

## [ LETTER to a young trial lawyer ]

# REVOLUTIONIZE LEGAL EDUCATION USING WORK PRODUCT

by DAVID K. BISSINGER

**L**aw schools use the case method as the core means of teaching law students. It has enormous value, but technology has the potential to revolutionize the law school experience.

Within the past decade, the Internet and related technologies have provided, for the first time in history, meaningful access to real work product of lawyers. These materials have a much higher educational value than judicial opinions and can reduce the learning curve from law study to legal practice.

The case method roots lie in the late 19th century. The founder of the case method, Christopher Columbus Langdell, wrote in his book "Selection of Cases on the Law of Contracts" (1871) that the use of case law arises from the premise that "all the available materials of [legal] science are contained in printed books," and that the law library is "to us all that the laboratories of the university are to the chemists and the physicists."

But technology has changed that. As former Vanderbilt Law School Dean Edward Rubin noted in a 2007 *Vanderbilt*



*Law Review* article, "Langdell's explanation that [appellate opinions] are the law student's library no longer makes sense." Now schools can use briefs, trial and appellate transcripts, and even audio and video. The new materials of legal science provide vibrant alternatives to opinions for teaching the law.

These materials can improve law teaching in at least three ways: laying bare the ambiguity of the law; exposing law students to the tone of litigation advocacy in addition to the tone of judicial authority, compromise and balance; and teaching students the style of writing their senior partners, clients and judges

will expect of them.

Competing briefs lay bare the ambiguity of the law. Judicial opinions teach only one side of the case. But the law professors tell students to think through both sides of the issues. This creates confusion. Some lawyers may believe that students should endure this cognitive dissonance as a rite of passage. But consider the complaints of the bench and bar about the poor writing of young lawyers. Law schools can do better.

That is where briefs come in. Law schools can use competing briefs, instead of opinions, to impart a systematic experience of reading strong competing argu-

ments. Using briefs furthers Langdell's goal of using source materials while more effectively honoring the ancient traditions of advocacy that embrace learning through debate.

- *Briefs avoid muddied compromise.* Teaching from opinions can confuse students because of the language of compromise inherent in judicial opinions. In his book "The Supreme Court: How It Was, How It Is," the late Chief Justice William H. Rehnquist observed, "[A]ll of us feel impelled to a greater or lesser degree to try to reach some consensus that can be embodied in a written opinion that will command the support of at least a majority of the members of the Court." Rehnquist acknowledged that these compromises can muddy otherwise logical opinions, leaving "the law reviews to figure out" what those opinions mean. What is worse, the most interesting and contentious decisions have a particularly high likelihood of containing the muddied reason of judicial compromise.

In contrast, good briefs contain minimal compromise or muddied reasoning. Teaching from briefs empowers profes-

Briefs from major trial or appellate cases have a high likelihood of coming from skilled lawyers who have first-rate writing skills expected in modern firms, corporations and government agencies. Any law student can master the elements of excellent legal writing if the law schools present it to them. From studying briefs, law students can learn, from the beginning of their studies, how careful writing can make a difference in the outcome of a case.

- *Beyond briefs, schools can use transcripts and recordings.* Technology can take law students a step further into the real world through teaching from transcripts and recordings of great appeals and trials. These materials constitute another laboratory of the law, one that can help law students develop the appropriate demeanor that affects not only success in the courtroom but also effective advocacy in transactional work and good client relationships. As technology continues to advance, so will the availability of these priceless materials.

In short, the technological advances of the past decade have

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sors to help students see legal argument in the form that the students will most likely use as practicing lawyers. Specifically, students will gain a deeper appreciation of the role of facts — and how to develop those facts through investigation, document discovery and witness examinations — in making legal arguments. Students will also learn better how and when to respond to their opponents' arguments.

- *Briefs teach better form.* Likewise, briefs more effectively instruct law students on appropriate form, style and usage than opinions. By and large, any briefs that schools might use will come from more recent cases, instead of the old opinions common in many casebooks. As such, briefs reflect modern rules of usage as opposed to the stilted formalisms of 19th century cases.

created a unique opportunity for law schools to revolutionize the way students learn. By using real-world advocacy materials, law schools can help restore confidence in the legal profession and the legal process. 



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