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The Legal Skills Program at the College of William and Mary: An Early Report

James E. Moliterno

In 1988, Legal Skills—a nine-credit program of comprehensive skills development—was initiated at William and Mary. We believe that the program covers more topics, uses more varied teaching methods, and has a more innovative format and more sophisticated problem materials than any other skills development program operating within an otherwise traditional curriculum. The program runs through the first two years of law school and attempts to help students develop necessary legal skills and an awareness of the ethical issues they will face as lawyers. Legal Skills covers the history and structure of the legal profession and professional ethics; legal research and writing (including drafting); interviewing and counseling; negotiating and other alternative dispute resolution methods; pretrial practice; and introduction to trial and appellate practice. By beginning in the first year, the program is able to reinforce the analysis-teaching goal of the rest of the first-year curriculum.

Because simulated client representation is the methodological core of the program, the entire program is organized around a simulated student law office and its need to deliver effective, competent, and ethical service. The staff¹ and students in the program are organized into *firms*, *offices*, *working groups*, and *teams*. Each entering class is divided into twelve offices, each of sixteen students (associates), one faculty member (senior partner),² and one third-year student teaching assistant (junior partner). Typically, the combination of a first- and second-year office headed by a single faculty

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1. The program staff consists of faculty, teaching assistants, law librarians, a secretary who also serves as the clerk of court, and attorneys who are affiliated with an office on an "of counsel" basis. The "of counsel" positions have not yet been filled.
2. The faculty senior partners come from backgrounds in small, medium, and large firm practices; solo practice; the United States Department of Justice and other government practice; legal services grantees; public institutions; military practice (including prosecution, defense, and judicial roles); and law school clinical practice. They provide students with practitioner role models and offer a positive first exposure to the profession.

member comprises a single *firm*. The associates in each office are divided into four *working groups* of approximately four associates each, and each working group is divided into two *teams* of two associates each.

Legal Skills begins one week before second- and third-year students return to school. During the introductory week students attend a welcoming address and a series of presentations on the legal system, precedent, case analysis, and briefing, and on the profession and client service. Associates meet their partners and participate in their first law office activities, including interviewing a client and preparing a closed research memorandum based on facts gathered from the interview. The introductory week is designed to prepare students for both Legal Skills and their other first-year classes. Students have found that the introductory week eases the transition to law school by humanizing the new environment and inspiring confidence.

The legal skills program proceeds on two concurrent tracks: simulated client representation and classroom instruction. Each of the simulations is intended to facilitate the teaching of a range of skills and topics. During the two-year course, associates serve five clients who pose problems from a variety of subject matter areas, such as criminal law, business planning, administrative agencies, and domestic relations.³ Although a high level of realism is sought in the simulations, we also realize that the program operates inside a law school building. Precise correspondence between reality and our simulations is not always possible or pedagogically desirable.

Class meetings in Legal Skills come in various forms. The standard class meeting is an office meeting of sixteen associates. Most of the classroom instruction is conducted in this format to take advantage of the relative ease of generating thoughtful discussion in smaller groups.⁴ Occasionally, a large group lecture will be used to convey information that the associates need before they proceed to a specific practice activity. When the topic requires special expertise, a faculty member or an invited speaker will also sometimes address a group meeting of between 80 and 110 students.

Among the features that distinguish the program from other skills development programs that are organized around a law office structure,⁵ the most fundamental are its ethics and professional responsibility instruction and its comprehensive simulations. Because the legal skills program is the ethics and professional responsibility course at William and Mary, ethics is not a side topic that is treated only to the extent that time will allow. Rather, the day-to-day teaching is built around the demands of ethics

3. In each of the five client phases, the four working groups within an office are each assigned to represent a different client. (The five client phases are called simply clients A through E.) Thus, each office represents four client A's, four client B's, and so on. The four working groups of another office represent the four opposing client A's, client B's, and so on. For the sake of realism, the twelve law offices are placed in six different jurisdictions (currently California, Illinois, New York, Ohio, Pennsylvania, and Virginia). For most purposes, the two offices in each jurisdiction oppose each other.

4. To ensure uniform coverage, staff members prepare general teaching notes for the use of everyone teaching a particular topic. Although the notes are detailed, they leave room for individual teachers to approach the material creatively.

5. See, e.g., Daan Braveman, *Law Firm: A First-Year Course on Lawyering*, 39 J. Legal Educ. 501 (1989).

teaching. Ethical considerations permeate every phase of the two-year program and are approached from a wide variety of perspectives. The program provides the students with experiential learning of ethical concerns.

Treating ethics through simulations allows the simulated experience to become more than a game.⁶ Although a simulated client experience is not the precise equivalent of a working-world experience, the integration of ethics with skills training changes the simulations from mere competitive games to much truer, better-textured representations of client service. For example, if we emphasize the ethics of truth telling when we teach negotiation tactics, we can imbue the negotiating experience with a consideration of legitimate client and lawyer goals beyond merely "winning" against an opponent.⁷

The classroom treatment of ethics issues is varied. The almost-weekly office meetings on negotiations, interviews, motion hearings, or trials often include an ethics aspect.⁸ The office meeting set aside for generating a pro bono policy for each individual office has been particularly lively and more realistic than discussions of the same topic in free-standing legal profession courses. Although the pro bono policy need only apply to the office's simulations, a few of the offices have begun to engage in actual public service, in part as a result of the discussions. We also conduct relatively traditional large group sessions (about eighteen hours, mainly in the fourth semester of the program) to ensure coverage of all topics that would have been covered in a free-standing legal profession course and to provide more opportunity for academic discussion of the topics that arise in the simulations.

The problem materials and thus the simulated client service that the associates provide are comprehensive. Associates represent the clients from a logical beginning point (an initial interview) through a logical end point (such as a negotiation of a settlement and drafting of the attendant agreement; a mediated agreement; or the conclusion of an appellate

6. "Game" strategy can compromise the effectiveness of practice skills programs. See Kenney Hegland, *Moral Dilemmas in Teaching Trial Advocacy*, 32 J. Legal Educ. 69 (1982). See also Steven Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. Legal Educ. 123 (1987).

7. To expose students early to the rigors of maintaining high standards of professional conduct, the program also has a disciplinary process to deal with complaints of conduct that violates the Model Code or the Model Rules. (The governing code depends on the student's office affiliation.) One measure of the success of the program is that students now spend as much time planning to engage in a practice activity by considering the moral and ethical dilemmas it entails as they spend considering the tactics and strategies that will play a role in the activity.

8. The students produce a number of short writings during the two years on ethics questions: on frivolous claim concerns when they are preparing to draft their first pleadings; on a potential conflict of interest that representation of their initial client may pose. An additional assignment focuses on qualifications for entry to the bar. It is designed as a memo from partner to associates informing the associates that the partner is a member of the state board of bar examiners and would like the associates' input on a particular application to take the bar exam from a problematic law graduate. The assignment incorporates computer-assisted research training. The CALR trainers have cooperated in the effort to integrate CALR training into legal skills work by using the bar exam exercise as the basis of their training sessions.

process⁹.) Because associates can see the results of each activity, they can assess all aspects of their performance. For instance, associates in a negotiation often conclude with the realization that their initial interview or a subsequent counseling session with the client was inadequate to prepare them to negotiate properly. Interviewing and counseling are no longer separate, isolated skills.

The comprehensiveness of the simulations also provides the opportunity to integrate fact investigation with legal research. As students do legal research, they realize, just as lawyers do, that they need more factual information. In the traditional legal research and writing course, students become frustrated because no additional source of information is available. Legal Skills students, however, can use their research to identify further factual questions to discuss with the client or witness and can pursue answers to which they would reasonably have access. Allowing the associates to make the connection between legal research and fact investigation introduces them to a way of thinking about legal work that is not available in most other skills teaching formats.

The program appears to be working extraordinarily well. Although a number of areas for improvement have been identified, the first two years of the program have been successful beyond expectations. Associates appear to have learned a great deal,¹⁰ and they have generally, if not unanimously, done so happily and enthusiastically. We owe a debt of gratitude to the first class of associates who completed the program for their collective patience and flexibility: the program has quite literally been developed as they experienced it.

We have begun to see evidence of the benefits of integrating skills and ethics teaching. Student behavior in their trial and appellate work reflects an integration of advocacy skills and ethics sensitivity. Without particular cues from faculty, students have raised concerns about potentially frivolous claims; they have conceded error on appeal when appropriate; they have brought controlling, directly adverse authority to the attention of courts; they have been sensitive to their role as prosecutor. They have understood and acted according to the limits on their advocate's role in ways not

9. Through a fruitful arrangement with a court reporting school, students are able to consult a verbatim transcript of their own trial work when they reach the appeals stage. Advanced court-reporting students gain useful practice by preparing the transcripts, and the associates have a record with which to work.

10. Comments from faculty teaching traditional first-year courses have provided a valuable gauge for measuring the program's early success. A faculty member who teaches Torts says:

I think the Legal Skills Program has had an enormously beneficial impact on the first-year experience. In the first year of the Legal Skills Program's existence, I noticed that the general level of analytical sophistication of the students in my Torts course reached a higher level at an earlier point in the year than I've seen previously in eleven years of teaching first year classes. There was also a more sustained sense of enthusiasm about the enterprise the students were engaged in than I'd seen before. What the students are doing in Legal Skills has a direct and positive effect on what I'm able to do in my classroom.

routinely observed in a trial advocacy, appellate advocacy, or legal writing course.¹¹

Our positive assessment is tempered by a concern that the organizational model—the law firm—should not become misleading or limiting. Although we would like to expose students to other forms of legal practice beyond the traditional law firm model, the structure of the legal skills program and the comprehensiveness of the problem materials inhibit our designating offices as entities other than law firms. We have exposed the students to other types of practice by cosponsoring panel discussions on law careers and by introducing criminal law cases, mediation services, and real-estate work into the program. Nonetheless, we would like to experiment with creating specialized offices, such as in-house corporate counsel or government agency representatives, as a student elective for some part of the program.

As would be expected, a program as ambitious as this one is not likely to have arrived at its final stage of development after a mere two years of operation. Indeed, because aspects of the program are constantly being examined and modified, the description I have provided here is neither the original nor the ultimate one, but only the current one. We have every reason to believe that our students will graduate better prepared than their predecessors to deliver skillful, ethical service to their clients, and that they will be more aware of what to expect from their life in the law.

11. We have also seen additional, unexpected benefits. The benefits to students from playing the role of a particular client for a long term have been greater than we anticipated. Many students have reported that they have obtained a valuable perspective on the practice from the client roles that will make them more sensitive to client needs than they might otherwise have been.