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# What's New in Legal Education— Experiential Learning

by David H. Getches

Chances are that nearly every Colorado lawyer, experienced or novice—regardless of having been educated in the East, in the West, or in between—had a remarkably similar legal education. We all took many of the same first-year courses—and second- and third-year courses, as well—based on case books comprising appellate court decisions. The courses likely were taught by bright professors who had excelled in their own law schools and who taught using the Socratic method.

The approach and the curricula have served us well. We learned to analyze and solve problems, and how to communicate under pressure. However, according to criticism from law school graduates, legal educators, and others, something was missing.

One of the most frequent criticisms about the current legal education system has been the lack of exposure to practical application of the doctrines and problem-solving techniques that are the stock-in-trade of American law schools. With an elevated consciousness of the importance of such “experiential learning,” a major change in legal education is afoot.

## Teaching Practical Skills

During the latter part of the 20th century, there was a groundswell of criticism from the practicing Bar about the failure to teach practical lawyering skills to law students and to inculcate the ideals of a professional serving the larger society. Many studies and reports in which legal educators and practitioners participated reached the conclusion that law schools should give more attention to preparing law students for the professional role of lawyers. A 1992 report of the American Bar Association Task Force on Law Schools and the Profession—the MacCrate Report<sup>1</sup>—recommended that practicing lawyers and law schools cooperate more closely to improve lawyering skills and professionalism.

The 2007 Carnegie Report, “Educating Lawyers: Preparation for the Profession of Law,”<sup>2</sup> challenged law schools to see legal education as having three “apprenticeships.” The analytical apprenticeship—so well enshrined in our classroom teaching—is just one of them. The report names the practical and the ethical as the other apprenticeships. Many of the ideas spawned by the Carnegie Report were familiar, and mirrored suggestions made in the MacCrate Report.

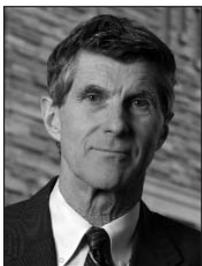
The conclusions of the Carnegie Report spurred a few schools to adopt courses on professionalism; some law schools even invested in costly new clinical courses. Many had already begun to make significant changes. Recently, for instance, the University of Colorado Law School (Colorado Law) has added clinics ranging from juvenile law to entrepreneurial law. A few schools have introduced “lawyering” and other related courses in the sacrosanct first-year curriculum. For instance, the University of Southern California created a course on “Legal Profession” that considers the role of a lawyer in society, the history and organization of the legal profession, alternative career paths, access to justice, and conflicting ethical duties. Georgetown has allowed students to choose electives in their first year, including “American Legal Profession” or “Legal Process and Society.” Several other schools have allowed departures from traditional first-year curricula that go beyond professional and experiential exposure, such as in international or transnational law.<sup>3</sup>

Although any change is notable in our hidebound profession, measures taken by some of the law schools were skin deep—that is, distant from the core curriculum—and were taught by adjunct professors. Many legal educators were skeptical of being told what to do, and most schools did nothing different.

## The First 100 Years: From Langdell to Clinics

Historically, the biggest change in the fundamentals of legal education came 140 years ago. Christopher Columbus Langdell of Harvard University introduced the case method and the use of Socratic dialogue; hired the first full-time law professor (to replace the part-time lawyers who used to teach law classes); extended the course of study from one to three years; and treated law as a science where analytical thinking was essential.<sup>4</sup>

That was in 1869. Since then, the second biggest change was the introduction of clinical programs in the late 20th century. Today, nearly every school, Colorado Law among them, has some hands-on clinical experience to offer.<sup>5</sup> More than sixty years ago, Colorado Law started one of the first law school clinics in the nation, engaging students in serving actual clients who could not afford a lawyer.<sup>6</sup> The law school now has nine clinics dealing with a variety of legal problems, including wide-ranging issues arising in criminal, civil, juvenile, and American Indian law; natural re-



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sources litigation; transactional work in entrepreneurial representation; technology policy; appellate advocacy; and wrongful convictions.

What continues to be missing in legal education, as pointed out in the Carnegie Report, is integration of professional and practical elements of law school teaching with the teaching of theory, doctrine, and analysis.<sup>7</sup> Incorporating practical elements into legal education has been gradual at best. The report cites a few positive examples. Consistent with the spirit of the report, legal educators have begun expanding curriculum in many law schools for ethics and professional responsibility instruction, going beyond blandly drilling students in the Rules of Professional Responsibility, and thereby attempting to distinguish and inspire the ethos that characterizes the higher calling of lawyers.

## The Last Quarter Century

There have been other, more recent changes in legal education. Unlike Langdell's revolution and the introduction of clinics, however, only a few of them directly affect the mission and content of law teaching.

On his retirement as the longest serving dean in the country, University of Iowa Law School Dean *Emeritus* Bill Hines wrote about the ten most significant changes in legal education he witnessed during his twenty-five years as dean.<sup>8</sup> He listed changes relating to law school operations, such as rising costs and increased reliance on external funding. He listed other changes that addressed how we do our jobs, including the growth of digital technology for research by students and professors.

Some of the changes Hines cited, such as racial and ethnic diversification of faculty and students, have affected our law school communities. Surely, this has broadened discussions and perspectives inside and outside the classroom. At least one change Hines mentioned—the emphasis on rankings—actually may retard change and experimentation in our ways of doing business by focusing on traditional measures such as LSAT scores of entering students and opinions of educators and lawyers schooled in the “old ways.”

Hines also mentioned the widespread creation and incorporation of legal writing courses into legal education curricula as an important change. These do add to the content of what we teach. Because of the growth of technology—another of Hines's cited changes—schools now teach computerized legal research.

A few of Hines's other notable changes influenced the number and diversity of the courses that law schools teach. The growth of interdisciplinary courses interjected broader analysis into the curriculum by tapping the wisdom of other fields, such as sociology, science, and public policy.

Hines remarks on the globalization of the profession that, in turn, has affected the content of courses. International law and comparative law have a much greater presence in the curriculum than they did years ago.

Although some of these changes have affected what law schools teach by adding courses, the objectives and methods of teaching have remained essentially the same. We still strive to teach critical analysis in the classroom.

Hines cited increased attention to professional skills and the emphasis on ethics and professionalism as major changes in legal education. They are indeed! In terms of the law school's mission, the methods that engage students to apply the learning they get in

the classroom and steep them in the ideals of professionalism are the most significant of all in changing legal education. They are the stuff of experiential learning. However, the enrichment and growth of clinics has moved along a parallel but quite separate path from mainstream legal education. Often these programs are nonexistent without integration into the classroom experience.

## The Evolution of Experiential Education

Today, students have advantages that were lacking when I went to law school in the 1960s. Not only are there clinical programs dealing with a variety of subject matter, but students can participate in a tantalizing array of hands-on, experiential programs. Colorado Law, typical of other good schools, offers students multiple opportunities:

- to learn trial advocacy skills under an experienced lawyer–professor
- to interact with and represent real clients in a clinic
- to learn trial advocacy from prominent practitioners
- to earn academic credit for work in law offices with lawyers and legal staffs
- to participate in literally dozens of moot court and mock trial competitions
- to feel the responsibility and satisfaction of serving those in need.<sup>9</sup>

The notion of experiential learning subsumes not only all the fractionated practical aspects of legal education developed at law schools—clinics, externships, court competitions, and *pro bono* service programs, but in its fullest manifestation, experiential learning can legitimate these experiences by linking them with the rest of legal education curricula. Students can connect the theory and doctrine they learn in the classroom with practice through hands-on experience in clinics and other programs of the law school.

In its fullest manifestation, experiential techniques are being embraced in the classroom through practical exercises of drafting, trial, or negotiation simulations, and even group consultation with clients and problem solving in real cases (such as a refugee family in an immigration class). Taken together, the introduction of experiential education into legal education through engaging students in clinics and other applied learning, a heightened focus on professionalism, instilling a sense of public service, and the greater integration of practical and professional elements into the classroom may constitute change as bold today as Langdell's innovations were in the 19th century.

## Optimizing Experiential Education

To optimize the educational value of what is being taught in traditional law school classes and the experiential programs of clinics, court competitions, externships, and *pro bono* work, students need guidance on how to select from this menu of practical experiences. Law school administrators and educators need to do better what we now do, do more of it, and tie it to the more traditional analytical mission of our teaching.

Some law schools already offer students experiential learning opportunities, but may not have succeeded in communicating the value and purpose of the programs. Students and faculty alike may see these opportunities as less important or of less value. Other schools provide so many programs that students can feast on an unbalanced

smorgasbord of practice-oriented courses and court competitions, sometimes with little sense of the underlying doctrine.

At Colorado Law, our programs of experiential education are heavily subscribed; however, they often exist in isolation from one another and from the classroom. This makes it hard to dispel the notion that practical matters and being part of the professional culture are less important than traditional curricula. With clinical offerings in diverse fields of the law, we have a great potential for linking practical applications with the teaching of doctrine and theory. We have begun to forge those links.

### Experiential Learning Matures at Colorado Law

Colorado Law's goal is to create the best experiential education program in the nation. The law school is refining its approach to teaching practical and professional skills, and is proposing to expand, enhance, and coordinate the courses and activities in which a law student applies knowledge and analytical abilities through the use of lawyering skills. Colorado Law also proposes to instill in students an awareness of a lawyer's civic responsibilities and opportunities to serve and lead. This will require, among other things, integration of experiential education in select classes throughout the law school, along with coordination of existing experiential programs with the full curriculum.

To address these challenges—and pursue an exciting change in legal education—Colorado Law has established a Chair in Experiential Learning. Creation of this position is made possible through the tremendous generosity and commitment of the well-known

Colorado aviation lawyer Richard Schaden and his entrepreneur son Rick Schaden.<sup>10</sup>

Colorado Law has committed to a dynamic experiential program that will have the dignity of being led by a nationally recruited, tenured faculty member holding an endowed chair. His or her role will be to weave together existing practical programs, improve and expand them, relate them better to the teaching that goes on in the classroom, and incite the inclusion of experiential learning in some traditional courses.

With an endowed chair, Colorado Law should be able to recruit an experienced trial lawyer–legal educator with a record of scholarship and teaching in a field such as trial advocacy, evidence, trial practice, clinical education, or professional responsibility. Importantly, the Chair—with tenured faculty status—will be a liaison between faculty members devoted to the teaching of doctrine and analysis, and those who direct student work in practical skills. A full-time faculty member will be charged with elevating the visibility and quality of practical and service education, and integrating experiential components of the curriculum in the law school's doctrinal and theoretical teaching mission. It will be especially important to find an individual with a personal and professional character that inspires students to use their legal education and their privileges as lawyers to serve clients and advance society with excellence, commitment, and integrity.

Besides teaching, the Chair in Experiential Learning will undertake curriculum development, fundraising, faculty support, and student counseling. This will include oversight of the content and

delivery of the law school's externship program, coordination of all trial and appellate court student competitions, and promotion and administration of the public service pledge program. Working with the Director of Clinical Programs, the Chair will continue to build the strength and quality of clinical education. The Chair also will be required to reach out to the legal community, recruiting and engaging volunteer and adjunct practitioners to participate in programs such as trial advocacy; teaching, coaching, and judging court competitions; developing opportunities with public and private law offices for student externships; and working with nonprofit organizations and public agencies to advance the *pro bono* pledge program.

## Conclusion

Traditional legal education in doctrine and analysis is here to stay. Its success, however, should not keep it from getting better. Surely the greater diversity of course offerings has made the curriculum more interesting, adding some subject matter worthy of a liberal arts college. However, the greatest departures from the traditional curricula have been the introduction of practical skills teaching and the commitment of law schools to better develop the ideal of professionalism. These experiments are incomplete and are rarely connected to the traditional law school mission.

The goal of experiential learning is to give greater coherence to the entire law school curriculum, making it truly applied learning. Properly undertaken, it will fulfill an understanding of all that is taught, from analysis and criticism to doctrine. In addition, while honing essential skills, it will further dignify the professional ethos that should be every good law school's mission to inculcate in the lawyers of tomorrow. Colorado Law is well-positioned to advance the ideal of experiential learning and to share its work with law schools across the country that want to embrace this new concept of legal education.

## Notes

1. See "Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap," (American Bar Association (ABA) Section of Legal Educ. and Admissions to the Bar, 1992), available at [www.abanet.org/legaled/publications/onlinepubs/maccrate.html](http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html). The report was named the MacCrate Report, after New York lawyer Robert MacCrate, who chaired the ABA task force.

2. Sullivan *et al.*, "Educating Lawyers: Preparation for the Profession of Law" (Jossey-Bass, 2007). The report was prepared after two years of study under the auspices of the Carnegie Foundation for the Advancement of Teaching; it is generally known as the Carnegie Report.

3. The information on innovations in law school curricula was gathered as part of a year-long task force effort at the University of Colorado Law School (Colorado Law). A Skills Teaching Task Force was led by Associate Dean Dayna Matthew and included faculty, students, and members of the Bench and Bar.

4. See Romantz, "The Truth about Cats and Dogs: Legal Writing Courses and the Law School Curriculum," 52 *Kan. L.Rev.* 105, 112-19 (2003).

5. Milstein, "Clinical Legal Education in the United States: In-House Clinics, Externships, and Simulations," 51 *J. Legal Educ.* 375, 380-81 (2001).

6. Dieter, "Legal Aid Clinic Marks 40th Anniversary" (1988), available at [www.colorado.edu/law/clinics/legalaid/cu-legalaidclinic-history.pdf](http://www.colorado.edu/law/clinics/legalaid/cu-legalaidclinic-history.pdf).

7. Sullivan, *supra* note 2.

8. Hines, "The Ten Major Changes in Legal Education in the Past 25 Years," *Association of American Law Schools Newsletter* (Aug./Nov. 2005), available at [www.aals.org/services\\_newsletter\\_presAug05.php](http://www.aals.org/services_newsletter_presAug05.php).

9. Colorado Law initiated a *pro bono* pledge program this year. Students who fulfill a commitment to fifty hours of volunteer legal work while in law school receive a notation to that effect on their transcripts.

10. In 2008, internationally known aviation lawyer Richard Schaden and his son Rick Schaden, the founder of Quiznos, made a \$5 million commitment to Colorado Law to establish and endow the Schaden Experiential Learning Program. A news release about the endowment is available at [lawweb.colorado.edu/news/showArticle.jsp?id=491](http://lawweb.colorado.edu/news/showArticle.jsp?id=491).