The Lawyering Process Course

Established in 1990, the success of the Lawyering Process Program has depended upon the support of practicing attorneys and second or third year students. Each year, more than sixty faculty, staff, attorneys and students are required to run Lawyering Process for the College of Law's entering class. Two-hundred fifty students, on average, are introduced to Lawyering Process each year. In order to better understand the impact of the Lawyering Process Course, we interviewed a number of students and attorneys who have either volunteered for or participated in Lawyering Process. Their comments appear throughout the next several pages.

Professional Performance Skills

One of the course goals is to introduce students to the basic skills and processes involved in client representation. The overriding philosophy which the course conveys to students is that lawyering is a client-centered process. Thus, it focuses on lawyering as a collaborative process in which the lawyer serves the client's goals and objectives, and introduces students to the basic skills required to represent clients pursuant to this guiding philosophy. This introduction is accomplished through a combination of class presentations and simulation exercises.

Class presentations are conducted in large sessions for both day and evening students. Readings are assigned in conjunction with the class presentations, which draw on a variety of teaching techniques including lecture, discussion, live demonstration, and videotape. The demonstrations throughout the year are all drawn from the same simulated legal problem, so that...
students see in the demonstrations of how the client representation process develops in the context of a case.

Client Relations and Performance Skills

The students must deal with the client immediately. No major step is taken without consulting the client and no decision is made without the client’s full participation and agreement. The class presentations begin with the client interview and progress through fact development, lawyer-client collaboration and decision-making, negotiation and alternative dispute resolution, the decision to litigate, conducting a deposition, persuasive communication, and appellate oral argument techniques. The simulation exercises track the class presentations, requiring students to perform a client interview, discuss fact and evidence development, present a counseling plan and subsequently counsel the client, conduct a negotiation, represent the client in a mediation, counsel the client regarding the decision to litigate, conduct a deposition, conduct motion arguments, and conduct appellate arguments.

The students conduct practice skills simulations in their law firms in the context of counsel representing a client who comes to them for legal advice. Each practice skill simulation is based on the client problem, thus mirroring the progression of demonstrations in the class presentations. Senior Partners also support the demonstrations and lectures by presenting skills-related materials in the law firms. An actual person plays the client throughout the year, according to a script and specific role-playing instructions. All students are required to prepare for these performances, but with the exception of motion and appellate methods of teaching, such as demonstrations, simulations, and visuals, as well as traditional lectures, works to promote different modes of learning in our students. As research continues to verify that people learn differently, the world of educators is branching out to encompass more varied teaching techniques. Professor Reese feels that Lawyering Process is a training program that is attuned to the different strengths of students because it requires them to utilize a number of different learning styles to master the concepts presented in a variety of practical learning experiences. Lawyering Process not only includes foundation legal theory, but it also combines theory with the skills necessary to put it into practice. Professor Reese states, “the law school has a duty to produce professionals who will represent their clients properly.” As the real world has less opportunity, time, or resources to train the novice attorney, that responsibility increasingly falls on the law school.

Professor Reese has been co-conducting a student learning styles study, and believes that multi-tasking in the educational environment is a good way to begin to meet the requirements of different learning styles. Once they obtain an understanding of the different learning styles, Professor Reese believes that students will develop the tools necessary to bridge the boundaries between certain learning “categories.” Since Lawyering Process inherently includes many different modes of learning, it provides the opportunity to develop those tools. Thus, the Lawyering Process program fulfills the need for both practical student experiences and a varied field of legal experiences that require different methods of learning.

While developing the Lawyering Process program, Professor Reese has spent much of the past five years writing an Administrative Law course book, published by West, which is now being used in the classroom. He says that the book is “different” from any he has used over the years, primarily because “it is learner friendly.” For the Administrative Law course, Reese feels he has developed a text that succeeds in teaching students the models for legal analysis that are essential to proper treatment of administrative law problems. It is composed half of cases and half of text explaining the legal principles illustrated by the cases. If equipped with an adequate understanding of the various analysis models, students should acquire a good measure of independence and confidence in addressing administrative law issues. We have heard that Professor Reese’s book is considered a “keeper” by many students, who keep it as a desk reference text instead of selling it back. In fact, Professor Reese is negotiating with West to develop a lawyer’s desk reference version. Moreover, although on the market for only ten months, Reese’s text has been adopted in 23 schools around the nation.
arguments, only one pair of students will perform each exercise in the law firm. Following the student performance in the law firm, the Senior Partner conducts a debriefing and discussion of the exercise.

Problem Solving Perspectives

Negotiation and ADR

Although the Lawyering Process course is developed on a basic litigation model, one of the goals of the course is to introduce students to the concept of the lawyer as problem-solver with a broad variety of alternatives to choose from rather than focusing on litigation as the sole method available to serve the client. This introduction is woven throughout the client relations topics and exercises in the assigned readings, the class presentations, and the expectations regarding student performances in law firms.

Litigation

The Lawyering Process course focuses on the origin and execution of civil litigation. Preparation for litigation begins with the client interview, after which the law firm develops the cases, facts, and legal theories to support litigation as one of the client options for resolving the legal dispute. In this part of the course, students see how their written work, fact memos to file, and office research memos provide a factual and theoretical framework
“After my first year at DU, and the Lawyering Process course, I felt that I had a leg up on summer clerks from other schools, such as Harvard, Vanderbilt, and Duke. Working with law students from other schools, I was able to compete and do well in the summer clerk environment. In some instances, I was able to offer practical advice based on principles learned in Lawyering Process.”

-Jen-Mark Patterson, Graduating Class of ‘96
After his first year, Patterson went on to serve as a junior partner to the Lawyering Process course and to win the Dulford & Brown Writing Competition based on written work from the Lawyering Process course.

for both alternative dispute resolution and litigation.

After negotiation and mediation fail or settlement offers based on them are withdrawn, the client, guided by her legal counselors, makes a decision to sue. Their path is chosen after a careful evaluation of the client's legal position, as well as real world factors such as fiscal and social costs, timing, and potential for success.

Once the decision to sue has been reached, students receive classroom presentations on drafting pleadings before they attempt to construct their own complaints or answers. Pleading drafting is followed by motion arguments. During this exercise, students begin to master persuasive communication and the concepts of advocacy.

A substantial part of the litigation process deals with pre-trial preparation. After presentations on pre-trial procedures, students turn to deposition. The law firms then depose each other's clients. Depositions are followed by a discussion of the likely trial scenario led by the law firm's Senior Partner. Although it would be more effective to take the law firms through the trial process, this course cannot accomplish so broad a task. First-year students do not yet have an adequate understanding of essentials such as rules of procedure and evidence. Closure on the trial briefs as the culmination of their first-year Lawyering Process experience. Appellate practice provides an excellent opportunity for first-year law students to discover persuasive written and oral argument.

Prominent Colorado appellate practitioners lecture on persuasive communication, appellate brief writing, and oral argument. Students follow Colorado Appellate Rules in constructing their briefs and in making their arguments to a panel of three judges.

Legal Research and Writing

Legal Research

Law librarians assign readings and instruct the students in the use of legal research materials. A law librarian meets with each law firm to deliver lectures on (1) secondary materials, (2) case finding, (3) statutory research and legislative history, and (4) administrative research. Students are introduced to both print and electronic sources of legal information. They become familiar with statutes, digests and case law in both traditional paper copy and Lexis, Westlaw, and other on-line sources. Hands-on practice exercises are included in some of

1990-92  Marc J. Kaplan ’83
1995-96  Suzanne J. Lambdin ’85
1990-91  Richard Laugerson ’61
1990-92, 1995-96  Katherine L. Letson ’84
1994-96  Scott L. Levin ’82
1990-93  Mark Levy
1992-94  William Martinez
1991-92  William Moore
1990-93  Linda Olson ’79
1992-95  Laurence Pendleton
1993-95  Lisa Perry
1995-96  John G. Powell ’88
1994-96  Patricia H. Powell ’83
1992-93  Marcelina Rivera
1992-94  James M. Robinson ’77
1993-94  Hon. Morgan Rumler ’78
1994-95  Joyce A. Saellen ’79
1991-92  Michelle W. Stern ’75
1990-91  J. Scott Swenson ’81
1990-91  John S. Tatum ’81
1991-94  Katarina Joni Teter
1991-96  David Thomson
1992-93  Chris Toll
1990-92  Doris E. Trohlar ’80
1992-93  Richard J. Truhlar ’81
1992-94  John Ventura
1990-93  Gina B. Wetzenkoin ’75
1993-98  Professor Robert B. Yegge MA ’58, JD ’59
the sessions. These exercises are spread over the course of the academic year rather than stockpiled at the front end of the course as in traditional research and writing programs.

Legal research exercises are created by the librarians to provide students with the opportunity to practice using the materials introduced in library practicums. In order to keep the exercises in context, they are based on brief fact situations. The law librarian provides research support for writing exercises as well as research refresher lectures for students.

As always, the law librarians serve as resource persons for any difficulties the students may encounter as they work through their legal research exercises and the research aspects of the client problem for the firm.

**Legal Writing in the Lawyering Process Course**

The Lawyering Process approach to teaching legal writing differs significantly from, and yet shares a number of characteristics with, traditional research and writing programs. While it incorporates most of the same exercises as traditional writing programs, the Lawyering Process writing program distinguishes itself by offering these, and other exercises, in the context of a client's case. It seeks to avoid the disembodied experience of teaching the student to write a document without any sense of why that document is needed or how it is used. In Lawyering Process, writing skills are not an end in themselves, but rather are just one of the tools lawyers must develop and use successfully to practice law.

Since research, writing, theory and practice-oriented skills are interwoven, legal writing in Lawyering Process is not offered as the discrete unit it typically forms in the first year curriculum. It is blended with theory and practice in a client's case, thereby developing both the student's sense of the continuum and flow of a typical case and a sense of the products and skills needed to represent the client.

The year-long legal writing activities include many traditional and non-traditional assignments: a fact memo, a case synthesis, a closed memo, an open memo, an opinion letter, a complaint or answer, a motion for summary judgment, and an appellate brief.

Among the unique strengths of this writing program is the relationship it offers between each student and his/her Legal Writing Consultant; a practicing attorney whose specialization is in the area of writing. The Writing Consultant lectures, offers feedback during conferences and on draft products. Many of the students' written products later become writing samples.
Students receive class presentations in case synthesis and statutory interpretation followed by writing examples and copious feedback. The course also offers a diagnostic test for identifying fundamental grammar, punctuation, and spelling errors, as well as a Legal Writing Clinic to help individual students address their weaknesses.

Legal Theory

As the students are being introduced to legal research and before they meet and interview their hypothetical clients, they are also introduced to theories of judicial decision making and jurisprudential perspectives. Such theories and perspectives help new students understand how courts legitimately may arrive at different results without necessarily being inconsistent or unprincipled.

Client interviews have triggered development of the cases, parallel presentations of substantive law and theory continue. These materials lay the foundation for student appreciation of the lawyer's need to synthesize groups of appellate cases to assess their potential impact in specific situations. Students are brought to understand that synthesizing is quite distinct from summarizing cases. These exercises support presentations on common law method and explanations of how judges participate in the evolution of law.

Today, of course, legislative bodies primarily evolve the law. Because their hypothetical cases will develop to include a legislative component, students learn rudimentary principles of legislative supremacy and legislative interpretation.

Finally, students are introduced to administrative law by their discovery that the developing case also contains a collateral administrative law issue. Only basic principles of rule making and adjudication are introduced, for further study of the subject is reserved to the administrative law course.

More Effective Learning Experiences

A separate component of Lawyering Process encourages students to recognize and adapt to teaching-learning strategies that they do not prefer. Research has established that adult learners have a preferred learning style which is predominant, but which does not exclude learning through other modes. "Learning style" refers to a method of receiving information and successfully processing it into concepts. By developing the ability to learn effectively when confronted with modes other than a preferred style, student frustration with different types of instruction may be diminished and the quality of law school learning experiences enhanced.

Conclusion

Lawyering Process is a carefully crafted course aimed at making graduates of the University of Denver's College of Law more sophisticated and better prepared for the realities of practice than their competitors. The MacCrate Report, a national commission's report on the failure of law schools to prepare new graduates for the practice of law, sharply criticized legal education. Foreseeing this criticism, the University of Denver College of Law had this course in place for several years before the MacCrate Report was published. No other law school has gone as far as the University of Denver in creating a dynamic and innovative course which responds to the call for more highly developed lawyering skills.

This article was written by the Lawyering Process Committee, Professor John P. Reus, Program Director; Mary A. K. Wilder, Dir. of Legal Writing; Kimberly A. Shinberry, Program Coordinator; Catherine Fabich, Library Instructional Coordinator; and Visiting Clinical Professor Cynthia A. Savage.