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Thursday, March 13, 2008

Washington and Lee's new 3L year

The hot news in the legal blogosphere is that Washington and Lee is overhauling its third year: instead of academic courses, the entire thing will be experiential learning. This will, according to the WSJ Law Blog, include practicing keeping track of billing hours.

Let me first say congratulations to W&L for taking a big experimental step with their educational program -- it takes guts to implement something like this, and hopefully they display the same guts over the years to keep with it and really try to make it work.

That said, while the heart is in the right place on this, I'm not sure that it is going to work out for them. It strikes me that experiential learning should be incorporate all the way through. Two years of classroom instruction and then a year of, what, basically apprenticeship? All this really does is push what used to be the first year in private practice back into the law schools. That's fine, I guess, if you're trying to make the law firms happy, but in the end, you're still just throwing the students into the "actual practice" portion of things with no real preparation beforehand.

The approach I'd want to take would be more integrated. In the first year, you take Legal Research and Writing, where you're really learning the nuts and bolts of, well, legal research and writing. But that first year is also filled with the usual doctrinal classes, partially to learn doctrine, but more importantly, to learn the way lawyers talk and think about things, so that you can actually fill those lovely briefs you're learning about in LR&W with substantive, correct-sounding material. None of this is radical. In fact, none of this is a change at all from what's already done.

The key, I think, is in the later years, when there ought to be requirements that some not insubstantial portion of your credits should be of the clinical/internship/externship/etc., i.e. experiential, variety. Furthermore, upper-level classes should include semi-experiential components. That is, don't just teach for 40 hours and then make the students write an exam; instead have them file short memos on various topics throughout the semester. Don't just do your silly, unexamined version of Socratic teaching. Set up sessions where students make meaningful contributions, like through oral arguments or perhaps presentations of material.

This kind of system requires a couple of things: a willingness on the part of the professor to really engage in teaching (but see Jeff Harrison's blog on the unlikeliness that this will happen); and small classes. There were 121 people in my Evidence class. That doesn't excuse the multiple-choice exam at the end of the semester, but it does excuse not having 3-5 writing assignments throughout the semester. Regardless of your dedication to teaching, grading 600 assignments, even if you limit those to one page apiece, is a ton of work.

The fact that this model law school will require smaller classes will balance, from the law teacher's perspective, the fact that fewer doctrinal classes will be taught (because of the clinics/internships requirement). Thus the faculty size will likely need to remain about the same. What will not remain the same, however, is cost. Building clinical programs, i.e. offering free legal services, isn't cheap. It's a lot cheaper to lecture 120 students about Evidence than it is to pay court costs and things like that for indigent clients in all these new clinics that will be starting. Another issue is the big gap between (relatively) rural and urban law schools. Carbondale just doesn't have the number of people who need legal service as New York City. Of course, given the number of schools in New York, that doesn't address the right question -- the question is whether there are enough people in Carbondale who need Southern Illinois' legal services to justify opening three or four new clinics and expanding the already existing ones to accommodate the fact that now, every student will have to do n credits of that kind of work.

To reiterate, however: all of these difficulties will always exist for any law school that wants to update its curriculum to be more useful, to give students the kind of experiential learning opportunities that forward-thinking educators realize are necessary. Thus it is a real credit to W&L's faculty and administration that they are willing to step up and try to make something new work.

UPDATE: Here's the post about the topic at PrawfsBlawg.

UPDATE 2: Here's Law School Innovation's post.

Posted by Jason Wojciechowski in Education, Law, Law School at 12:36