General Education Research Supports the Proposal to Require 15 Credit Hours of Experiential Courses
by E. Scott Fruehwald

The American Bar Association Section on Legal Education and Admissions to the Bar has proposed to modify standard 303(a)(3) of the ABA Standards and Rules of Procedure for Approval of Law Schools to require 15 credit hours of experiential courses. General education scholarship supports this proposal. As one prominent education scholar has noted, "We have learned more about how the mind works in the last twenty-five years than we did in the previous twenty-five hundred." (Willingham at 1)

1. Active learning is more effective than passive learning. "Educational experts have found that students learn more when they are actively engaged, such as by speaking, writing, or discussing, rather than listening to a lecture or discussion." (here June 2013) Similarly, "It will not be enough to have students generally memorize (store) a fact. The fact must be used." (Shell at 14) Finally, students learn better when they apply what they know because manipulating knowledge increases retention and understanding.

Most of the teaching in law school is lecture or using the Socratic method one student at a time, neither of which involves knowledge application. Accordingly, lecture and the Socratic method are not enough; law students need to apply their knowledge through problem-solving exercises and experiential classes.

2. Students need to solve authentic problems—the types of problems they will encounter in practice. (here June 2013) "Experiential lessons provide students with an opportunity to experience concepts first-hand and, as such, give students a richer, more meaningful understanding of course concepts and of how they operate in the real world." (Slavich & Zimbardo at 594) Moreover, "Active learning and authentic experiences in which students are acting like lawyers enhance motivation and interest for most students." (Hess at 82) Experiential classes provide such authentic/real world problems to students.

3. Students need frequent formative assessment with prompt, detailed feedback. "Assessment methods and requirements probably have a greater influence on how and what students learn than any other single factor." (Bone at 3) Formative assessment aids learning because "learning and memory for material is improved when time is spent taking a test on the material, versus spending the same amount of time restudying the material" (McCabe at 464) because testing keeps students engaged in the subject matter. Also, testing uses retrieval, which reinforces long-term memory retention. (here at 17) Furthermore, students retain more if they get feedback on their assessment because without feedback students don’t know when and why they’ve made mistakes. (here at 17-18)

A typical law school class generally has one exam at the end, occasionally with a midterm. This type of cumulative assessment does not help learning. On the other hand, experiential classes generally have detailed formative assessment throughout the semester.
4. Experiential teaching better engages and motivates students. Experiential learning is especially motivating for students because it engages them by making learning more interesting. (Slavich & Zimbardo at 574, 594) Similarly, "several well-controlled studies have shown that students demonstrate more learning, better conceptual understanding, superior class attendance, greater persistence, and increased engagement when collaborative or interactive teaching methods are used compared to when traditional lecturing is employed." (Slavich & Zimbardo at 570)

5. Problem-solving and experiential classes involve deep learning. Students need to practice all six levels of Bloom’s Taxonomy (the six levels of cognition): "1) recall; 2) understanding; 3) application; 4) analysis; 5) synthesis; 6) evaluation" (Fox at 21) to achieve deep learning. Problem-solving exercises focus students’ attention on complex problems and involve higher-order cognitive skills (analysis, synthesis, evaluation) (Slavich & Zimbardo at 574), while lecture and the Socratic method focus on the lower-order cognitive skills.

6. Experiential classes help students develop their planning, self-monitoring, and reflective skills. Planning, self-monitoring, and reflection are necessary skills for competent lawyers. Experiential classes help students develop these skills.

7. Experiential classes help law students develop professionalism and professional identity. One of the main goals of law school should be to help students develop professionalism and professional identity. Students in experiential classes and clinics run across the same types of ethical problems that lawyers do in practice.

8. Experiential classes help students break down complex problems and reassemble them. Lawyers deal with complex problems, and they need to be able to break them down into manageable parts, then reassemble them. Students practice these skills in experiential classes.

9. People retrieve knowledge from long-term memory in the same way they learned it. As I have discussed in more detail here, knowledge organization in long-term memory is in relation to how the material is learned, including the context and function of the way the material is being learned. (Ambrose at 47-48; here at 31 (‘Experts’ knowledge cannot be reduced to sets of isolated facts or propositions but, instead, reflects contexts of applicability: that is, the knowledge is ‘conditionalized’ on a set of circumstances.”); here at 42-44, 62-63) Knowledge organization can be well- or poorly-matched to a particular task. (Ambrose at 48) In other words, the usefulness of knowledge organizations depends on the tasks they need to support. (Ambrose at 48) "Students performed better when their knowledge organization matched the requirements of the task, and they performed worse when it mismatched." (Ambrose at 48)

Based on the above, one should be able to see the biggest problem in traditional legal education. Traditional legal education mainly teaches students to be appellate lawyers and legal philosophers. The typical lawyer is not an appellate lawyer or a philosopher. Thus, law schools do not teach their students in a way that is best for the knowledge retrieval they will need as practicing attorneys. For example, students learn contract principles in law school, but the typical first-year contracts class does not teach students how to use this knowledge to draft a contract. When a novice lawyer starts to draft contracts in practice, she will be lost because of the way she
has contract law stored in her long-term memory. In other words, the way that contract law is stored in a law student’s long-term memory does not transfer well to drafting contracts. Similarly, Torts may help a student write an appellate brief on a torts question, but the typical Torts class does not provide the knowledge organization to make it easy to draft interrogatories in a torts case. The torts doctrine is not organized in a manner in long-term memory that will transfer easily to drafting interrogatories.

The above has only begun to show how recent scholarship on general education supports the 15 credit hour proposal. Now that we know much better how the mind works, law schools should not be relying mainly on teaching techniques developed in the nineteenth century. As Professor William Henderson has proclaimed, "the types of education that will attain the highest valuation are complex problem-solving skills that enable law school graduates to communicate and collaborate in a highly complex, globalized environment. This is not vocational training; it is the creation of a new model of professional education that better prepares our graduates for the daunting political and economic challenges ahead." (here)

Print Sources

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