

(The following article is adapted from a background paper written by Prof. William Clune for a recent faculty retreat. The paper resulted from interviews with most faculty members soliciting their comments about curriculum concerns as well as ideas for reform or restructuring. Some of the suggestions have a broad base of support and are at least potentially feasible. Others, clearly identified, were born in Prof. Clune's mind and are given here for the first time. The faculty retreat is one step towards completion of a Self-Study, required for reaccreditation by the American Bar Association.)

CURRICULUM IDEAS

Writing Skills Courses The most widespread sentiment on the faculty was the need to improve the writing skills of our students, including the sense of craft in writing. Many people felt that too many of our students are drastically deficient in writing skills and that teaching is capable of making significant improvements. This was not a criticism of the legal writing course or even a comment on the first year curriculum. On the contrary, legal writing is conceived by most of us to convey bibliographical, analytical and elementary writing skills. The lack of more advanced writing skills was seen as a failure of the second and third year curriculum. That is to say, most people with this point of view saw the need for an advanced writing experience in the second and third years. The task should be of major proportions, including conceptualization, research, outlining, and drafting. The experience could not be meaningful without detailed feedback to the student at each stage of the writing process, and the feedback, it was felt, would have to come from faculty.

Some law schools, such as Arizona, provide this experience in a course called a "super seminar." In such courses, faculty members take a relatively small group of students — say ten or 15 — and work with them through a complete writing project.

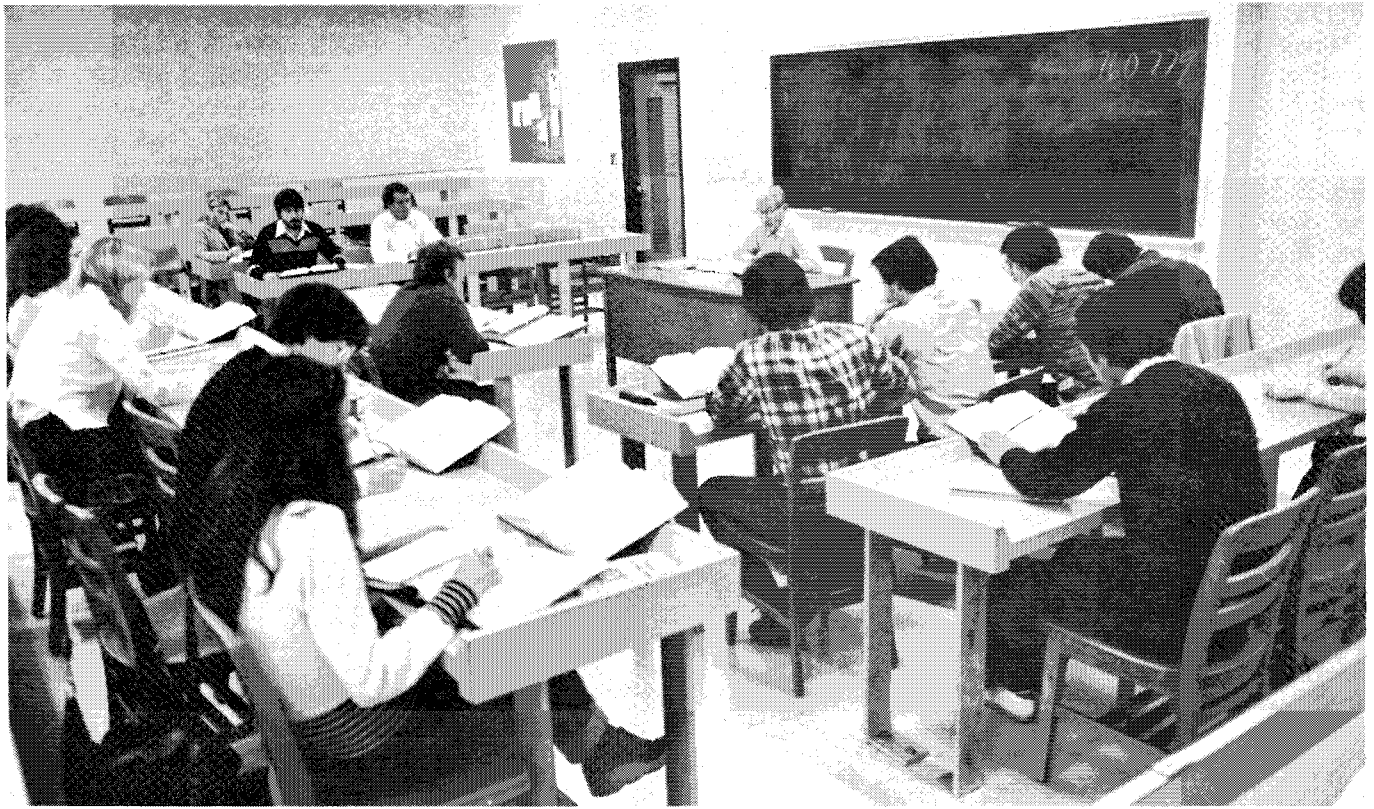
Typically, the product would be a research paper in an area of the faculty member's interest; but experiences other than research seminars could readily fill the underlying skills objective. Law Review and certain clinical experiences involving major writing projects come to mind. The essence of the writing skills experience is faculty feedback at each incremental stage of producing the paper. Thus, comments and discussion should take place at perhaps each of two outlining stages and each of two drafts. The extra work for faculty members might or might not require an adjustment of teaching credit. If more credit were given, an already difficult resource question, discussed below, would become more difficult. Extra teaching credit was not given at Arizona, and it may be that such writing seminars do not require many class meetings. (This is, they could

operate more like 10 or 15 small directed research projects than a traditional seminar.) Faculty members who have taught such seminars report that they are pedagogically successful and an exceptionally good way to get to know second and third year students and insure that they are working hard.

It seems to me that there is an enormous amount going for this proposal. The second and third year curriculum was identified by the faculty as in need of serious attention, and this was identified as the most serious area of need. Unfortunately, there is an enormous, perhaps impossible, budget constraint. The putative writing seminar is like other "new wave" skills courses in demanding an extraordinary amount of faculty resources. If we were to require one such experience of every law student sometime during the second and third year, we would need



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to serve about 250 students a year (I am guessing that about 50 students per year already have experiences which could be readily adapted to the new format). In round numbers, that means offering about 20 writing seminars per year. As always, the problem is which of our alternative current offerings to cut back. The first year small section program is very popular, and I do not see support for abandoning it. This seems a bad time to recommend cutting back on core survey courses, which may have been cheated somewhat in recent years as it is. Ordinary seminars are an obvious candidate for retooling as writing seminars, but I do not think we offer nearly enough of these to fill the bill. Perhaps it is logical to ask whether our current skills budget — and here I refer to clinical and simulation courses — reflects the sense of priorities which the faculty holds. Are writing skills so important that they should have first priority in our very expensive skills budget to the exclusion, if necessary, of other meritorious but less important functions? Such questions are difficult and controversial, but they are ex-

tremely typical of curriculum questions generally. It is easy to sit in one's office and think of wonderful educational innovations. Giving up some other worthwhile activities which have strong constituencies is quite another matter. A proposal which seems self-evidently meritorious in the abstract may seem highly problematic in light of its realistic costs.

Reorganization of the Business Curriculum Probably the next most significant area for possible change is the business curriculum. Specific changes here would have to be proposed by the faculty members in the business area, but the general principles can be discussed usefully by the whole faculty. There were two major areas of concern. On the one hand, it was felt that by comparison to common law and public law courses, we do a comparatively weak job in guaranteeing that our students possess a minimum degree of competence in business law. On the other hand, the business curriculum itself seems in need of restructuring and reordering; and the time is

ripe to do it. We have a fairly large group of young faculty members teaching the business courses with lots of interesting ideas for change. Let me address each of these areas of concern.

An argument can be made that we need to require some basic business law course, if necessary by de-requiring some other course. It would seem to me and others that federal income taxation is one of the most important courses in the law school, in terms of practical application, in terms of legal theory, and in terms of importance for public policy. In addition, that course can serve well as an introduction to business law. It deals with a wide spectrum of economic transactions and organizational forms, viewing them from the point of view of law, economic reality, and public policy. As important as these other courses are, it is difficult for me to see why the second constitutional law course or the second criminal law course or trusts and estates can be considered more important to the education of the law student than federal income taxation.

As for the reorganization of the business law curriculum, the basic



idea was what the existing business organization courses are somewhat thin and archaic. In law practice, business law tends to fall into three categories: (1) Problems of the small firm or enterprise, that is, the techniques of bringing together capital, labor, and expertise in small entrepreneurial ventures, whether through agencies, partnerships, contracts, incorporation, joint venture, or whatever. The required techniques are advanced and "interdisciplinary" (in a law curriculum sense). Tax considerations, for example, loom importantly at every stop. (2) Problems of the large corporation such as securities regulation, proxy fights, anti-trust, and the like. (3) Problems of consumer protection, such as debtor creditor and commercial law.

The proposal for change is to redirect the efforts of the business law faculty along the lines suggested by this functional division of law practice. Basic corporations law in its present form would not be taught, but the same course label could be used for a more advanced course in corporate finance. (Thus covering the large corporation.) Business organiza-

tions in its present form would not be taught. In its place, would be an advanced course on business planning, dealing with the world of small ventures (including, by the way, farming). The consumer protection area did not seem in need of major change, but we do have a potentially serious staffing difficulty in that area.

Restructuring of Trusts and Estates The time seems absolutely right for a restructuring of our trusts and estates offering. A proposal which has been widely discussed runs along these lines: A one credit course would be made available on important public policy issues of the trusts and estates area. In spite of its reputation as a dull course, trusts and estates does have a surprising number of these issues (e.g., marital property and the distribution of wealth). The practitioner aspects of trusts and estates could be handled in a separate two credit course, and it would be possible to offer this course from either faculty members or lecturers. The two credits should deal with essentials of will and trust drafting, tax considerations and probate administration. The existing prac-

tice-oriented content of Trusts and Estates(a) would be altered. The lengthy treatment of such things as will contests, restitutionary remedies, and the legality of will substitutes could be drastically shortened or eliminated in favor of more pressing practical concerns. Trusts and Estates(b) would be demoted to an "infrequently offered" course.

Certain Changes in the First Year Curriculum, Including Limitation of Required Courses to That Year

Although it was widely felt that the first year is generally a success, and, therefore, that we should not fall into the trap of endlessly revising the first year curriculum, certain changes are worthy of consideration. Also, changing the First Year might help solve some of our problems (like the need for Advanced Writing courses). There's a strong argument for beginning the constitutional law sequence in the first year, because the argument for requiring constitutional law at all rests heavily upon the fact that it is a general prerequisite to a variety of other courses. Another point which seems valid about the first year is that we are heavy on common law courses and the activity of courts. Should we not introduce legislative and administrative processes in a general way in the first year? (This is one of the strong arguments for criminal justice administration, although that is a rather special look at administrative law.)

It is possible to construct bandaid solutions to this and other specific problems. I might suggest, however, the development of a single two semester course on "Liabilities and Sanctions" to replace first year courses in Contracts, Torts, Property and Substantive Criminal Law. The nineteen or more credits presently devoted to these courts could be reduced to — say — ten and substantive contents from each course incorporated into a single 5-credit per semester sequence. Almost all first year teachers I talked to said that they primarily teach legal method and legal process in the basic first year course, that for



these purposes the substantive content is relatively unimportant, and that important substance, in the sense of survey material, could be moved to advanced courses. The idea of this course is not as novel as it sounds. It is a progressive concept, reflecting a good bit of serious thought; it is being used or developed at other law schools, and several people here have a good grasp of why it is possible to combine the above-mentioned first year courses.

Required Third Semester If we keep our present distribution of required courses, I suspect that, absent resource constraints, there would be considerable support for a required third semester. While it is difficult to come up with a very satisfactory specific proposal, I am sure something could be agreed upon. However, it seems clear that the required third semester is in irreconcilable conflict with the first year small section program. (Both would be offered in the fall semester.) Too many of our first year teachers also teach the required second and third year courses that would be the logical candidates for a required third semester. I see no prospect that the required third semester is valued more highly than the first year small section program.

Opening Up the Rules for Non Law Courses and Joint Degrees

Given the interdisciplinary approach of our faculty, it is quite remarkable that our rules about interdisciplinary credit are so restrictive. It seems to me that we should consider changes both in the automatic credits allowed for non-law school work and in the availability of joint degrees. Rule 3.08 might be amended to allow 8-12 credits rather than 6 of relatively automatic non-law work. Further, those of us interested in interdisciplinary work might get together to design a variety of one semester and even full year non-law options. I have in mind here a kind of course package which would be fully defensible as basic education for the modern sophisticated lawyer. Consider such courses as microeconomics, statistical interference, public finance, sociology of the police, business organizations, or even special interests like hospital administration. In order to justify a large number of credits, the content of such non-law packages presumably would have to be of high quality, difficulty and relevance to law practice. At the same time, it is probably impossible to design a single package which would suit the needs of diverse student objectives. Therefore, if we go this route, it may make sense to design a variety of packages, or put the

more extensive non-law option under the direction and approval of a particular hard-nosed administrator or faculty member.

In addition to automatic non-law credit and specially designed non-law packages, I believe that we should be more flexible and tolerant toward joint degree efforts. The problem currently is that, other than public policy and industrial relations degrees, a joint law/non-law degree at Wisconsin means separate admission and filling all the separate requirements of the law school and another department. I think it is possible to design a set of umbrella rules along the lines of the ones adopted for the JD/Public Policy degree which would permit quick construction of a variety of joint degree programs. The most critical part of a joint degree planning effort is the designation of which courses in the law school and the other department deserve joint credit. I do not see why faculty members in the law school and non-law departments should not be trusted to construct lists of such courses within the credit limits established by the umbrella rules. In any case, each program could come before the faculty. The problem is that now we have no routine planning vehicle for the construction of joint degree programs.