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## Law School Teaching: Linking Learning with Law Practice

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## TEACHING NOTE

# Law School Teaching: Linking Learning with Law Practice

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*James K Eckmann\**

### Introduction

This Note features a pedagogical method in a specific law practice course to suggest that this method can assist in meeting the challenge law teachers have faced for as long as there have been students, namely, how can the students be better prepared for the practice of law. The pedagogical method predominately uses the active learning technique of student presentations. Stated another way, the course is mainly taught by students. The course, entitled “Practising Law: Successful Strategies”, is bread-and-butter practical dealing with topics such as client care, marketing, hiring and motivating staff, insurance, office location and set-up, law partnership concepts, and retirement planning, to name a few.

This Note explores the need for this type of course, then gives a brief historical overview of law teaching, describing the author’s law practice course introduced into the curriculum in 1996, giving some examples of the students’ creativity and contributions. The note closes with a discussion of the results of the pedagogy from evaluations submitted anonymously by the students as part of law school routine at the end of each term.

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## The Need for a Law Practice Course

One need not look very far to find critiques by law teachers of law schools and their pedagogy.<sup>1</sup> At the same time, lawyers looking back on their academic training overwhelmingly favour healthy doses of practical courses as part of law school efforts.<sup>2</sup> Although the two groups, law teachers and lawyers agree on many items, there is also a substantial disconnection between what lawyers say are important and what law schools emphasise.

Both groups, academics and attorneys, agree that law schools should do more than just “teach law”. Both agree that knowledge of the law and “thinking like a lawyer” are key skills. Both agree that business savvy, communication skills, collaborative abilities and problem-solving capabilities are important. Practitioners go further, adding that negotiation, fact gathering and document preparation could be taught effectively, but only a quarter of practitioners responding to an earlier survey believed those subjects receive sufficient attention.<sup>3</sup>

The author undertook a survey in 2003 of graduates of California Western School of Law.<sup>4</sup> The respondents join those from prior studies in their assessment that law schools need to do a better job of preparing their graduates for law practice.<sup>5</sup> For example, in responding to the question of specified areas where they felt they needed more preparation when they started practising law, the two groups (those who did not take the Practising Law class [“general alumni”] and those who did [“course alumni”]) expressed concerns, though the course alumni less so, as the following table shows.

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- 1 D L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford: Oxford University Press, 2000) 185-199 and numerous authorities there cited.
  - 2 Rhode, *supra* note 1 at 190.
  - 3 Rhode, *supra* note 1 at 190 and studies there cited.
  - 4 There are roughly 2,000 alumni in the law school's electronic database. Individual e-mails were sent in late May 2003 to those individuals; they were invited to click to a link that displayed the survey. The participants entered their responses on the templates provided, added any narrative comments and then submitted the completed survey. The responses were electronically tabulated using statistical software in June 2003. Responses received totalled 305, two-thirds from graduates within the past 12 years. Ninety-six took the time to add narrative comments, some of substantial length. Nearly 90% were practising lawyers and 62% were in private law firms. Eighty percent of those were in law firms of nine attorneys or fewer. Fourteen stated they had taken the Practising Law class.
  - 5 Rhode, *supra* note 1 at 190. It could be the mission is almost impossible, for what educational structure could totally prepare the law graduate for the challenge of law practice? Thus, in most instances the task is framed in terms of better preparation.

Topic	General Alumni (#/%)	Course Alumni (#/%) <sup>6</sup>
Marketing and bus devpmnt	159/54.6%	7/50%
Managing a practice	151/51.9%	4/28.6%
Client care	29/44.3%	2/14.3%
Funding a practice	114/39.2%	2/14.3%
Hiring and training staff	88/30.2%	None
Partnership aspects	83/28.5%	2/14.3%
Other (not described)	50/17.2%	6/42.9%

In answering the question whether attendance at a law practice course should be mandatory, 121 (41.6%) general alumni “strongly” agreed, and an additional 103 (35.4%) “moderately” agreed, for a total of 77%. The course alumni were even more definite: 10 (71.4%) “strongly” agreed and three (21.4%) “moderately” agreed, for a total percentage of 92.8%. The course alumni also recommended law students take a law practice class and voted in the exact same numbers as in the previous sentence. These total percentages are significant expressions of how law graduates view the importance of this type of course.

Assuming the respondents represent a reasonable cross-section of law graduates, law schools can do more to meet the expressed importance of “law practice” type courses. The author laboriously reviewed the websites of 175 or so law schools accredited by the American Bar Association to see how many law schools offer law practice courses. That review revealed the following:

- Such courses are offered in only one-in-five of the 175 or so ABA-accredited law schools in the United States.<sup>7</sup>

6 The “#” symbol refers to the raw number of responses in that category. The “%” symbol refers to the percentage this raw number bears to the total number of responses.

7 The websites of all the ABA-accredited law schools, at <http://www.abanet.org/legaled/approvedlawschools/alpha.html>, were reviewed in March and April 2003. Almost all provided Course Descriptions or similar curricula information, although 13 did not. Some of the “legal profession” courses covered ethical issues exclusively; if so, these were not counted. Any doubt was resolved in favour of labelling the courses “law practice”. Not included are internship programs, wherein law students perform a variety of tasks in law firms and obtain credit hours. Such programs doubtlessly expose the students to law firm operations, though not designed for systematic study of the practice of law. Also not included are clinical programs; these programs also give hands-on learning experiences. See discussion accompanying supra note 16. Although the author is reluctant

- A law practice course is mandatory in only one law school.<sup>8</sup>
- The course is an elective in the remaining 30 or so law schools.
- Though difficult to assess from course descriptions, the teaching style mainly appears to be of the case study, lecture or seminar style, or some combination of these three, with the instructor generally leading the class and making the presentations.
- One course requires interviews with practising attorneys, and submission of papers that summarise the lessons learned about law practice.<sup>9</sup> Fewer than five courses expressly state practising attorneys are at least partially involved in the instruction.

In short, the marketplace (law graduates) is telling law schools what it needs. The providers (law schools) need to do more to meet that need. The history of law teaching, discussed next, may be partly to blame.

## A Brief History of Law Teaching

Legal training started with the apprenticeship method, progressed to the proprietary law schools that emphasised practical aspects and ultimately to the modern model, now over 100 years old.<sup>10</sup> For several decades the pedagogy in the modern model has been the case study method, wherein appellate opinions on related topics are briefed, analysed, contrasted, compared, and reviewed. The instructor questions the students about the facts, the holdings, and the reasoning of the cases under study.<sup>11</sup> This pedagogy is used to improve the students' critical thinking skills, although most who experience this "Socratic method" of instruction often conclude the purpose is (apparently) to provide a vehicle by which the instructor tortures, humiliates and embarrasses the students.<sup>12</sup>

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to classify law schools, the website efforts revealed that only about six of the law schools which most would call "first tier" offered a law practice course.

8 The Norman L Wiggins School of Law, Campbell University, Blues Creek, NC.

9 Suffolk University Law School, Boston, MA.

10 F M Hart and J Norwood, "The Origins of Law School Education" in S Hoberman and S Mailick (eds), *Professional Education in the United States: Experimental Learning Issues* (Greenwood: Greenwood Publishing Group, 1994) 77-85.

11 Id at 76-78.

12 Professor Rhode described the conventional Socratic dialogue in law school as a one-sided exercise where the instructor "invites the student to

The Socratic method was combined with lectures to form the backbone of most law schools' pedagogy, a situation that still predominates.<sup>13</sup> Researchers Hart and Norwood asserted the case study method has several disadvantages: it (1) injects a chronic adversarial model; (2) overlooks other necessary legal skills (such as negotiating and fact-gathering); (3) does not easily address ethical questions; and (4) limits the context to an appellate court's recitation, thereby often under-emphasising socially relevant information.<sup>14</sup> Indeed, one recent author, changing slightly the words of a Yale law professor, wrote there are only two things wrong with law school teaching – its content and its style.<sup>15</sup>

A partial answer to those disadvantages emerged when law schools borrowed a teaching method from medical schools and formed clinical programs. Like medical students examining patients in a supervised clinic, law students are made available to those seeking legal services, often in impoverished settings, under faculty supervision.<sup>16</sup> The scope and extent of the clinical efforts vary with the law student gaining direct experiences of interviewing and advising clients. Another method of introduction to law practice involves internships, where law students work in law firms, often in research projects and earn academic credits. Faculty coordinators are involved in such programs, although supervision and feedback usually come from the law firms.

Active learning techniques can also help impart important skills. For example, role playing or experiential learning was used in 81% of the skills courses (such as a trial practice course), although there are unresolved ambiguities in the Friedland study as to whether role-playing was a cameo feature or was extensively used.<sup>17</sup> Other methods of teaching were listed as incidentals by responding law instructors, including student presentations, watching videos, and simulations. However, no textbook discussions of student-led classes in law school have

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'guess what I'm thinking', and then inevitably finds the response lacking" (Rhode, *supra* note 1 at 197). As one can recall from philosophy courses, the original Socratic dialogues were more supportive and encouraging than those practised by some law professors.

13 S I Friedland, "How We Teach: A Survey of Teaching Techniques In American Law Schools" (1996) 20 Seattle UL Rev 28.

14 Hart and Norwood, *supra* note 10 at 78-79.

15 Rhode, *supra* note 1 at 196. The Yale Law School professor in question, Fred Rodell, actually attributed those shortcomings to legal writing: F Rodell, "Goodbye to Law Reviews" (1936) 20 Va L Rev 38.

16 Hart and Norwood, *supra* note 10 at 79-82.

17 Friedland, *supra* note 13 at 30.

been found<sup>18</sup> and only one article sets forth the concept in any detail.<sup>19</sup>

Despite these commendable efforts to introduce law students to the realities of practice in developing needed skills sets, complaints and concerns persist that law schools could do more, as the section immediately above revealed.

## The Practising Law Course Described

The course originated from an offhand remark by a law professor to the author at a reunion dinner in 1995 at Stanford Law School, to the effect: "You know, law schools under serve the students when it comes to teaching them about the practicalities of being a lawyer." That remark planted a seed and a few hours in the library launched the following efforts. First, I reviewed a number of law practice books and articles to conceptualise the class. That review yielded an outline that listed three dozen possible topics. Next, I met with the members of a networking organisation of alumni and added additional topics suggested in that meeting.<sup>20</sup> Time constraints forced me to trim or to combine topics to reach the target number of 21 topics. I researched these topics further and compiled a "Resource Guide", divided by topic, to distribute to the students. This is updated before each offering. The students are expressly encouraged to research further and bring in other resources. The Internet provides a wellspring of additional information.

The students are assigned randomly to teams at the first class. The syllabus states: "The goal is for teams to learn (and to exhibit) promotional, organisational and managerial skills lawyers need, which the business world calls entrepreneurship." The syllabus expressly encourages creativity although quite intentionally does not give any examples of it. There are

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18 G F Hess and S Friedland, *Techniques for Teaching Law* (USA: Carolina Academic Press, 1999); Friedland, *supra* note 13.

19 A Greig, "Student-Led Classes and Group Work: A Methodology for Developing Generic Skills" (2000) 11 LER 81. Professor Greig used this pedagogy in a Torts course.

20 California Western graduates in the early 1990s created a monthly "Breakfast Club" out of necessity due to a meagre job market. This informal network of referrals, job leads and mutual support has continued over the years and now includes educational programs. The Breakfast Club assisted the development of the Practising Law course in several ways and responded to a survey. Indeed, during a meeting to hand out the survey they shouted out suggested topics, such as "Make sure they know about Rules of Court"; "They should know about forms"; "We never learned in law school how a lawsuit comes together. We just were taught the parts."

seven teams and each team presents three times during the term for about 30 minutes per team.

Typically, early student presentations follow the lecture format<sup>21</sup> often with overhead transparencies. Soon creativity blossoms and a wide variety of presentations occur, discussed in the next section. After the first round of presentations is completed, an entire class is devoted to a roundtable of practising attorneys who candidly answer all questions about client care, financial aspects, partnership arrangements and the like. The students typically ask questions such as: "How much did it cost to open your law firm?" or "Where did your first clients come from?" or "How long before you concluded you wouldn't starve?" The predominant reaction of the students from the roundtable is: "We can do it (translation: "I can succeed in the practice of law"). Written student evaluations year after year show that the roundtable is a course highlight.<sup>22</sup>

Written assignments are required. The students must keep and submit individual learning journals. A learning journal is a student's review of all the topics, including self-reflection on how various steps and recommended practices match to the student's strengths or test weaknesses.<sup>23</sup> Also, the students submit a 10-page plan of the 20 significant steps the student would take to create and operate his or her "Dream Law Firm". A formal "business plan" is not required, although the student is requested to specify why each step was chosen. Special arrangements are made for the final paper for those not certain about forming a law firm.<sup>24</sup> Thus, writing skills are prized as well.

A cautionary note should be added about creating a law practice course. First, law schools are constantly evaluating their curriculum. New courses cannot be added at the drop of a hat. So a "law practice" course will necessarily have to take its place in line with all the other courses under consideration, issues such as classroom space and instructor assignments will need to be addressed. This latter item raises a second issue. Studies show almost half of all law professors have no private

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21 Are the students at first merely copying the pedagogy they've seen thus far in law school?

22 The roundtable is usually composed of several attorneys of various vintages with from five to nine years in practice. The Breakfast Club provides many of the panellists, year after year. See *supra* note 20.

23 Professor Greig noted another of her assumptions (in which this author joins) – self-reflection is an important aspect of learning: Greig, *supra* note 19 at 87.

24 For example, two team members hit it off so well they decided to form a law firm upon graduation. They were allowed to submit a joint paper.

practice experience. Going further, the “mean years of (private practice) experience for all law professors is 2.5”.<sup>25</sup> Thus, the faculty may decide law practice issues could be delegated, at least in part, to adjunct instructors.<sup>26</sup>

## What the Students Do

The author by no means is arguing that the following examples of student creativity will find their way into courtroom presentations or appellate court arguments. It is argued that the “process” of creativity constitutes a significant part of the instructional value. The reader will be tempted to say: “Yeah, but the use of poetry in the practice of law will never happen.” That’s not the point. Rather, this section asserts how creative students can be, and how differing methods can be employed to impart information. That knowledge will carry forward after law school so that the attorney can design a creative presentation appropriate to the venue and audience.

The first time we saw a PowerPoint presentation we were probably all captivated. PowerPoint is now a well-worn delivery system, though many expect it as part of almost any meeting.<sup>27</sup> Students sense this and use PowerPoint sparingly, rarely as an entire presentation. Skits are often employed to show marketing techniques or client care concepts. Home videos are effective. For example, one student dressing as and mimicking children’s PBS personality, Fred Rogers, gave a video tour of “forms” to a harried young attorney, while the third team member filmed them in the law library. That same team handed out to every student a mini-diskette that contained hundreds of forms typically needed in several practice areas.

Another team, teaching on staff training and morale, created and filmed “The First Day at Work” of a legal assistant. The video consisted of scenes of how not to treat any employee. In discussion afterwards, several students eagerly added stories about similar experiences working in law firms.

Another team, instructing on office space, took the class on a tour of a vacant space at a nearby office building, arranging for the leasing agent to be present to answer questions about

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25 M R Ramos, “Legal Malpractice: No Lawyer or Client is Safe” (1995) 47 Fla L Rev 1 at 37, and studies there cited.

26 A surprising number of attorneys muse about “teaching someday”. A willing labour pool waits to be invited. Closer connections between the Bar and academia are always a good idea, plus adjunct faculty would probably bring more current information into the classroom.

rates, tenant improvements, utilities and other topics under study. That same team handed out a “tour brochure” which superbly covered the main points of leasing space.

The course has more than enough room for, and welcomes, the thespians. One team did a take-off of late night television, including a Top 10 list relative to equipping an office, a Dave Letterman-type interview of a fellow team member and concluded with “student on the street” video-recorded interviews to reveal what students believed was the most important equipment in a law office.<sup>28</sup> Another team was assigned this same topic a few years earlier. They visited an office supply store with the manager’s permission, filmed the typical equipment and furniture required, including prices, and taught from their video.

One student brought in his electronic keyboard, played musical accompaniment and sang vocals. Another, a mother of two young children, used the cadence, metre and rhyme of Dr Seuss (complete with large striped hat) to deliver her team’s key concepts as she closed their presentation. A student posing as a gangster who had used self-help in a contract dispute found himself as a defendant in a civil lawsuit. His team used his predicament to explain the arc of a civil case.

Game shows also come forward with contestants (including the entire class) asked for their views on the topic under study, including “Family Feud” and “Jeopardy” formats. Rewards for good answers often involve pieces of candy tossed to the class members. Excerpts from movies or television programs are also used. Some illustrate client care, marketing (or how not to), and funding problems lawyers can experience. One team, teaching on marketing, parodied a slick marketing seminar complete with sign-in sheets, coffee, juice, Krispy Kreme donuts, opening jokes, banter with the class, rah-rah mantras and a glossy handout.

This instructor makes special and supportive comments regarding stories told by the presenters, often from their summer job experiences or internship programs.<sup>29</sup> The students seem to pay more attention to their peers’ presentations of war stories than the instructor’s. In this regard, almost anything can be turned into a fascinating story, including The Rule

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27 Audiences are becoming more and more adept at incorporating PowerPoint presentations into their sleep patterns.

28 They corralled on the sidewalk a long-time faculty member, known for his sense of humour, and we learned that “a bathroom fan that works” is important.

29 Storytelling can be an effective way to deliver information.

Against Perpetuities. One way may be to use a “Readers’ Theatre” format.<sup>30</sup>

There are instances when things don’t go so well. Audio/visual equipment can malfunction or not be adequately cued in advance or provide other misadventures – such stumbles also provide learning opportunities. Teams can be dysfunctional. Students sometimes complain about uncooperative or lazy team members. Lack of effort or poor preparation reveal themselves when team members cover the same points, or in awkward hesitations or whispers about who will present next. One or two students may ask to switch teams in order to work with friends. No such requests have been granted. A perceptive instructor will have a reasonably accurate impression of the team members who are collaborating and working and those who are not and so can grade accordingly.

A little over half of the class time<sup>31</sup> involves student-led efforts. The design of the course involves the instructor to act as a “back-up” for the student teams and in short lectures cover concepts, questions or realities the student teams missed or under-emphasised. The instructor also comments on the presentations, including speaking styles.<sup>32</sup>

## Discussion of Results

It is my opinion a law school pedagogy which engages and uses the students’ skills, energy, resourcefulness and creativity in the instruction process furthers the goal of delivering to the law school graduates various skill sets needed to be successful practitioners. This opinion is validated in several ways. First, the general assumption is that students learn in ways that are meaningful to them.<sup>33</sup> The students in structuring their presentations are automatically matching their learning styles to their peers. Student-led classes allow the students to have a voice in how information is imparted and the assumption is they do so in ways that engage their classmates.

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30 R Donmoyer and J Yenne-Donmoyer, “Data as Drama: Reflections on the Use of Readers Theater as a Mode of Qualitative Data Display” (1995) 1 *Qualitative Inquiry* 402.

31 The class runs for two hours, once per week, for 14 weeks.

32 This can be done confidentially or openly. This instructor favours the former and writes compliments and critiques, along with suggestions for improvement. The goal is to encourage a communication style that will be most effective with lay clients and others.

33 Greig, *supra* note 19 at 85.

The second validation comes from the students themselves. The following are taken from written student evaluations from the past two years:

- “The class is unique and *important!* Having the students present the course material worked well because class was never mundane. We learned *practical* things.”
- “This is the most practical course I’ve *ever* taken.”
- “[I]t was fun to learn material that could be dry at times.”
- “Class participation ... was very refreshing because throughout law school [the] Socratic method was used.”
- “The information that was given will be vital throughout my legal career.”
- “Requiring group presentations was a great exercise.”
- “[B]y skits it was fun to learn material that could be dry at times.”
- “It helped [me] to become more confident in presenting in front of a group.”
- “I’ve really learned a lot about the ‘actual or real life’ practice of law.”
- “[We were allowed] to participate.”
- “[We were allowed to] be creative.”
- “The ideas for ‘real-world’ experience in setting up a practice were priceless.”
- “[This is] a great way to get the students involved in the class material by having them present several topics throughout the semester. It makes the class interesting and I have learned a lot in the process.”
- “This has been one of the most helpful and practical courses I have taken [in law school].”
- “This is one of the only *practical* courses offered [in law school]. It is extremely informative and fun.”<sup>34</sup> (Emphases in originals.)

The survey responses provide a third validation. Alumni of the Practising Law class strongly favoured a law practice course being mandatory and recommended this teaching style.<sup>35</sup>

Finally, there are my observations. The learning journals submitted each year show constant and unrelenting attention to the bread-and-butter aspects of the course, even though

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34 Not all is champagne and peaches: “This should be a 3 credit course for all the work”; “I thought it was a lot of work for 2 units.”

35 See discussion accompanying *supra* note 4.

the teaching is presented in skits, by home movies, or in other creative ways. Also, the students' final papers, in which they describe their steps to create and to operate their dream law firms, show a sound understanding of the basic principles, such as identification of their own core values and competencies, the importance of service to clients, funding, insurance, management, staff training and of numerous other critical aspects in undertaking a successful law practice. Lastly, and perhaps most importantly in my view, the development of communication skills, fostered by creativity and enthusiasm, is palpable. Students whose first presentations were made behind a lectern, head down reading notes with scant eye contact with the audience, morphed over time into presenters with good eye contact, growing ease away from the lectern and working the room.<sup>36</sup>

## Conclusion

Student-led classes offer a way for law schools to foster skill sets needed in representing clients, such as collaboration, negotiation, team dynamics, communication styles, visual and graphic aids, to name a few. These benefits can flow in any course.<sup>37</sup> In addition, a law practice course provides a way for students to be better prepared for the practical side of the legal profession.

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<sup>36</sup> More than one student has advised that law firms are asking interviewees to make "presentations" as part of the job search process. In this regard, one student, painfully shy (and thus extremely courageous) made her first presentation in tremulous voice, head down, behind the lectern. She was urged to move beside the lectern for her second presentation. She did so. It was suggested she move out front for her third presentation, perhaps using 3x5 cards. She did so, but without any notes. As she left class that morning, she joyously shouted back, "I did it, Professor!" Law professors don't get many moments like that.

<sup>37</sup> Greig, *supra* note 19.