

## The Changing Legal Profession: Pedagogy (The Challenges of Teaching)

### *“In the Midst of Change, Some Methods Persist: Rule-Centered Teaching Through the Use of Problems”*

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- I. Many aspects of teaching almost all legal subjects are likely to change over time.
  - A. Technology and styles of teaching are likely to change at an increasing rate.
    1. Technology for distance learning may put a few master teachers into classrooms all over the country. What are now regional law schools may become franchise outlets of national corporations or institutions.
    2. The ability to record and distribute images of classes may make legal education an even more passive activity for students than it has already become.
    3. The challenge of helping students see that issues they are studying will impact their lives and careers is only likely to increase. In fact, of course, students may be right that what we teach them will soon be out of date.
  - B. The rate of world-wide change makes it even less likely than before that we can impart substantive insights that will have a significant shelf life.
    1. Many students we teach today could still be practicing in 2065. Just as many substantive questions that students studied in 1945 are unrecognizable today, so what we teach today is likely to become irrelevant as our students move through their careers.
    2. Even our assumptions about value issues may become archaic as changes in manufacturing techniques, environmental realities, financial institutions and global power have profound social effects.
- II. Problem-based teaching remains a particularly effective way to address such issues.
  - A. Problems provide a way to engage students and personalize questions.
    1. If passivity is the challenge, solving problems can provide part of the answer.

2. Like any simulation-based teaching, problems provide a clinic-like experience in which students are required to see themselves as lawyers.
- B. Problems require students to bring materials to issues rather than watch a judge do so.
1. I disagree with Roger Cramton & Susan Koniak's suggestion, 38 Wm. & Mary L. Rev. 145, 177-79 (1996), that courses taught by the case method are the only ones in a law school curriculum that are taken seriously by students.
  2. Problems create a setting for active involvement in learning. Determining the relative value of different legal and non-legal materials requires that a student do more than read an assignment.
  3. In any realistic format for classroom teaching – as opposed to independent study – some materials used in developing an answer must be provided to the students. Application of those materials, however, can and should be left to the students, assisted by later class discussion.
  4. Indeed, traditional case-method teaching, done well, treats the cases as complex problems faced by lawyers and judges. The difference is that, under the case method, students and teachers are largely placed in the role of critic rather than being forced to come up with a solution of their own.
- C. Problems can provide flexibility to reflect changed issues and realities.
1. Teaching based on “leading” cases can become trapped in the paradigms upon which those cases were based. One can criticize the paradigms or even change what cases are studied, but that tends to simply make the best of an undesirable reality about the case-based methodology.
  2. Because problems are hypothetical, their facts can be created frequently to raise the issues the professor believes challenging and relevant. Or, the facts can stay relatively constant from year to year while the answers change with changes in law and reality.
- III. Rule-based teaching, based on the Restatement of the Law Governing Lawyers or the ABA Model Rules, is likely to remain the best way to teach professional responsibility.
- A. The 2002-03 amendments to the Model Rules bring them increasingly into line with the Restatement as analyses of behavior in realistic situations facing lawyers.

1. The Comments to the Model Rules, as well as some of the black letter, identify key issues and suggest relatively-nuanced approaches to addressing them.
  2. Nothing about teaching from the Model Rules requires a professor to agree with the analysis the Rules propose. Indeed, some of the most effective teaching can address critically how the Rules came to be as they are and the values that the Rules implicitly reflect.
- B. The risk of such an approach falling victim to formalism is real but exaggerated.
1. Many students will initially have a tendency to see the rules as final answers, not as illustrations of responses to questions. They may also see a rule boundary as creating a license to do anything not expressly prohibited.
  2. That danger is particularly great if professors place too great an emphasis on the rules as a basis for professional discipline or legal malpractice. Rules serve those functions, but they reflect and increasingly articulate much more.
  3. Contrasting currently expressed values to those embodied in the 1983 Model Rules and the 1970 Model Code – and to those in documents like the American Lawyers Code of Conduct and the ABA Standards Relating to the Administration of Criminal Justice – can tend to minimize otherwise-legitimate concerns about formalism.

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*Brief Bibliography of Materials Adopting or Commenting on the Problem Method of Instruction*

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