

VANDERBILT LAW SCHOOL'S CURRICULAR REFORM INITIATIVE

Background

In the Spring of 2005, the faculty of Vanderbilt University Law School and the administration of Vanderbilt University decided to re-think the legal education that the Law School was providing for its students. Our curriculum, like the curriculum of virtually every accredited law school in the U.S., was based on the model that had been developed by C.C. Langdell at Harvard in the 1870s. While that model was certainly innovative in its day, and has demonstrated impressive staying power ever since, we thought that the time had come to re-assess it. Many transformative changes in the American legal system have occurred since the 1870s, including the advent of the administrative state, globalization of the economy, the rise of the large law firm, and the adoption of the Federal Rules of Civil Procedure. Similarly dramatic changes in scholarship and pedagogy include Pollack and Maitland's discovery of the common law's real origins, the development of empirical social science, and the rise of progressive or learner-centered education. As a result, the Langdellian curriculum is seriously out of date, and we thought we could do better. The new dean of the Law School was chosen on the basis of his commitment to this process of curricular reform.

One lesson that we have learned from Langdell, and that remains relevant today, is that curricular reform is difficult unless the University administration is fully supportive of the process. After Langdell introduced his new curriculum, enrollments at Harvard Law School declined dramatically and remained depressed for nearly a decade. The President of Harvard, Charles Elliot, not only continued to support Langdell during this period, but offered constructive advice such as the idea of elective courses in the second and third year. Following this model, the Vanderbilt administration not only endorsed the Law School's curricular reform effort, but allocated substantial funding from a program

known as the Academic Venture Capital Fund to support the development and transition costs of a new curriculum.

We realize that university support at this level is extremely rare in American legal education. As a result, we feel that we have an obligation to produce a curricular design that other law schools can adopt. This means that our design must not only provide an up-to-date, effective legal education, but must also be relatively transparent, that it must be flexible enough to be relevant to a wide range of law schools, and that it must fit within those schools' existing levels of expenditure. Thus, we are planning to develop and publish materials for our new curriculum and we have issued an open invitation to deans and curriculum planners at other law school to visit Vanderbilt at our expense, see what we are doing, and share their own ideas with us.

Process

As is true in most law schools the first year and upper class curricula at Vanderbilt differ not only in content, but also in their governance structure; while the upper class curriculum is generally something designed by individual faculty members, in consultation with the Associate Dean for Academic Affairs, every course and every credit in the first year curriculum is generally subject to collective decision-making by the faculty as a whole. We therefore decided to use separate processes for re-thinking these two parts of the curriculum. But we also decided to proceed on both these fronts simultaneously because we wanted to develop a comprehensive approach and avoid excessive delay.

The basic idea regarding the upper class curriculum is to establish concentration programs that will enable students to focus on a particular area of law during the course of their second and third years. To implement these concentration programs, faculty members were invited to join together in groups and develop a plan for a coherent curriculum in their field. The only general rules given to these groups are that the curriculum should provide more intensive training for students in its particular field, and that the curriculum should progress from the second year to the third. Faculty members can choose which group or

groups to join, and cannot be excluded from any group so long as they are willing to be active participants in its activities. The Dean appointed one faculty member in each group to be its director.

To give the curricular groups an institutional reality, the Law School's conference and speaker budget was decentralized to them. Thus, each group has a budget that it can use to run conferences, invite speakers, and provide supplementary funds to its participating faculty members for travel and research. The groups also have the authority to choose short courses visitors and adjunct faculty in their area, and to negotiate with other schools or departments to develop interdisciplinary programs. The additional funds for these latter purposes are derived from decentralization of the Law School visitor and adjunct budget. To enable faculty members to devote time to participating in these groups, all administrative committees at the Law School –with the crucial exception of the appointments committee – were abolished. Thus, the administrative staff handles admissions, physical plant renovation, student relations, placement, and similar functions.

The process for re-thinking the first year curriculum is entirely different. In December, 2005, the faculty held a two-day retreat to discuss and re-assess that curriculum. It was organized around a single question – what foundational education should a twenty-first century law school impart to its students? The goal was not to take any votes or reach any decisions, but to develop a framework. After the retreat, faculty members were invited to submit plans for developing a new first year course or revise an existing course within the framework established at the retreat. Once these plans were approved by the Dean, the faculty member or members who proposed it were offered teaching relief, generally for one semester, so that they could develop the course and create materials for it without taking time away from their research activities. To replace the courses that were not being taught by these faculty members, visitors were hired with the funds provided by the University. This is a one-time expense, using funds that will be discontinued once our reform process is complete. Other

schools that are interested in using some or all of our materials would not incur this expense.

Each plan for a new course or the revision of an existing course in the first year must be approved by the entire faculty if it involves a change in basic coverage or credits. Plans that fit within the contours of an existing course do not need to be approved, but the faculty members who regularly teach that course need to agree with the plan if it is to become the standard approach for the Law School. We will consider plans for new courses and revisions on a rolling basis, since these plans will be completed at different times, but each decision will be discussed in terms of the framework we developed and the other plans that either have been adopted or are under development.

Content

Our framework for the first year calls for a curriculum that can be characterized as:

1. Relevant or Up-to-Date: First year courses should reflect the basic areas of current legal practice and the developments in our legal system over the course of the past century
2. Coherent: First year courses should relate to each other, acknowledge overlaps and highlight differences. Second semester courses should follow from first semester courses in a coherent manner.
3. Interdisciplinary: The courses should be designed in light of the general recognition that law is no longer an autonomous discipline but part of a more general academic enterprise of understanding and improving our society.
4. Developmental: First year courses should be more foundational, and less detailed than upper class courses. They should serve as general introductions to a field that give students a global, albeit rudimentary understanding of the field, and that provide a foundation for the upper class courses in that field.

Thus far, we have instituted three new first year courses. The first is a one-week, one-credit orientation course that will expose student to the idea of law and the basic structure of our legal system. The second is a first semester, four-credit course entitled The Regulatory State. Its goal is to introduce student to modern administrative government, to teach them to read primary source materials in this field such as statutes, regulations and notice and comment rulemakings, to teach them how modern regulatory statutes are interpreted, and to place the legal rules in this area within a broader political context. The third course, which is being introduced by one of our contracts teachers within the contours of the existing course, is a transactional approach to the subject. Students learn what a modern transactional practice is like, they read contracts as primary source materials, they learn how contracts are interpreted by courts (this being the totality of the traditional course) and they learn how contracts function within a broader business context.

Several other new or revised courses are currently under development. One is a revised Civil Procedure course that will focus on current litigation practice, both domestic and international, teach students how to read primary source materials in the field such as complaints, answers and interrogatories, and place civil procedure in a broader context of dispute resolution. Another course is a revised Constitutional Law course that will introduce the entire subject, rather than being limited to structural issues such as federalism, the Commerce Clause and the separation of powers. The content is not particularly new, but the format is designed to provide a foundation for all upper class constitutional law courses, and to introduce human rights and social justice issues into the first year curriculum. We are also considering a new course that will introduce students to a wide range of basic business law concepts. The traditional property course introduces one basic concept, but then proceeds to a detailed exploration of specialized topics such as estates in land, adverse possession, and landlord-tenant law. The course under consideration replaces these topics with an introduction to concepts such as money, capital, debt, equity, financial intermediaries, business organizations, bankruptcy, accounting

and the time-value of money. Finally, we have begun consideration of a revised Criminal Law course that will focus on criminal procedure and the criminal justice system as well as the substantive rules defining crimes.

With respect to the upper class curriculum, the very general working principles for the self-identified faculty groups described above are to produce a program that can be characterized as:

1. Coherent: The student should be offered a set of courses in a particular field that are designed according to a specifically developed plan
2. Engaging: There should be a sense of progression and increased mastery, leading to educational experiences in the third year that are more intensive and interactive. This is specifically intended as an antidote for the third year malaise that is familiar to all legal educators
3. Interdisciplinary: The same rationale that applies to first year courses applies equally to upper class courses
4. Developmental: The goal is not necessarily to produce graduates who will be able to progress more rapidly in the particular field of the concentration, although that is certainly not discouraged. Rather, it is to allow the student to study one area of law in an intensive manner and at a sophisticated level so that the student can learn a set of skills that cannot be communicated by passive lecture courses, such as taking initiative, designing a project, presenting it to one's colleagues, commenting on one's colleagues work in an analytical but constructive manner, and working collegially with someone ten to fifty years older than oneself.

It will be noted that these features are nearly identical to the ones identified for the first year, an indication that the two components of the program, although divided by historically-established governance rules, are united in their educational approach. The only difference is that "relevant" appears as a first year feature, and "engaging" as an upper class feature. This is because students are inevitably engaged in the first year by the novelty of their experience, while the upper class program, which is not controlled by tradition or collective

governance, is the place where faculty have developed new courses to reflect their up-to-date research interests.

At present, we have three fully developed upper class concentrations: International Law, Law and Business, and Litigation and Dispute Resolution. At least five others are currently in various stages of development: Constitutional Law and Theory, Government Regulation, Intellectual Property, Law and Human Behavior, and Social Justice. Not all will develop into full-fledged programs, and eight such concentration programs would certainly be at, if not above, the carrying capacity of a small school such as Vanderbilt (190 JD students per class). Once we launch a concentration, we would expect to continue it; that is, we do not want to create expectations about opportunities at Vanderbilt that we are subsequently unable to fulfill.

A major advantage we see to our upper class curriculum plan is its flexibility. There is no fixed set of subjects that the concentrations must address, and there is no fixed format for each concentration. Within the general approach, the specific programs depend on the faculty's particular expertise and interests, and the design of each program depends on the particular choices made by the faculty group. At Vanderbilt, all of our existing concentrations are different from each other. As an example of one of these concentrations, a description of the Litigation and Dispute Resolution program is attached.

One further note. The Litigation program is named because it was endowed, and we are seeking endowments for the other concentrations as well. This is to provide additional program funds, or more precisely, to replace the additional program funds that the Law School received from the University. It is always helpful to have more money, of course, but the specific reason the University was willing to increase our program budget was to help initiate this new approach. Once the model is developed, it should be possible for other law schools to implement it by simply decentralizing their existing program budgets.

DESCRIPTION OF THE CECIL D. BRANSTETTER LITIGATION AND DISPUTE RESOLUTION PROGRAM

Vanderbilt's principal initiative in the third-year curriculum consists of the Civil Litigation Capstone Seminar, a year-long, seven-unit seminar for students interested in professional careers in the civil justice system. The Seminar responds to the oft-voiced criticism of the third year as a period of increasing student disengagement from the enterprise of legal education. This disengagement is a predictable consequence of the usual third-year curriculum that is much the same in structure and content as the courses to which students already have become accustomed and that often neglects to seize upon their greater capacity for advanced, specialized study. The Civil Litigation Capstone Seminar breaks from the conventional model by offering students an intensive, specialized, and practically relevant learning experience – one in which they undertake a significant research project under individualized faculty supervision in an area that ties directly to their anticipated career trajectories.

Unlike conventional seminars of a stand-alone nature, the Civil Litigation Capstone Seminar builds systematically on the course offerings on the civil justice system available to students in their second year – courses that regularly include such topics as Complex Litigation, Conflict of Laws, Federal Courts, International Civil Litigation, Negotiation, and a variety of one-unit “short” courses offered by distinguished visiting professors and practitioners under the auspices of Vanderbilt's recently-endowed Cecil D. Branstetter Litigation & Dispute Resolution Program. In recent years, such nationally-recognized lawyers as Elizabeth Cabraser and Kenneth Feinberg have taught short courses of this sort. As prerequisites for the Capstone Seminar during their third year, students in their second year must take at least eight units of litigation-related courses, selected from a menu that is itself the product of systematic curricular design on the part of Branstetter Program faculty. The result is that students arrive in the Capstone Seminar with a genuine background in the subject area – a familiarity buttressed by their summer employment, most in defense-side “big firm” law practice but also others in public-interest or plaintiffs'-side practice.

The substantive focus of the Capstone Seminar builds on the growing attention devoted by the current generation of scholars to the business and strategic dynamics of civil litigation. This attention marks an intellectual broadening from the approach of the previous generation, directed principally to the elaboration of procedural doctrine by appellate judges. Doctrine rightly continues to form an important concern in the civil-justice world. But doctrine is increasingly supplemented by a rich sense of litigation finance, empirical data, the dominance of settlement over trial as the endgame of most civil lawsuits, the rise of alternative dispute resolution, and the interplay between litigation and both corporate finance and the regulatory state. The Capstone Seminar takes advantage of the scholarly literature that situates sophisticated litigators, not just appellate judges, as the appropriate subjects of close study. The result is three-fold: to integrate emerging theory with a practical, on-the-ground perspective on civil litigation; to underscore the interface between litigation and the areas of business and regulatory

practice otherwise set apart in different curricular cubbyholes; and to bring home to students the tremendous creative role that they can play in real-world litigation.

The Capstone Seminar starts with secondary works that speak to the distinctiveness of the American civil justice system by comparison to that of other Western nations, the historical development of our procedural rules centered on “notice pleading,” ethical and economic dimensions of litigation finance, and models of the settlement process drawn from such perspectives as economics and cognitive psychology. Later portions of the fall semester then turn to salient contemporary topics. This fall, for example, these topics have included: the two major preemption cases before the Supreme Court at the intersection of tort litigation and FDA regulation; the role of social science in the Wal-Mart employment discrimination class action; the Milberg Weiss prosecution; and the relationship of arbitration under the auspices of private contracts to conventional litigation in the public institution of the courts.

Students take an examination on the fall material and, during the spring semester, turn to the production of a significant research paper. The latter process involves individualized consultation with the professor for the Capstone Seminar (sometimes supplemented by informal consultation with additional Branstetter Program faculty with expertise in the area of the student’s research), a workshop-like discussion of each student’s preliminary research (for which fellow students are expected to read a summary prepared by the student researcher in advance and to provide substantive commentary and criticism, much in the manner of a faculty lunch workshop), and written comments from the professor that run between eight and twelve single-spaced pages in length for each draft research paper. In addition, students in the Capstone Seminar are fully integrated into conferences and other intellectual events hosted by the Branstetter Program, attending those proceedings as well as the welcoming dinners for participating scholars, judges, and practicing lawyers from outside Vanderbilt.

Given the close faculty attention involved, the Capstone Seminar inherently cannot sustain a large enrollment. For the first iteration of the Capstone Seminar, offered in the 2006-07 academic year, ten students enrolled, and at least three of them will be marketing their respective research papers as full-fledged scholarly articles in the law review submission process this coming spring. During the current academic year, enrollment has increased by 50 percent – to fifteen students from among the roughly 190 in the current third-year class. The longer-term challenges include: rotation of Branstetter Program faculty to teach the seminar (the seven-unit commitment being such that the professor is available to teach only one other course) and possible further decoupling of the unit credit received by the students from the number of formal “classroom hours” during a given semester.