

Suggestions for Law School Courses on Strategic Case Evaluation and Management

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Law students would benefit from a course on strategic case evaluation and management (SCEM). An SCEM course would be particularly appropriate considering that the overwhelming majority of lawsuits are terminated at the pretrial stage, typically through negotiation or mediation. Such a course also would be great preparation for the [revised bar exam](#), which will test client counseling and advising, negotiation and dispute resolution, client relationship and management.

The following ideas for this course grew out of a study I did interviewing respected lawyers about the cases they settled most recently, [Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better](#).

We generally teach negotiation and mediation focusing primarily or exclusively on the final stage of cases. In real life, attorneys and parties live through cases from the outset, and there are numerous substantive and procedural negotiations along the way. This perspective was summed up by one lawyer who said:

“It is all negotiation from the time suit is filed. You are constantly negotiating or setting up the negotiation. It doesn't just happen. You are negotiating from the outset, setting up where you want to go. You are judging [the other side] and they are judging you.” He elaborated, “Negotiations don't occur in a week or a month. They occur in the entire time of the lawsuit. If anyone tells you they aren't negotiating, they really are. Every step in the process is a negotiation. You don't call it negotiation but in effect, that's what it is.”

The lawyers in my study repeatedly said that to negotiate effectively, lawyers should identify the key issues and get the information necessary to evaluate the case. They need to understand their clients' interests, figure out where the suit is going, know the facts, understand the procedure and the law, and estimate how long the suit will take.

Unfortunately, much of legal education is teaching students rules but not how to use them to advance clients' interests. This is like teaching students how the components of a car work, from the manual, but not how to drive or get to particular destinations.

SCEM courses might cover topics such as:

- conducting initial client interviews
- developing and refining a legal theory of the case
- developing an investigative strategy including a discovery plan

- developing a good working relationship with counterpart lawyers*
- using experts as consultants and/or witnesses
- developing an evaluation of likely court outcomes
- developing a goal and strategy for possible negotiation
- using mediators, arbitrators, or other neutrals

Although there might be some overlap with pretrial litigation courses, the focus of an SCEM course would be on strategic planning whereas pretrial litigation courses may focus more on using procedures to execute such a plan (such as conducting discovery and litigating summary judgment motions).

Obviously, the activities listed above are in the context of litigation. A course might include transactional matters, either as part of a single course or as a separate course. If a course included transactional matters, there would be counterparts or variations for many of the topics listed above and possibly some topics without counterparts in litigation.

Presumably, the course would involve a lot of documents that lawyers use in their case files. Indeed, instructors might edit documents from actual case files to remove names, other identifying information, and extraneous detail. This would give students the chance to have hands-on experiences with the kinds of documents that they would regularly encounter in practice. Much of the reading might involve documents from case files instead of course texts or other publications.

Class sessions might involve some combination of lecture, discussion, analysis of case documents, and simulations. There might be a take-home exam in which students are given documents from a case file and asked to address certain issues relevant to the course.

Schools might assign regular and adjunct faculty co-teach the course. Ideally, this would be a required course for all students, possibly with a regular faculty member coordinating adjunct faculty teaching several sections, though presumably that's a bridge too far for most schools.

*Although it might seem odd to teach students to develop good working relationships with their counterparts, lawyers repeatedly emphasize how much this affects the handling of cases, as described in my *Good Pretrial Lawyering* article.