This book measures up very well against the standard set by its predecessors in the Cavendish series, no doubt substantially because of the common thread of the calibre of Richard Johnstone's contribution. There can be no doubting the importance of what the authors set out to achieve and that assessment coupled with the sort of feedback that will impact upon student learning is a continuing weakness in law school teaching, despite the trend toward 'progressive assessment'. Hence, this guidebook indubitably addresses a problem of considerable significance. Although the treatment of some of the issues could be improved (for example, the discussion on educational objectives is a tad superficial), those law teachers inspired to enhance the quality of their students' learning through structured and systematic feedback will find a great deal of practical use to them in this book.

Editor

The impact of a pass/fail option on negotiation course performance

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Law faculties frequently debate the appropriateness of pass/fail grading options. Should students have the right to choose a conventional grade or the credit/non-credit alternative, or should a course be designed as graded or pass/fail and all students in it treated alike?

Students who take the author's Legal Negotiation class may elect a conventional letter grade or a pass/fail arrangement. Students explore the negotiation process and engage in a series of negotiation exercises, with the participants negotiating one against one or two against two. Students are also required to prepare a paper exploring the negotiation process, analysing bargaining interactions in light of the concepts covered in the course. Although the majority elect a grade, a sizeable minority choose pass/fail.

The author decided to examine his class data over the 11 years he has taught the course at George Washington University to determine whether there are any statistical differences in class performance between graded and pass/fail students. Over this period, the percentage of students taking the author's course on a pass/fail basis has increased. In 1986 pass/fail students were 15.6 percent of the class. In the past six years the percentages have ranged from 30.5 in 1993 to 48.2 in 1995. Possible explanations for the increase are that law students have become more risk-averse or more grade-conscious during the 1990s, or perhaps more recent students have heard that graded participants in the author's course experience greater anxiety because of the competitiveness of the exercises.

Many students suggest that pass/fail participants have an advantage in the negotiation exercises, because they are affected far less adversely by non-settlements than are the graded students. Since non-settlement options are usually less beneficial than realistic settlement agreements, non-settlements tend to lower the grades of graded students while having no negative impact on pass/fail students. The contrary argument is that graded students have the advantage because pass/fail students are less likely to commit the time and effort needed to get optimal negotiation results. Their graded opponents may make the extra effort to obtain better results from their less dedicated pass/fail adversaries.

Several factors diminish the likelihood of indifferent participation by pass/fail participants. One is the fear of embarrassment when weekly negotiation results are announced and analysed. No one likes to be considered incompetent or indifferent by classmates, and most pass/fail students work hard enough to achieve at least respectable results. Also influencing the negotiating behavior of pass/fail students is the fact that on several exercises they are assigned partners who are taking the course for a grade and are committed to getting optimal results.

It is not clear whether the pass/fail option affect the quality of the papers that students prepare. They know they must prepare acceptable papers to receive credit for the class, inducing pass/fail students to strive for at least minimally acceptable papers. Once they accept the need to write a reasonable paper, it takes little additional effort to produce a final paper rivalling those of graded students. In short, one can make the argument that the pass/fail alternative does or does not affect student performance on the exercises and/or the papers, and that any advantage is with the graded or with the pass/fail students.

The years for which the author observed no individually significant mean differences lend support to the hypothesis that graded students achieve higher average negotiation results than pass/fail participants. In 10 of the 11 years graded students attained higher average results. So there is substantial support for the proposition that graded students tend to achieve more beneficial negotiating results than their pass/fail classmates.

The author's hypothesis for the papers differed from that for the negotiation exercises. Since pass/fail students would lack motivation to prepare outstanding papers — being virtually guaranteed credit — the author would expect either to find no difference in paper scores between graded and pass/fail students or to find a higher average score for graded students. The fact that graded students earned higher average paper scores in eight of the 11 years does suggest the existence of a statistically significant pattern. This lends support to the theory that graded students tend to achieve higher paper scores than their

pass/fail classmates. Nonetheless, the aggregate mean difference is of only marginal practical significance. From this practical perspective, the data lend substantial support to the null hypothesis that there is no *meaningful* difference between graded students' and pass/fail students' average paper scores.

The data indicate that there is a statistically and practically significant difference between the graded students' performance on the negotiation exercises and that of the pass/fail students. The author suggests that such observed differences do not mean that he should eliminate any option, as he does not have the impression that pass/fail students expend significantly less effort on the exercises. If everyone were to take the class pass/fail, the author would have no highly motivated graded students to keep the pass/fail students honest; the class would not be a truly competitive existence, and the participants would be less well prepared for competition in the legal world. Conversely, the author would not wish to mandate a traditional grade for everyone, because this could cause some risk-averse students to forgo his course entirely.

Those who teach legal negotiating courses through the use of simulation exercises that may influence student grades must recognise that the availability of a pass/fail option may affect performance on those exercises. One way to diminish the impact of the pass/fail option would be to assign partners for most or all of the class exercises. Their feelings of obligation toward one another would probably motivate each to work more diligently than they would work individually.

Teachers who wish to heighten student commitment and generate a modicum of real intergroup competition should consider a grading system in which the exercises determine one-half or two-thirds of the final grade. This induces most graded participants to work diligently, and their commitment tends to generate reciprocal competition from their pass/fail classmates. By conducting gentle, but regular, post-exercise evaluations, the instructors can further encourage more serious participation by pass/fail students. Teachers of other lawyering skills courses through the use of simulation exercises must also consider the impact of a pass-fail option on class performance.

CLINICAL LEGAL EDUCATION

Developing a child advocacy law clinic: a law school clinical legal education opportunity
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At the same time that law school deans and faculties are looking for programs that deliver an educationally meaningful experience for their students, there is an increasing unhappiness with the quality of legal services provided to children and a recognition of the need for a better trained bench and bar to handle children's legal cases. The ideal clinical program is not a passing fad but an element of the core curriculum that consistently achieves educational outcomes fundamental to a law school's mission. A good clinical experience integrates general legal practice skills with the study of legal doctrine. One cannot separate theory from practice, abstract knowledge from practical skill or understanding of the professional role from the experience of professional action.

A child advocacy law clinic can meet important community needs. Law schools can supplement the meagre resources of the juvenile and family courts by providing high quality representation. In some cases, the presence of law students in proceedings has improved the level of lawyering in court. Like many clinical programs, a child advocacy clinic links the law school and the practising bar, narrowing the gap between the academy and the practice of law. Interdisciplinary opportunities for teaching and research are particularly rich in such programs.

Since 1976, the University of Michigan Law School Child Advocacy Law Clinic has offered law students a specialised clinical legal education in cases of alleged child abuse and neglect. The student attorneys handle cases in three distinct legal roles – attorney for the child, for the parents and for the agency. The Clinic seeks to introduce students to the substantive law and skills demanded of their new lawyer identity, along with the institutional framework within which lawyers operate. One goal is for students to develop habits of thought and standards of performance that will enable them to learn from experience in their future professional growth.

Selection of the right mix of cases is perhaps the most important component of a good clinical program. The ideal case is complex enough to challenge yet discrete enough to allow student attorneys to assume a substantial amount of responsibility. Each student team in the clinic is assigned at least one case representing the state child protection agency in a matter likely to go to a full trial. These cases are momentous in their consequences and provide reasonably complex litigation experiences for law students. They offer superlative learning experiences because the law students are responsible for fact investigation, petition drafting, discovery and a full trial that typically lasts from a half-day to three days.

Each student team is assigned three to five cases representing children, which provides excellent opportunities for legal education. First, it inspires and nurtures altruism. Law students see the