

“LAWYER AS PROBLEM SOLVER:” CURRICULAR INNOVATION AT DAYTON

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IN 2005, the University of Dayton School of Law began to offer the “Lawyer as Problem Solver,” a comprehensive curricular revision aimed at producing problem-solving graduates well prepared for practice. Building on a tradition of experiential learning at Dayton, the new curriculum integrates skills more comprehensively, provides practice-related tracks for subject-matter concentrations, and offers an accelerated option that allows students to graduate in as little as two calendar years. The curricular package includes other features to attract highly motivated students and provide them with a rigorous educational experience. Legal educators face many challenges as we strive to keep our students engaged for three years and bridge the gap between the academy and the profession. This essay explains how Dayton’s curriculum addresses some of those challenges and describes some of the work entailed in moving this type of change forward.

Curricular change is difficult and requires extensive deliberation and planning. At Dayton, individual faculty members and small groups created courses and experimented with curricular change, but no major curricular changes had been enacted at Dayton for many years, despite faculty recognition of the need for change. The curriculum is the province of the faculty, and deans need to work carefully to guide curricular reconsideration by providing broad opportunities for inclusion and empowering smaller groups that can move deliberation forward at key moments. Even with broad faculty and staff support, implementing such change causes anxiety and requires careful attention to detail. We are finding that curricular change is also rewarding, as many members of the Dayton Law community experience renewed creativity, energy, and engagement.

I. ADDRESSING SOME OF THE CHALLENGES FACING LEGAL EDUCATION

Lawyers and legal educators face many challenges, including, but not limited to: the cost of legal education and its impact on career choices; the need for greater diversity in our schools and profession; the learning needs and styles of the millennial-generation student; the expansion of large firm law practice and the growth of multi-disciplinary practice; the pressure on lawyers to specialize early; the decrease in mentoring or an “apprenticeship” period for some new lawyers; the influence of technology on law practice; the growth of alternatives

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to litigation and changes in court-connected processes; and the globalization of law and practice.

In strategic planning discussions, which began at Dayton in 2002, we considered many of these challenges. We looked critically at our competitive position, assessed our strengths and opportunities, and then designed the new curriculum to address some of these challenges.

In particular, we were concerned about the gap between the academy and the profession and sought to prepare our students better for practice, without sacrificing a strong, broad foundation in analytical thinking and doctrinal coverage. Legal education must evolve to meet the demands of twenty-first century practice. We read about the pressures on legal employers to control costs, which places pressure on associates to perform at an advanced level more quickly than had been expected traditionally. We heard from our alumni that associates could no longer sit in court, learn from the judges, and watch great trial lawyers. Many could not find the time for such informal training and many reported a greater emphasis on settlement prior to trial in many areas of the law. While some firms offer strong formal training programs, many new lawyers reported that they were not receiving good mentoring.

With the new curriculum's emphasis on experiential learning including more comprehensive integration of lawyering skills and a broader reach of externships, we seek to prepare students better for practice, while recognizing that new lawyers will still have much to learn on the job. It allows us to bridge the gap between the academy and the profession by encouraging more collaborative efforts between town and gown. Faculty and practitioners from around the nation are bringing our students the best of both worlds by co-teaching intra-session and capstone courses.

We were also concerned at Dayton Law about national studies showing that many students are less engaged with legal studies by the third year. Students are highly engaged in law schools for the first semester or first year, learning new material primarily in large class environments through quasi-Socratic dialogue. After class ranks are released, some disillusionment is common for students outside the top portion of the class. By the latter half of law school, the Law Student Survey of Engagement and other studies show declining preparation for classes, declining attendance, and a general disengagement from the learning process. By emphasizing problem-solving and experiential learning in certain courses, the Dayton faculty is attempting to foster deeper engagement with the substantive material and lawyering skills throughout students' legal education.

This type of engagement builds on a history of experiential learning expertise and interest among the faculty. Dayton has long offered small-sections in its outstanding and nationally recognized Legal Profession program with a focus on research, critical thinking, and writing skills. The courses promote professional development through exercises simulating legal practice, which sometimes incorporate ethical issues, frequently require teamwork, and always culminate in individualized student assessment. In recent years, Dayton has offered more small-sections in other first-year courses, increased the use of midterms, and employed other methods to keep many students engaged throughout the semester in larger courses.

To keep upper-level students highly engaged, some faculty members have developed smaller size, problem-based courses (e.g., Family Law seminar, Health Care seminar, Advanced Commercial Real Estate Transactions, Children & the Law, and Business Planning). The School has long offered a Law Clinic and the Volunteer Income Tax Assistance Program, providing opportunities for students to learn while assisting real clients. Faculty members have experimented with combined trial practice/evidence courses, sometimes linked to subject matter areas (e.g., Civil, Criminal, Intellectual Property sections). The school has also increased its dispute resolution offerings and externship placements in the last decade.

These developments certainly strengthened our offerings and helped prepare students better for practice. Nevertheless, we were troubled because not all students were exposed to problem-based courses, and there was no coherent sequencing of problem-solving skills in the former curriculum. The “Lawyer as Problem Solver” builds on the School’s traditional strengths and these recent experiments, which attempt to engage students more comprehensively with problem-solving skills in a sequential manner and better prepare them for their professional roles.

The emphasis on experiential learning fits with the Catholic and Marianist identity of the University and Law School. The University espouses “integrated learning and living in community” as a way to engage the “whole person”—mind and soul, heart and hands—in the educational enterprise.¹ With law students, this engagement can happen through courses and in students’ work experience outside the classroom as they integrate theory and practice. What law students encounter in their externships, part-time jobs, and summer clerkships informs how they study, absorb, and apply material in courses. Students sometimes bring work problems, including ethical issues, into conversations with law faculty members. Through our new curriculum, we seek to formalize this type of dialogue and make it ongoing. Students benefit not only from exposure to the “real world” of practice, but also from the opportunity to reflect upon these experiences, positive and negative, with classmates and faculty members.

When students work with real clients or even the actors used for our interviewing courses, another dimension of the lawyering role emerges beyond case analysis. Students encounter the human dimensions of practice, where communication is paramount and the clients’ priorities, interests, and needs are critical. The new curriculum attempts to link learning inside and outside the classroom as students begin to develop their professional identities, promoting reflection and better integrating their personal values and professional roles. Building on our strength in integrating theory and practice in the Marianist tradition, the curriculum strives to train students, who will become problem-solving leaders, serving their clients, the justice system, and their communities with ethics and integrity.

1. The University of Dayton, A Vision of Excellence (Sept. 2005), <http://marianist.udayton.edu/Documents/Vision%20of%20Excellence.pdf>.

II. HIGHLIGHTS OF THE “LAWYER AS PROBLEM SOLVER” CURRICULUM

A. *The Vision*

The key elements of the “Lawyer as Problem Solver” vision of legal education follow:

1. The lawyer’s fundamental role is to help clients solve complex problems and make appropriate choices. To fulfill this role, lawyers require an outstanding foundation in analytical reasoning, substantive legal doctrines, and professional skills. The best lawyers are not mere technicians, they act with sound judgment and common sense, always cognizant of their clients’, and their own, ethical responsibilities.
2. Lawyers help clients and communities prevent and resolve conflict. They help clients prevent future disputes and help them manage current conflict by choosing effective dispute resolution processes to achieve durable solutions.
3. Lawyers serve the people and organizations they represent through a blend of practical and intellectual activities. Thus, they need to understand more than legal doctrines in books; they need to understand people and organizations.
4. Lawyers who excel become fulfilled leaders who serve their clients, the justice system, and their communities by making the world more just and fair.

B. *Principal Elements of the New Curriculum*

1. *Foundational Breadth*

The “Lawyer as Problem Solver” retains much of a traditional first-year curriculum with its emphasis on the case method and analytical thinking. The curriculum adds required upper-level subjects included on most jurisdictions’ bar examinations. Thus, it aims for a broad foundation in a variety of core legal subjects.

2. *Curricular Tracks*

Our offerings add some depth and opportunity for specialization in three broad areas: advocacy and dispute resolution (with a criminal or civil specialization as a student advances); personal and transactional law (with a focus on representing individuals and businesses in transactional work); and intellectual property, cyber law, and creativity (with advanced specialization in patent or a broader intellectual property sequence of courses). These tracks fit both the expertise of our faculty and the interests of many incoming students. For example, our

innovative and widely renowned Program in Law & Technology offers intellectual property and cyber law experts, programming, and externships. Students in each track are exposed to the subject matter that interests them early (e.g., through specific, track-related legal profession exercises and one track-related offering during their first year).

3. *Experiential Learning Opportunities & Enhanced Skills Offerings*

The new curriculum creates more meaningful opportunities for experiential learning. Each student will complete a four-unit externship, affording hands-on experience, individualized feedback, and reflection. The curriculum requires each student to take a capstone course or clinic, helping students transition from a theoretical to a practical understanding of the practice area, bringing together skills and theory, and providing students with a rigorous writing requirement. Additionally, students will take a course in dispute resolution geared to their track, and each will complete another skills experience before graduation.

4. *Broadened Horizons*

Dayton offers intensive, one-unit intra-session courses, providing students the opportunity to survey a wide array of topics, enhance their professional skills, explore cutting-edge issues, and encounter a variety of legal perspectives. During 2005-2006, first-year students took an "Interviewing" course, which culminated in two simulated interviews conducted with actors posing as clients. This "standardized client methodology" has long been employed by medical schools and allows students to receive individualized critique, including critique from the clients on their ability to establish a rapport to their ability to gather pertinent facts. Students also studied end-of-life issues with faculty members, lawyers, judges, legislators, health care professionals, and ethicists with a focus on students beginning to develop their professional identities and reflect on the role of lawyers in advising clients on legal issues fraught with ethical complexities and value choices.

5. *A New Academic Calendar & Accelerated Option*

Dayton now offers students the opportunity to graduate in either five or six semesters and to begin the study of law in either the summer or the fall. Students complete the same rigorous course of studies, whether in five or six semesters. If a student commenced her studies in Summer 2006 and maintains the standing necessary to stay on the five-semester option, she can graduate in May 2008 (with Summer 2007 reserved for a clerkship). We hope this option will attract highly motivated students, including non-traditional students, who want to change careers and get back into the workforce more quickly.

III. STRATEGIC PLANNING: ADOPTING CURRICULAR CHANGE

The road to significant curricular change is long and winding. The need for patience and perseverance cannot be overstated. Faculty and senior administrators engaged in serious strategic planning efforts in 2002-2003, which was led by a task force. This extensive effort, detailed in an earlier essay of the deans' collections,² was broad and inclusive, covering many topics of importance to the school. As we worked to develop a clear and renewed vision for Dayton Law, we sought advice and counsel from faculty, staff, students, prospective students, university leaders, members of the Advisory Council, alumni, employers, ABA officials, and our colleagues at other law schools around the country. This planning effort culminated in a faculty and senior staff retreat in Spring 2003 and a good portion of it centered on how to reform the curriculum. A strategic plan was produced, and one of its primary goals was to revise the general curriculum by "building on existing strengths and opportunities to 'bring practice into the classroom' so graduates can 'hit the ground running' with bar passage and initial job placements."³ The plan listed several tactics to accomplish this reform, which have been incorporated into the curricular elements described above.

In 2003-2004, more faculty discussion and small group planning work ensued. Elements of a proposal were vetted with the faculty, the Advisory Council, and university leadership at several points. The faculty considered one reform plan but expressed several reservations and sought revisions. The faculty realized that, given the divergent opinions among its members, a coherent and comprehensive curriculum could not be drafted by the faculty acting as a "committee of the whole" or even by a large committee. In May 2004, the faculty resolved that the dean should work with a small group of administrators to prepare a comprehensive, programmatic curricular recommendation for faculty consideration by Fall 2004. The final proposal, adopted overwhelmingly by the faculty on November 3, 2004, was the outgrowth of years of planning work and discussion among many constituencies.

At a critical time between Spring and Fall 2004, it was very helpful that a limited number of drafters worked closely together to design the final package. The level of trust that can be developed within a small group fosters both individual and group creativity. The use of a small group also allowed us to create expertise as to the project's intricacies among its members, who were specifically charged with devoting the bulk of the summer to these planning efforts. So, for example, when one member proposed a new component of the plan, others were able to quickly assess whether that component was consistent with overall goals, consider its effect on other components of the plan, and move to integrate it, if appropriate. Without the spadework done previously by the law

2. Lisa A. Kloppenberg, *The Balancing Act: Leadership in Strategic Planning*, 36 U. Tol. L. Rev. 103, 106 (2004).

3. UNIV. OF DAYTON SCH. OF LAW, STRATEGIC PLAN, 2003-2008, at 2 (Oct. 30, 2003) (on file with author).

school community as a whole, however, the small group's work would not have been effective.

Change could have easily been derailed. Several faculty members provided critical help when they proposed that the reform package be voted "up or down," subject to the acknowledgement that the faculty, of course, retained the ability to alter the curriculum over time. While there was a shared commitment about the direction of change at a general level, faculty members advanced many different plans in terms of details. This resolution prevented a "tinkering" with many particular aspects of the plan or redrafting by a "committee of the whole," which could have destroyed the faculty consensus needed to adopt comprehensive curricular reform. Given the dramatic nature of the change, the risks entailed, the natural caution lawyers and academics employ in analysis, and the difficulty of curricular trade-offs, this resolution was very important to the process of moving ahead.

It was significant that the faculty asked for a comprehensive plan, enabling us to look at a package instead of bits and pieces of gradual reform. The faculty recognized the need to move (after many years of discussion), and the comprehensive nature of the reform has yielded Dayton Law some very positive national attention. I have had the opportunity to speak to my decanal colleagues and legal employers about the curriculum.

The International Institute for Conflict Prevention and Resolution presented the law school with its Problem Solver Award in 2006. The judges emphasized that Dayton's "unprecedented focus on problem-solving throughout the entire curriculum should be honored for its breadth."⁴ This attention and the comprehensive nature of the reform have helped rally support and resources from the University and donors, in part because the faculty and staff demonstrated a willingness to embrace change, in part because supporters see the problem-solving focus as relevant for students and the legal profession, and in part because of the fit of the new curriculum with the University's mission and identity. Finally, with a comprehensive package of reform, a high-priority level can be given to its effective implementation. This is not a minor reform in a single program involving a few persons (which, of course, could be implemented more easily), but an overall effort requiring sustained attention and resources.

Assessment will be ongoing and some revisions surely will be needed over time to keep the curriculum responsive to student and employer needs, as well as faculty expertise and interest. We recognize the importance of careful assessment, regular re-examination, and continuous response to changing competitive landscape and new opportunities. In general, as proposals for change to particular aspects of the new curriculum have been advanced, faculty members have voted to wait on enacting further significant change at this early stage of implementation. Most faculty members have concluded that it is

4. University of Dayton School of Law, School of Law's New Curriculum Wins International Award from Group that Advocates Resolving Disputes Outside Classroom, <http://law.udayton.edu/newsevents> (follow "News Archives" hyperlink; then follow "USDL's New Curriculum Wins International Award" hyperlink) (last visited Oct. 9, 2006) (quoting Helena Erickson, senior vice president for research, development and education at CPR).

important to allow at least one full cycle before drastic alterations are made to the curriculum. While we will continue to be engaged in assessment and further planning, this approach has given us some “breathing space” to focus on fully implementing the “Lawyer as Problem Solver” package.

IV. ENGAGING THE COMMUNITY BROADLY IN IMPLEMENTING CHANGE

Faculty members were already busy with scholarship, teaching, and service activities before they voted for curricular reform. Staff members were already busy recruiting classes, serving and teaching our students, and placing them in jobs. As we move to a year-round calendar of classes, with summer starters, many people within the University of Dayton School of Law have had to undertake new work and make adjustments to their schedules and responsibilities. We set up eighteen committees to implement various aspects of the new program. We have hired, or are in the process of hiring, more faculty and staff to implement various aspects of the curriculum, from supervising the new externship offerings to providing additional library coverage in the summer.

While the work has been overwhelming at times, the broad scope of reform has engaged many members of the faculty, staff, and student leadership. In particular, for some faculty members, new courses have provided an opportunity for creativity and development in their teaching and scholarship. Several faculty members have found new possibilities by teaching in the summer and fall and reserving the spring for more intensive scholarly work and travel to conferences. Thus far, faculty members are working on designing more than half a dozen capstones and more than half a dozen intra-session courses. Some full-time faculty members plan to team teach the four-unit capstone courses with adjunct faculty members, enhancing the ability to provide feedback to students and incorporate practice realities into these intensive, culminating courses. Several donors provided grants to support the faculty’s work on course development. Some faculty members are genuinely excited about the new challenges they are surmounting as they design the courses and explore more possibilities for excellent experiential learning opportunities for our students.

A. *Capstone Examples*

Capstone courses are four-unit courses that are track-specific and provide closure to the track. They encourage students to take the knowledge gained in earlier courses and apply it to a complicated problem, simulating practice more than possible in another survey course. They often will combine several legal subjects and all will require significant written work, satisfying the new upper-level writing requirement. Many of the courses adapt actual documents used in legal transactions and litigation. For example, Professor Susan Brenner designed a Cyber Crimes and Law Enforcement capstone, which allows students to draft jurisdiction-specific manuals for local prosecutors and law enforcement officials on the legal resources available to them to fight cyber crimes. Professor Jim Durham developed a capstone for Advanced Commercial Real Estate Transactions, in which students negotiate and draft documents used in the

development of a shopping mall. Professor Andrea Seielstad created a capstone on the Legal Protection of Indigenous Culture, in which students will assess and develop legal protections for the cultural heritage of indigenous peoples of North America. Professor Rich Saphire designed a Civil Rights/Civil Liberties capstone, involving students in interviewing of clients, depositions, and pre-trial civil work.

B. Intra-Session Examples

Intra-session courses are one-unit, intensive courses conducted within a one-week period during the semester that is reserved exclusively for intra-session courses. The School has already offered more than a dozen intra-session courses, including one canvassing the recent Bankruptcy Act reforms, led by Professors Jeff Morris and Victoria Van Zandt. Students studied the impact of the new Bankruptcy Act on individuals, especially the poor and middle class. Drawing on Professor Morris' connections in the field, the program featured national experts, including leading judges and lawyers. Jeff Froehlich and Mary Kate Huffman, local trial judges and outstanding adjuncts at Dayton, taught an intra-session course on sentencing. Students explored the concept of criminal sentencing, using specific examples drafted by judges that make sentencing determinations regularly. Professor Rich Saphire taught an intra-session on the legal issues facing the homeless, working closely with a social service provider, lawyers, and others involved in a task force addressing homelessness in the area. In addition to studying written materials and hearing from experts, students will have the chance to engage in hands-on work with homeless people. In the international law arena, Professor Sheila Miller developed a course on human trafficking and Professor Fran Conte taught European Union law.

V. CONCLUSION

The energy, thought, and diligence that the Dayton Law faculty and staff have demonstrated in devising and implementing this curricular reform are most admirable. The support of the University, including its willingness to allow us to take some risks, has been very important; we also could not have achieved this without the active support of many of the school's alumni and friends. Those constituencies recognize that this change entails disruption and difficulties, but they are excited by its promise and heartened by the leadership shown by our faculty and staff. Some days we feel a bit exhausted, but all in all, we feel as if we are working on something important for the school, for our students, and for their employers and clients. If this work spurs some of our colleagues in legal education to re-examine curricula, we would be greatly honored and further encouraged. We look forward to working with other educators and legal professionals to hone our problem-solving vision and improve continuously the experiential educational components we offer students.

Innovation can generate excitement, internally and externally, and this has been one outgrowth of our curricular reform. An emphasis on innovation is quite fitting in Dayton, home to some of the great inventions in our country, from the

airplane to the electric auto ignition, from cinema equipment to the cash register to personal digital assistant technologies, from space food to mood rings. I see the “Lawyer as Problem Solver” as another example of innovation in Dayton.