodology.

While many law schools seem to assume that oral advocacy skills can be easily acquired after graduation, some schools are starting to recognise the need for teaching it. Good oral argument pedagogy requires a set of tools that are clearly defined, readily applicable and flexible, so that an advocate can both increase her level of preparation as well as 'think on her feet.' Though many critics have excellent ideas that should be incorporated into law school pedagogy, none, or few, of these critics have offered a coherent and comprehensive system for the way oral advocacy should be learned or taught.

Most law school advocacy programs focus on research and writing disproportionately to oral argumentation. In fact, most law students are only required to give one oral argument in the culmination of their first year. Rarely are law students ever required to take additional courses requiring oral advocacy. Some law schools, however, are making oral advocacy a higher priority. While most law schools require students to give an oral argument, they rarely provide formal instruction on oral advocacy. Generally, students practise oral arguments with peers or once in front of a teacher. Even worse, oral advocacy is something that is thrown in at the end of the semester, rather than integrated into the entire course.

Classical Rhetoric embodies a pedagogical system that can aid students as they develop skills of oral argument in the preparation stages as well as presentation stages. Fundamentally, it was separated into five canons: Invention,