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Legal History: Teaching Skills Practicing Lawyers Needed

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Legal History: Teaching Skills Practicing Lawyers Need

by **ROBERT M. JARVIS***

I

INTRODUCTION

Why should law students take a course in legal history? That's a good question, given that the subject is not tested on any state's bar exam and, apart from academia, the field's employment prospects are almost non-existent. Moreover, just about every course in law school includes at least a little bit of history (and some, like constitutional law, quite a bit), so taking a specific course in legal history isn't really necessary.

Nevertheless, I teach a course (actually a seminar) entitled "American Legal History," and believe it offers real value to students.

II

LEGAL HISTORY AS A SKILLS COURSE

To me, a legal history course is a skills course. It's an opportunity for students to get their hands dirty working with materials and sources they wouldn't otherwise encounter in law school. Among the items I encourage my students to look at (in addition to case files and legislative testimony) are old newspapers, photographs, letters, diaries, obituaries, ship logs, birth and death certificates, bills of sale, censuses, patent applications, maps, military and church records, railroad schedules, title abstracts, corporate charters and minutes, city directories, school yearbooks, passenger manifests, prisoner registries, and cemetery headstones. I also expect them to root through publicly- and privately-held archives and

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repositories, visit historical societies and museums, locate and interview descendants, and do whatever other field work is necessary to complete their papers. In short, I want them to become highly-creative detectives who are able to go far beyond what is available on Google, Lexis, and Westlaw.

On first blush, this may all seem silly. Why does a lawyer-to-be need to know how to locate and work with such items? The answer, of course, is that as lawyers they eventually will have a matter that requires just this sort of research. And while certain types of lawyers (such as probate and real property lawyers) will use this sort of expertise more frequently than others, I have yet to meet an experienced lawyer who hasn't at some point had to do historical research.¹

While working for an admiralty firm, I was asked to write a memo on Liberia's shipping laws. Largely for tax reasons, many vessels are registered in that country. And having been founded in 1847 by former American slaves, Liberia's laws are modeled after those of the United States. But in the early 1980s, Liberia's civilian government was replaced by a brutal military dictatorship. This caused a panic among shipowners, who suddenly were uncertain about their legal rights.

To determine just where matters stood, I had to go back to the country's creation and painstakingly trace the development of its legal code. And that meant spending weeks looking for and through original sources. It was the best assignment I ever had in practice.

III

COURSE STRUCTURE

So just how do I accomplish my pedagogical goals? After much trial-and-error, I have developed a very specific way of teaching my seminar.

First, I do not have a casebook.² And rather than tying my course to a particular historical era or theme, my seminar is completely

¹ Indeed, it could be argued that unless the lawyer is involved right from the very beginning (an unlikely occurrence), every transaction or piece of litigation arrives with its own "back story" that the lawyer must piece together.

² I do, however, post various materials on my course page, including legal history articles I have published and superior student papers from past years (which I include with permission).

free form. In other words, I make the students decide what they are going to study.

Specifically, I tell them they to choose any subject that interests them and write a 15-20 page paper on it. The only limitations are that whatever they write about must have occurred before 1960 and must bear a connection to the American legal system.³

Understandably, students are pretty shocked when they hear they can write about absolutely anything. Indeed, it would be fair to say that they are completely unnerved, given that in all of their other law school courses they are told exactly what they will be studying (often down to the day they will be studying it).

To help them get over their discomfort, I spend the first two classes kicking around possible ideas. Now that I have taught the course for a number of years, I tell them about the student who loved ice cream and therefore wrote about Pennsylvania's pioneering efforts to regulate its sale and distribution. And about the student who was a self-proclaimed "fashionista" and therefore wrote about the case that extended copyright protection to dress designs. And about the student whose favorite fast food chain was Burger King and therefore wrote about its early legal struggles. And about the student who delighted in everything Disney as a child and therefore wrote about its first lawyers.

In weeks 3-6, I bring in guest speakers. These have ranged from local genealogists to professional biographers to faculty colleagues (from the law school as well as from my university's history department). One of the speakers I always bring in is a librarian, who gives the students an introduction to online and offline historical research.⁴ In weeks 7 and 8, I conduct individual conferences with the students to make sure they are on track with their papers.⁵ Finally,

³ I make 1960 the cut-off to ensure that students will not have too easy a time finding the information they need. On the other hand, I limit them to the American legal system to keep their research manageable. And because my law school is located in Fort Lauderdale, I encourage them to pick a Florida-based topic. Lastly, I require all topics to be approved by me and will not authorize those that I think are too difficult or have been written about so often that there is nothing new left to say.

⁴ This same librarian has created a "pathfinder" specifically geared to my course. See Mitch Silverman, *American Legal History: Doing History*, at <http://nova.campusguides.com/ALH1>.

⁵ I also hold office hours, make it a point to stay after every class, and give students my e-mail address and cell phone number. Nevertheless, I find having

during weeks 9-13, each student presents a 15-minute summary of his or her research to the class, which is followed by a 15-minute question-and-answer period.⁶

Students are graded on their paper (60%), class presentation (20%), and class participation (20%, which is primarily determined by the quality of the questions they ask during other students' presentations). They are told on the first day of class that the course is a lot of work (exacerbated by the fact that I require papers to be turned in at the last class and do not grant extensions—I'm a stickler when it comes to meeting deadlines and believe time management is something lawyers must master to succeed). This makes it particularly tough on night students, who often find it hard to work, attend their other classes, and do the field work my paper requires. (Nevertheless, some of my best papers have been written by night students.)

Unfortunately, my class is expensive. Students typically find they have to hire genealogists, travel to distant sites to do research and conduct interviews, and purchase archival materials (usually from government sources but occasionally from private collectors on eBay and similar web sites). Of course, not having to buy a casebook helps, but students often wind up spending more than the \$150 that law school casebooks now cost.

IV CONCLUSION

I really enjoy my seminar—it's simply wonderful working with students to come up with a topic they are excited about and then see it evolve into a finished paper. Based on their course evaluations, my students seem to feel the same way. And all the while, they are developing skills they will most assuredly need when they are out in practice.⁷

mandatory conferences midway through the semester makes a world of difference in the quality of the papers I receive at the end of the semester.

⁶ Many law students abhor public speaking and therefore dread having to do a classroom presentation. I point out to them that every lawyer needs to develop proficiency at public speaking and try to make the experience as painless as possible.

⁷ See further Robert M. Jarvis et al., *Contextual Thinking: Why Law Students (and Lawyers) Need to Know History*, 42 WAYNE L. REV. 1603 (1996).