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Erasing Boundaries: Inter-School Collaboration and its Pedagogical Opportunities

Ian Gallacher
Amy Stein, *Hofstra University*
Robin A. Boyle, *St. John's University*
David Thomson

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By Ian Gallacher, Amy Stein, Robin A. Boyle, and David Thomson

Introduction

Experiential learning is all the rage in legal education today. And yet, educators throughout history have known that involving students in their learning and exposing them to practical applications of what they are learning increases student engagement and retention. But legal education is coming to this way of thinking somewhat late. For many years, most law schools taught primarily through the "Socratic method" – which mostly involves reviewing appellate cases in dialog with the professor. Indeed, the "traditional 1L classroom provide[d] very little diversity in teaching methods."[1]

Recognizing the need to bring more skills training to law school, a call to action was trumpeted by the MacCrate Report in 1992.[2] It was followed by the Carnegie Report [3] and *Best Practices for Legal Education* in 2007,[4] both of which made similar suggestions. Written by clinicians, law and legal writing professors, and professional educators, these writings emphasized the importance of *applied* and *contextual* legal training in law school.

The ABA heard the call. In 2011, it passed a resolution to encourage law schools to implement curricular programs intended to develop practice ready lawyers.[5] The resolution stated, "That the ABA take steps to assure that law schools . . . provide the knowledge, skills, values, habits and traits that make up the successful modern lawyer."[6] The ABA requires schools to report the number of "seats" available for students to partake in clinical, externship, and simulation-based learning opportunities, and it requires at least some training in practical skills. At least two state bars (New York and California) are considering requiring significantly more practical training than the ABA currently requires.

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[1] Stephen M. Johnson, Teaching for Tomorrow: Utilizing Technology to Implement the Reports of MacCrate, Carnegie, and Best Practices, 92 Neb. L. Rev. 46, 56-57 (2013). See also Boyle & Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. Law Rev. 213, 224 (1998) ("We found that the law students tested had, in fact, diverse learning-style traits.").

[2] Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, Report of the task Force On Law Schools and the Profession; Narrowing the Gap (1992).

[3] William M. Sullivan et al., Educating Lawyers: Preparation for the Profession of Law (The Carnegie Foundation for the Advancement of Teaching ed., 2007)

[4] Roy Stuckey et al., Best Practices for Legal Education: A Vision and Road Map (2007).

[5] Am. Bar Ass'n Resolution 10B (2011).

[6] Id. See Michele Mekel, *Putting Theory Into Practice: Thoughts from the Trenches on Developing a Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy*, 9 Ind. Health L. Rev. 503, 506 (2012).

In response to all of these forms of encouragement, law schools are enhancing their clinical offerings, building out their externship programs, and expanding litigation and transactional course simulations to produce more practice-ready students.[7] Law schools have been – and continue to be – creative with their responses to the urgent need for experiential learning. Sprouting around the country are concentrations, certified programs, centers of excellence, clinics, field placements with integrated curricula, co-ops, and many new faculty job titles that include "experiential."[8] And they are doing this in the face of a dramatic drop in applications and students going to law school over the last several years. This expansion of learning opportunities in the face of reduced resources has – as was predicted[9] – lead many schools to look to leveraging technology in the service of teaching and learning. Much experimentation is underway. This is all good.

Of course, none of these pedagogical imperatives are new to legal writing professors. For at least two decades, legal writing programs have relied on experiential learning through simulations, modeling, and formative feedback – all designed to teach their students to be effective legal communicators, both orally and in writing. Further, we have known for a long time that the more realistic these simulations are, the more engaged the students can and usually will become with the problem. But we do these simulations *within* our classes. And this might be a significant weakness in our simulations that has not been discussed yet, or at least not very much.

This article, based on a presentation that we gave at the AALS conference in New York in January of 2014, suggests that technology opens up new possibilities for law schools by allowing students from different schools to participate in complex inter-school simulations that can, if carefully prepared, teach important lessons about lawyering skills, behavior, and provide rich opportunities for the development of professional identity. It can, in short, deepen and enrich the experiential learning opportunities that law schools offer. The article does not propose that law school faculty should teach or grade students from another school, but that the faculty can collaborate on problems that are more elaborate and complex than could realistically be produced within one school, and that students from different schools can work together as co-counsel, or in opposition to each other, in a variety of projects, with students from other schools serving as judges or arbitrators, witnesses, and clients. In this way, faculty members teach and grade their own students but both faculty and students gain the advantages brought by collaborative learning environments across schools – enabled by technology.

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[7] Janet Weinstein, et al. *Teaching Teamwork to Law Students*, 63 J. Legal Ed. 36 (2013); Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 Drexel Law Rev. 69 (2009); Tina Stark, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO (2d ed., Wolters Kluwer 2014).

[8] See generally Mekel, *supra* n. 6 at 506, 508-09.

[9] See David I. C. Thomson, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE (LexisNexis/Matthew Bender 2009).

The article does not discuss a completed project, but rather describes and explores the possibilities presented by the rapidly-changing world of internet communication, and will suggest that this approach is something that can be undertaken now with minimal cost for the technology and by the faculty currently teaching in law schools. In other words, this approach suggests one way in which law schools can offer their students a richer and more engaging learning experience that will go at least some of the way to answering the questions about how they can offer realistic experiential learning opportunities and help students graduate "practice ready" lawyers without incurring significant, or even any, additional cost.

Inter-School Collaboration in the First Year

It is no great insight to say that legal education is in crisis, with critics assailing law schools on two principal fronts: law school is too expensive, and it doesn't adequately prepare students to be practicing lawyers. But while the problems can be simply stated, the solutions suggested pose issues that are much more complicated.

For example, one proposal to keep the cost of law school down is to cut back the number of semesters a student needs in law school before taking the bar exam. While that would reduce the costs of tuition, housing, and incidental expenses for that year, it is unlikely that law schools would cut back their doctrinal offerings in a shorter curriculum. Schools would argue – with justification – that graduates would still be expected to pass the bar in order to practice, and that in order to pass the bar they would need to study not just the core first year subjects, but also upper-level courses like evidence, commercial transactions, administrative law, and other "bar courses." So what would likely be dispensed with (or reduced) would be the specialty seminars and the skills and clinical courses, with the argument that the bar would have to step up and shoulder its responsibility to introduce young lawyers to the specific skills they need to practice in the area for which they have been hired.

Conflicting with the "fewer semesters" approach, but attempting to solve the "not ready for practice" category of complaints about law schools, is the drive to increase the number of clinical, simulation, or externship courses offered in law schools. Of course, this proposal is predicated on the present three-year standard curriculum, which might continue to be a valid assumption, but law school administrations would likely raise an even more compelling concern about the expansion of clinical course offerings. Put simply, if thought of as a way to increase clinical offerings in law schools, this proposal would amount to an unfunded mandate that would cause law schools to increase tuition to fund the necessary influx of clinical teachers, teaching courses with very low student-to-teacher ratios, at the very time they are being told by the market to reduce tuition costs.

Although the situation is much more complicated than a brief summary like this can encapsulate, reduced to its essence, the issue facing law school appears to be this: the proposals to make law schools less expensive would likely deemphasize

skills education at a time when other forces are demanding an increased emphasis on skills education, with a likely increase in fees to pay for the changes. In the face of conflicting demands like this, what's a law school to do?

The good news is that one small adjustment to the rhetoric surrounding skills courses, albeit an adjustment necessarily accompanied by a reconceptualization of those courses, would result in a dramatic change that would allow law schools to promote their training of future practicing lawyers without costing them, or their students, a penny.

That change is to four words: "Legal Research and Writing," or LRW for short. These courses have been central to the 1L curriculum since the MacCrate Report and the adoption of the ABA's Standard 302(a)(3) that requires law schools to offer substantial instruction in "writing in a legal context, including at least one rigorous writing experience in the first year with at least one additional rigorous experience after the first year." In fact, of course, LRW classes do, and have always done, much more than this and much more than the name implies: they teach writing in predictive and persuasive contexts, certainly, but they also introduce students to all manner of other issues relating to lawyer communication, from concepts of rhetoric, narrative theory, lawyering culture, and even typography as a communications tool, as well as teaching research, oral argument, and -- increasingly important when teaching the internet generation even though not identified as one of MacCrate's lawyering skills -- active reading. And they do all this, usually, in the context of assignments that flow from a hypothetical, but often very realistically scripted and produced, set of facts. In other words, given any reasonable definition of the term, LRW is a simulation-based experiential class.

The class is often taught in a classroom format – with lectures, class discussions, and pre-class reading from a textbook. But students also learn from the documents they write, and the more realistic the simulation that has been prepared for them, the better experience they will have as they work through the various assignments that flow from that simulation. One aspect of what LRW courses are doing, although it often goes unnoticed and unremarked upon, is helping the students take the first steps in developing their professional identity as lawyers -- something the Carnegie Report wants to see law schools do much more of in the 1L year.[10]

But LRW programs do even more, although their work is often -- perhaps even usually -- misunderstood or ignored by those who look at legal education. Perhaps this is because these courses are located in the first year curriculum and we have Langdellian blinkers on when looking at the first year of law school, or perhaps it is the still-pervasive status issues that cause the work of LRW faculty to go under-noticed in the legal academy. LRW's marginalization though, is perhaps at least in part caused by the decision to label the discipline with a name that implies those

[10] Sullivan, supra n. 3, at 126-147.

who teach it do little more than teach grammar, punctuation, and maybe a little composition. But at their core, LRW courses teach applied analysis, and law schools would benefit greatly if they thought of the courses in that way. This is not to suggest that LRW courses change their name to "Applied Analysis" – for one thing, the acronym "AA" is already in use and might raise some unfortunate associations – but finding a name for a course that helps law students find and use rules in cases and statutes and apply them to a variety of factual situations with the goal of helping a client would more closely capture the reality of what the LRW faculty does than a name that carries with it the musty odor of long afternoons spent discussing the pluperfect tense.

The reconceptualization of LRW as some form of applied analysis would immediately liberate the LRW faculties already in law schools and would allow them to take their place as knowledgeable and experienced experiential teachers who know how to teach the very skills law schools have been criticized for not teaching enough of: if a law school is looking to show its alumni, or the prospective employers of its graduates, a commitment to experiential learning that helps students be practice ready, then what could be easier than rebranding the LRW course as one teaching some form of applied analysis? And if a school is looking for experts to show it how to construct and teach experiential courses that don't cost anything, such rebranding should make clear that these faculty members are already there – teaching away in the core of the first year curriculum, and ready to help their doctrinal colleagues bring more experiential learning into the classroom, both in the first year and in the upper level curriculum.

All of this can be done without spending any more than is already being spent, because the experiential learning is already happening – unnoticed and unsung, perhaps, but still there – and the faculty with experiential expertise has always been deeply engaged with this style of teaching and learning. And the keys to unlocking these talents are in recognizing the simulation approach that lies at the heart of how most LRW courses are taught, and a realization that already-existing technology has the potential to substantially enhance those simulations.

Simulations gain value the more realistic they are. So while an LRW assignment that gives students an assignment outlining the relevant facts of a case and then asks the students to analyze those facts in the context of some legal standards, either supplied or which the students must find themselves, will likely meet the goal of providing a vehicle that will generate the type of document sought – a memo, a brief, and so on – and while it is true that the act of writing the document can itself be instructive and can generate many important teaching moments, the students likely will not be especially engrossed or engaged in the assignment as lawyers. Rather, and understandably, they will treat the assignment as another in a string of law school assignments that must be completed in order to obtain a grade for the course.

For that reason, many LRW programs now offer enhanced assignments, in which the assignment memo has been replaced by a simple set of instructions, with the facts on a series of documents from which the students must separate the relevant from the irrelevant facts rather than paraphrasing already-existing facts. This approach is a significant improvement on the more conventional type of assignment, but it too has its limitations: the students might be able to willingly suspend their disbelief for short periods of time and become more engrossed in the fictional world of the assignment – something we often see during oral argument, for example, when the experience might be of one student arguing against another in front of a faculty member but it feels, at least for the duration of the argument, more real than that -- but such engagement is likely fairly short-lived. It's hard to get too engaged when the opposing attorney in your oral argument, or that attorney against whom you're negotiating in a negotiation class, is standing next to you in the cafeteria line.

Moot court competitions have recognized this problem and they overcome it by pitting students from different schools against each other. The students know they are working in simulated environment, just as the reader of a book, the audience member in a theater or at a movie, and the game player with a video game, understands that the experience is fictional, but the willing suspension of disbelief allows the reader, audience member, player, or law student, to become emotionally and intellectually engaged in the fictitious reality of the experience.

Cost and logistics make it impossible for most law schools to contemplate in-person encounters between students from different institutions. But technology allows them to come close to that face-to-face encounter. The experience is perhaps not as compelling as in-person contact, but it does allow students from one state to conduct a negotiation or an oral argument with students from another state, with the advantage of seeing and hearing strangers with whom they are working or arguing against. By using the technology available now in every laptop and using free software and internet services, it is possible for LRW faculty now to consider such interaction when video conferencing was, only a few years ago, restricted to special rooms with expensive technology.

And that possibility opens up others. For example, the LRW community has a form of asynchronous assignment collaboration now, in the form of the LWI Assignment Bank. But the possibility of students working together with, or in opposition to, each other opens up the possibility that LRW faculty could also engage in synchronous collaboration. If teachers from two different schools, for example, decided to have their students oppose each other in an appellate assignment, it would be crucial for them to agree on the nature and factual details of the assignment. If they did that, though, it would be easy for them to collaborate on all stages of creating the problem, working together, at the same time, on all aspects of the assignment from the basic framework to creating the documents and other artifacts that would make the assignment as real as possible.

This type of inter-school collaboration is no different from what can happen now, except that the timeframe in which the collaboration has occurred has changed. In this proposed approach, both teachers still teach and evaluate their own students, including offering critiques of their students' performances when they oppose each other, but by adding another person to the creation of the assignment they have likely added depth, nuance, and sophistication to the problem and have enhanced the experiential portion of the class by giving their students real, and unfamiliar, opponents to work against.

And once that essential premise is established, there are few boundaries to this approach. LRW faculty could create a litigation problem that would involve both civil and criminal prongs, both requiring extensive pre-trial investigation, drafting of pleadings, and discovery, with one set of students taking the civil plaintiff role, a second taking the civil defendant, a third set of students acting as prosecutors and a fourth acting as criminal defense counsel. Other schools, perhaps those with a corporate counsel upper-level program, could have their students act as counsel for the civil defendant corporation, managing the litigation and the attorneys representing that corporation, and informing the corporation about developments. Students could learn about the role played by insurers and, if the litigation is substantial enough, re-insurers as well, all with counsel from different law schools and all engaged in different aspects of the same, large -- perhaps multi-year -- simulation. When the case eventually comes for trial, upper-class trial advocacy students could actually try the case in front of students taking courses preparing them to be judicial law clerks, who could write trial opinions that could then be challenged on appeal by another set of students in front of different appellate judges.

If inter-disciplinary contacts are desired between the law school and other schools and colleges on campus, those students could be brought in to act as clients, experts, and other participants. A case involving medical malpractice could use medical students as defendants and experts on both sides, a case involving building defects could engage both the engineering and the architecture schools, business students could act as corporate CEOs, reporters from a journalism program could report on the case, and on and on. If necessary to provide a tangible benefit for these students' participation, a credit-awarding "introduction to the lawyering process" course would be a natural outflow from a simulation of this type.

It's possible to get giddy when thinking about the possibilities, and perhaps also to get carried away. It is even possible to see how 1L doctrinal classes could be woven into a complex simulation like this, allowing students to learn doctrine while simultaneously applying it. The point, though, is that no matter how limited or extensive one chooses to be, only two things are necessary to contemplate this sort of simulation-based approach to law school education: a recognition that all the expertise and knowledge to construct and develop simulation scenarios that would accommodate almost any desired scaling already can be found in the LRW faculty who are already doing this kind of teaching, and the realization that the technology

necessary to draw faculty and students together while they work on this type of simulation already exists and is freely available.

In other words, law schools can confront their practice critics and tell them about experiential learning that is happening in their classrooms that will help to make their graduates more practice – or client – ready, and they can do so without additional cost. And all of this can be done by the simple reconceptualization of a program that already sits at the core of the 1L curriculum, an acknowledgment that the faculty teaching that program are doing what many people want law schools to do, and the encouragement to do more of it.

Inter–school collaboration in upper level skills courses

At our 2014 AALS presentation for the Section on Legal Writing, Reasoning, and Research, the audience and presenters discovered that upper-level skills professors are already experimenting with lowering the walls in their classrooms. Many professors have used Skype and similar technology to have guest appearances by practitioners. For instance, in a course at St. John's Law School called "Drafting: Litigation Documents and Contracts," alumni have presented on topics pertaining to both litigation and contract drafting. The technology allows for students to be able to ask questions to the presenter, who does not need to leave his or her office. At Hofstra Law School, an adjunct professor teaches an insurance law practicum from his office in Manhattan. Students have the option of attending the class either live in his office, or remotely from campus.

But the use of technology can go even further. It is easily possible to tweak both an existing face-to-face course as well as a course designed to be online to include interactions between students at different schools. For example, many schools offer courses on various aspects of the discovery process. Such courses could share a common fact pattern developed by the faculty who teach them.

In a written Discovery course, the professor divides students into law firms representing either the plaintiff or the defendant. Lectures are delivered live throughout the course on various topics such as drafting interrogatories; students are then expected to work together as a firm to apply that skill. On the first day of the course, each firm will draft interrogatories, requests for the production of documents, and notices to admit on behalf of their client. The instructor then provides feedback on the documents. Students then re-draft the documents in accordance with the comments and exchange them with their adversaries, who will be located at another school. After the document exchange has occurred, students draft responses to the demands that they have received. Again, the instructor provides feedback on the responsive documents, which the students then redraft and exchange with their adversaries.

After reviewing the responses, students meet for a "face-to-face" negotiation during which they seek to resolve the discovery disputes arising out of the documents that they have drafted. A negotiation of this type is extremely appropriate for inter-school collaboration. Students become extremely passionate about adequately and effectively representing their client during this negotiation. The fact that the negotiation is solely between students without an impartial third-party present makes it an even more interesting opportunity for students to get real life experience negotiating against an adversary who is a stranger and not a classmate. This scenario more closely simulates actual law practice. Since each school would have a faculty member present and observing the negotiations, it would also provide students with an extremely interesting opportunity to get constructive feedback not only from the professor at their school who probably knows them, but also from a professor at another school who is not at all familiar with their skills.

In a Motions Course, classes could be taught by "flipping the classroom," where all substantive lectures are viewed online. Class time would then be used solely for skills-based activities. Such a course design provides for an intensive experience in which students write both moving papers and responsive papers. Since the course would be taught in such a condensed format, students can be given the legal authorities that they need to resolve the questions raised. Prior to the first day, students watch a lecture on drafting motions. On the first day, all students represent the plaintiff. Each student drafts a statement of undisputed facts and memorandum in support of plaintiff's motion. The instructor provides feedback on the documents; students redraft them and each student exchanges documents with an assigned adversary. Again, the adversary would be located at another institution.

Then, students watch lecture material relating to responding to motions. On day two, all students represent the defendant. Students spend the day drafting a response to the statement of undisputed facts and memorandum in opposition to the plaintiff's motion. Yet again, the instructor provides feedback on the documents, and the students then redraft the documents and exchange them with an assigned adversary at the partner school.

Next, students watch a lecture relating to arguing the summary judgment motion. On the third and final day of the course, the students engage in practice rounds and also argue the summary judgment in front of local judges who volunteers their time on that day. This is the portion of the course that could easily be adapted to inter-school collaboration. It would be a simple matter for students to engage in practice rounds with students from the other institution. Yet again, this provides students with a more realistic experience of arguing against a stranger as their adversary. Judges could be present in both locations and students could be given the opportunity to argue twice, once in the room with the live judge and once in the room with the remotely located judge. This means that all students have a similar experience arguing in front of both a live judge and a remotely located judge.

It also means that students would get feedback from two different jurists as well as from their instructor.

These two examples demonstrate that collaboration between schools can easily be worked into existing upper-level courses with little or no financial cost to the institutions but with significant benefits to the quality and realistic nature of the experiential learning.