

RETHINKING THE FIRST-YEAR CURRICULUM

By Randee Fenner (BA '75)

MANY ALUMS LOOK-

ING BACK ON FIRST-YEAR *Legal Research and Writing* no doubt recall—perhaps with nostalgia, perhaps with embarrassment—their first, and possibly only, experience writing an appellate brief and arguing before a panel of three “judges.” The moot court assignment, which has occupied the second semester of first-year *LRW*, filled the role of introducing students to the art of written and oral advocacy. And although its success in fulfilling that mission has been frequently questioned, there hasn’t been much impetus for change—until now.

“When something has been an integral part of the curriculum for such a long time, it’s tempting to assume that it’s working the way it’s supposed to,” says Larry Kramer, Richard E. Lang Professor of Law and Dean. “We realized, however, that we could do a far better job preparing our students for the actual work that lawyers do—and that many will be doing as early as the summer after their first year of law school.”

Recognizing that the moot court requirements of one brief and one oral argument afforded a bare minimum of advocacy preparation, and that most students would benefit from development of a broader range of advocacy skills, the law school is trying something new. Instead of participating in moot court, 1Ls are now taking *Federal Litigation*, a popular class that previously has been offered as an elective only.

Federal Litigation is a simulation course that takes students from the beginning of a hypothetical case through the whole pretrial process,

concentrating on the briefing and arguing of several pretrial motions. It was introduced at Harvard Law School in the 1970s as a means of augmenting the first-year civil procedure curriculum with practical skills and thereafter was taught as an elective for 2Ls and 3Ls. Kathleen M. Sullivan, Stanley Morrison Professor of Law and former dean, who taught federal litigation while at Harvard, brought the course with her to Stanford Law School, where it has been taught by a succession of instructors since the 1990s.

In many ways, the course remains unchanged from its original iteration. Based on the real-life drama surrounding the 1967 film *Titicut Follies* by famed documentary filmmaker Frederick Wiseman, the hypothetical case pits plaintiff Norman Nolan, an inmate at Claremont State Mental Hospital in Rhode Island, against defendant Best Film, Inc.

According to the complaint, Best Film violated the privacy rights of Nolan and a class of similarly situated inmates by making a film, without their consent, that exposes them in intimate and embarrassing situations. Best argues that it had the consent of the hospital administration and that, in any event, a film that serves the public interest—in this case, by

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We have a wonderful opportunity to acquaint folks with our mission and our resources. It's not just traditional environmental and landscape resources but also cultural ones. We are the guardians of much of our cultural history, from the Constitution Hall to the Selma to Montgomery Civil Rights Trail and to the Women's Rights National Historical Park in upstate New York. There's a lot to share with our youth and we're committed to doing that.

Are there aspects of legal education that should change? What could we do differently to help new graduates participate in both the evolution and the revolution that's coming in environmental law and land management?

I think Stanford Law has been a leader in this respect and is heading in absolutely the right direction by providing opportunities for students to work across disciplines. As they learn the law, they also have the opportunity to learn the science and to learn how to work with business and government. Environmental law is an excellent example of a discipline that requires a unique skill set in which effective lawyers must be facile in a number of subject areas. You can't just be a "green eyeshade" lawyer if you're going to be effective. You have to be able to understand and talk about the science. You have to work in teams. You have to be comfortable in an ambiguous regulatory environment. Dean Kramer's focus on interdisciplinary education and a holistic sense of the problems lawyers encounter is really terrific. I totally enjoyed my quarter at Stanford's Woods Institute for the Environment and saw that firsthand. I think Stanford is leading the pack in that regard, but I will admit to significant bias in that respect.

Well, we certainly hope, when you're a little less busy, to get you back to Stanford.

I'd love to.

Does anyone stand out as a real inspiration to you while you were here at Stanford or elsewhere early in your career that led you to this field?

When I went to Stanford, long ago, there was no field of environmental law. But there was a public service orientation to the law school as there is now, and the notion that the law should be used to help people was emphasized. I graduated just as the first energy crisis was hitting with the oil embargo, the long gas lines, and all that. I joined a law firm after my clerkship and got involved in those issues and saw the energy and environmental connection. That's how it all started for me. The environmental field grew up around me, and I saw it as an area where the issues really mattered to people.

In terms of professors, I had former Dean Paul Brest as my small section constitutional law professor my first year. He was very influential. But he was not alone. Paul Goldstein [Stella W. and Ira S. Lillick Professor of Law], for example, taught me in an area that I didn't end up working in, but he gave me an enthusiasm for the law. Ironically, when I graduated I wanted to be a trial lawyer. So there's a lesson there. Sometimes it takes a little while to find your niche.

In some ways you were one of the people who created the career path by seeing those connections and working to implement the key administrative and regulatory aspects of the laws that connect us.

Well, that's a little over done, but I appreciate the compliment!

Maybe. But I think you've played an important role, especially in your work in the Clinton administration in terms of natural resource management.

Thank you. **sl**

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exposing the horrendous conditions of a public institution—is protected by the First Amendment.

In the real case, *Titicut Follies* was the subject of an unprecedented injunction that lasted for more than 20 years, until Sullivan, serving as counsel for Wiseman, persuaded the court to lift it in 1991. To this date, it remains the only film enjoined for reasons other than obscenity. In the hypothetical case, the plaintiff like-

wise seeks to enjoin the exact same film, which has been retitled *Claremont Review*.

Federal Litigation students are assigned to represent either Nolan or Best throughout the course. By the end, students will have drafted a complaint, taken or defended a deposition, briefed and argued three motions, watched and critiqued six sets of oral arguments, had their written and oral arguments critiqued by instructors, and have served as judges for their classmates' arguments.

"Key here is that, unlike the traditional moot court brief, the students must participate in a series of exercises that

develop their research, writing, and advocacy skills. There is no substitute for iterative experience in learning how to analyze and advocate," says Kramer.

Incoming 1Ls will begin *Federal Litigation* during the winter quarter and continue into spring quarter—with a total of 10 sections of approximately 17 to 18 students each. And for those students who are still eager to participate in moot court, the Marion Rice Kirkwood Memorial Competition, which moved to autumn quarter, is available to provide a rigorous appellate advocacy experience—as well as those irreplaceable memories. **sl**