

PRACTICE-READY: A LAW SCHOOL PERSPECTIVE ON BAR CERTIFICATION

by Veryl Victoria Miles

Law schools play a critical role in the bar certification process. They certify that graduates have the character and fitness necessary to become members of the bar, and they verify that graduates have completed the schools' academic requirements for graduation. Each of these certifications is much more than a mere check mark but rather an analysis of a complex set of factors.

The certification of character and fitness is not a simple notice of the lack of negative information about the graduate. Law school determination of character and fitness is quite detailed. While all of the levels of that process are beyond the scope of this article, the bar and the public need to know that we are evaluating all aspects of the student's character. That includes, but is not limited to, issues such as lapses of judgment within the educational environment (including experiential learning activities), formal or informal disciplinary matters, and criminal matters. The law school is uniquely positioned to evaluate not only the underlying matter but also the way in which the student demonstrates candor and professionalism in addressing the matter.

On the other hand, the certification of completion of academic requirements for graduation is a reflection of a complex educational process and the student's full engagement in that process. In this

certification, we are verifying the depth of the educational process and the resultant development of professional competencies by the student. It is this certification that is the focus of this article.

LAW STUDENT CERTIFICATION: DEVELOPMENT OF BASIC COMPETENCIES

It is the goal of all law schools to prepare law students with three basic competencies. These competencies are typically described as (1) a general knowledge of law, legal theory, and legal procedure, and an ability to engage in critical thinking—that is, an ability to engage in legal analysis and reasoning; (2) performance of law practice skills, including legal writing and research, trial practice and appellate practice skills, client counseling, negotiation, and other law practice dispute resolution techniques; and (3) an understanding of the code of professional ethics and the obligation and responsibility of lawyers to serve justice.

While the development of these competencies in our law students has always been a part of the law school experience, the extent to which law schools can develop these competencies in their graduates is dependent on diverse and integrative teaching methods and the provision of sufficient experiential learning opportunities for students.¹ Law schools must not only help students acquire a fundamental

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knowledge of law, practice skills, and an understanding of ethical obligations but also provide students with significant real and simulated law practice experiences so that they can put what they have learned into action, making the schools' graduates practice-ready to the fullest extent.

A critical part of achieving this readiness in terms of law practice competency includes conversations with the bench and practicing bar, seeking their assessment of the practice readiness of our graduates, and partnering with them in providing practical educational experiences for our students. Contributors to these conversations include alumni and other lawyers and judges who hire our students, supervise students in internship and externship placements, and teach specialized practice and skills courses at the law school.

What I offer in this article is a description of what several of my colleagues at The Catholic University of America, Columbus School of Law, are doing in providing integrative experiences for our students, building a bridge between the doctrinal and theoretical and the practical, with the ultimate goal of graduating students who are practice-ready and possess a clear sense of professional identity and responsibility. While most of us remember our first-year experience to be a review of abbreviated appellate decisions as an introduction to problems of law and procedure, it has become a practice among my faculty colleagues to remove the disconnect between knowledge and practice through an integration of

skills and simulation experiences throughout the first year. This integrative teaching is being done in both first-year doctrinal courses and basic legal research and writing courses.

Faculty are introducing students to the complexities of law practice by combining Socratic dialogue and other methods designed to foster acquisition of knowledge of blackletter law with exercises in legal analysis and critical thinking, hypotheticals involving professional ethics, and practice-oriented exercises requiring drafting or simulation.

The following two descriptions are examples of first-year integrative approaches taken by my faculty colleagues, one of whom teaches first-year Contracts and the other of whom is the director of our Lawyering Skills Program. The first description represents an example of limited integration of practice skills and the second represents more comprehensive skills integration.

FIRST-YEAR INTEGRATIVE APPROACHES

Limited Integration of Practice Skills

A limited skills integration approach is represented in one section of our first-year Contracts course. Although the professor uses the traditional case-law method to teach the rules of contract law and the fundamental skills of legal analysis, she supplements this with contract drafting exercises throughout the course. Through the contract drafting exercises, the professor is able to help students appreciate deeper issues behind contract formation, using the

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context of client-specific needs and abilities to perform. Examples of the kinds of practice-related issues students must grapple with include levels of specificity in language reflecting transactional cost choices, ordinary business or industry practices or standards, course of conduct, and professional competency of the lawyer. All of these issues raise questions concerning professional responsibility and judgment; and they underscore the necessity of conferring with the client to address client-specific contractual needs, goals, or requirements.

Comprehensive Skills Integration

The first-year Lawyering Skills Program is a more comprehensive introduction to the professional skills essential to law practice, including basic legal research, writing, and analysis, and other foundational practice skills that are further developed in upper-level clinical and externship experiences. Students participate in a two-credit Lawyering Skills course during the fall and spring semesters of their first year. The teaching techniques used in this program include a range of practice simulations such as client interviews and representations, group work and collaboration, peer review, and student presentations. These activities model how attorneys work with one another and with clients in the “real world.”

Accordingly, instead of using the traditional doctrinal law school course approach of beginning studies with case law analysis, assignments begin

with unedited client facts. Students are required to explore the law to identify potential litigation and nonlitigation solutions for “wronged” clients. By the end of the first semester, students are able to approach basic legal research and writing tasks with confidence; analyze conceptually complex facts and law; and translate that analysis into logical, objective written memoranda, client letters, and e-mail updates to supervising attorneys.

As a result of this comprehensive integrative approach, the students are also developing a real-world understanding of the role of the attorney as advisor.

In addition, students in the Lawyering Skills course participate in simulations designed to foster the development of practice-oriented skills, including a mock client interview exercise and a simulated mediation exercise. The mock client interview introduces students to client interviewing and counseling skills, professional ethics, and law practice management

tasks. Instead of receiving a typed set of facts or identifiable legal claims, the students are required to interview a client with a complex story. The student lawyers must decipher the relevant issues and facts from the story and identify the relevant legal documents to support an identifiable claim.

The most recent mock client interview exercise required students to interview a client who had been injured when a residential deck collapsed during an engagement party. The client expressed conflict about pursuing a potential claim against the

homeowners—his relatives. The students were expected to identify a number of issues relevant to a potential claim, including whether the homeowners properly maintained the deck, whether the deck was built with the required permits, and whether there was potential liability of the builder and/or the county inspector. Before conducting the interview, students were introduced to matters concerning ethical considerations for attorney advisors, including the duty to maintain client confidences, the duty to offer objective advice (as opposed to merely telling the client what he wants to hear), and the duty to lay out the scope and costs of the representation in advance.²

As the students prepared for and conducted the interview, they assumed law practice management tasks such as locating sample retainer agreements, researching fees and billing structures, estimating how much time would be required to complete the necessary research, and advising the client of his options. Students were required to work collaboratively in groups as they conducted research on relevant statutes, case law, and secondary authorities. Each group reported on research results during in-class presentations. Self-reflection and peer assessment occurred as students were encouraged to describe not only what worked in their research process but also what did not work.

STUDENTS IN THE LAWYERING SKILLS COURSE ALSO PARTICIPATED IN A SIMULATED MEDIATION. WITH THE HELP OF VOLUNTEER ACTORS FROM THE UNIVERSITY'S DRAMA DEPARTMENT, THE MEDIATION WAS ENACTED BEFORE THE CLASS. TWO STUDENTS REPRESENTED EACH PARTY IN THE MEDIATION. THE STUDENTS WERE PROVIDED WITH A SET OF CONFIDENTIAL FACTS INVOLVING AN EMPLOYEE'S CLAIM AGAINST AN EMPLOYER FOR WORKPLACE INJUSTICE. . . . THE STUDENTS ALSO HAD TO DRAFT A MEDIATION SETTLEMENT AGREEMENT. AT THE CONCLUSION OF THE MEDIATION, THE CLASS OBSERVERS DISCUSSED THE SKILL SETS USED IN MEDIATION AND CRITIQUED THE PERFORMANCES AND THE OUTCOME OF THE MEDIATION.

Students in the Lawyering Skills course also participated in a simulated mediation. With the help of volunteer actors from the university's drama department, the mediation was enacted before the class. Two students represented each party in the mediation. The students were provided

with a set of confidential facts involving an employee's claim against an employer for workplace injustice. A professional mediator (who did not know the confidential facts) participated and facilitated the mediation. The students also had to draft a mediation settlement agreement. At the conclusion of the mediation, the class observers discussed the skill sets used in mediation and critiqued the performances and the outcome of the mediation.

UPPER-DIVISION INTEGRATIVE APPROACHES

Law students are also required to take an upper-level Professional Skills course prior to graduation.³ There are several ways

students can meet this requirement, including participation in our live-client clinics, externship programs, or simulation law practice skills courses.

Live-Client Clinics

The competencies students are expected to develop in our live-client clinics include skills in the following areas:

Attorney-Client Relationship—interviewing, counseling, maintaining client contact, updating clients on case developments

Development of Cases, Investigation, Discovery, and Planning—identifying factual issues, researching legal issues, developing case strategy, anticipating adversary’s position

Oral and Written Advocacy—preparing motion hearings, evidentiary hearings, and community presentations; developing communication skills for case meetings, telephone calls, and strategy sessions involving cases and projects

Professional Responsibility/Ethical Conduct—understanding the ABA Model Rules of Professional Conduct; identifying potential ethical issues in cases and community projects; developing strategies for addressing ethical issues

Reflective/Self-Evaluation Skills—being able to critique oneself and to accept constructive suggestions and feedback; understanding the social, economic, and political context of legal problems clients present in order to fully analyze and address the problems

Law Practice Management—time management, documentation of time spent, case file organization, importance of office procedures

Professional Relationships—collaborating as a team on cases; developing positive working relationships with supervisor(s), administrative staff, and colleagues, including opposing counsel and court and agency personnel

The practice skills opportunities offered through our live-client clinics include civil law practice before the District of Columbia Superior Court, the DC Court of Appeals, and various state and federal administrative agencies in the Washington DC area.

Externship Programs

In addition to the live-client clinics, the law school offers approximately 200 externship placements each year, many of which are associated with the several certificate programs at the law school. These programs are attractive to students who have identified special areas of law practice that they hope to enter, including securities and corporate law, communications law, international and comparative business law, and law and public policy. Students are able to acquire a deep understanding of the substantive law in these practice areas and work in a broad range of law offices through field placements that are jointly supervised by practicing attorneys and judges in conjunction with the law school faculty members who coordinate the placements.

Simulation Law Practice Skills Courses

The law school also offers a number of courses designed to give students the opportunity to develop their written and oral advocacy skills in the context of simulated client representation. Through these courses, students learn to interview, counsel, negotiate, mediate, draft legal documents and legislation, conduct trials, and engage in appellate advocacy. The problems and materials used in skills courses integrate issues of ethics and professional responsibility into simulations and require students to grapple with the day-to-day realities of law practice.

CONCLUSION

The certification of lawyer competency is a joint collaboration between the nation’s law schools and bar examiners. From the perspective of the law schools, we must be able to certify that our graduates are knowledgeable about the law; are able to practice the law competently; and understand the ethical, moral, and social responsibilities required of all who

assume the duties and privileges that come with admission to the bar. While all of the many different practice competencies required of lawyers may be difficult for bar examiners to test in a matter of two or three days, law schools are able to assure that their graduates have acquired the competencies necessary for law practice by offering a balanced and comprehensive academic program that integrates doctrinal and theoretical aspects of law with experiential learning and law practice opportunities. ■

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Professor Lisa Everhart contributed the description of the integrative approach used in the Lawyering Skills Program. She serves as the director of the program and is one of six faculty members teaching in this program. The illustrative first-semester mock interview was developed by Professor Everhart. Her colleagues, Professors A.G. Harmon and Olivia Farrar, developed the second-semester mediation simulation. Professor Farrar mediates civil matters through the U.S. Court of Appeals for the Federal Circuit and the Maryland Circuit Courts. The mediation simulation is part of a forthcoming text, *THE COMPLETE ADVOCATE* (LexisNexis), authored by Professor Harmon.

Professor Faith Mullen contributed the description of law practice competencies students are expected to acquire in the live-client clinical programs. She teaches in the law school's General Practice Clinic.

ENDNOTES

1. The evolution and importance of integrative teaching methods are thoroughly described in a study of legal education published by the Carnegie Foundation for the Advancement of Teaching entitled *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (John Wiley & Sons, 2007). This study includes descriptions of various law school programs that have successfully implemented integrative teaching.
2. Representatives from the Maryland Bar Counsel spoke to the class about the interrelationship of ethical lapses in the courtroom setting and potential state disciplinary actions based on client complaints and/or judicial referrals.
3. ABA Accreditation Standard 302(a)(4) prescribes that law schools require students to receive substantial instruction in "other professional skills generally regarded as necessary for effective and responsible participation in the legal profession." Similarly, Standard 302(b)(1) requires law schools to offer students substantial opportunities for "live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence." "2008-2009 ABA Standards for Approval of Law Schools," available at <http://www.abanet.org/legaled/standards/standards.html> (last visited June 16, 2009).



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