

The Fall Immersion

Introduction, Theme, and Theory

The theory of the immersions is to involve students as we provide a base-line exposure to a set of cross-cutting skills that will prepare students for the clinics, their practicum courses, and eventual entry to practice. Attempting to do more would be misguided and futile.

The two-week period provides an intense focus on the sessions and skills. Although many skills of litigation readily transfer to transactional and other practice settings, and vice versa, for organization's sake, the fall immersion is focused mostly on litigation skills and the spring on transactional.

As instructors, we need to remember that realism is a goal that is secondary to education. We strive to enhance the realistic feel of the work the students do so that their education will be enhanced. But when realism gets in the way of good instruction, realism yields. Further, as a practical matter, complete realism would make the entire immersion two weeks unmanageable and impossible to deliver. For example, . . . we might spend more energy litigating the cases than financial considerations would warrant given the likely damage amounts; we likely spend more time critiquing students than their partners in practice might; we sometimes step in and guide students toward a better educational path, as when we require some claims to be abandoned; and we certainly spend more time in group sessions discussing strategy than would likely be done in practice. In all these ways and more, we are being unrealistic for an educational purpose. So, when someone (a student perhaps or a practicing colleague) might criticize what we do as unrealistic, you might respond that we seek realism until it harms our educational goals.

Critique: There are multiple ways of providing feedback on student work. We recognize that to provide a line-by-line critique of every writing and a minute-by-minute critique of every performance would be impossible given our tight, intense schedule and given the numbers of students we each have in small groups. So we compromise and it is important that we compromise in roughly the same ways from group to group. As to writings, they will primarily produce a pleading, a clipped set of discovery requests, and a motion memorandum. The motion memorandum is the most significant writing and it is the only one that is essentially prose and presents a full description of an argument. We should strive to provide at least brief comments on those prior to the students' motion presentations. That can be done using track changes feature in Word. By doing a modest number of sentence edits and a modest number of "comment boxes," a reasonably good critique can be produced in a short time and returned to the students electronically. For the other brief writing assignments, we have some small group time set aside for a group critique. A skim of their submissions will allow a small group session in which highlights and lowlights can inform the entire group about their work. Further, some students will also ask you individual questions about their pleadings or interrogatories. Answering them as time permits should be



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done. As to performances, we will be able according to the schedule to observe some portion of each interview, negotiation, and half our students' motion arguments and the trials of the other half of our students. Brief oral critique is the best we can do for these. Tech problems have prevented us from having recordings available of our students, and the full review and critique of recordings were they available would be daunting. If recordings are to be available, we will require students to observe some segments of their own work and provide a self-critique.

Critique is a critical part of what we do. But as all other resources, we must use ourselves in sustainable ways. If we tried to be perfect, we would be perfect for a very short time, and the law school and its future students need our teaching talent and experience for the future.

Guiding students: We want the students to explore and form the mental pathways of practicing lawyers. So we need to seek some balance between simply telling them what to do next or what strategy to undertake, and a completely hands-off style of instruction. Let them flail to some extent. Let them discuss and explore what you know may be fruitless or ill-advised strategies and theories. Model good habits of planning and analysis for them. And when you see that their path will lead not merely to losing the case (It's ok for them to lose), but to an unproductive educational experience, step in and guide, gently and as indirectly as you can. The very best meeting with a supervisor is the one in which the student leaves with a new idea, a good one, that the student believes she came up with on her own.

Consistency and being ourselves: We have to be consistent with one another, and yet we must be ourselves as instructors. We each have ways of explaining an idea that may be somewhat different from one another. That's fine, and in fact desirable. When one person's good way of explaining can be transferred to others for the benefit of more students, all the better. But despite being ourselves and having our own teaching styles, we must strive for a high level of consistency so that students feel that everyone has had essentially the same experience. Much has been done centrally to achieve that: we have common problem materials; we have common teaching notes and small-group exercises; we follow for every student the same schedule of activities. Still, inconsistency in application should be avoided. Better, for example, if none of us brings in extra food for our small group while others do not; better if none of us says that the large group presentation by one of our colleagues was incorrect; better if none of us change the fact patterns or provide extra materials unless we all do. Students, even as busy as we keep them during the immersion, talk incessantly about their experience. No matter what we do, some will decide they had a better or worse experience because of who they had as a small group instructor. But it will help us all if they are not given fuel to support claims that one group has been handled in a substantively different way from the others.



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BASIC DESIGN OF THE IMMERSION

The design of the fall immersion was built on the single, continuing case idea. In other words, with few exceptions, the students' work as lawyers in the immersion serves a single client, as the representation of that client walks step-by-step through an orderly process. This design is significant. When students do isolated exercises on various skills, they learn only about that single skill at any given time. By contrast, when students' work stretches across activities for a single client, they learn lessons that cut across those activities. For example, students may draft pleadings as an exercise of drafting skills. If that exercise is isolated, the students' learning is similarly isolated. But in the single case model, when the student later drafts and argues a motion, the implications of the pleading drafting will come to play a role. Evidence may not be admissible because of the pleading choices; issues may or may not have been framed for decision at trial; and so on. Every activity potentially plays a role in the success of other activities and students learn the connections and the significance of those connections in ways not possible in the isolated exercise model.

In the 2011 fall immersion, the students are divided into ten groups of either 12 or 14 students each. Each pair of groups represents opposing parties in two pieces of simple litigation. Each student represents one client and is opposed by a student in the paired group. Students also play client roles for other groups on other fact patterned simulations. The playing of client roles, predictably and as designed, produced insights for students not possible when only playing the role of lawyer.

A system of assigning students to their cases as lawyers and to their roles as clients is designed to serve several goals that make the simulations possible. There are two cases, both having the same basic legal components, but having different enough fact patterns and nuances to be functionally dissimilar. The cases are about simple wrongful discharge of an at-will employee. The at-will employee asserts that he or she was discharged for engaging in some form of protected conduct. The employer asserts that the discharge was a simple matter of terminating an at-will employee and nothing more. One case involves a gas station; the other a grocery store. Each student is assigned to play the lawyer for one party of one of the cases, and the client in the opposite party role in the other case. The roles are assigned so that students are not one another's clients.

For their clients, the students will engage in the following activities:

Client interview

Demo of client counseling session

Develop fact investigation plan

Draft pleadings



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Draft and respond to shortened discover requests

Negotiate

Observe a deposition

Prepare and execute direct, cross, open and close

Conduct trial

Each skill is presented in the model that has come to be the best practice for skills teaching developed in legal education over the past thirty years. The theory of the skill is presented; the students engage the activity; the activity is debriefed and the theory evaluated; when possible, a repeat use of the skill is employed.

Theory exposure: For different skills, the theory is provided in differing, and sometimes overlapping ways. Creative, engaging lectures, readings, demonstrations, and distribution of evaluation criteria are all used to provide the theory base.

Activity: The activity component is engaged in different and overlapping ways as well. Small-group skill exercises and individual and team work done for the single-case client were the primary “activity” vehicles.

Debrief: The techniques used to debrief/critique were also varied. Some marking of papers, some group discussion of activities, some one-on-one critique, and student self-critique are all used.

Varying the techniques used for various stages is advertant. Different students will be engaged by different teaching/learning styles. Students are being prepared by the immersion to self-teach and self-critique as will ultimately be necessary for professional life and independence.

EVOLUTION OF THE FALL IMMERSION

The design and execution of the immersion has not and will not be static.

Shortly after the first iteration of the fall immersion, its staff met to discuss the project and any improvements we could make.

First, we made the two weeks even more active than it had been the first iteration: we shortened some of the large group meetings and eliminated a few of them, replacing them with more time in small groups doing the activities we were teaching the students: client interviewing, negotiation, drafting pleadings, and various trial skills.

Second, we created free work time for students to engage in more thorough preparation for some of the major assignments, especially their negotiation, their motion argument, and their trial. Both



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the additional small group sessions and prep time produced visible results: we could see the quality of the students' work improve, their engagement level was heightened.

The third change was a revamp of the negotiation teaching. In 2009, we assumed too much about the students' baseline abilities to negotiate and we focused on more advanced skills; this time, we started at the start and taught basic bargaining skills, techniques to enhance perception, strategies for revealing and shepherding information. Again, we noticed a marked improvement in the negotiation performance of the students.

Finally, we got better ourselves at the logistics and management of the immersion. Because we engage the students in a complicated simulation that spans the entire two weeks, the logistics of getting each of the 84 student to the right room at the right time to interview her client, negotiate, present a motion argument, conduct trial, be a witness, . . . Happily, in this second time through the fall immersion, all the administrative kinks were out and the logistical challenges were met.

CHANGES FOR 2011

The staff once again met shortly after the fall 2010 immersion and discussed the quality of our work and improvements that could be made. We committed to enhance the teaching of pleadings drafting and discovery. We are adding an exercise for students to draft interrogatories and requests for production of documents. We are enhancing the lecture on drafting and adding elements to make students more accountable for the quality of their pleadings. In addition, we are building in an opportunity for students to redraft their pleadings after a group critique session.

We are also making certain administrative improvements. We have created this "instructor's manual" in addition to providing the teaching materials as we have done the first two times through.

In the sections that follow are instructor's notes, small-group exercises and guidance provided by the staff members most expert in various areas. The goal is to level our varying expertise as much as possible. None of us is expert at everything; each of us can contribute to building the expertise of the rest of us.



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