Law Schools Revamp Their Curricula to Teach Practical Skills

By Katherine Mangan

Lexington, Va.

With one day left before their preliminary hearing, the prosecution team was scrambling to pull together evidence to support its case for first-degree murder. The disturbing writings scrawled on the wall of the shooter’s apartment might indicate a violent state of mind. But with no witnesses, his claim of self-defense would be hard to refute.

Meanwhile, the defense lawyers were trying to come up with a plausible medical explanation for the absence of bruises on their client’s neck, since their case hinged on his claim that he had fired his gun while being choked.

These strategy sessions took place not in law offices but around a conference table here at Washington and Lee University School of Law, where students are spending their final year recreating cases their professors actually worked on.

Nationwide, law schools are integrating more clinical experiences and practical-skills training into their curricula in response to complaints that their graduates lack real-world experience. But few have gone as far as Washington and Lee, which has jettisoned the entire third year and rebuilt it from scratch.
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The Virginia law school’s third-year overhaul, which began last academic year, replaces electives with practice-based courses, using simulated and real clients, in specialties like international, securities, tax, and criminal law.

Law schools have offered courtroom simulations for years in the form of moot-court competitions, usually available to a select group of students as an extracurricular activity. But the idea of building a class around such role play is relatively new.

The change reflects a practice-based trend that has assumed greater urgency with the escalating costs of legal education and diminished job prospects for graduates.

The changes are also in response to criticisms from a number of national foundations and associations regarding the strictly theoretical approach many law schools have long taken to preparing students for legal careers.

Students at Washington and Lee learn strategy and skills from practicing lawyers in an environment where it is safe to make mistakes and ask questions, says S. Brett Twitty, the law school’s director of admissions.

He says that hiring associates notice the difference. “They tell us that when students graduate from this program, they perform more like second-year associates than brand-new lawyers,” he says.

Each semester of the third year now starts with a two-week-long court simulation that provides participants with a crash course in the skills they’ll be learning. Students are also required to complete 65 hours of law-related service and a semester-long program on professionalism.

**SIMULATING THE COURTROOM**

The crux of the program, though, is the dozen or so problem-based courses, some taught by high-profile practicing lawyers, that simulate actual legal cases.

Jonathan Shapiro, a professor of practice at Washington and Lee, leads the criminal-practice practicum and serves, during classroom court simulations, as lead investigator and judge. His real-life clients have included John A. Muhammad, who was executed in 2009 for his role in the Washington-area sniper attacks, a killing spree that terrorized the capitol for several weeks in 2002.

In previous semesters, the class has also been taught by Judy Clarke, a visiting professor at Washington and Lee who represents Jared Lee Loughner, the alleged gunman in the recent Tucson, Ariz., shootings, whose victims included U.S. Rep. Gabrielle Giffords. Ms. Clarke also represented Ted Kaczynski, better known as the Unabomber.

Mr. Shapiro, who worked on each of the cases his classroom simulations are based on, says his goal is to get students to think strategically.

“It’s interesting for me to see where these spin out,” he says. “The students come up with angles I didn’t think about.”

Students work in pairs, representing the prosecution or defense in a case. Over the course of the semester, they pursue the case from the beginning, the point at which the defendant is charged with a crime.

As they sit around a conference table on a recent morning, Kristen Gustavson, one of two students acting as prosecutors in the murder case, says she worries the case might not be ready for the next day’s preliminary hearing.

The following day, when Mr. Shapiro shifts to the role of the judge, he listens to student lawyers from both sides, as well as a witness—a first-year student who has been prepped to play a county detective in the case.

Mr. Shapiro, dressed in a V-neck sweater and faded jeans, may look more relaxed than a real-life judge, but his ruling still stings. “I have a dead kid in the house and a guy calling 911 saying he was being strangled,” he tells the prosecution team. “I don’t see enough here to establish the murder. I’m dismissing the charge, and you can proceed as you see fit.”

**I JUST GOT FLUSTERED**

Reflecting back, Ms. Gustavson says she missed some opportunities. “I made some mistakes at the preliminary hearing that I learned from and won’t make again,” she says. “I wish I’d asked the detective about the lack of marks on the defendant’s neck, which is a big point in our case. I guess I just got flustered.”

Even though the murder charge was dismissed at the class’s preliminary hearing, Virginia law allows her and her partner to go directly to a grand jury to argue for an indictment for murder.

That’s what they plan to do, along with interviewing a forensic scientist and medical examiner (Mr. Shapiro will recruit first-year students to play those roles) to strengthen their case.

Meanwhile, their classmates are moving forward on their own cases. One involves a drunken wedding guest accused of sexually assaulting another guest; one centers on a man charged with homicide after allegedly drinking and plowing his car into a construction zone where a worker was killed.

David K. Millon is a professor of law at Washington and Lee who leads a curriculum committee reviewing the third-year overhaul. Before unanimously approving the changes, law professors raised questions about the inevitability of trade-offs, including the lack of flexibility for students to take advanced electives.

A typical question, he says, was, “What if a student takes a summer job after the second year and becomes interested in a specific kind of law and wants to take a class in it?” or says, “My employer thinks I should have this class if I want to come work with them?” Under the new approach to the third year, the student might not be able to take that class or pursue many studies in his or her specific area of interest. The curriculum committee is considering allowing third-year students to add electives to the requirements to alleviate that concern.

Some faculty members have also said that simulation courses take so much time to develop and run that they have little time left for research. And professors like Mr. Millon, who haven’t practiced law in many years, don’t feel comfortable teaching the simulations.

Generally, though, law-school faculty members concluded, “Yes, there is a trade-off, but by the time students are in their third year, they need to be learning in different ways,” Mr. Millon says.

**AN ANSWER TO CRITICS**

Washington and Lee’s curriculum responds to criticism of the strictly theoretical approach to legal education that several recent national reports have decried.

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The Carnegie Foundation for the Advancement of Teaching’s 2007 critique of legal education, for instance, called on law schools to do a better job of preparing students to meet the ethical and practical demands they’ll face on the job.

The American Bar Association has also signaled its interest in seeing more skills-based legal education. It has proposed that accreditation decisions for law schools be based on student-learning outcomes, along with inputs like library holdings and student-to-faculty ratios.

The bar association is deliberately vague about what those outcomes should be and how law schools should assess what students are learning, giving schools the flexibility to tailor their approaches to their particular missions.

But the proposal does outline general goals and says the outcomes should include prac-
tice-based skills that can be learned through simulated and real sessions with clients.

There were renewed calls for more hands-on training at the annual meeting, in January, of the Association of American Law Schools, and a similar appeal from the people who hire law-school graduates in a national forum on legal education last year. Law-firm partners and judges attending the forum, at Arizona State University, suggested that law schools take a page from medical schools’ playbook and treat the final year as a clinical transition to practice, and not leave so much of the skills training up to them.

“Students have been pushing for some time to make their education as practical as it can be so they’ll be ready to practice when they walk out the door,” says Richard A. Matasar, dean of New York Law School, which, along with Harvard Law School, has cosponsored a series of conferences over the past few years on overhauling legal education. “What’s kind of new is the pull from the demand side, with law firms announcing that they’re getting out of the training business.”

But law schools don’t have some of the advantages that medical schools have. While medical schools have federally subsidized teaching hospitals where their third- and fourth-year students can perform clinical rotations, “law schools don’t have a mechanism that covers the cost of a completely dedicated clinical experience in the third or fourth year,” says Mr. Matasar. So law schools have had to get creative.

California Western School of Law, in San Diego, places 65 percent of its students in semester-long internships during their third year to give them supervised experience working in law offices or government agencies. (Students planning to pursue internships can squeeze their required courses into the remaining semesters.) To prepare for that, students spend much of the second year in simulated client sessions, with professional actors as clients. During the first year they learn basic legal skills, such as understanding the structure of the court system and how to write case summaries, in addition to taking core courses.

The program starts out defining the skills that lawyers need in practice and then working back to insert them in the curriculum. “We think of it as reverse-engineering a lawyer,” says Timothy Casey, director of the Stepps Program at California Western, which stands for Skills Training for Ethical and Preventive Practice and career Satisfaction.

Second-year students in the course, which is taken over two trimesters, meet both in the classroom and in mock law offices, where they interview and advise simulated clients. Medical schools have used “simulated patients” for years, and some of the actors California Western hires alternate between complaining of broken bones at area medical schools and broken contracts at the law school.

The law-school sessions are videotaped and critiqued by students and their professors, who act as supervising attorneys. Students counsel clients, mediate cases, and engage in alternative dispute resolution while tiptoeing through a minefield of ethical traps.

“The ethical issues come alive when presented in the form of a client relationship,” Mr. Casey says.

Erin Dillon, a third-year student at California Western who is interning as a clerk in a small law firm this year, says last year’s simulations helped build her confidence.

“I have the red-lined copy of all the mistakes I made,” she says. “They’re things you eventually learn in practice, but it’s nice to get them out of the way while you’re still in law school and can ask all the silly questions you might not want to ask your real boss.”

Watching a videotape of her interview with a “client,” she realized that she had waited too long to disclose her fees. “As a young attorney, it’s hard to value yourself and tell someone, ‘I’m going to charge you $175 an hour,’” she says. “But we learned in our professional-responsibility class that you have to get it out there as soon as possible.”

Top-tier law schools are also changing. Harvard Law School’s revamped curriculum, now in its second year, includes a first-year course in problem-solving that exposes students to real-world issues, and Stanford Law School has expanded its clinical offerings. But many of the most sweeping changes have taken place at lesser-known schools looking for a way to differentiate themselves and give students an edge in a fiercely competitive market.

**Learning Inside the Courts**

Administrators at the Jacob D. Fuchsberg Law Center at Touro College say they come as close as any law school to replicating a medical-school model because of the way they’ve taken advantage of the school’s location, adjacent to federal and state courthouses on Long Island.

“We use courtrooms the way medical schools use teaching hospitals,” says Myra Berman, an assistant professor of law and director of Touro’s three-year Collaborative Court Programs. “We integrate what students are seeing and hearing in the courtroom with what they’re learning in the readings and seminars.”

First-year students visit state and federal courts to watch proceedings and meet with judges and lawyers, then return to the classroom to discuss and write about what they observed. In the second year, students are expected to spend at least four hours each week in courtrooms, and their courses integrate what they’re observing in the courtroom with assigned readings.

J udges and lawyers volunteer their time to work with Touro students, explaining the work of the courts and engaging in role-playing exercises.

In one such exercise, “the student has to argue the motion to the judge, who is there in the federal courtroom in a robe, with a court reporter taking the transcript,” Ms. Berman says. “If this isn’t experiential, I don’t know what it is.”

Third-year students participate in noncredit internships and “externships,” clinical placements in court or other legal offices for credit. “They’re doing the real world of the courts, and not just the academic work of the law schools,” Ms. Berman says.

But not everyone thinks that law schools should have to devote time to teaching nitty-gritty skills like conducting depositions or drafting specific types of legal agreements.

“My view is that if it’s a very technical skill, it doesn’t make a lot of sense for law schools to teach it,” says David E. Van Zandt, a former dean of Northwestern University’s School of Law and now president of the New School.

“At the same time,” he adds, “we need to do a better job with basic competencies like understanding a client’s problems and communicating effectively.”

Ms. Dillon, the California Western student, believes her skills training will help her when she applies for jobs this spring.

“As soon as you walk in the door and can talk about legal issues both at a practical and theoretical level,” she says, “any hiring associate is going to see that you have an edge.”

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