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Experiential Learning in Legal Education – Creating “Whole Lawyers”

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Matter commented on: A Research Study on Experiential Learning in UCalgary Law’s Advocacy Course

In 2016, the University of Calgary Faculty of Law’s third-year Advocacy course was completely redesigned to create an intensive capstone student-centred experiential learning program. The goal was for students to become “whole advocates” and “whole lawyers” who are equipped with the requisite knowledge, skills, and competencies to enter an evolving legal services market. In 2021, I undertook a research project with Lisa Silver (now the Honourable Justice Silver of the Alberta Court of King’s Bench) and JD student Alexander Dingman to reflect upon the teaching and learning occurring in this course. The project evaluated whether student learning was/is occurring as intended, how it was/is occurring, and what changes might be needed to deepen and facilitate that learning. This blog post discusses our research project, shares our findings, and makes suggestions for refining experiential learning in legal education, including in our Advocacy course.

Background

The literature on legal education has increasingly emphasized the importance of experiential learning for integrating professional skills and competencies within traditional law school curricula (see e.g., William M Sullivan et al., [*Educating Lawyers: Preparation for the Profession of Law*](#) (Stanford, CA: The Carnegie Foundation for the Advancement of Teaching, 2007); Alli Gerkman & Logan Cornett, [*Foundations for Practice: The Whole Lawyer and the Character Quotient*](#) (Denver, CO: IAALS, 2016)). Experiential learning in legal education serves to place law students in the role of lawyers and encourages them to connect the law and legal principles to real-world situations. The goal is to provide students with effective training in the full range of proficiencies needed for legal practice, including those involving both “hard” skills (legal skills and

competencies that can be measured) and “soft” skills (such as respect and civility). Through experiential learning opportunities, the literature suggests students will be better able to develop the ethical and social competencies and attitudes necessary to become “whole lawyers”, those who are ready to navigate the complexities of professional life (see e.g., Susan L. Brooks, [“Fostering Wholehearted Lawyers: Practical Guidance for Supporting Law Students’ Professional Identity Formation”](#) (2018) 14:2 U St. Thomas LJ 412). Moreover, the goal is for students to develop the habit of mind of “reflective practitioners”, professionals who are actively engaged in reflecting on their actions and on their future actions (see Timothy Casey, [“Reflective Practice in Legal Education: The Stages of Reflection”](#) (2014) 20:1 Clinical L Rev 317).

To meet these goals, the Faculty of Law’s third-year mandatory Advocacy course was redesigned in 2016 to create an intensive three-week capstone experiential learning program. The Advocacy course prioritizes not only courtroom legal advocacy skills, but also the competencies and characteristics required by “whole advocates” or “whole lawyers” entering a dynamic and evolving legal services market. With a partner, students choose between two files (a real-life criminal or civil case) that form the context for their learning over the entire three weeks. Students learn fundamental advocacy skills through scenarios, including direct and cross examination of witnesses and witness preparation, and they engage in the tasks required to prepare and present a persuasive and well-organized trial.

All students are involved in trial preparation exercises, negotiations with opposing counsel, and attendance before actual superior court justices for pre-trial conferences. They work with experts to understand the complexities inherent in presenting arguments and evidence in court, and they discuss big picture concepts such as trial strategy. There is an emphasis on professionalism as students consider ethical scenarios, learn civility practices, and prepare witnesses for in-court testimony. The program culminates with each team presenting an entire trial with volunteer witnesses before a presiding volunteer judge. At the conclusion of the trial, the judge provides students with detailed (summative) feedback on their performance. This complements the ongoing (formative) feedback provided from approximately 90 experienced practitioner and judge volunteers throughout the course.

As a capstone program, the Advocacy course builds upon students' learning from their previous two and a half years of law school. In line with best practices for experiential learning, students are assessed on a credit/no credit basis, rather than on a traditional letter-grade scale. By untethering the course from grades, yet still ensuring rigour, students are better able to immerse themselves in the experience of learning and reflecting. This approach supports the goal of providing a safe and supportive environment for students to try out their newly-found advocacy voices while at the same time challenging them to apply their learned knowledge and life experiences to a real-life case file and trial scenario.

Our Research Project

In 2021, we wanted to study how well the Advocacy course was meeting its learning objectives. In particular, we wanted to evaluate the following questions: was/is student learning towards becoming a whole advocate/lawyer through the Advocacy course occurring? How was/is it occurring? And what changes might be necessary to further deepen or facilitate that learning?

To explore these questions, we analyzed student learning in the Advocacy course in four ways. First, we examined the relevant pedagogical literature to create a framework for analysis. Second, we collected data through questionnaires distributed to former students and instructors who participated in the course from 2016-2020. There were nineteen survey questions for students and seventeen for instructors. Questions related to experiential learning, shaping the “whole lawyer”, and providing a capstone experience. Additionally, we organized small focus group discussions with former students to obtain more in-depth information about their experiences in the course. Third, we reviewed student feedback from formal university course evaluation forms. Finally, we identified what was working and what was missing by comparing the data collected against the pedagogical literature.

The Literature

Given the goals and learning outcomes for the Advocacy course, the literature that informed the design of our research study focused particularly on three matters: experiential learning in legal

education; what makes a whole advocate/lawyer and how best to teach them; and best practices in capstone education.

With respect to experiential learning generally, the literature stresses the proper design of experiential learning opportunities by attending to four essential elements: learning outcomes and goals; the learning experience itself; how learning is to be formatively and summatively assessed; and how learners will be supported through meaningful reflection on past and future learning experiences. For effective experiential learning, the literature recommends some variation of a continuous four-stage sequence involving the following: the learning experience itself; opportunity for reflection; theorizing by the learner and instructor to make sense of the experience; and planning or making predictions for the next encounter, event, or task (see e.g., Alice Kolb & David Kolb, [“Eight Important Things to Know About the Experiential Learning Cycle”](#) (2018) 40:3 Australian Educational Leader 8; Taylor Institute for Teaching and Learning, [Experiential Learning Plan for the University of Calgary \(2020-25\)](#)).

As noted, experiential learning in the context of legal education specifically refers to any method of instruction that primarily places students in the role of lawyers. This form of instruction must integrate theory and practice by providing numerous opportunities for students to learn and apply skills as they are used in legal practice (see David Thomson, [“Defining Experiential Legal Education”](#) (2015) 1:1 *Journal of Experiential Learning* 3). Beyond the development of legal skills, through experiential learning, students also begin to form their professional identities through experience or role-playing with guided reflection to become skilled, ethical, and professional life-long learners (see e.g., Sullivan *et al.*, and Brooks, *supra*). Continuous feedback must be provided to assist learners in reflecting upon the development of their knowledge, skills, and attributes. Critically, this habit of reflection is developed not only with the short-term goal of improving student learning, but also with the broader objective of developing the habit of mind used by the “reflective practitioner” (see e.g., Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (San Francisco: Jossey-Bass, 1987)). A reflective practitioner actively thinks about doing a professional task while they are doing it, and thus the ultimate goal is to build reflective exercises in ways that help students develop a reflective practice as legal professionals.

The descriptor of the “whole lawyer” comes from the literature and represents a holistic approach to legal education that combines doctrinal knowledge with professional competencies. To help shape “whole lawyers”, the literature identifies three apprenticeships that must be made explicit throughout law school. These apprenticeships correspond to the categories of legal knowledge, practical skills, and characteristics or competencies (the “ethical-social apprenticeship” according to Sullivan). All three apprenticeships must be made explicit throughout law school to allow for the cumulative development of student knowledge, legal skills, and characteristics or professional competencies. In this respect, the findings of the *Foundations for Practice* project launched in 2014 have been critical (Gerkman & Cornett, *supra*). This nationwide survey engaged American stakeholders to determine what were deemed to be the most critical entry-level skills, characteristics, and professional competencies immediately required by law school graduates.

Some of the legal skills identified (to be acquired over time) include: determining appropriate risk mitigation strategies; objectively assessing the soundness of a deal or settlement in terms of risks and rewards; preparing a case for trial; and attaining knowledge of relevant business, industry, and community landscapes and perspectives. In relation to the “characteristics” or qualities needed as a lawyer, the most important were the following: the ability to honour commitments; integrity and trustworthiness; diligence; having a strong work ethic; putting forth best effort; and attention to detail. Some professional competencies or “soft” skills identified were: keeping information confidential; arriving on time for meetings, appointments, and hearings; treating others with courtesy and respect; listening attentively and respectfully; and promptly responding to inquiries and requests (Gerkman & Cornett, *supra*).

Along with reviewing the literature on experiential learning in legal education and educating the whole lawyer, our research also reviewed the features of capstone courses as a high-impact educational practice. While capstones are under-researched in the literature, some consensus exists around the specific features and strengths of these learning experiences, which require students to integrate and apply learnings through some form of culminating project such as a research paper, a portfolio, or a performance (see e.g. John Zilvinskis, “Measuring Quality in High-Impact Practices” (2019) 78:4 Higher Educ 687). Key features of capstone courses include frequent

contact with supervising faculty, multiple opportunities for meaningful discussion with peers, and some form of public demonstration of competence. Because the performance and time expectations should be set at appropriately high levels, learners need timely and constructive feedback to support structured opportunities for reflection and the integration of past learnings (Zilvinskis, *supra*).

Our Research Findings

Based on this literature, we drafted questions relating to experiential learning, shaping the whole lawyer, and providing a capstone experience within our Advocacy course. We collected data from 81 anonymous responses through online questionnaires sent to former students and volunteer (practitioner and judge) instructors involved in the course. Additional qualitative data came from student focus group participants, and from over 100 comments provided in past course evaluations. The data was sorted across five categories exploring different areas of our research inquiry, namely: the degree of stakeholder support for the Advocacy course; the degree of alignment between the course's intended learning outcomes and student learning; whether there was successful implementation of recommended educational practices and shaping the whole lawyer; whether the course curriculum was sufficiently practical to be relevant to students' professional lives; and whether the course met the criteria for a capstone course. Although there are always limitations to these types of opt-in surveys, we believe that our findings yielded some important insights.

First, respondents reported a high degree of confidence in the development of relevant legal skills (e.g., negotiating with opposing counsel, demonstrating competence in interviewing skills, witness preparation, and preparing a case for trial) through participation in the Advocacy course. They also reported a high degree of confidence that the Advocacy course allowed them to develop the professional competencies and characteristics of whole lawyers (e.g., understanding professional boundaries, identifying ethical issues facing litigators, recognizing the importance of treating other members of the trial process with courtesy and respect).

Second, the data we collected suggested that the experiential nature of the course was critical in shaping this reported confidence in achieving these learning outcomes. Respondents estimated that the vast majority of the course was delivered in an experiential manner, and many praised the use of instructor-led activities and exercises that allow for the practice of advocacy skills. Survey respondents repeatedly noted that their ability to observe their colleagues attempt drills (either successfully or unsuccessfully) was essential for prompting self-reflection that would help their own attempts. They also stated that formative feedback provided throughout the course from instructors leading the small group exercises was helpful both in its immediacy and in its variation as it was directed towards different student performances.

Third, the data we collected strongly suggests that our decision to have students' overall performance in the Advocacy course assessed on a credit/no credit basis was, and is, central to supporting the course's objectives. For example, many student respondents noted that this grading approach provided them with a safe space to be bold and to experiment with different advocacy styles while executing the various skills exercises. One focus group participant interestingly suggested that this approach to grading allowed for "learning by failing".

Taken together, the data we collected revealed a high degree of reported learner and instructor confidence that the Advocacy course is serving to promote a "growth" mindset for our students, one in which they come to understand that their talents and abilities can be developed through effort, instruction, and persistence.

With respect to whether the course contributes to the development of whole lawyers, the data strongly suggests that it does. Questionnaire respondents reported a high degree of confidence that the course effectively integrates legal doctrine with practice and teaches subjects that are highly relevant to students' careers. Respondents repeatedly reported that the course highlighted the importance of being well-prepared, and that both short-term and long-term preparation was emphasized by the structure of the course itself. They suggested that although the legal skills developed in the course might be most useful to those who will work in litigation, the value of learning fundamental advocacy skills and of being well-prepared were transferrable to all areas of future legal work.

Finally, survey respondents overwhelmingly perceived the Advocacy course as a capstone course. The vast majority of students and instructors agreed that the course meets the criteria for a capstone experience, which, as noted, include frequent contact with instructors, opportunities for meaningful peer discussion, and a public demonstration of competence before external evaluators (in this case, a trial conducted before members of the bench and bar). One respondent summed up the Advocacy course as a “rewarding and triumphant experience celebrating two and a half years of training before starting one’s legal career.”

A Key Gap to be Addressed

The data we collected did, however, help us identify a key gap to be addressed in our Advocacy course. Some students and instructors reported some uncertainty about both experiential learning in general, and in particular in relation to the reflection aspect within the experiential learning cycle. When asked if they thought the course was an experiential learning course, most respondents agreed that it was, but they were unsure about some of the specific elements of experiential learning. With regard to reflection, although some respondents reported a high degree of confidence that the course effectively incorporates reflective practice and helps improve students’ abilities to self-assess, others were less sure. In some cases, students denied reflecting at all in order to improve their learning. Instead, they suggested that what was really motivating them was a desire to not embarrass themselves in front of their peers. Others questioned whether the reflective nature of their experiences in the course was sufficiently structured and intentional. Some said they wished that reflections on learning could have been more directly led by instructors immediately following each skills exercise to reinforce what was learned and to improve next time.

This feedback prompted us to consider how learner reflection could be made more explicit and consistent in our Advocacy course. In short, the data we collected led us to conclude that more could be done to make reflection within the experiential cycle more intentional, visible, and accessible throughout the course. We realized that incorrect assumptions are often made that learners and instructors intuitively know that reflection is important in experiential learning or that they know *how* to reflect and that they will do so naturally and instinctively. Instead, we learned

that there is a need in any experiential learning opportunity to highlight the *process* of reflection by discussing what it is intended to achieve and the ways in which it can be done. We also learned that the element of reflection in experiential learning is just as important for instructors as it is for students. Instructors should also be reflecting, especially when demonstrating their own skills or learning something new (or different) from watching others, and they should take the time to share those reflections with students along the way.

Conclusion

Based on our findings, the element of reflection was fine-tuned for subsequent iterations of the Advocacy course. We learned that it is critical in any law school experiential learning course to begin with a discussion, for both instructors and students, about what experiential learning is and about the critical role that reflection plays in the experiential learning process. Instructors should prompt students to consider their individual and collective learning experiences throughout the course and to ask them to identify and reflect upon learnings from each other. By promoting this type of explicit reflective practice, students can begin to develop a life-long habit of reflection, a key attribute of whole lawyers.

This blog post is based on a research project discussed in more detail in the following article: Nickie Nikolaou, Lisa Silver (now the Honourable Justice Silver of the Alberta Court of King’s Bench) & Alexander Dingman, “Creating the ‘Whole Advocate’ through Experiential Learning in the Law Classroom” (2023) 10 Canadian Legal Education Annual Review 1. The article was awarded the 2023 Canadian Association of Law Teachers (CALT) Prize for the Scholarship of Teaching and Learning (SoTL). The authors gratefully acknowledge the funding for our project provided by the University of Calgary through a SoTL Grant.

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