Madison – Simulation

Teaching Students to Practice Intellectual Property
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Simulation

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My "simulation" method

- I assess student performance via memos, rather than via final exam.
- I have used the method in courses on Copyright Law, Electronic Commerce, and Cyberspace Law. Each of these is a 3-credit open enrollment course.

Why do this?

- Frustrations of practice: dealing with (and having to train) new lawyers who cannot write.
- Frustrations of teaching: getting students to think critically and deeply about a subject area; teaching students to talk like lawyers.
- Student frustrations: not receiving enough training in legal writing, and not enough feedback from professors, after the first year.
- I used related "simulation" methodology in my first law teaching appointment in the Lawyering Program at Harvard (1997-1998).

Description of the method

- I assign three memos per semester, distributed roughly evenly. The final memo is assigned on the next-to-last day of class.
- Strict page and format limits are specified (3 or 4 pages per memo, depending on the assignment).
- These are open assignments, i.e., any resources are permitted, including collaboration with other students, with appropriate citation and/or acknowledgement. Assignments are designed so that complete analysis is possible using materials covered on the syllabus.
- Assignments include both real world problems, taken from the news of the day, and hypotheticals. Some are fact-oriented; some are policy questions. I avoid pure "issue spotters"; rather, I guide the students toward the issues that should be addressed.
- Assignments ask for memos to senior lawyers (with an eye on the client), to judges, or to legislative aides or members of Congress.
- I give students 10-14 days to complete each assignment; a strict "no extensions; no excuses" policy is announced.
- Assignments are distributed electronically and posted online. Hard copy work product only is accepted (no email or electronic posting), delivered "hand to hand" (no slipping the memo under the door).

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- One class session per assignment is dedicated to discussing student questions; sometimes discussion is "in role" or partly "in role."
- Memos are not anonymous.
- Memos are graded on writing quality and organization as well as on quality of analysis; feedback is often highly critical. Comments include line-by-line editing.
- Memos are scored on a 1-10 scale, not graded. [In practice, I typically use "4" or "5" as the low end of the range."] Scores provide information about relative performance and limited information about absolute performance. Avoiding grades is intended to discourage strategic behavior by students. Memos are weighted 30/30/40. This permits multiplying scores by weights for an aggregate score on a 1-100 scale. Letter grades can be assigned based on the school's curve.
- High scoring memos are posted (with authors' permission and without names) for review.

Advantages

- Students learn to read and write using the vocabulary of the discipline.
- Students engage with the material in great depth (though scoring well does not depend on depth of research).
- Students see first-hand the difficulties of using the material in practice. (Answers to questions generally raise more questions than they answer.)
- Students learn something about how to use primary and secondary materials (and about how much weight to give online materials).
- "What are you looking for?" eventually gets set aside in favor of "what is the client/the senior lawyer looking for?" Students tend to internalize their role as legal analysts.
- Students engage with the material during the semester, rather than at the end.
- Students can adjust their learning and studying practices to improve their performance (and their grade).
- I can adjust syllabus and classroom approaches based on issues raised by memos.
- The method teaches professionalism, by exposing students to the harshness of real world criticism for sloppy work.

Drawbacks

- There is an enormous time commitment involved in discussing assignments in advance, grading memos, and meeting with disappointed students afterward. Whether this amounts to an increase or decrease in the amount of time spent in assessment, or merely to redistribution of time spend grading exams, depends on the number of students.
- The grading structure unsettles students (this may be an advantage).
- Permission to collaborate is unsettling to students (this, too, may be an advantage).
- It is impossible to design memo assignments to cover the syllabus comprehensively.

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- The timing of assignments and the delivery of graded memos to students must be handled with care.
- Students may object that writing and grading methods differ from methods used in LRW curriculum.
- The method may invite ethics problems.
- Excuses and requests for extensions have to be managed.
- Students whose first language is not English may be disadvantaged.
- Course evaluations tend to be slightly more critical in the aggregate, though the distribution gets broader.
- The effect on course enrollment is unclear.

Concerns

- Impact on in-class engagement has been limited to non-existent.
- What amounts to a week's worth of class time is dedicated to discussing the memos.
- Some students did not learn or do not recall the lessons of first-year LRW, so the assignments function as remedial LRW rather than advanced LRW.

Next steps

- Consider enrollment limits.
- Base assignments on extensions of course material, rather than on tests of material already covered.
- More in-class role-playing.
- Consider structuring (some of) the content of syllabus around problems embedded in the assignments. This may limit flexibility in designing the assignments.