

Building Bridges Between Theory and Practice: Incorporating Lawyering Skills into Doctrinal Courses

Saturday, January 5, 10:30 a.m.

Location: Grand Salon Section 18, First Floor

Discussion Group Abstracts

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Developing “Carnegie Integrated Courses” for Law School

In December 2009, the University of Denver Sturm College of Law (SCOL) faculty approved a new strategic plan that included a modern learning initiative. The modern learning initiative springs from the 2007 Carnegie Report, *Educating Lawyers*. The Carnegie Report identifies three apprenticeships in law: analytical, skills, and professional ethics/identity. The Carnegie Report suggests that these apprenticeships in law school are neither balanced in most schools, nor integrated. The SCOL seeks to address these two things—balance and integration. According to the DU SCOL Strategic Plan,

“Our plan is informed by the extensive modern research on legal education, including the Carnegie Report of 2007 entitled *Educating Lawyers: Preparation for the Profession of Law*. While we are not tied to its conclusions, we find the Carnegie Report’s three “apprenticeships” helpful for identifying components that are central to effective legal education:

- 1) The cognitive apprenticeship – variously described in the report as understanding, sets of abilities, legal knowledge, conceptual knowledge, and thinking;
- 2) The skills apprenticeship – variously described in the report as know-how, practical knowledge, skillful practice, and performing;
- 3) The professional identity apprenticeship – variously described in the report as intention, professionalism/ethics/social responsibility, and professional identity.

We believe that effective legal education requires a balanced curriculum – one that offers exposure to each of the Carnegie apprenticeships described above. We are committed to providing such a balanced curriculum. DU Sturm College of Law Strategic Plan, December, 2009, at pp. 6-7.

To carry out the mandates of the strategic plan and to forward emerging consensus on student learning outcomes, the University of Denver Sturm College of Law Modern Learning

Committee (MLC) was created. The MLC is composed of faculty and staff representatives from each program or entity that has anything to do with the direct teaching of DU law students. The MLC ultimately conceived of developing a series of fully integrated (all three apprenticeships) courses that could be undertaken in every program represented on the MLC and in the law school. We termed these, “Carnegie Integrated Courses (CICs).” My talk at AALS will go over the CIC template and discuss the various ways that different professors, including myself, have approached creating integrated doctrinal classes. We have developed over 17 substantive Carnegie Integrated Courses at the law school. As a Carnegie scholar in 2000-01, I was involved in a focus group on initial drafts of the Carnegie Report. Over the past 8 years at Denver Law, I have been substantially involved in helping to bring the vision of the Carnegie report to actuality. <http://mediaserv.law.du.edu/mp4video/misc/Denver-Law-Carnegie-Integrated-Courses-2015.htm>
<http://iaals.du.edu/educating-tomorrows-lawyers/projects/resources/administrative-law-dinosaur-park-simulation>
<http://iaals.du.edu/educating-tomorrows-lawyers/projects/resources/labor-relations-law>

Attachment A-1: DU Sturm College of Law
“Carnegie Integrated Course” (CIC) Requirements

This series of courses will be conducted primarily in a simulated or practice-oriented learning environment in the context of substantive law:

I. Major (“Substantial and Regular”) Component Requirements:

A. At least two (2) of the following practice contexts:

Litigation
Contract/Agreement drafting
Negotiation
Client and/or Witness Interviewing
Client Counseling
Alternative Dispute Resolution
Legislative Drafting
Oral Presentation

B. Writing and Research Skills

1. Students will write several legal documents, and
2. Students will write a variety of documents (including, e.g., briefs, motions, reports, legislation, internal memos, reflection papers, etc.), and
3. Students will write at least one document with a requirement of a rewrite after feedback is provided, and

4. Students will research at least one legal topic posed by, and related to, the simulation or practice context of the course.

II. Minor (“At Least One Exercise”) Component Requirements:

A. Professional Identity, Ethics, and Values:

In addition to exhibiting appropriate professional behaviors throughout the course as well as in simulated practice settings (including, e.g., collaborative groups), students will be required to submit *at least one graded assignment* concerning ethical and/or professional identity issues posed by, and related to, the simulation or practice context of the course.

B. Oral Presentation/Advocacy:

In addition to regular participation in the class, students will be required to prepare *at least one graded oral presentation* on an issue or issues posed by, and related to, the simulation or practice context of the course.

2/1/12

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Building Skills Through Case Study—Convincing Students (and Faculty!) of the Value

Most law students expect, and most law faculty deliver, Socratic-style teaching in doctrinal courses. Yet, we know that other teaching methods can be as effective if not more so for preparing a practice-ready lawyer. I have incorporated lawyering skills into my Professional Responsibility courses for several years and also written a book with Professor Ellen Murphy to help other professors do so easily: *PROFESSIONAL RESPONSIBILITY FOR THE REAL WORLD—BUILDING SKILLS THROUGH CASE STUDY* (Foundation Press 2018). As a requirement in most upper-level curriculums (and often the only requirement after the 1L year), a legal ethics course is an ideal place to make sure that all students master early lawyering skills. My observations, however, apply to teaching skill-building in any doctrinal class.

The Socratic method does not readily lend itself to teaching skills beyond legal argument/reasoning and speaking-on-one's-feet (though those are certainly important). Entry-level lawyers, of course, are expected to be adept in a range of other skills, including client counseling, fact investigation, legal reform, problem-solving and reasoning, policymaking, reflective practice, research, review/analysis of legal documents, statutory analysis, and written/oral communication. Students who develop these abilities as a law student will be in a better position to succeed early in their legal careers.

As I endeavored to incorporate in-class exercises to help students develop skills beyond Socratic-driven techniques, for example a mock client intake interview, I found students appreciated the opportunity to practice a skill but wanted more than a fictional hypothetical. When I began to use real-life scenarios with primary source materials drawn from actual cases, students more fully embraced this teaching method. Situating skill-building within a case that actually happened helps students find genuine value in the exercise.

It's one thing to convince students of the value in different kinds of teaching methods. It's quite another to convince faculty to take on new teaching methods. In my role as the director for Outcomes and Assessments at the University of Houston Law Center, I spend a lot of time thinking about how to encourage and support faculty use of formative assessment and skill-building exercises in their curriculum. This led me to develop a teaching resource that supplements, but does not supplant, whatever a professor already does in the classroom.

Traditional casebooks introduce students to a range of perspectives and identify the most important arguments and cases for them. In the context of legal ethics, most casebooks are organized around the Model Rules of Professional Conduct produced by the American Bar Association. Teaching for skill-building through case studies, by contrast, is organized around

a range of real-life issues selected to help students develop their own judgment and legal analysis. Students are exposed to all sources for the law of lawyering, including ethics opinions, cases, administrative regulations, and jurisdiction-specific professional conduct rules. Students are encouraged to apply the rules governing law practice in the state they most likely will become licensed rather than simply memorize the Model Rules.

Case studies drawn from real-world events offer a range of opportunities for skill development, and I've found that students not only engage more fully in the material but also perform better on exams using this teaching method. Law schools (and employers) are increasingly focused on training students to practice law, but teaching materials have not kept pace with these new pedagogical goals. This led me to create a book based upon seven case studies, each a stand-alone chapter with an appendix containing primary source documents. The book's style reflects recent trends in legal education to prepare students for the practice of law. It offers practice-based materials that expose students to a wide range of possible ethical dilemmas combined with various activities designed to build lawyering skills grounded in substantive topics that cover core traditional legal ethics issues such as conflicts of interest and confidentiality as well as breaking issues of the day such as social media use and substance abuse.

To help persuade faculty experimentation with teaching skills through case study, three priorities became clear: (1) ease of use; (2) affordability; and (3) flexibility. It was important to develop a teacher's manual to reduce preparation time and to include rubrics/responses to give faculty comfort in attempting new teaching mechanisms. It was also critical to create an affordable resource for professors reluctant to completely replace standard doctrinal teaching methods or impose additional costs on students. As for flexibility, the book is designed for faculty wishing to add lawyer ethics and skills(!) in subjects beyond the standard ethics course, per the Carnegie Report recommendation, whether in clinics, legal writing, or doctrinal courses.

It's not necessary to write a book, however, to effectively use case studies for teaching skills. Anyone can adapt their teaching to provide students exposure to lawyering skills and the opportunity to master them. First, select a case that students already read for class. (Cases receiving media attention can be especially effective because the professor can incorporate multi-media teaching tools.) Second, determine the relevant skill(s) for students to develop. Third, locate primary source documents related to the case, which are good resources as models or templates for assigning students a particular role or task. Fourth, craft an exercise based upon the primary source document that incorporates the identified skills. Finally, provide feedback to students after completion of the exercise, whether it is individual feedback from the professor or peer-to-peer feedback using a rubric of expectations. Building skills through case studies drawing from real-world, primary source documents in this way can be an effective mechanism for building bridges between theory and practice.

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***Debunking the Theory-Practice Divide in Legal Education:
Why It's Wrong and How We Can Do Better***

The so-called theory-practice divide in legal education is not only factually false but semantically impossible. As to the divide's falsity, practitioners have of course performed excellent scholarship, and academics have excelled in practice. As to the divide's semantic impossibility, meaning is inextricably woven up with experience. One cannot, for example, fully grasp the “theory” of a limited indemnity without understanding how such an indemnity would play out in experience.

Modern cognitive psychology’s notions of embodied meaning further underscore the semantic impossibility of separating theory from practice in the world of experience. In the real world, we approach problems through our sensory experiences and thus through our own individual interactions with the world.

Legal education must therefore reject wrong-headed Langdellian notions that experience and legal practice taint scholars and scholarship. Instead, legal education should recognize that theory without practice is empty and practice without theory is blind.

Embracing such fusion of theory and practice, I will share my teaching approaches in two courses: (i) Commercial Leasing and (ii) Contracts and Commercial Transactions. In both such courses we combine applicable theory with a deep review of actual documents and instruments. I will also share thoughts on how these approaches can and should be used in other courses such as first year courses in Contracts.

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Bridging the Great Divide in Legal Education

Why is it an exception - and not yet the norm - to teach doctrine and skills together in the same law school course? What is it about the legal academy that dissuades us from teaching our students the law and how to actually use it, in the same class? Instead, we teach legal doctrine in podium courses, and we teach skills separately, in legal writing classes, clinics, and other workshop or lab settings. More often than not, these skills courses are taught by faculty with lower status than the full-time tenure-track cohort. Finally, we send our graduates out to practice law in the real world, where the great divide between doctrine and skills is conspicuously absent. What can we do differently and what are the challenges of a more integrated approach?

Tradition, of course, is a large part of why the great divide persists. The knot becomes that much more difficult to untangle due to the status hierarchies entrenched on some campuses with respect to doctrinal or (the more stinging terminology) “substantive” faculty and skills faculty. Further, law faculties tend to be conservative, not in their politics perhaps, but in their willingness to embrace curricular and pedagogical change. Yet, since at least the advice and admonitions of the Carnegie Report and based on our own experiences in the classroom, many of us in the legal academy have long suspected that our students could be better prepared for practice by a more integrated approach to legal education.

With the above goals and challenges in mind, I decided to start small in my pursuit of better integration of doctrine and skills in the classroom. In the legal writing classes I usually teach, students must research and understand the subject matter of the documents they draft, but that subject matter is not the focus of the course. In the doctrinal courses taught by my colleagues, students may occasionally be given a drafting assignment, but overall, the focus of the course is on the law itself. Interested in teaching law and practice together, I approached my tenured colleague, Professor April Cherry, about co-teaching a doctrine and drafting course in estates and trusts. She agreed, and we then designed and taught the course in two different iterations.

We found that students were eager to take this kind of integrated course. Our students learned concepts more effectively when they had the chance to put them into practice right away, and their written work improved with a deeper understanding of the applicable law. April and I found that we both benefitted from each other’s expertise in the classroom and in our weekly planning sessions. The first version of the course was the more successful experiment. In that version, we taught each class session together in the classroom, and were each able to contribute throughout the class. In the second version of the course, I taught the drafting classes separately, to a subset of the students enrolled in April’s otherwise traditional estates and trusts course.

Many of the benefits we enjoyed in the combined class were diluted by the format of the add-on version.

We proceeded aware of some of the challenges inherent in our enterprise. I approached April because I knew we would work together as equals with mutual respect, despite the difference in our faculty status (tenured for her, and contract for me). In some cases, non-tenure-track faculty may be wary of collaborations that have the potential to turn them into the worker bee in the co-teaching relationship with a higher status colleague. Likewise, institutional curricular innovation sometimes falls by design on lower status faculty, leaving higher status faculty comfortably in their pedagogical status quo. Misunderstandings of the academic freedom held by contract or contingent faculty can contribute to such missteps. By starting incrementally with a single course, we avoided some of the resistance and pitfalls that we might have faced if we had immediately advocated for wholesale curricular change.

Currently, a significant challenge for proceeding with integrated courses is one of resources. With a shrinking faculty, schools like mine may not have the personnel to develop and teach more integrated courses, and may fall back into old patterns and the great curricular divide. However, this type of curricular innovation should be prioritized for our students' sake, and more resources made available. We expect our students to enter the practice of law with the ability to serve their clients with both knowledge and skill. As educators, it's our responsibility to teach them how to do just that.

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Connecting Doctrine to Context: A Lawyering Approach to Teaching Legal Doctrine

The Carnegie Foundation report, *Educating Lawyers*, recommended that law schools directly integrate lawyering skills and promote professional identity awareness in doctrinal teaching rather than to continue to treat the content of legal doctrine, lawyering skills, and professional identity development as separate courses of study. The benefits, I believe, include providing a more accessible framework for students to learn unfamiliar doctrinal rules and concepts and enhancing the motivation critical to tackling challenging course material. Focusing on the lawyer's role also surfaces and enables exploration of communication, relational, and professional identity issues. I'll develop these ideas by drawing on my experience teaching in simulation-based lawyering courses at NYU School of Law and at City University of New York School of Law (CUNY) as well as my inclusion of practice-based assignments, internships, and attention to attorney-client counseling in doctrinal courses that I also teach at CUNY.

Lawyering skills courses shift the typical emphasis on learning a large body of legal rules to using more limited aspects of legal doctrine to explore the lawyer's role and the capacities needed to be an effective legal counselor, advocate, planner, negotiator, or drafter. By replacing reliance on traditional law school examinations with a focus on performance and task-based production, these classes allow students to engage actual lawyering work with the benefit of recurring faculty feedback, student-to-student interaction, and opportunities for self-reflection. In my experience, students learn the legal doctrine needed for this productive work more completely and thoroughly than they do through memorizing rules. Supplying professional context adds meaning and a source of motivation for completing these assignments with acuity and skill.

When I began teaching an interdisciplinary seminar at CUNY to study urban land use law and policy, I designed the course in part around a case study of a major university's expansion in a neighborhood that long suffered the effects of environmental degradation and economic disinvestment. The university's negotiation of a community benefits agreement with a local development corporation formed the basis for an extended role play in which students "continued" the negotiation and then wrote a law office memorandum on a related legal issue. Applying legal doctrine in a reality-based but simulated context without a doctrinal exam can help consolidate students' learning legal rules while promoting a practical understanding of how lawyers use doctrine. I've reinforced this focus on law practice by arranging for student placements in legal organizations that handle land use and housing issues.

In teaching Real Estate Transactions, the sheer number of topics to be covered requires more traditional testing. Posing questions rooted in the client counseling role has helped to focus and engage students. To reinforce that attorney-client context, I scripted and recorded videos portraying simulated attorney-client counseling sessions framed around the doctrinally-based questions asked by the client, presented as a first-time home buyer. As I prepare to teach the foundational Property course in Spring 2019, I'll use a similar attorney-client focus by regularly

assigning students to explain the law to one another in role. I am also developing a legislative advocacy exercise in which students will role play lawmakers and attorneys for stakeholders at a hearing to consider proposed rent regulation amendments now being discussed in New York.

The performative aspect of in-class role plays requires students to internalize difficult doctrine and apply it in lawyering context. Although the use of lawyering exercises may reduce the amount of time for doctrinal coverage, I have found that this experiential approach promotes doctrinal learning, provides opportunities to test how legal rules play out in practice, and introduces professional responsibility and professional identity issues that lawyers must address. Because these lessons enhance the utility of traditional doctrinal study, students should be allowed to engage doctrine experientially, in an integrated, holistic way, rather than through the “siloeed” approach that many law schools continue to use.

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Integrating doctrine and skills is valuable to our students. Among other benefits, it prepares them to be better practicing lawyers by learning the skills they'll use in practice. And using writing assignments or other lawyering skills exercises gives students opportunities to understand doctrine in greater depth than they might in a traditional doctrinal class where they're reading case law, participating in class discussion, and preparing for a final exam.

So if our goal is to integrate skills education with what we would traditionally think of as "doctrinal" legal education, how do we make that happen? Some law schools are restructuring their curricula to emphasize skill integration. But at many law schools, the level of integration between skills and doctrine is driven almost solely by the faculty who teach podium classes. On traditional law faculties, the doctrinal faculty are often not the same faculty who teach legal writing and lawyering skills, and skills faculty rarely teach classes where students expect to learn foundational legal doctrine.

But even in this limited context, legal writing and skills faculty can play an important institutional role in promoting greater integration between doctrine and skills by positioning themselves as curricular innovators and creating opportunities to share what they do and why it works. That effort can take many forms, from developing relationships that may lead to collaborations with doctrinal faculty who are interested in curricular reform to presenting to the faculty about skills pedagogy. This contribution to the discussion group will highlight a number of specific strategies that legal writing and skills faculty interested in promoting this integration can pursue.

Of course, whether and to what extent these strategies can be successful depends in large part on the institutional status of legal writing and skills faculty. These opportunities arise when legal writing and skills faculty are visible in the law school, are serving on committees, are making decisions, and are respected as colleagues and teachers. This contribution will also touch on these status issues.

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1. The University of Baltimore experience

For more than ten years, we have taught legal research and writing integrated with a doctrinal subject. The research and writing component is called Introduction to Lawyering Skills (ILS) and is a 3-credit, fully graded course. The doctrinal component may be Torts (4 credits), Civil Procedure I (3 credits), or Criminal Law (3 credits). In the past, we have also paired the course with Contracts I (3 credits), but for administrative reasons that pairing has not been offered for several years.

2. A Different Kind of Course

Our goal with the course is to create a true integrated academic experience for the students. It is not intended to be two separate courses appended to each other. Instead, faculty strive to use the doctrinal material to teach research and writing skills and to use the writing assignments to cement knowledge of doctrinal material. Some faculty take topics covered in the casebook and use writing assignments to deepen students' knowledge on those topics. Others use writing assignments in lieu of casebook coverage on doctrinal topics.

3. The Benefits

Small classes ensure that faculty get to know students individually, students receive regular and meaningful feedback, and faculty do not feel overburdened by the grading. Students are able to connect what they learn through the casebook to writing and what they learn from writing to other forms of legal problem solving. Students appreciate that research and writing carry the same weight in the curriculum as other subjects.

4. The Challenges

Although the course is very rewarding to teach, it comprises 50% of a faculty member's teaching load for the year and 100% of the fall semester load. This can make scheduling and staffing difficult. Teaching research is an ongoing challenge because research platforms are always changing. Providing a truly integrated experience is easier for people who take on both parts of the class together from the start. Those of us who have taught either half previously can sometimes struggle to reformulate the material in an integrated way.

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Abstract:

I will (1) briefly sketch an unconventional map of the three islands that our bridges need to span and (2) describe an often-overlooked bridge-building strategy.

1. A Map

The bridges we want to build connect islands within the hierarchical legal academy. ABA Accreditation Standard 405 maps these status-segregated islands by describing the minimally acceptable “professional environment” for faculty at accredited law schools. Such an environment’s crucial characteristic is an express “policy with respect to academic freedom and tenure.”

But Standard 405 permits law schools to reserve the tenure track for an elite. Something “reasonably similar” suffices for long-term, full-time clinical faculty. For everyone else, virtually any employment conditions suffice: whatever “may be necessary” to employ qualified people.

Thus “The Big Island,” home of tenured and tenure-track faculty, is dominant, controlling governance and wealth.

Second, “Reasonably Similar Island” is home to many faculty members with clinical status. In recent decades they have won limited governing power and wealth.

Finally, the third island has a name that is taboo on the other islands: “Island of Legal Writing Teachers.” They don’t *profess*, Standard 405 suggests, so they’re unworthy of both The Big Island’s professional environment and a reasonably similar substitute.

2. A Bridge-Building Strategy

Consequently, our bridges must span some cold, deep waters. We should not be surprised that our task is difficult.

One good bridge-building strategy is to minimize the conceptual gulf between islands. If we change our thinking, small bridges can suffice.

In practice, however, incentives lie mainly with those on the second and third islands: they strive to learn from Big Island dwellers and to work much like them. The striving aims in one direction.

Let’s consider the opposite direction too. Those who dwell on the second and third islands have resources of increasing value. For example, they have expertise in planning courses by articulating detailed learning outcomes, designing multiple practices for assessments and efficient ways to provide feedback, and writing assessments tailored to specific outcomes.

I will share an example of professors on the second and third islands sharing such expertise with colleagues.