The Fifth Colonial Frontier Legal Writing Conference

The Capital Lawyering Concentration & Courses at McGeorge School of Law

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Presentation Outline

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Personal & School Background

- Personal Background
  - Professional lobbyist in Sacramento, CA. Both policy & politics.
  - Adjunct Professor, teaching legislative courses at night.
- What is McGeorge?
  - Law school of University of the Pacific.
  - Located in downtown Sacramento, CA, near the State Capitol.
  - State government is a dominant employer, with many legislative and executive branch jobs.
  - Student and alumni complaints led to development of curriculum beyond “traditional practice of law.”
Philosophy of Capital Lawyering Concentration

• In response to this criticism, McGeorge developed a Capital Lawyering Concentration:
  • Developed curriculum related to public policy development and advocacy, particularly California state legislative advocacy, to meet the needs of a society increasingly defined by statutes and regulations—as opposed to common law.
  • Elevated public policy advocacy to a regular career path, instead of an “alternative career” which does not involve the “actual practice of law.”
  • Called the “Capital Lawyering Concentration,” with coursework, experiential courses and clinics enabling advocacy in all branches of government, recognizing that each branch has venue-specific rules and tools for advocacy which merit both theoretical and practical focus.
Overview of Courses in Concentration

• Students must complete at least 14 units of required and elective classes to satisfy the Concentration requirements.

• Two Required Courses

• One Required Experiential Course, from a choice of three

• Various Electives, including “Non-Traditional” Courses developed by adjuncts with a focus on legislative advocacy in the State Capitol
Two Required Courses in Concentration

• Course #1: Statutes & Regulation:
  • Traditional course required of all students, not just those enrolled in the Capital Lawyering Concentration, 3-unit, single semester taught by full-time faculty. Uses familiar Manning, Stephenson text related to administrative law and statutory interpretation.
  • Requirement created mild controversy because it came at the expense of other required courses.
Two Required Courses in Concentration

Course #2: Introduction to Capital Lawyering:

- Required for the Concentration.
- Developed and Taught by Adjunct, former Chancellor of California Community Colleges.
- A “non-traditional” 2-unit, single-semester course, also taught by a noted contract lobbyist.
- Overview of public policy advocacy in all branches and layers of government. Imagine a matrix of 3 branches of government, 3 levels of government. A public policy issue can manifest in any of the 9 options. How do you formulate a public policy strategy?
One Required Experiential Course, from a choice of three

- Experiential Course Options:
  - Administrative Adjudication Clinic, a 2-unit, single-semester option taught by adjunct;
  - Capital Lawyering Externship, which is a field placement which can be from 3 to 14 units; or
  - Legislative and Public Policy Clinic, which is a 4-unit, two-semester clinic taught by adjunct in which students develop and pursue adoption of original legislative or regulatory proposals (covered in greater depth below).
Various Electives, including “Non-Traditional” Legislative Advocacy Courses

- **Administrative Law**, Traditional 3-unit, one semester course taught by full-time faculty, teaching administrative law at a deeper level than “Statutes and Regulations”
- **Legislation and Statutory Interpretation**, 3-unit, one-semester practicum taught by full-time faculty, teaching statutory interpretation at a deeper level than “Statutes and Regulations”
- **Negotiations and Settlements Seminar**, a general negotiations course taught by full-time faculty which provides core lawyering skills relevant to the Concentration.
- **Various Local Law Offerings**, mostly California-specific courses taught by both full-time and adjuncts, particularly related to land use planning and local agencies.
- **Federal law offerings**, principally related to election law topics.
- **California state legislative electives**, taught only by adjuncts
  - **Lawmaking in California** (covered below)
  - **California Lobbying and Politics** (covered below)
Details of Three Elective Legislative Courses

• While all of the preceding courses, except “Introduction to Capital Lawyering,” should look familiar, the Concentration includes 3 new electives for which there is little academic literature:
  • Lawmaking in California
  • California Lobbying and Politics
  • Legislative and Public Policy Clinic
Details of Three Elective Legislative Courses

- Physical skills coursework needed for training students how to perform actual public policy advocacy, principally legislative advocacy.
- Developed and Taught Exclusively by Adjuncts.
- No Standard Textbooks, Use of Readers in the Absence of Formal Scholarship.
- Difficult to Develop and Continue to Evolve with Experience.
- “Lawmaking in California” (Fall only) and “California Lobbying and Politics” (Spring only) are required for admission to the “Legislative and Public Policy Clinic” (year long), and can be taken concurrently.
Course #1: “Lawmaking in California”

- Covers the fundamental components of the California legislative process, “nuts and bolts,” including:
  - Legislative calendar, legislative leadership and the committee system
  - Powers and limits of Legislature
  - Legislative floor session, house rules and legislative publications
  - Legislative drafting and committee bill analysis
  - Practical instruction on statutory research and legislative intent
  - Role of lobbyists
  - Ethics rules
  - Other topics, including media, the Governor’s administration, and the state budget
  - California administrative rulemaking process
  - California direct democracy – including initiative, referendum and recall.
Course #1: “Lawmaking in California”

- Taught by the California Legislative Counsel and a Noted Contract Lobbyist
- Course includes a mid-term and final exam, with multiple choice and essay questions.
- Practical exercises in drafting legislation (bills and amendments) and bill analyses.
- At the end of the course, the goal is that the students understand how to use legal training in the legislative branch.
Course #2: California Lobbying & Politics

- While “Lawmaking in California” prepares students for activity prior to introduction of legislation, this second course prepares students for post-bill introduction activity, particularly actual legislative advocacy in the Capitol.

- Goal is to understand:
  - How to use tools for “Advocacy on the Merits.”
  - The external forces (aka, politics) which impact California state legislators and influence decision-making not “on the merits.”
  - How to develop a legislative advocacy strategy based upon good policy and politics, because each legislator employs a different combination of deliberation and politics from time to time, depending upon: the specific public policy issue, the legislator’s personal history and relationships with third parties, and the level and nature of interest group/media attention to the issue.
Course #2: California Lobbying & Politics

- Like “Introduction to Capital Lawyering” and “Lawmaking in California,” “California Lobbying and Politics” relies heavily on adjunct professor-developed material.
- Beyond a Course Reader, the course selectively employs chapters from traditional political science textbooks:
Course #2: California Lobbying & Politics

• First Half of Course: Acquisition of Skills to Lobby on the Merits
  • Fundamentals of Advocacy in Deliberative Process:
    • Marshalling information;
    • Preparing arguments based upon this information; and
    • Persuading legislators with these arguments.
  • What are the Components?
    • Drafting an advocacy/client letter outlining a position on legislation which is suitable for delivery to legislators, legislative staff, committee staff and other stakeholders;
    • Constructing and orally delivering a client position to legislators/staff/proponents/opponents in an informal, pre-hearing environment (e.g., an office visit); and
    • Delivering formal committee testimony.
Course #2: California Lobbying & Politics

- Skills Assessment: Mock Legislative Hearing
  - In either week 6 or 7, each student participates in a mock committee hearing at the California State Capitol. The exercise tests “pure” advocacy, while avoiding the “political” topics that are covered in the second half of the class.
  - In a two hour exercise, experience shows it is feasible to work with 13 students. So, course enrollment is limited to 26 to ensure that each student can participate in a hearing.
  - For each exercise, 1 student volunteers to be the bill author and the remaining 12 students are assigned to either the “pro” or “con” side, where they can choose from a list of pre-selected interest groups to represent.
Course #2: California Lobbying & Politics

- **Workflow and Timing of the Exercise:**
  - Students receive a copy of the bill one week prior to hearing.
  - Interest group letters are submitted by noon the day prior to hearing.
  - Professor releases a committee analysis of the bill by close of business that day which incorporates interest group arguments.
  - Bill “author” submits bill presentation statement by noon the day of the hearing.
  - Volunteer “legislators” evaluate written work product and score the work using an evaluation template prior to the hearing.
  - First 40 minutes of class: Informal “office visits” with legislators scattered around the hearing room in their “offices,” simulating pre-hearing informal advocacy. Each student must lobby at least 3 “legislators,” who score them using an evaluation template prior to the next student.
  - For 1 hour & 10 minutes, legislators conduct a simulated legislative hearing, with a 3 minute opening from the author, 5 minute presentation/Q&A for each advocate, and a 3 minute closing by the author during which the student chooses a course of action: request an “aye” vote as presented or an “aye” vote with author’s amendments. Legislators debate, discuss possible amendments, make motions, and vote.
  - For final 10 minutes, legislators explain their votes, provide feedback and advice to students, and network with them after class.
  - The entirety of Class 8 is a detailed group discussion of the exercise with an effort to relate it back to the previous course instruction, as well as a discussion of practical lessons learned. The professor provides detailed written feedback and scoring for each student within a week. Students provide suggestions for improving the exercise.
Pictures!

Group Prep

Office Visits

Formal Hearing
Course #2: California Lobbying & Politics

• Second Half of the Course: When persuasion on the merits is not possible, how to make a legislator “persuadable?”

• Explore a legislator’s typical journey to his or her first vote in the state Legislature:
  - Class 9: appointed and elected service in local government, including campaign mechanics, staffing, fundraising, issue specific to local gov’t.
  - Class 10: how state and county political parties as well as local political clubs impact candidates and legislators, includes review of organizational and policy documents, and the identity and activities of party leadership, activists and donors.
  - Class 11: how state legislative leadership and special interests in Sacramento approach the statewide “playing field” to achieve their partisan and ideological goals in the Legislature, including campaign finance rules, direct and indirect funding of campaigns, and independent expenditures.
  - Class 12: the peculiar sub-culture of Sacramento political life and legislators’ interactions with institutional legislative staff and the special interest groups, “sponsored” bills by interested parties, fundraising and other demands on legislators in Sacramento, and institutional forces such as term limits.
  - Class 13: the public affairs world, including grassroots; astro-turfing; earned, paid and social media; and techniques for using public affairs in legislative advocacy.
  - Class 14: A class summation and in-class group exercises practicing how to blend excellent legislative advocacy on the merits with sophisticated political strategy.

• Final Exam, which requires students to meld the deliberative tools from the first half of the class with the non-deliberative tools from the second half of the class and demonstrate the ability to formulate a strategy to accomplish specific client legislative goals.
Course #3: Legislative & Public Policy Clinic

- A test of how far law students can go in the formulation and passage of original legislative proposals which they develop and personal lobby in the California Legislature.

- Started in 2013-2014 academic year at the request of students who had taken California Lobbying and Politics and wanted to go further.
Course #3: Legislative & Public Policy Clinic: How Is It Constructed?

- Application process, students admitted by May preceding Fall semester.
- Enrollment cap of 12 students admitted to the Clinic.
- Goals is to develop original legislation in the Fall, and pass it in the Spring.
- Prior to the first Clinic meeting, each student is required to form a project group with one or two other students, resulting in a total of 4-6 Clinic project groups.
Course #3: Legislative & Public Policy Clinic: Fall Semester

- By the end of the Fall semester, student groups are expected to submit a strategy memo, including actual bill or regulatory proposal language, an assessment of the prospects for passage, as well as a coalition, grassroots and/or media strategy.
- Each week, student groups present their ideas and receive feedback.
- They use the Bardach policy analysis rubric from Intro to Capital Lawyering.
- The skills needed in the Fall semester track with the timing of substantive teaching in “Lawmaking in California.”
Course #3: Legislative & Public Policy Clinic: Spring Semester

For the Spring semester, each student group pursues adoption of its legislative (or regulatory) proposal, including:

- Selecting and obtaining a bill author
- After introduction, working the bill through the legislative process.
- Students write support letters, background sheets and collateral materials, respond to committee staff, conduct office visits to advocate for passage, perform coalition and media work in anticipation of a hearing, and participation (when permitted by the legislator) in formal proceedings.
- The skills needed in the Spring semester track with the timing of substantive teaching in “California Lobbying and Politics.”
Course #3: Legislative & Public Policy Clinic: Results of 14 Bills Introduced?

- Eight (8) bills signed into law by Governor Brown:
  - 2013-14: AB 2643 (Wieckowski / Revenge Porn), AB 2623 (Pan / Peace Officer Training – Elder Law), AB 2632 (Maienschein / State Dependent Care Facilities), and SB 1058 (Leno / Discredited Expert Witness Testimony); 2015-16: AB 1554 (Irwin / Powdered Alcohol), AB 2505 (Quirk / CO2 Animal Euthanasia), SB 1064 (Hancock / Commercially Sexually Exploited Children), and SB 1339 (Monning / Inter-county Medi-Cal transfers).
- One (1) bill which passed the Legislature but that Governor Brown vetoed: 2014-2015: AB 1200 (Gordon / Procurement Lobbying)
- Five (5) bills failed at various points in the legislative process.
  - 2013-14: AB 2452 (Pan / Advanced Healthcare Directives); 2014-2015: AB 100 (Alejo Law Fellowships), AB 291 (Medina / Multi-County Water Transfers, and AB 791 (Cooley Online Advanced Health Care Directives); and 2015-2016: AB 1740 (Alejo / Law Fellowships)
- Lessons learned? No bills requiring an appropriation or a state technology project.
- Five New Projects This Year:
  - Standards for entry into law enforcement gang database, exemption from eavesdropping law for domestic violence, regulation of bouncers at nightclubs, sharing of inmate mental health records upon transfer or release, and alternative measurement of college student loan default rates.
Course #3: Legislative & Public Policy Clinic: Factors That Help Success?

- Legislative Advocacy Curriculum
- Faculty Experienced with Legislative Advocacy
- Proximity to the State Capitol
- Legislative Calendar Which Matches Clinic Activity
- Member-Driven, Retail Legislature; Not a Committee-Driven System
- Clear Attainable Goals for Evaluating Student Work
Course #3: Legislative & Public Policy Clinic: Media Coverage

Law students propose bill to close lucrative Capitol lobbying loophole

Legal clinic immerses aspiring lawyers in the political process

California doesn’t need powdered alcohol problems

Lawmakers want a second chance for dogs rescued from fighting rings
Issues To Consider When Developing a Legislative Clinic

• Ethical Issues:
  • Is the school placing students in water that is “too deep?”
  • Should bills be “public interest” or can they help “for profit?”

• Reputational Issues:
  • Should the school/professor assign or censor topics?
  • How should the school respond when a powerful opponent contacts the Dean?
  • Should the students have business cards or use school letterhead?

• Legal Issues:
  • Is this lobbying? Will this impact the school’s tax status?
Conclusion

• Under the right circumstances, it is possible to train students to develop original legislation and supervise their work to achieve actual results, but the circumstances must be right.
• It takes a lot of work by experienced practitioners to develop legislative advocacy courses without established scholarship in this area.
• Generosity and support from administrators and full-time faculty is essential, but they often lack experience as day-to-day legislative advocates and it takes time to help them understand. Once they do, things can change very quickly.

• Thank you! Questions?
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