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EXPERIENTIAL LEGAL EDUCATION: HOW THE UNIVERSITY OF KANSAS SCHOOL OF LAW ALUMNI ARE CONTRIBUTING TO TEACHING PROFESSIONAL SKILLS

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“It takes persistent practice to be skillful in the act.”²

Over twenty years ago on my first day as a practicing lawyer, the managing attorney of the legal aid office assigned me a landlord/tenant bench trial scheduled for that afternoon. I was handed the case file and instructed to review it immediately. Luckily as a third-year law student, I had served as an intern in my law school’s legal aid clinic, and presumably my practical experience as a clinic intern helped me land the job with the legal services office after I graduated from law school. Looking back, the trial involved a simple legal matter though the stakes were certainly high for my indigent client who was threatened with eviction from her residence. But I remember thinking at the time that I was competent, I would do a fine job, and most of all I was well-trained with the proper skills to present my case in court.

In those days, live client clinics which mostly relied on clinical faculty to dispense instruction to interns as well as supervise case work, provided law students with virtually the only practical skills training they received before setting out to practice law after graduation. As we all know, in recent years, due to strong demand by employers and new changes to the ABA’s standards³, there is the expectation and resultant pressure for law schools nationwide to respond to these market demands and accreditation requirements. Thus, the evolution of law school curricula to include robust and meaningful hands-on legal professional skills training beyond the live-client clinical experience, has created new opportunities for law schools to develop experiential courses in which students start their training to become skilled lawyers during their law school education.

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² Lailah Gifty Akita, Think Great; Be Great!, <https://www.bestquotes4ever.com>

³ See American Bar Association Standards 303(a) and Standard 304(a).

Importantly, any development or expansion of an experiential course menu tends to be both resource and time intensive, which certainly can pose a challenge for many law schools, especially public law schools where financial resources have become scarce. Long ago, the University of Kansas School of Law wisely tapped into what it views as its most valuable resource – KU Law alumni practitioners – to provide assistance and their expertise in providing students with real-world courtroom skills training. The current model of KU’s Trial Advocacy program, incorporated into the School’s curriculum at least 35 years ago, will be discussed more fully below. It is an institutional jewel and serves as a framework for which all other practical skills courses are modeled at the Law School.

Expanding on the longstanding success of KU’s Trial Advocacy program, as well as other established and reputable practical skills courses in areas such as pretrial advocacy, advanced litigation, and estate planning, KU Law has been a pioneer in creating additional experiential courses since the turn of the century. In addition to further perfecting its Trial Advocacy program, KU Law has added numerous other experiential courses to its professional skills curriculum including courses that are not only litigation-based, but those with a transactional focus too. Many of these practical skills courses necessarily rely on the generous financial support, as well as personal involvement and expertise, of KU Law alumni. For three straight years, including the last ranking conducted in October 2016, KU was recognized as a Best Value Law School in the country, according to the *National Jurist* magazine.⁴ KU’s strong professional-skills curriculum, which is comprised of its clinics, field placement programs and experiential courses, has helped the law school earn this honor.⁵

While KU Law has a rich history of clinical and field placement programs⁶, the focus of this article is to highlight the School’s professional skills program and those experiential courses, both litigation and transactional-based, that especially rely on the expertise and commitment of KU Law’s reputable alumni who serve as invaluable teachers and mentors to KU Law students as they pursue a well-rounded legal education before they set out to practice law.

⁴ <http://www.nationaljurist.com>.

⁵ “KU Law School Earns Top-20 Best Value Ranking For 3rd Straight Year,” <http://www.law.ku.edu>.

⁶ KU Law has three clinics and 9 field placement programs. See <http://www.law.ku.edu>. See also, Suzanne Valdez Carey, “An Essay on the Evolution of Clinical Legal Education and Its Impact on Student Trial Practice,” 51 Kan. L. Rev. 509 (2003).

LITIGATION SKILLS: TRIAL ADVOCACY

As already mentioned, for many years, KU's Trial Advocacy program provides students with the opportunity to gain hands-on practical instruction of courtroom skills from experienced litigators in such areas as conducting opening and closing statements, and direct and cross-examination of witnesses. The semester-long Trial Advocacy program, offered during both the fall and spring semesters, involves a weekly one-hour substantive class taught by a faculty member, and it also includes a weekly three-hour lab which has no more than six students per group. The lab is taught mostly by KU Law alumni practitioners. Each weekly lab focuses on a particular trial skill and uses an effective instructional model wherein the practitioner gives each student helpful feedback and critique immediately following each performance and in an environment where the students in each group can learn from one another. The program has a solid reputation among KU Law alumni and is hugely popular with law students. At least seventy-five percent of all KU Law students enroll in Trial Advocacy as upper level students after they have successfully completed Evidence, which is a prerequisite for the course. The 3-credit course culminates in a final trial, which is also judged by alumni practitioners.

DEPOSITION SKILLS WORKSHOP

For lawyers who are skilled litigators, one of the many important skills to be perfected through proper instruction and persistent practice is that of taking and defending civil depositions. With an overwhelming number of civil cases in both the federal and state systems being resolved prior to trial, oftentimes the deposition is the only opportunity a lawyer may have to examine a party-opponent under oath, or to gather critical information from a fact witness. Courses in deposition practice taught in law schools across the country are, like many law school classes, taught in different ways. For a course to focus on deposition skills, however, it requires the necessary knowledge of the relevant deposition federal rules, practice rules, guidelines, and interpretative case law, along with the act of taking and defending a deposition to give students exposure to the skill of effective deposition practice.

At KU Law, students enrolled in the Deposition Skills Workshop learn the substantive rules and law related to deposition practice, but just as important, by conducting depositions themselves they learn the skill of deposition practice from practitioners in a workshop format. Since 2009 KU Law has offered this intensive upper level 4-day intercession course focused on deposition skills. The workshop is

scheduled during the week prior to start of the spring semester, which gives students ample opportunity during the winter break to prepare for the workshop by reviewing and learning relevant rules, practice guidelines, and other law related to deposition practice that are assigned as part of the course. Once the workshop begins, KU Law alumni practitioners serve in the critical role as faculty who instruct and mentor students on the skill of taking and defending a civil deposition.

The workshop format resembles the lab model used in the School's Trial Advocacy program wherein alumni practitioners observe, instruct and provide immediate critical and helpful feedback of each student performance in a group of no more than six students. The only difference is that the workshop is held in an intensive format, rather than in a semester-long format. In the Deposition Skills Workshop each student is assigned to represent either a plaintiff or defendant in a civil case. During the entire course each student takes five mini depositions and defends five mini depositions of a fact witness. Students also rotate through the witness roles as part of the learning experience. When the workshop was first offered in 2009, eighteen students were enrolled in the 2-credit hour course. For the last seven years, demand for the workshop has been high enough that 48 spots are allocated each year. Many of the KU alumni who have served as faculty for the first workshop have continued to do so year after year, devoting countless hours of their time and talent in sharing their expertise with KU Law students.

EXPERT WITNESS SKILLS WORKSHOP

Using the same pedagogical model utilized in the Deposition Skills Workshop, the Expert Witness Skills Workshop follows an intensive workshop format. This popular short-course, which is offered during the "dead" week between the last week of final exams and before spring commencement, exposes students to the substantive and procedural law as well as the ethical rules pertaining to expert witness testimony. Importantly, it provides a realistic courtroom setting where students learn to conduct and defend a series of expert witness examinations and cross-examinations in a simulated environment under the direction and guidance of experienced KU Law alumni practitioners who serve as the workshop faculty.

The importance of this litigation-based workshop to the Law School's curriculum as well as the involvement of experienced and skilled KU alumni practitioners cannot be overstated. KU alumni who serve as faculty in this workshop are experts themselves in instructing

students on the skills related to expert witness testimony. For instance, in the first workshop students learn to introduce the expert (in their assigned case file) to a jury, by presenting the expert's training, describing the expert's basic findings, and building credibility with the jury. In a later workshop, the students learn strategies on how to convey complex data effectively to a jury, while they also learn tactics related to raising proper objections. As the workshops continue throughout the 3-day intensive format, students learn how to develop a theme with an expert through the use of effective questioning techniques and visual aids, they learn how to control an expert witness on cross-examination, and how to effectively use an expert's reports and depositions to their client's advantage. Finally, the workshop culminates with students putting all the skills together by conducting a direct, cross, and re-direct of expert witnesses.

Both the Deposition Skills Workshop and the Expert Witness Skills Workshop require students to spend meaningful time preparing for the course by reading assigned materials and reviewing assigned video demonstrations. During the workshops themselves, both course schedules provide sufficient time for classroom sessions between individual workshops which are used to allow alumni practitioners to provide substantive instruction on certain topics for the benefit of all students and for them to give their general comments and feedback to the group. Students in both workshops are required to be intently familiar with their assigned case file and to present themselves in professional attire.

MOOT COURT PROGRAM

In May 2017, KU Law's moot court program was recognized as 17th in the country in a poll conducted by the University of Houston Law Center. Several top-three performances by KU Law students at various national and international competitions this year contributed to the School's accumulation of points to break into the top 20 for the second year in a row. The School's 2017 ranking is two spots above last year's 19th rank.⁷ At KU Law students get a taste of moot court during their first-year Lawyering class, wherein students write a brief and engage in an oral argument before a "judge" (a faculty member). For those students interested in practicing and advancing their appellate advocacy skills, KU offers a Second-Year Moot Court Competition in which teams write an appellate brief and give an argument before a mock U.S. Supreme Court. Depending on the number of

⁷ 2016-17 Moot Court Rankings – University of Houston Law Center, <http://www.law.uh.edu/blakely/mcnc/rankings.asp>

competitions the School participates in, the top teams in its internal school tournament form KU's Moot Court Council and these students represent the Law School in various national and international competitions. Students who are part of Moot Court Council earn academic credit for their work in preparing to compete in their respective competitions.

Traditionally, KU Law moot court teams have been coached by faculty members, and in recent years have consistently achieved success at the national and international levels, frequently winning top honors in brief writing and oral advocacy." To further enhance the School's moot court program, KU Law alumni have been recruited to join law faculty in preparing and coaching students to perfect their advocacy skills. These alumni coaches, most of whom themselves participated in the School's moot court program as students, serve as dedicated "mooters" and mentors to the students as they prepare for competition. The additional expertise of KU Law alumni has further helped students perform at a very high level at their respective moot court competitions and should serve to benefit these students in actual legal practice.

TRANSACTIONAL SKILLS:

KU Law has historically offered a comprehensive upper level doctrinal curriculum focusing on business, tax, and other transactional law. With the recent changes in employer hiring practices and the new ABA standards requiring professional skills training, the School recognized that it lacked skills courses in the transactional-based area. Through the dedication of two of the Law School's tenured law faculty, the School recently added four professional skills courses to its transactional-based curriculum: Contract Drafting, Due Diligence, Deals, and Transactional LawMeet.

While first-year Contracts teaches students the law of contracts, Contract Drafting, an upper level course, was developed to expose students to the understanding of the contract itself – how a contract memorializes a business transaction, allocates risk and control, and attempts to eliminate uncertainty. Thus, Contract Drafting is a skills course designed to teach students the principles of contemporary commercial drafting, and it does so by having students draft actual contracts. In this semester-long course students learn the business purpose of each of the contract concepts; how to translate the business deal into business concepts; how to draft each of the contract's parts; how to draft with clarity and without ambiguity; how to add value to a deal; how to work through the drafting process; and how to review

and comment on a contract. Instructors use class sessions to discuss and review the students' drafting assignments. This course is taught by law faculty and an adjunct (a KU Law alumnus). It is also the foundational course for each of the three other experiential courses, Due Diligence, Deals, and Transactional LawMeet, in which KU Law alumni practitioners play a key role in teaching and mentoring students in transactional law practice.

DUE DILIGENCE IN BUSINESS TRANSACTIONS

Like the Deposition Skills Workshop and Expert Witness Skills Workshop, this immersion short-course is a five day, all day and evening, workshop which is offered during a "dead" week before commencement in the spring. Due Diligence involves only a single aspect of the process of a business acquisition (i.e., the buyer kicking the tires), but it's the aspect which which junior associates will first become involved. The workshop offers students a realistic due diligence setting, in which students learn the fundamental scope and goals of the due diligence process, including the various types of information that must be obtained and reviewed. Students also learn to identify the typical issues that must be analyzed in a business transaction, they practice using a framework for systematically accumulating information, and they learn to understand how that information may affect the structure of a transaction and the content of the agreement that memorializes it. The workshop is co-taught by two law school faculty members, but it involves added practical instruction by well-seasoned KU alumni practitioners.

DEALS

Deals is a professional skills course that serves as an optional lab component for students who are concurrently enrolled in Mergers and Acquisitions, or have previously completed it. It is offered during the spring semester and introduces students to the ethical, structural and technical aspects of negotiating and drafting the documents that bring a business transaction to life. By following a complex business transaction from start to finish, students gain practical experience grappling with the type of tasks and issues common to a deals practice. The course helps students learn to prioritize their client's business objectives and understand how deal lawyers create value, manage risk, and work toward optimal outcome for their clients.

Deals is co-taught by law school faculty and experienced KU alumni practitioners who provide students with the opportunity to practice such skills as developing personal professionalism goals and

practices, such as attention to detail, project time management, and communications skills; selecting and drafting from precedent documents; conducting a client meeting and drafting email and written communications to clients; planning and participating in oral negotiations with opposing counsel; drafting selected provisions of a merger agreement and other ancillary transaction documents; and preparing for the closing of a business transaction.

TRANSACTIONAL LAWMEET

The Transactional LawMeet is the name of a national competition for law students that is best described as the equivalent of moot court for future transactional attorneys. The goal of the competition is to provide participants with a meaningful and realistic simulation of transactional practice. Each round consists of three distinct phases. First, students work in teams of two or three to prepare a proposed draft agreement on behalf of one of the two parties to a business transaction. Second, each team prepares mark-ups to draft agreements prepared by the opposing teams they will encounter at the regional or national competition. Finally, the teams meet to negotiate the final contours of the deal. Enrollment in Transactional LawMeet is competitive, based on an online simulation course in the fall semester and academic performance in Contract Drafting. The competition lasts almost the entire spring semester. KU Law fields three teams, who are coached by three KU Law alumni practitioners as well as two alumni adjunct professors.

CONCLUSION

As indicated by KU's three-time recognition as a "Best Value" Law School, the value KU Law students and graduates place on their legal education and law degree indeed matters to the School. Importantly, it is the balance of both a rigorous doctrinal curriculum and a growing and robust professional skills curriculum that provides KU Law students with a valuable educational experience, one that ultimately culminates with a law degree in which graduates have the ability, skill, and confidence to excel in the practice of law in whatever area they choose. KU's success would not be possible without the dedication and involvement of KU Law alumni practitioners, who have answered the call to serve as teachers and mentors to students in the area of professional skills training. After all, who is best qualified to critique a student's performance in a deposition than a practicing lawyer who has conducted hundreds of them herself. Or who is most experienced to review a student's draft of a contract than a transac-

tional lawyer who drafts and reviews contracts for clients on a daily basis? The answer to both these questions is simple. It is experienced and successful practitioners. It is KU Law's alumni, who have filled this vital role in the School's professional skills training curriculum, a role that deserves recognition, gratitude, and praise.