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Teaching Legal Skills: The Three-Year Experiment That Works

By Professors

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The basic legal skills of analysis, research, writing, and advocacy are probably taught fifty different ways in the 176 ABA-approved law schools. The teaching of these skills varies greatly in number of courses, number of credits, course content, method of evaluation, and course faculty. Not only are the approaches different but few schools are ever satisfied with the approach they have adopted. Change then becomes constant.

The University of Baltimore is currently using its sixth method since 1973 and may have found a formula that works well here. In 1984 the faculty approved the current Legal Skills Program, which was designed by two professors, Byron Warnken and Barbara Britzke. Dean Katz then appointed them as co-directors of the program, which was first implemented in the fall of 1985.

The content of the Legal Skills Program is quite traditional. It is its method of delivering this skills training that is less typical. Some schools use only regular, tenure-track faculty to teach in this area. Some use full-time instructors hired on a contract basis. Some use adjunct faculty. Some use one of these faculty approaches plus student teaching assistants, while others rely solely on upper-class students.

The current University of Baltimore system combines features of each of these approaches in a team-taught program, which is continually evolving and which requires extensive planning, centralized administration and supervision, and a bit of luck. At the University of Baltimore this begins with full-time faculty members. The Legal Skills Program co-directors develop the curriculum; teach a portion of the program; help the dean select the adjunct faculty and program administrator; advise, supervise, and evaluate the faculty; and assume overall administrative responsibility.

Legal Skills is a five-credit, two-semester sequence, consisting of a three-credit course Legal Analysis, Research, and Writing during the fall semester and a two-credit course, Moot Court, during the spring semester. It is designed to complement the analytical training that students receive in their substantive first-year courses. Each of the last three years Professor Warnken has taught legal analysis to all 300 entering students in a five-week class that begins in August, one week before the upper-class students return. He has applied a detailed case analysis approach to a small number of sophisticated cases. Students are required

to submit a "maxi-brief" of each case before class. This analysis phase also develops skills of case synthesis and statutory construction by requiring students to apply the case law and related statutory material to hypothetical problems. Public policy issues are raised by the cases, which have included a decision imposing strict liability on the manufacturers of "Saturday Night Specials" and a decision applying sovereign immunity in a suit against a government employee who negligently caused the death of a small child. Practical issues also have been presented in the materials, from the consequences of failing to file a mandatory motion on time to result-oriented court decisions not supported by law or fact. The analysis phase ends with a one-hour examination, which counts as ten percent of the course grade and serves as a warm-up for the mid-term exams students are about to take in their other courses.

During the analysis phase, every student is assigned to a small section conducted by an upper-class teaching assistant. With a ratio of only twelve-to-one, the teaching assistants are able to provide individual attention, which is especially important during the trying first month of law school. The small sections meet weekly to

discuss the case material and the maxi-briefs. The case briefs are graded by the teaching assistants on a pass-fail basis, with the concurrence of a faculty co-director required on all failures. This past year the teaching assistants were selected from among fifty-eight applicants and each worked for one academic credit per semester.

After the legal analysis phase, the first-year students begin a seven-week legal research phase, which was taught this year in sections of sixty students each. The students also could meet in the library once a week if they wished with their small-section teaching assistant. The students submitted four legal research exercises, which collectively counted ten percent of their final grade and which were graded preliminarily by the teaching assistants, with final grades assigned by the adjunct research professors.

One week after the legal research phase begins, the overlapping eight-week legal writing phase begins. Twenty-five adjunct faculty members teach twelve-student sections. The subject is taught in the context of three memorandum of law assignments, the first of which is a short, one-issue closed memorandum of law. "Closed" means that, although the assignment requires the skills of legal analysis and legal writing, it does not require legal research skills because the problem includes a packet of authority. This past year, the first memorandum problem involved sufficiency of the evidence in a robbery case, requiring analysis and synthesis of five cases. The second writing assignment is a longer, two-issue closed memorandum of law. While the first memorandum is typically an easy and interesting common law problem, the second memorandum is typically a complex statutory problem. The second memorandum problem this past year involved both diversity jurisdiction and jurisdiction under the Foreign Sovereign Immunities Act of 1976, and required the analysis of difficult statutory authority and judicial decisions. The co-directors prepare the first and second memorandum problems. The writing professors grade these memoranda and confer individually with the students about their efforts.

The final writing assignment is a fifteen-page, multiple-issue research memorandum of law. Each legal writing professor, with research assistance from a teaching assistant, prepares a problem, which is reviewed by the co-directors. This project is the first one that requires the student to perform all three tasks of analysis, research, and writing, and counts as fifty percent of the grade for the semester.

During the spring semester, the students shift from dispositive writing to persuasive writing, and each student's writing professor becomes his or her moot court professor. Two moot court professors, with research assistance, prepare a record that is the basis of a moot court problem for their two sections. While at work in pairs on their appellate briefs, students are offered large group lectures on appellate advocacy by the Honorable Charles E. Moylan, Jr., Court of Special Appeals of Maryland; the Honorable Alan M. Wilner, Court of Special Appeals of Maryland; and William A. McDaniel, Jr., partner in Murphy and McDaniel and former Supreme Court law clerk.

Students also meet several times with their moot court professor during the term and are offered an opportunity to observe a demonstration National Moot Court team argument and critique. After submitting their briefs, students do a practice oral argument with their teaching assistant and, finally, in either a real court room or the school's moot court room, each pair participates in an oral argument, opposing two students from the small section with which their small section is paired.

The time required to coordinate a program with so many new students, adjunct faculty members, and teaching assistants led in the fall of 1987 to the creation of a full-time administrator position now held by Ms. Leslie Metzger. Also in the fall of 1987, Professor Elizabeth Samuels replaced Professor Britzke, who went on leave when her husband became dean of the University of Richmond School of Law. New adjunct professors have been hired to fill vacancies for 1988-89 from among seventy-nine attorneys and judges who applied to teach, a gratifying number of applicants given the intense demands of the job. Applications are being accepted from next year's upper-class students for teaching assistant positions. And for the second time in eleven years, Professor Warnken is "retiring" from teaching in the first-year legal skills area. Professor Samuels, with the assistance of Ms. Metzger, will direct the program for 1988-89.

The Legal Skills Program has been fortunate to attract excellent adjunct professors. During this past year, there were twenty-five attorneys and seven judges. The judges represented the court of special appeals, the circuit court, the district court, and the orphans' court. Of the practicing attorneys, almost a third came from the public sector — including the U.S. Congress's Judiciary Committee staff, the state's Attorney General's office, and the public defender's office — while the rest represented the private sector — including

the city's largest firms, smaller firms, solo practices, and corporate legal staffs. Fourteen of the adjuncts were University of Baltimore graduates, ten graduated from the University of Maryland, and eight went to law schools out-of-state.

Although no program is ever perfect, the concept and the execution of the Legal Skills Program has received high marks from diverse sectors, including the Association of American Law Schools during its 1987 visit. Even law students, who frequently consider this program the albatross of their first-year curriculum, usually have a different opinion upon their return in the fall of their second year. In the interim, while serving as a summer law clerk or law student intern, they come to appreciate the value of the legal skills training they received during their first year.

Professor Elizabeth J. Samuels earned a B.A. from Harvard College and a J.D. from the University of Chicago. She served as a law clerk to the Honorable James L. Oakes, United States Court of Appeals for the Second Circuit, and was a legal services attorney, a professional legal editor, and an adjunct professor in Alabama. She joined the University of Baltimore School of Law faculty as a visiting assistant professor in 1987. She serves as co-director of the Legal Skills Program, and also teaches in the field of family law.

Professor Byron L. Warnken earned a B.A. in English from the Johns Hopkins University in 1968 and a J.D., cum laude, from the University of Baltimore School of Law in 1977. He has taught courses in the legal skills area during eight of the past eleven years. In the "skills" area, Professor Warnken has served as faculty director of the Internship Program since 1978 and faculty director of the Summer Institute for conditionally accepted students since 1984. He has chaired the law school's curriculum committee and admissions committee and is a member of the law school's long-range planning committee. He is a member of the section council of the Maryland State Bar Association Section of Legal Education and Admissions to the Bar.

