

LEARNING IN CONTEXT—WHAT BANJO LESSONS CAN TEACH US ABOUT LEGAL EDUCATION

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I can teach you to play the banjo, and you can choose my teaching method from one of these two options:

Option A is learning by reading reviews of recent banjo compact discs. The reviews may express differing opinions of the same music, like these reviews of Steve Martin's CD, "The Crow." The *Wall Street Journal* liked the "delicate compositions, which are supple, never morose, and rich with unexpected minor chords,"¹ but the *Boise Weekly* found it "a good album, but it never shakes loose of melancholy and takes wing."²

Option B is learning by doing. You hold on to a banjo and try basic movements that I demonstrate for you.

So, what will it be?

In law schools we have been choosing Option A for decades. We have been teaching those who will practice law by asking them to read and discuss appellate opinions. These opinions are authoritative, but they are generated by judges who may have never met the parties to the conflict. This method makes legal questions cold, remote, and uninteresting. But we have other options.

The *Carnegie Report*,³ *Best Practices*,⁴ and the humanizing legal education movement all suggest that, among other things, we

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1. Jim Fusilli, *Steve Martin Takes the Banjo Seriously*, <http://online.wsj.com/article/SB10001424052970203658504574193291486232598.html> (May 30, 2009).

2. Brandon Nolta, *Steve Martin: New Songs for the 5-String Banjo*, <http://www.boiseweekly.com/boise/steve-martin-new-songs-for-the-5-string-banjo/Content?oid=1432101> (Jan. 11, 2010).

3. William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Josey-Bass 2007).

4. Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* (Clin. Leg. Educ. Assn. 2007).

put our teaching in a context. We can use real clients and real problems, we can use parts of real problems, we can create scenarios that simulate real problems, and all of that will enrich our students' learning.

I thank John Marshall School of Law for hosting this conference on implementing the *Carnegie Report*. And particular thanks to Professor Steve Schwinn for inviting me to speak and encouraging me to use my teaching experiences to launch a conversation. Maybe I am rootless (well-rounded sounds nicer) but I have taught casebook courses, clinical courses, and skills courses. I have learned from teaching each kind of class, and I have learned that the lines between these kinds of classes are artificial. The best methods are ones that are tailored to the goals of the course and the needs of the students.

So to get thinking about how to best meet teaching goals and students' needs, here are three ideas. They come from a clinical, a skills, and a casebook class. They range from individual, hands-on work to a written group project. They are not offered as a recipe for a perfect class, but as examples of what some professors are already doing.

First, a clinical exercise: If you have not taught a clinical class before, take a minute to imagine the first day of the semester. It is the opposite of a casebook class where the first day starts with the big picture. To make the clinic work, each student needs to know right away where the case files are kept, where phone messages are posted, and how drafts are routed. It is common to have a first-day drill that gets each student to locate and use each part of the office. This exercise may not be directly transferable to a casebook class, but it shows one end of the spectrum of skills taught in a clinic. With that information it is easy to see all the other parts of practice that are taught along the way. For example, nobody is born knowing what a proof of service is. Clinical professors have experience teaching how and why a proof of service is used. Incorporating something as small as a proof of service into an existing assignment can turn something that is abstract into something much more real, and clinical professors have that experience to share.

Second, a skills exercise: At Southern Illinois University, our first-year research and writing class includes an introduction to several other skills, including interviewing. We teach basic interviewing skills and prepare the students for an interview they will

have with a second- or third-year law student posing as a client. The interviews are arranged to be an appropriate challenge for a new law student, recognizing that just shaking hands with a fake client will be a challenge for some folks. After doing this for several years, I decided that while the interview itself should not pose an overwhelming challenge, I really did want to expose my students to a sample of what they might encounter in a real interview. I could lecture, or tell war stories, but I wanted my class to be able to feel it. So I added a sample interview in class. We used the facts and law from the memo they had just finished writing. That way everyone knew the story already and we could focus on the technique of the interview. We started with the client as depicted in that last memo, just an ordinary person with a problem, coming to see a lawyer. Before the interview I give index card to several volunteers who pose as successive versions of the same client. The instructions, which the volunteer students do not share, include things like “Cry easily,” “Talk too much about irrelevant things,” and “Offer to lie to make the case better.”

The result has all the raucous fun of a World Wrestling Federation match, including tag team functions. I tag in the new client characters at appropriate times, and the students who are interviewing the client can tag in any other classmate at any time. I use frequent time-outs to comment on how the interview is going well or could go better. Overall, this exercise provides a non-threatening, and more complete, introduction to interviewing. Why not use the same tag team concept to stage a client counseling session based on a case that the class has read? Successive clients could “remember” details that would require the student providing the counseling to adjust her advice along the way. The process engages more students in the work of the class, and it provides a more practice-like context than even Socrates in a singlet.

Finally, a casebook class exercise: I admit that I stumbled onto this exercise the easy way—through a pro bono case I had one semester. I was a *guardian ad litem* for an infant in an adoption case. The child was born in Illinois, and that was where the easy part ended. She was conceived in Missouri, with sperm sent from a sperm bank in Georgia, and a sperm donor who lived in Florida. This is manna from heaven for a final exam! But I was working on my report to the court, and I needed to describe to the court why the sperm donor’s waiver of rights was valid in this

multi-state context. I decided to let my class work on the issue in groups during the class that we would have devoted to discussing these kinds of issues. I gave the class a starting point from my research, and all the details except for client identification information. I gave them one class period to come up with a proposed section of my report and suggested a two-page limit. I encouraged them to do the research and drafting in the classroom so that they could ask questions along the way.

I told the class that I would be happy to incorporate any good structure or substance from their drafts into my report. This was excellent motivation for the class. Although I had a good draft of this section of my report, I did incorporate parts of the student work into my final report. Their fresh perspective turned out to be useful.

I plan to use this kind of exercise again, even if I do not have an active case with a great issue. Drafting a practice document seemed to be much more exciting than writing a mid-term exam answer. And the opportunity to do research and work with colleagues is so much more like practice than an exam. Of course reviewing only ten papers from a forty-student class made the exercise more manageable for me too.

We all set high goals for ourselves and our students. The *Carnegie Report* gives us some direction on how to help our students learn to be lawyers. The three exercises I have described are starting points that get my endorsement. I hope they will encourage you to talk with colleagues at your school and others about what kinds of contextual learning may work in your class. And do not forget that next time I see you I owe you a banjo lesson—bring your banjo.