Reflections on Contemporary Legal Education

The Role of Case Analysis in an Increasingly Skills-Based Curriculum

By Jennifer S. Bard

Anyone who attended law school more than 15 years ago would likely be very surprised at today’s curriculum. The days when law school was a self-contained, three-year period consisting entirely of 50-minute hours in which a professor might ask a single person questions about an appellate opinion for the entire class period are gone. Today, most professors bring the world of law practice into their rooms through guest lectures, field trips, or problem sets requiring students to apply what they have learned. Beyond what goes on in individual classes, all law students can experience a balance between courses devoted to analyzing cases and learning tools, like drafting and oral advocacy, that allow them to use their knowledge of the law for the benefit of their clients. Finally, today’s law students can get experience representing people with real legal problems, in closely supervised clinics, as well as working with practicing attorneys in work placements.

Legal education has made these changes because it recognizes, in a way that legal education of the past did not, that a practicing lawyer must master skills very similar to other professionals — working in teams, developing and sticking to budgets, using technology effectively, and communicating complex information to people who are not experts. And the best way to get those skills is by combining direct instruction with experience in work settings long before graduation. The workplace has changed, and lawyers must change with it.

Yet, law students are still assigned cases. Given the pace of change, can we expect a time when law students are spared the frustration, and perhaps even embarrassment, of reading a three-page case twice, five, 10 times, without being able to state the legal reason why one side won and the other lost? I hope not.

Our common law system, where binding law comes both from courts and legislatures, would be complex enough were it not being conducted in real time by 50 states and the Federal Government (let alone foreign countries). Cases let students
track the path of a legal argument preserved in an appellant opinion just as cadavers let medical students track the path of nerves in a preserved body.

The study of cases is how lawyers acquire the knowledge and skill for which they are hired. A lawyer can provide the advice that allows people to take risks in their personal and professional lives because they can make predictions based on legal precedent. A lawyer can advise a hospital on what it has to do in order to avoid federal sanctions, a parent to avoid losing custody of his or her children, and a manufacturer to avoid taking on the cost of losses caused by the carelessness of others. Many lawyers are masterful negotiators, inspiring orators, compassionate counselors, and gifted writers. But all lawyers start in the same place: with the ability to analyze case law.

Once learned in the first year, case analysis quickly becomes instinctual. Most law students and even more lawyers forget there was a time before they could do it. Yet, it is this foundation from the first year of law school that makes it possible to advance to the far more complex material, often involving interpretation of statutes and regulations in the second and third year. Today’s legal education, unlike that of the recent past, gives students many opportunities to bridge the skills of finding and interpreting the law, with those they will need to apply that knowledge in representing their clients. And it is representing clients, whether individuals, corporations, or government entities, that is the core activity of our profession. Legal education continues to evolve to provide students with more opportunities to learn how to succeed in today’s workplace, but it should always retain its focus on the clients who our students will soon represent.

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