Experiential Skills in Legal Education

Introducing Tomorrow's Practitioners to Practicing Law

By Ted Becker

Welcome to the "Future of Law," a new column that will appear regularly in the *Michigan Bar Journal*. This month, we kick off a recurring series devoted to legal education. These articles will highlight new developments and ongoing efforts at the five Michigan law schools to introduce students to experiential skills and more effectively prepare them to practice law. In future columns, authors will shed light on what law schools are doing to prepare students for practice and, we hope, inspire more Michigan attorneys to get involved—or, for some of you, become further involved—in those efforts.

Why is this inaugural column about experiential skills part of a theme issue dedicated to the future? That's simple enough. Legal education faces forward. Law schools train tomorrow's lawyers and are vital to the profession's future. This introductory column, however, begins by looking at the past. Law schools are often criticized for not having done enough to train students to actually practice law. When directed at older approaches to legal education, this criticism is often justified.

Anecdotal evidence supports that conclusion. Who hasn't marveled at a rookie mistake by a newly minted lawyer and wondered what exactly that lawyer had learned during three years of law school? I don't need to look any further than the mirror. When I recall my days as a new associate more than two decades ago, I shake my head at all the things I didn't know—and, worse yet, didn't know I didn't know—about what it meant to practice law.

I take solace from the fact that these gaps in my preparation didn't cause irreparable injury to any clients. Not all attorneys—and their clients—are so fortunate. Consider the following cringe-inducing example in which an exasperated judge asked an ill-prepared attorney, who was unaware of controlling authority in an employment discrimination case, where he'd received his degree:

> Judge: What do you do about *Morgan*?
> Attorney: I don't, I don't, I don't know *Morgan*, Your Honor.
>
> Judge: You don't know *Morgan*?
> Attorney: Nope.
>
> Judge: You haven't read it?
> Attorney: I try not to read that many cases, Your Honor. *Ricks* is the only one I read. Oh, *Ledbetter*, I read *Ledbetter*, and I read that one that they brought up last night....
>
> Judge: I must say, *Morgan* is a case that is directly relevant to this case. And for you representing the Plaintiff to get up here—it's a Supreme Court case—and say you haven't read it. Where did they teach you that?
>
> Attorney: They didn't teach me much, Your Honor.[1]

A critic of law schools needn't rely only on anecdotes, however. Over the past few decades, various surveys of legal employers and practitioners have documented the skills deficiencies of new attorneys—that is, what the respondents viewed as gaps in new graduates' ability to accomplish basic lawyering tasks.[2] Partly in response to this perceived skills deficit among law school graduates, the American Bar Association now requires accredited law schools to demand that their students take at least six experiential credits before graduating, meaning simulation courses that are "reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks," clinics, or field placements.[3] Some states, like New York and California, have gone further and have either imposed significant new skills-focused requirements for bar admission or started down the road toward doing so.[4]

In my view, the justifiable concerns underlying these calls for more experiential training have often become overblown in the heat of rhetorical exchanges. Occasionally, assessments that law schools prioritize theory over practice are based on an individual critic's decades-old experiences. Such critiques are outdated. If law schools ever did focus on abstract theory to the exclusion

"Future of Law" is a regular column of the *Michigan Bar Journal*. Articles relating to legal education are edited by Ted Becker of the University of Michigan Law School. To suggest a topic or propose contributing an article relating to legal education, please contact Professor Becker at tbecker@umich.edu.

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of practical skills, that's no longer the case. Still, the fact that some criticisms of law schools are exaggerated doesn't mean law schools haven't responded to other, more legitimate ones. In future articles, contributors will describe how Michigan law schools have heard the call from the bench and bar to better prepare students for practice and are restructuring how and what they teach to accomplish that goal.

Coming attractions

You have a lot to look forward to in future articles. Here's a quick preview of some of the topics you can expect to see.

- **Increasing opportunities for first-year law students to work with real clients**. Working with actual clients used to mean waiting until a summer internship after a student's first year or upper-level clinics. No longer. Live client work is now being integrated into 1L skills courses such as Legal Writing to give students the chance to work with real clients during their first year.
- **Incorporating skills more extensively into first-year and upper-level doctrinal courses**. Students are eager to see how the legal doctrine they're learning manifests itself in the documents that lawyers regularly prepare. This can be accomplished in many ways in courses where the primary focus is teaching doctrine. One way is giving students the chance to draft such documents as part of specific modules in class. These opportunities may have been infrequent in the past, but are becoming more prevalent.
- **Expanding the sorts of skills to which students are exposed**. Seasoned attorneys know that lawyers use many different skills in their daily routines, including "hard skills" relevant to a particular practice area and "soft skills" applicable across all practices, such as collaboration or time management. These soft skills, which may have been given little attention in law schools until recently, are now finding their way into classes such as first-year and upper-level practice simulations, practicums, and doctrinal courses.
- **Clinics and externships**. These avenues for providing law students with hands-on practical experience have been around for a long time. What's new, however, is how clinics and externships have expanded and evolved, both in terms of the subject matters they cover and the types of clients they assist.
- **Changes in the methods of skills education**. It's one thing to recognize the need to provide students with more experiential training. It's another thing to do so in a pedagogically sound manner that conveys information efficiently, takes advantage of technological advances, and is consistent with how today's students expect to learn. Legal education innovators have been developing new ways of teaching, and law schools are using these new methods to convey practical knowledge more effectively.
- **Challenges to providing additional experiential education**. It's no secret that the legal profession and law schools are experiencing significant economic pressures. This affects everything that law schools offer, including skills training. Even absent such pressures, obstacles exist to ensuring that law students graduate with as broad an exposure to practical skills as is realistically possible. As one example, legal educators and practitioners alike must deal with the problem of students or young attorneys not transferring the practical skills introduced in one course or practice setting to another. Educators have ways to address transferability issues, which practitioners might find helpful when dealing with similar issues that arise in their practices.

Opportunities to get involved

Sound interesting? I hope so. Because I hope this and subsequent "Future of Law" articles not only bring Michigan lawyers up to speed with what law schools are doing to teach students practical skills, but also encourage practitioners to get involved. Law schools can do a lot in this area, but they can't do it all. Many Michigan practitioners already help by judging moot court or transactional competitions, teaching as guest lecturers or adjunct professors, or serving as a source of advice to educators who have questions about incorporating practical skills in their classes. If you already give of your time and knowledge, thank you. If you don't but would like to start, please either reach out to someone you know at one of the Michigan law schools or contact me. I'll do my best to put you in touch with someone to discuss how you might be able to share your experiences with tomorrow's lawyers. ■

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ENDNOTES

1. *Hartz v Admins of Tulane Ed Fund*, 275 F Appx 281, 290 n 4 (CA 5, 2008).
2. For an older survey, see Baird, *A Survey of the Relevance of Legal Training to Law School Graduates*, 29 J Leg Ed 264 (1978). Current surveys abound, but the results tend to be similar, calling to mind the old adage about "the more things change…." For a recent summary of many of these surveys, see Kuehn, *Do Law Schools Adequately Prepare Students for Practice? Surveys Say…No!*, <https://bestpracticeslegaled.albanylawblogs.org/2017/01/03/do-law-schools-adequately-prepare-students-for-practice-surveys-say-no-robert-kuehn-washington-university-school-of-law/> (accessed May 10, 2017).
3. ABA Standards for Approval of Law Schools, Standard 303(a)(3) and 304(a).
4. New York now requires all new bar applicants to demonstrate "skills competency." Among the ways applicants can satisfy this is taking 15 credits of "practice-based experiential coursework." NY Rules for the Admission of Attorneys and Counselors at Law, R 520.18(a)(2). A California State Bar task force recommended imposing a similar 15-credit-hour requirement for bar applicants, although its recommendation was not implemented.