Erasing Lines: Let the LRW Professor without Lines Throw the First Eraser

A Comment on "The Integration of Theory, Doctrine, and Practice in Legal Education"

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My role in commenting on Dean Byron Cooper's paper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, is to be the contrarian. During this conference, most of the attendees here will be among the converted, eager to speak in laudatory tones of integrating theory, practice, and doctrine. In fact, Dean Cooper assumes in his paper that we all agree on the importance of practice in law school curricula, so he reminds us of the importance of legal theory in the classroom. However, the fact remains that (i) despite all of the rhetoric surrounding skills training, very little skills training is going on in law schools today and (ii) despite the unanimous cry of legal research and writing professors to integrate skills, theory, and doctrine, the daily habits of LRW professors actually inhibit that integration. My comments will begin on how the attitudes and environment of the law school will need to change to allow for the integration of skills training and then focus on how LRW professors also will have to change to be prepared to move from just talking about curriculum reform to actually achieving it.

I. The Law School Experience

Dean Cooper's paper would lead someone unfamiliar with his work to thinking that he gives short shrift to practice skills. On the contrary, Dean Cooper merely assumes that our law schools, like his law school, University of Detroit Mercy School of Law, have rationally considered integrating its curriculum and actually made those changes. However, skills training at most law schools is a lot like the Internet. Everyone talks about it, reads about it, writes about, and then talks about it some more, but when the holidays roll around, ninety-percent of us go to the mall and do our shopping at bricks and mortar stores. And, in most law schools, a few professors may include some skills component into a course or may add clinical opportunities for a small percentage of our student population. However, the majority of our students sit in large lecture halls reading and answering questions

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about appellate court opinions.

A. Attitudes of the Faculty and Attitudes toward the Faculty

If everyone agrees that we should include more skills training in law schools, why do we not just do it? The first reason usually articulated is that skills training is expensive. Lecturing, even using the Socratic method, with one professor and 100 law students is very cost-effective. Supervising a clinic with a teacher/student ratio of 1:8 is not.

Incorporating some skills training into standard courses might be a good start, but that requires professors to stretch their repertoires and unlaminate their teaching notes.[2] Therefore, the second reason, which may or may not be articulated, is that curricular reform requires a lot of academic stretching on the part of faculty members. Setting school-wide objectives requiring professors to incorporate practice skills into their courses may even be offensive in the law school environment where academic freedom is guarded very heavily. Most law schools do not monitor what professors do in their individual classes, even required classes.

A third, even less articulated reason is that most law professors do not want to teach practice skills. Most law professors did not like practicing law, if they even practiced law. So, why would they create a class that simulated the practice of law? This phenomenon is very curious and may be peculiar to legal education: the professors preparing the professionals do not really like the profession itself.

Therefore, any practice skills "revolution" will have to involve changing our expectations of law school faculty. Faculty members will have to agree to be part of an integrated whole, not just independent contractors who have their own independent businesses and clientele at the law school.[3]

B. Attitudes toward the Students and Attitudes of the Students

If our expectations about what we can require of faculty is low, then our expectations about what we require of students is even lower. I am not aware of a law school that has any undergraduate course requirements at all. Most law schools do not require that applicants have certain majors, have taken certain courses, or have worked in any certain field for any amount of time. Once students are admitted, schools impose very few requirements on them as well. Few law schools have many course requirements past the first-year curriculum. Most law schools allow students to have outside jobs, some even in the first year. Most law schools do not require students to remain residents near that law school and allow students to visit at other schools for one or two semesters, to schedule courses on two or three days a week, and to take several hours of independent study.

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2. A colleague of mine used this phrase in a discussion regarding why so few professors used technology in the classroom. It applies equally to why so few professors are willing to integrate a skills component into their courses.

3. At a recent faculty retreat, a tenured faculty member described law professors as mall tenants. We all have the same desire for the lights to be on and the doors to be open, but we each have our own separate enterprises that do not interact with one another.

More important, students rebel against any requirements imposed by law schools. Students have become more prone to envisioning law school as a product that they, the consumers, are buying. Students demand classes that fit their schedules and lifestyles. In addition to offering part-time programs and night classes, many schools have added web-based courses or distance-learning offerings. Students demand courses that fit their individual goals, not courses that satisfy an academician's determination of what constitutes a proper legal education. These relaxed rules do not live up to the perceived rigor of law school that is showcased in movies and television.

Compare our three-year law school experience to medical schools. In addition to reliance on an entrance exam that tests actual knowledge and not just logic and comprehension skills, medical schools require extensive undergraduate coursework. Once a student is admitted, medical schools require students to be in attendance at that school for four years, virtually year-round. A typical day during the first two years is the entire business day. A typical day during the last two years is even longer. Most courses are required; in some cases, students may have a limited choice of elective classes.

In addition, medical schools have been combining semesters of lecture with semesters of clinical experience for years. These clinical experiences are mandatory, not just an elective offering to a small percentage of the student body. Moreover, students are required to rotate through many practice areas, some of which will not be related to a particular student's ultimate practice choice. Now, medical schools are integrating those experiences with lectures and clinical experience even in the first two years of medical school. Medical school faculties have discovered that patients do not present an endocrinological problem. Patients present a stomach problem, and physicians must then determine a diagnosis. Therefore, an integrated medical curricula that introduces problem-based learning is more reflective of actual medical practice.

I would propose that in order to fulfill legal academia's charge to fully prepare students to be lawyers, we should tend more toward the medical school model. We should institute undergraduate requirements, create mandatory course sequencing, and require students to give full-time attention to law school during those three (at least) years. I would also propose requiring students to have at least one clinical experience during law school. However, any school that does these things risks losing market share in the race to attract the most qualified students. Will students willingly choose a more rigorous, practical legal experience over a law school that allows them to choose their course and their weekly schedule? Integration of theory, practice, and doctrine will not happen without radically changing our expectations of both our students and our faculty.

II. The LRW Experience

So, now I have put the blame on the failure of legal education to integrate theory, doctrine, and practice on "the Faculty,"[4] the students and the

4. In Dean Kent Syverud's opening address, he listed the caste system of law schools, with the "Brahmins" as the tenured and tenure-track faculty, or "The Faculty." Kent D. Syverud, *The*

administration. However, we should not fail to turn the mirror around to ourselves, the LRW directors and professors, and note that our daily actions in hiring, creating assignments, and teaching our courses create more lines than they erase. Perhaps LRW professors should receive even more blame, because we definitely preach a lot, but have not truly begun to practice what we preach.

Specifically, LRW directors unconsciously erect barriers between the LRW curriculum and the doctrinal curriculum in our hiring practices, our general course design, and our creation of assignments. Although we speak of integration of skills and doctrine, we adamantly avoid both doctrinal subjects and doctrinal faculty.

In hiring, LRW directors seem to rebel against the typical hiring criteria of "the Faculty." Instead of looking at grades, law review experience, judicial clerkships, and publications, we tend to hire more by personality and value work experience, often at smaller firms or government agencies, over academic prowess. In addition, LRW directors are often leery of applicants that show an interest in teaching doctrinal subjects or in eventually moving to a tenure-track position on "the Faculty." We feel that they will simply use our programs as stepping-stones and jealously guard our program as a place for only those who are truly called to teaching legal research and writing.

The problem, however, is that legal research and writing should not be a separate discipline. If we are to take the values of this conference seriously, then legal education would not be divided into doctrinal topics and an isolated course on how to research and write about those topics. As anyone who has ever designed an LRW problem knows, students (and lawyers) do not research and write in the abstract. Legal writers research and write about doctrinal subjects. Therefore, if a director hires LRW faculty who have no interest in a particular doctrinal subject or no proven academic proficiency in those subjects, then the director will probably see poorly conceived and executed LRW assignments. Instructors will either choose topics that they hope the students have already learned in their other courses, choose topics that are overly simple, or, worse yet, choose topics that are beyond the instructor's knowledge. None of these options add to student morale or gain the respect of our colleagues on "the Faculty."

In this conference, we talk about erasing the lines between practice skills, theory, and doctrine. To do this, our own courses will have to erase those lines, and our LRW faculty will have to be conversant in all three as well. Therefore, hiring decisions cannot be made based on a few years of practice experience at the district attorney's office or a couple of years as a briefing attorney. LRW directors will have to hire faculty who have outstanding academic credentials, as well as practice experience. Additionally, applicants who have shown some inclination toward traditional legal scholarship will guarantee those applicants have an interest and proficiency in researching doctrinal subjects. Finally, directors cannot dismiss those applicants who aspire to teach doctrinal subjects. These candidates are not going to ruin our programs, which have high attrition anyway, and will infuse our programs with the interest and skill in doctrinal subjects necessary to create more integrated curricula. Also, if directors hire LRW faculty using the same criteria as "the Faculty," then those doctrinal faculty will not be as reticent to partner up with

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Caste System and Best Practices in Legal Education, 1 J. ALWD 12, 13-14 (2002).

the LRW faculty in designing problems or courses that do indeed erase lines.

If LRW faculty are going to bash the Brahmins by challenging them to add practice to doctrinal classes, we should also recognize that we fight to keep doctrine out of the LRW classroom. We ourselves do not employ problem-based learning as used in medical schools. We create sanitized problems where clients have one legal issue that is easily identified. In practice, clients rarely come in your door and "present" a problem that will require you to construe one or two prongs of a three-part common law test. Clients "present" problems that will have contracts issues, torts issues, and procedure issues all tangled together. When students come in to our office after having researched an assignment, we reign them in if they have decided to consider another cause of action or legal issue. We tell our students to think outside of the box, but not outside of our box.

In addition, LRW programs have been fairly narrow in scope as to what practice skills are taught. We cannot tout our willingness and ability to teach practice skills with much credibility when we have generally confined those skills to the litigation realm. An integrated curriculum would not just integrate doctrinal subjects with litigation skills, but also with skills necessary to transactional practice. However, most LRW programs focus on assignments in a litigation setting.[5] Law schools will not be serving the students by teaching practice skills that only half will use and ignoring practice skills that the other half of students will use.

The topics of LRW content and LRW hiring are truly a chicken-and-the-egg dynamic. LRW programs across the country are very litigation-oriented. LRW faculty across the country are more likely to have litigation experience than transactional experience. Therefore, LRW programs will find it difficult to design transactional problems or coordinate with a contracts professor on a drafting assignment when none of the LRW faculty have any transactional experience.

III. The Future

The future is very bright for the integration of the law school curriculum. All legal educators are recognizing the value of combining practice skills, theory and doctrine. However, no sweeping reforms will be made without changing the attitudes and expectations of the faculty, the students, and yes even the LRW faculty. While we enjoy ourselves at this conference and bounce ideas off one another about how we can sell this brave new plan to "the Faculty" and the students, we should turn the mirror on ourselves and recognize that we also have to change the way we have been doing business. Just as a professor who has been teaching torts the same way for twenty years should not be threatened by changing her teaching methods and course content, LRW directors cannot be territorial or protective of what LRW faculty do if true integration will ever take place. All professors are going to have to do some intellectual stretching and redesigning.

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5. According to the 2000 Survey Results of ALWD and the Legal Writing Institute (LWI), of 137 legal writing programs reporting, 134 assigned an office memorandum, which is usually based on a cause of action, sixty assigned a pretrial brief, thirty-two assigned a trial brief, and 104 assigned an appellate brief. Only twenty-eight of those reporting programs assigned a problem involving drafting a document. *See* ALWD, *2000 ALWD/LWI Survey Report* <http://alwd.org/resources/survey_results.htm#2000> (accessed July 15, 2002).

Some attendees have asked whether I mean that someday law schools will not have legal writing professors or a legal writing department. Maybe I am saying that. We cannot simultaneously chant that legal writing is not a separate discipline and maintain a separate identity for LRW faculty.