

1997

Book Review of Seattle University Skills Development Series

James E. Moliterno

Repository Citation

Moliterno, James E., "Book Review of Seattle University Skills Development Series" (1997). *Faculty Publications*. 1580.
<https://scholarship.law.wm.edu/facpubs/1580>

John B. Mitchell et al., *Seattle University Skills Development Series*. Charlottesville: Michie Publishing Company.

Reviewed by James E. Moliterno

In many ways, legal education is moving toward greater integration of subject areas and teaching methods. In particular, professional skills and professional ethics are being integrated with each other and with various substantive courses. These excellent new teaching materials will provide needed fuel for that process. They will be welcomed by anyone who has looked for easy-to-use, well-constructed skills materials to build into a substantive law course. And, if properly supplemented, they will make it possible to integrate professional ethics as well.

Each set of materials provides a connection between a substantive course and a series of rich skills exercises based on an elaborate, well-supported scenario. Three of the projected twelve sets of materials have thus far been published: *Secured Transactions* by Edith R. Warkentine, and *Evidence* and *Criminal Procedure*, both by John B. Mitchell and Rick T. Baron. Still in the works, at various stages of production, are *Business Planning*, *Administrative Law*, *Antitrust*, *Corporations*, *Environmental Law*, *Family Law*, *Real Estate*, *Securities*, and *Pensions, Compensation and Benefits*. Except for the lack of an explicit and extensive professional ethics component, the materials have no major flaws. I reviewed all three of the currently available titles, but I will focus most of my comments on *Evidence*, since that subject, along with professional ethics, is one that I teach regularly.

Why These Materials Are Needed

Many of us, particularly if we have used experiential methods in our teaching, have heard this sort of comment from our students: "I learned more about contracts by doing that simulated exercise [or "by working in the clinic," or "by having a summer job," or "by doing that writing assignment"] than I learned in an entire semester of the Contracts course." We can all agree that the experiential activity—whichever one it was—has done a good thing for the student. But the student is mistaken in thinking that she learned only through the experience and not through the class as well. Actually, the student has realized through the experiential activity the connections between the material she studied and its application, and so she credits the activity with nearly all of the gain.

A student who applies almost immediately what she has learned in a classroom will retain the material better and have a deeper understanding of

James E. Moliterno is Professor of Law at the College of William and Mary.

it; neither the classroom experience nor the skills-oriented experience, standing alone, can teach as well. The Seattle materials, used as the authors suggest, will allow the classroom learning to be accompanied more or less simultaneously with the experience of applying what the student has learned, and the student will surely benefit.

Ideally, professional ethics would be taught by making the same connections between study and experience (and that is being done at a number of schools). Using a cross between experiential methodologies and the pervasive method of spreading ethics teaching among substantive law courses, we would order materials and experiences by practice setting to illustrate how ethics law can differ: lawyers in different practice settings experience the same rule of professional conduct in fundamentally different ways. I wish that the Seattle materials included readings on the law and culture of the practice settings in which the lawyers in their scenarios present themselves: prosecutors and criminal defense lawyers in the Criminal Procedure materials, in-house or law firm corporate counsel in Secured Transactions, administrative agency counsel in Administrative Law and Environmental Law, and so on. As they stand, the materials could well support this teaching model if one adds to them some readings on the practice setting.

The authors make a constructive effort to incorporate ethics issues, but sometimes the effort is not placed for the greatest effect. For example, *Evidence* includes a well-constructed conflict-of-interest question about corporate counsel's division of loyalty between the officers and the entity (page 7), but it is really a question that arises in a corporate practice. It would fit better in the Corporation Law materials when they are published. The Evidence materials should include, instead, ethics questions relating to the litigation role and the offering and contesting of evidence.

The Books and Their Use

The Internet lists have been filled with inquiries about available materials for integrating skills exercises into various substantive courses. Apparently many teachers are creating their own skills materials for use in conjunction with their courses. The Seattle materials are ready to use and seem to require very little adjustment by the individual user.

The books are meant to support either a one-credit add-on to a substantive law course or an internal component of the course. In other words, a student in Secured Transactions might have a second teacher who would conduct classes and supervise exercises based on the Warkentine materials (and the student would earn an additional credit); or the Secured Transactions teacher might have the students engage in the exercises and activities as an integral part of the course. These possibilities and other formats are well explained in the teacher's manuals that accompany each book and also in the article that the authors have published describing the courses they teach with the materials.¹

1. John B. Mitchell et al., *And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum*, 2 *Clinical L. Rev.* 1 (1995).

The materials themselves are a marvelous blend of substantive law reinforcement and a rich scenario that runs through the book. Each book includes a series of short-answer exercises and a case file containing the documents that construct and support the scenario.

The exercises have different types of questions and require the student to engage in different activities. Some exercises in *Evidence*, for example, ask a narrow question in a basic legal analysis mode: "What do you need to do to authenticate the photographs?" (65). Others ask a fairly open-ended question in another activity mode such as investigation strategy: "As counsel for defendant, what investigation would you conduct upon learning that the plaintiff intended to produce the 'golden parachute' evidence at trial?" (22). The variety should help students make productive connections between legal analysis and other lawyering modes. Such integration will be especially useful in Secured Transactions. Like the subject matter, the materials are primarily transactional rather than litigation-oriented. The planning mode of lawyer thinking gets too little attention in skills courses and in law school generally, and these materials provide a good exposure to it.

The case files that support the scenarios are excellent. Rich with detail and nuance, they include a wide variety of materials. The *Evidence* case file, for example, includes forty-three items, everything from pleadings to affidavits to employment policies to deposition excerpts to investigative reports to experts' résumés to employment evaluations, time-card records, reprimands, photographs, and other employee file documents. Everything in the case file is realistic in substance and appearance.

A mismatch between the order in which concepts are covered in a course and the order of supplementary materials can create a problem. *Evidence* begins with logical and legal relevance, a relatively safe bet to be the first materials covered in an Evidence course. From there, the materials go on to other-acts evidence, impeachment, and privileges before getting to hearsay. Some courses and texts may follow that pattern, but many may not. Any order that the authors might have chosen would fail to match some teachers' ordering of topics. But the authors do as much as they can to help those teachers. First, the teacher's manual provides a thorough cross-reference to the leading casebooks so that teachers can easily match up skills exercises with whatever casebook they are using. Second, the exercises are mostly self-contained and make little use of material from another section of the book. That allows a teacher to skip around without making the students feel confused and disoriented.

Evidence, like Civil Procedure, presents students with the study of what some call adjective law, the law that governs how a claim is administered by a court rather than the law that governs the claim itself. Because they present adjective law materials, Evidence course materials, including casebooks, rely on students' having a basic understanding of the substantive claims upon which the evidence law under consideration is operating.² *Evidence* uses a

2. For evidence to be relevant, for example, it must have a logical relationship with a proposition that is "of consequence." One cannot know what is of consequence in a particular case until one knows the elements of the claims and defenses implicated in the litigation.

scenario having to do with an employee's dismissal and a claim of wrongful age discrimination. At the outset, the authors ask the students to develop a theory of the case and discuss the relevance of various pieces of evidence. The students cannot do so in a responsible way unless they know at least the basics of the law governing the age discrimination claim. The authors helpfully provide a governing statute in the case file, but I expect that teachers using the materials may want to give their students a more detailed summary of the applicable law or may require that the students research the law and themselves produce a summary.

While the substantive law that is included implicitly in the materials is sound, there is occasional oversimplification. For example, some students have trouble understanding the Rule 403 balance between probative value and prejudicial and other ill effects of a piece of evidence. The balance favors admissibility by requiring that before exclusion of a piece of evidence is warranted "its probative value [must be] substantially outweighed by the danger of unfair prejudice." Students sometimes lose the "substantially" and see the balance as a simple comparison of probative value vs. prejudicial effect. Unfortunately, the authors reinforce that misunderstanding when they refer to the "more prejudicial than probative' objections" (9) that might be raised by counsel in the scenario. Teachers using the materials will have to watch out for such slips and provide clarification. But that is a minor concern given the value and overall quality of the series.