Teaching decision-making in law schools:
Promotion of experimentation; collection, analysis and dissemination of materials; creation of an organization to encourage decision-making pedagogy in law school curricula

The genesis of this project was a symposium held at the University of Maryland Law School on April 28th, 2010 exploring the changes that have occurred in the legal profession during the last three decades and how, if at all, law schools can best address these changes.

Gillian Hadfield of USC presented at the Maryland symposium and described in some detail the pedagogy of her introductory and advanced contracts courses at USC that involve client-centered problem solving, and the frustration she has experienced in trying to convince her colleagues of the value of her design of the materials and the significance of extraordinary student engagement when she uses these “real world” materials. Robert Rhee has first hand experience with a similar frustration at Maryland, where the implications of using business school case studies to teach corporate law has generated no resonance or interest in the faculty at large. There are a number of initiatives involving use of new teaching materials and pedagogies occurring in law schools throughout the country, ranging from the Harvard minimester, to the transactional initiatives at Emory, and the third year curriculum at Washington and Lee. No doubt many other examples exist of thoughtful faculty at schools around the country who believe new forms of pedagogy are needed to prepare students for a career in law, but find the resistance of most law faculty to new methods and styles of teaching legal decision-making both daunting and discouraging.

New pedagogical methods relevant to this proposal fall into two broad categories:

• **Contextualization.** Discussion materials that create virtual situations for decision making. These describe circumstances that emulate practice settings of a client with a business or other problem seeking assistance from a lawyer practicing in a particular form of organization. This re-creation of a practice situation requires a student to take into account some complexities of law practice, that can include:
o responding to a client who articulates a problem, not necessarily a legal problem, and framing for the client the relevance of legal analysis and action,
o knowledge [some might term it “interdisciplinary”] of a business, industry or organizational challenge that affects the client and the legal advice,
o anticipating how best to deliver the advice or service to the client in light of the capacities and operating assumptions of both the law practice and client, and the costs to the client and law practice.

• *Group or Process Work.* Simulated problem situations (e.g. negotiations) involving organizational decision-making, problem-solving with teams, supervised clinical or externship work with live clients, reflective work on the functions of groups in real or simulated settings that are designed to provide an experience analogous to law practice.

If we acknowledge that most law is made by lawyers in their everyday interaction with clients and adversaries, these new pedagogies draw on a variety of complex jurisprudential understandings of the making of law. They also are attempts to address the perception of many observers of the profession that students lack appropriate preparation for the practice of law after three years of post-graduate training—regardless of the legal marketplace in which they practice.

Criticism of the adequacy of legal education in preparing lawyers for practice was one of the major themes of the Future Ed Conference at NYLS, but most of the suggested projects there focused on making greater efforts to shorten or make more efficient (and thereby lessen the expense of) a curriculum that is in various ways inadequate. There was a lot of focus on differentiation among law schools based on the marketplace for their graduates. No one was talking much about the technology of teaching, the materials that lie at the base of the classroom experience in law.

The goal of this project is to deploy various methods to convince law school faculty of the necessity of creating or adopting new forms of materials and pedagogies more relevant to preparing students for law practice. The strategic assumptions of this project are:
1. find allies, supporters, who command respect of law faculty, people already engaged in creating some of these new materials and pedagogies or are enthusiastic about the enterprise;

2. encourage allies and others to write about the importance of this new pedagogy, why it is superior intellectually, what it means in terms of various legal subjects and schools of thought about law, how it is best done, etc.—in short try to create some buzz, some curiosity--the best marketing tool in a setting like a law school;

3. establish a governing group, something like an AALS section or unincorporated organization and identify one person accountable as the project leader or executive director to make things happen, give it a name, e.g. “decision-making teaching” or “law-making for lawyers,” find a law school to house it and offer it 501 (c)(3) status and management for any funds it might generate. The governing group should include law faculty representative of the whole pecking order of law schools. The governing group should include law school deans (resource and strategy people), and private practitioners who like the idea of an intelligent way to hook up with and strengthen legal education and have an impact on it by working with faculty to create sophisticated cases, do co-teaching, raise funds, etc.;

4. collect the wide array of innovations and experiments by individual faculty and law schools, teaching materials and teaching guides, describe them well, provide a critical comparative analysis that explores in some depth the costs, goals, rationale, limitations and possibilities of these new law school pedagogies; and

5. devise and implement a strategy to disseminate this information through a collaborative organizational framework (the organization mentioned above) designed to influence the field of American legal education by promoting pedagogical experimentation to prepare students better for the practice of law, e.g. group members get free access to the cases and materials of others in the group, or access to virtual groups of colleagues for advice and help as an incentive to adopt and adapt new pedagogies.

Michael Kelly
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Timing:
• Item 1, identifying allies, should be largely completed by January 1, 2011.
• Item 2 should be underway and significant progress demonstrated by June, 2011.
• Item 4, the collection of materials, should be well developed by June, 2011, along with an analytical framework (in discussion draft form) describing and comparing various materials and pedagogies.
• Item 3, the formation of a governing group and sponsoring law School or other institution should be in place by January, 2012.
• Item 5, the promotion and dissemination of materials should begin as early as June 2011, and be fully developed by January 2012.

Endorsements:
  • Prof. Kenneth Abraham of U. Virginia School of Law
  • Prof. Marc Galanter of U. Wisconsin – Madison School of Law
  • Prof. Diane Hoffmann of U. Maryland School of Law
  • Prof. Robert Rhee of U. Maryland School of Law
  • Robert Waldman, Partner, Hogan Lovells US LLP
  • Prof. Robin West of Georgetown U. Law Center