

LEGAL WRITING: TAKEWAYS FROM THE STUDY VISIT TO THE WILLIAM AND MARY LAW SCHOOL

SCRIEREA JURIDICĂ: CONCLUZII DIN VIZITA DE STUDIU LA ȘCOALA DE DREPT WILLIAM AND MARY

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The paper presents a brief evaluation of the takeaways emerging from the academic life at William and Mary Law School, Williamsburg, Virginia, USA, focused primarily on the Legal writing course and on the supporting institutional mechanisms for improving the quality of higher education, and for enriching the professional background of future lawyers, under conditions of current global trends. The main findings result from on-site observing of the teaching-learning-evaluating process, through interactive and collaborative activities. As a general conclusion, the quality of legal higher education can be improved only through multidimensional and intersectoral synergies, including academia, civil society, public authorities, employers. Investments in human resources and in infrastructure, open mindedness in the teaching-learning-evaluating process in legal schools are part of the knowledge management and they really count.

Keywords: IRAC, knowledge management, legal writing.

Lucrarea prezintă o scurtă evaluare a concluziilor din viața academică la William and Mary Law School, Williamsburg, Virginia, SUA, focusate, în primul rând, pe cursul de Scriere juridică și pe mecanismele instituționale de sprijin pentru îmbunătățirea calității învățământului superior și pentru îmbogățirea experienței profesionale a viitorilor juriști, în condițiile tendințelor globale actuale. Principalele constatări rezultă din observarea la fața locului a procesului de predare-învățare-evaluare, prin activități interactive și colaborative. Cu titlu de concluzie generală, calitatea învățământului juridic superior poate fi îmbunătățită doar prin sinergii multidimensionale și intersectoriale, care să includă mediul academic, societatea civilă, autoritățile publice, angajatorii. Investițiile în resurse umane și în infrastructură, spiritul deschis în procesul de predare-învățare-evaluare în școlile de drept fac parte din managementul cunoștințelor și într-adevăr contează.

Cuvinte-cheie: IRAC, managementul cunoștințelor, scrierea juridică.

INTRODUCTION

The paper is developed in the context of the Institutional Project ‘Modernization of governance mechanisms focused on the protection of human rights’ within the Scientific Research Laboratory ‘Comparative Public Law and e-Governance’, Faculty of Law, State University of Moldova (project cypher - 20.80009.1606.15).

The work is based on the conviction that the modernization of the justice governance mechanisms, through the lens of the effective guarantee of the right to a fair trial, begins with a quality legal training (Arama E., 2022 [1]; Ciobanu R., 2021 [2], Negru A., 2019 [3]; Negru A., Creciun N., 2022 [4]; Creciun N., 2023 [5]).

The world of higher education becomes more and more exposed to current challenges, meaning that various multidimensional and intersectoral synergies need to be valued to ensure the adaptation to reality of the actors involved (students, teachers, administrative staff, partners, employers, etc.). Partnerships and wide collaboration in improving the policies and mechanisms of providing quality education on a large scale can substantially contribute to increasing the attractiveness of the process of lifelong learning and to shaping of those requirements that are necessary for being part of a global view on the purpose and possibilities of education itself. Knowledge sharing and co-curricular approach (Cepraga L., 2022 [6]) in the academic area are important elements of the knowledge management, inside and outside the institution.

THE PURPOSE AND THE OBJECTIVES OF THE PAPER

Teachers from several national universities – Moldova State University, Academy of Economic Studies of Moldova, Alecu Russo State University of Balti, Stefan cel Mare Academy of the Ministry of Internal Affairs, Comrat State University – benefited from a study visit to the William and Mary Law School, Williamsburg, Virginia, USA. The study visit has been organized and ensured by the National Center for State Courts (NCSC), in the context of implementing the ‘Strengthening Legal Research, Writing and Reasoning in Moldova’ Program, with the main objective to support the national Law Faculties to elaborate and provide a university course on legal writing.

Thus, *the purpose of the paper* is to argue that study visits and experience exchange are part of the knowledge management strategy in the university environment and meet the current requirements to the legal education area under conditions of good governance, primarily focused on the free development of human personality. Mutual learning and sharing knowledge, views, experience, help to shaping attitudes, developing, and improving skills, integrating in new spaces of communication, in terms of human rights, rule of law, democracy, freedom, peace and development.

The objectives of the paper are: a) to present briefly the several key moments of the legal education spirit at the William and Mary Law School; b) to evaluate the takeaways emerging from the academic life at ‘America’s first law school’, ‘a premier public research university widely recognized for its outstanding academic reputation, beautiful campus, and vibrant community’ [7]; c) to invite to open mindedness in the teaching-learning-evaluating process in legal schools, by encouraging the cross-cultural dimension of the knowledge management in legal schools.

METHODOLOGY

The main findings on the knowledge management in law schools synthesized in this paper result from on-site observing of the teaching-learning-evaluating process, through

interactive and collaborative activities. At the same time, for impact, study visits are not just for observing, but for comparing, analyzing, evaluating, questioning, applying, adapting, improving, designing as well. That is why, this paper is a form of fixing the advantages of experience exchange for encouraging synergistic partnerships between law schools, civil society, and employers, in order to develop skills for a more successful career and a better future, following the model of the NCSC's support of the program aimed at strengthening legal research, writing and reasoning at the Law Faculties in the Republic of Moldova.

FINDINGS, DISCUSSION

Legal writing is an essential formative course for law students. It is a 'fundamental and foundational course [...], because it [...] constructs the foundation for what lawyers do' and it is really challenging (Thompson D.I.C., 2021) [8, p.173]. The classes of legal writing are about shaping a way of thinking, and, for this reason, the interactive didactic methods and strategies are the most recommended. Students and teachers are engaged in activities that are much more associated to cooperation, mentoring and guidance, than to traditional form of delivering knowledge. Students are taught to think like lawyers and to write like lawyers: clear, concise, reasoned. They need to figure out that the judges or the lawyers, who are very often the recipients of the written legal acts, are very busy people. They will appreciate clear, concise, and reasoned texts, this kind of approach being a form of respect for their time and profession and an essential substrate of credibility of the author – legal professional.

Legal writing is a compulsory course at most Law Schools in the USA, and at William and Mary Law School as well, considering the impact on the initial training of future lawyers. At the beginning, in 2012, the course was provided by practicing lawyers, on the basis of a pass/fail test system. But since 2012 it is taught by full professors on the basis of a specific grading system. One of the reasons of such changes was the awareness of a need of a special methodology of teaching-learning-evaluating system for the legal writing course and of particular skills in legal research and reasonings.

The skills are trained step by step, through different types of assignments. Firstly, students are taught 'how to locate, read and analyze a statute', secondly – 'how to use cases to interpret an undefined term in a statute, thirdly – 'how to use a statutory interpretation framework to resolve an ambiguous statutory term' and finally – 'to apply the various skills [...] to analyze a state or federal statute' (Sancken L., Butler M., 2022) [9]. And skills can be consolidated only through continuous and hard practice.

Among different variations (FIRAC: facts, issue, rule of law, application, and conclusion (Motshabi K.B., Vinti C., 2019) [10]), IRAC and CRAC are universal methodologies for legal writing. IRAC and CRAC are the basic methodologies used in legal writing. IRAC seems to be 'the standard' (Termini M., 2022) [11], 'the classic legal reasoning form' (Thompson D. I.C., 2021) [12, p.183], the 'analytical paradigm [...]' [which] provides a highly beneficial basic approach to analysis and writing' (Trautman I.J. at

al., 2020) [13, p.317]. It proves ‘its usefulness as an analytical and organizational tool’ (Candlin C.N., 2002) [14, p.303]. Both IRAC and CRAC are acronyms: IRAC means Issue, Rule, Analysis/Application and Conclusion and CRAC means Conclusion, Rule, Analysis/Application and Conclusion. Both are indispensable for writing legal acts and the logic of construction of the analysis and of the argumentation is learnt and practiced during the classes at the Law School. It is very often emphasized that IRAC and CRAC are a way of thinking and those who understand the core logic of these methodologies use them in designing legal analysis in general, both in written and in oral discourses. Of course, it is important to distinguish the objective memorandum from the persuasive brief: the first one is usually presented to a lawyer and the appropriate method is IRAC; the second one is usually presented to the judge and the appropriate method is CRAC. Every element of the method used needs to be thought, written, revised, in a cyclical evaluative process. It can be a challenge even for experienced lawyers. Of course, students get to know the methodology by analyzing real or simulated cases, by resolving problems. With the advancement in studies, then in practical activity, IRAC and CRAC have a visible impact on the way of thinking and end up being used automatically.

Externships, legal clinics, moot courts. Beyond traditional classes, students at William and Mary Law School have very interesting outreach activities (externships, moot courts, legal clinics), which contribute to enhancing their practical skills and soft skills, as part of ‘experiential education’ (Kaplan R., 2021) [15, p.5-6]. ‘[E]xternships (also called “field placements” by the ABA) [...] are positions with organizations external to the law school’ and ‘[t]o earn credit, students must complete hours for the externship organization’ (Kaplan R., 2021) [16, p.6]. Externships are considered one of the most successful steps ‘of getting a student practice-ready as a first-year attorney’ (Gharakhnian A., at al., 2021) [17, p.171]. A complex analysis of the results of a survey distributed to lawyers across the USA, in 2014-2015, revealed that ‘new lawyers’, ‘successful lawyers’ ‘require some threshold intelligence quotient (IQ), [...] a favorable emotional intelligence (EQ) [...] [and also] some level of character quotient (CQ)’ (Gerkman A., Cornett L., 2016) [18, p.1]. These requirements can be achieved through experiential education, especially through externships.

Human resources are the most valuable ones. The first impression on the legal education spirit at William and Mary Law School was about the role and the value of people, of the community involved in the very well-organized teaching-learning-evaluating process. This first impression has not disappeared yet. The building itself, the accessibility, the huge and beautiful library, special spaces for individual and teamwork, the meditation room, state-of-the-art technologies, inspiring university campus – all these are examples that the infrastructure of the legal school counts. A high developed infrastructure is not the only key to performance and success. But a high developed infrastructure, adapted to the requirements of the academic community, combined with openness and friendly environment, are efficient mechanisms for ensuring and improving knowledge management in law schools.

MOLDOVA STATE UNIVERSITY (MSU)

MSU is one of the national universities targeted by ‘Strengthening Legal Research, Writing and Reasoning in Moldova’ Program, implemented by the NCSC. *Fundamental aspects of legal writing, research and reasoning* is a new course, provided since 2022 to second year students, Licence (Bachelor), 1st cycle. It is a great opportunity to focus our attention, efforts, and skills to improve legal writing through institutional mechanisms. This will contribute to the standardization of legal writing, from the viewpoint of formal logic, in terms of analysis, motivation and structuring. Improving legal writing is a pressing objective for all actors representing the legal professions (judges, prosecutors, lawyers, bailiffs, criminal prosecution officers, etc.) and the achievement of this objective begins with legal training, as part of a complex, consistent, and qualitative legal education. Some of the latest changes to the national procedural-criminal legislation, which aim to examine some categories of cases in the written procedure, without the participation of the parties, once again validate the degree of importance of the quality of the legal acts presented to the court for examination. The fate of concrete people, families, the business environment, etc., depend on the quality of legal documents (requests, references, complaints, court decisions, ordinances, indictments, expert reports). Thus, the inclusion of a special course in the academic plan of the national Law faculties, including the Law Faculty of the MSU is a current requirement for the higher legal education, fits the priority directions of sustainable development on this segment and is focused on the human being, on human rights, on the respect and development of the human personality, under conditions of the rule of law.

GENERAL CONCLUSIONS

The take-aways from the study visit to the William and Mary Law School are of a great variety. Some of the main ideas would be:

- The quality of legal higher education can be improved only through multidimensional and intersectoral synergies, including academia, civil society, public authorities, employers.
- Knowledge sharing in the academic area (through study visits, experience exchange, on-site observations, interactive and joint activities) is an important element of the knowledge management, inside and outside the institution, capable to improve the learning process and learning outputs, even to the extent of a turning point impact for the legal education, in terms of quality and performance.
- Legal research, writing and reasoning should be a basic course at the Law Faculties, due to its fundamental formative impact on future lawyers.
- IRAC, CRAC and other variations are indispensable, universal methodologies for legal writing and should be practiced in different ways, in order to help future lawyers to think and write like successful lawyers.
- Students and teachers should be taken out of the classic academic space and integrated in practical, simulated or real activities, from which the entire community

involved will benefit, according to the win-win model. Moot courts, legal clinics and externships are a great opportunity in this sense.

- Investments in human resources and in infrastructure is essential for creating a favorable and supportive environment for education and research, in terms of competitiveness, attractiveness, quality and performance.

As a lecturer involved in teaching *Fundamental aspects of legal writing, research and reasoning*, the most challenging (of course, beyond the level of load and effort required from the teacher) seems to be the capacity and the willingness to open mindedness: the logic has an indispensable connection with the law and legal thinking; but it far exceeds the legal framework; the logic is part of human being and thinking. For this reason, the analysis and argumentation methodologies simply must be accepted, as good friends, who will accompany us unconditionally in making the best legal and non-legal decisions.

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