

# LAW IN ACTION: A Dean's View



— *Dean Kenneth B. Davis, Jr.*

One of the unexpected results of our recent strategic planning process was to capture in a few well-chosen words the unique and special role that Wisconsin plays within legal education. Time and again, the concept of Law in Action came up as we discussed who we are and who we want to be. I remember hearing this phrase often upon joining the faculty in 1978. It signifies that in order to truly understand the law, you need not only to know the “law on the books,” but also to look beyond the statutes and cases and study how the law plays out in practice.

Law in Action also means that in teaching and research, no matter how interesting we find a legal theory, we always need to ask, “How does this affect people’s lives in the real world?” It is an orientation that has led to our national reputation for innovative approaches to both teaching and scholarship. It embraces our preeminence over the years in fields such as legal history, criminal justice, industrial relations, law and society, and comparative institutional economics. And it challenges us to combine our expertise and scholarly traditions with the strengths of the great university of which we are a part, in order to assume national leadership in emerging areas such as globalization, bioethics, and other

dimensions of law and technology.

Law in Action is hardly a new concept, nor did the term originate at Wisconsin. The first reference I’ve found is in a 1910 article by Roscoe Pound, the Harvard Law School dean whose work was a forerunner to the legal realism movement.

But at Wisconsin the concept quickly took hold and developed a distinctive form. It was energized both by the school’s appreciation of the value of other social sciences in understanding how law works and by the Wisconsin Idea—the commitment to service embodied in the slogan that “the boundaries of the university are the boundaries of the state.” According to former Duke Law School Dean Paul Carrington

and Professor Erika King, in their 1997 history of the University of Wisconsin Law School's early years:

"One effect of the Wisconsin Idea was to bring the university's new, young law teachers into contact not only with public affairs, but also with academic colleagues in other disciplines who possessed useful expertise. The law school established a liaison with the political science department in 1907, a liaison designed with the purpose of 'relating' legal instruction 'to modern social and economic conditions.' Between 1904 and 1910, law faculty, Gilmore in particular, similarly collaborated with economics faculty such as John Commons and Richard Ely in a large-scale endeavor to document the history of labor in America .... By 1915 law school bulletins actively advocated a mixture of law classes with history, economics, political science, and philosophy classes."

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Over the years, the concept continued to develop and became strongly linked to the UW Law School's identity and fundamental to the teaching methods and research of many faculty members. To appreciate how this Law in Action orientation shapes the work of our Law School today, let's begin in one of our large classrooms, with a basic course such as contracts, property, or constitutional law.

Here, as at law schools everywhere, the focus is on appellate opinions, and students are asked to analyze and evaluate the holding, apply it to other factual settings,

and consider alternative approaches the court might have taken. Yet the Wisconsin professor is also likely to ask questions such as, "How might the parties on the losing end of the case respond?" "Will the rule change their future behavior?" "Who will enforce the rule?" "What was the cause of the underlying dispute?" "Was this lawsuit the most effective way to address it?" Questions like these—designed to ensure that students do not lose sight of the larger context and the lawyer's role within it—are not unique to the Wisconsin classroom. But based on conversations with colleagues at other schools, I am convinced they play a more central and systematic role in the classroom experience at Wisconsin than elsewhere.

Move on to one of our many clinical programs. Wisconsin has long been a national leader in clinical and other types of education that take the student outside



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the traditional classroom setting. With more than twenty-five full-time clinical instructors on our faculty, students have the opportunity to supplement their classroom education with in-depth experience in a wide range of areas, including criminal, consumer, health, and elder law. They can also take advantage of simulation courses, such as the highly regarded Lawyering Skills Course (formerly known as General Practice), along with more specialized classes focusing on topics such as negotiations, writing for practice, and client counseling.

To be sure, all these offerings provide students with valuable opportunities to hone the practical skills they will need to succeed in the practice of law. That is only the beginning, however. Consistent with our Law in Action philosophy, we see these clinical and skills courses as important settings for students to integrate their first-hand experiences with their classroom coursework to build a much richer appreciation of how the legal system works in practice. This shared commitment to Law in Action means that there is not the gulf between our classroom and clinical offerings that exists at some other law schools. Indeed, many of our clinical professors teach classroom courses as well. My hope is that our students see these two modes of teaching as points along a single continuum rather than distinct philosophies of legal education.

Law in Action has another

important educational advantage. I regularly hear from employers that our new graduates seem better prepared to “hit the ground running” than their counterparts. Perhaps it is because our students are routinely asked to consider the broader implications of the law and to share and reflect upon their practical experiences. Whatever the reason, we firmly believe that our approach equips them with not only the technical skills to succeed, but also a broader sense of perspective and more confidence in thinking for themselves.

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Of course, Law in Action is evident in our research as well as in our teaching. I think it fair to say that the kinds of legal scholarship being done today by the nation's leading law schools look much more like what was being done at Wisconsin fifty years ago than what was being done elsewhere. We've already mentioned the school's long history of interdisciplinary work, for example.

Here, though, Wisconsin faces a unique challenge: How do we maintain our edge? It is perhaps Wisconsin's greatest strength that, year after year, our faculty has

continued to produce scholarship that shapes the national discourse among lawyers and legal scholars, and Law in Action deserves no small share of the credit.

Law in Action is a wonderful stimulus for taking emerging ideas from various disciplines and thinking hard about how they might better explain the workings of legal institutions. The great advantage we enjoy, as part of one of the world's great research universities, is being “where it's happening”: in the center of activity as those ideas originate and develop. Our faculty has always maintained close ties to other departments around the campus, and continues to build more all the time.

At the same time, however, Law in Action reminds us that no matter how interesting or elegant the theory or idea, we always need to ask, “Why should this matter to people in the real world?” At Wisconsin, we know that if we don't ask this question of ourselves, one of our colleagues certainly will. I can't tell you how many talks I've heard and papers I've read over the years from scholars at other schools that would have benefited greatly from someone's asking this question early in the project.

In describing what distinguishes Law in Action scholarship, I am sometimes reminded of the distinction between the deductive and inductive methods that we learned in science classes. Much of the research I read today starts with an interesting idea from another

discipline—it might be economics, sociology, literary theory, or even physics—and then looks for legal settings in which to apply it. Law in Action work tends to proceed in the opposite direction: The researcher begins with an observed, real-world problem or phenomenon and then seeks to explain it.

Sometimes that explanation lies entirely within the law library. The work of some of our most talented scholars at Wisconsin continues to rely heavily on the interplay of legal doctrines and philosophies. Often, though, the explanation may lie in the insights of some other discipline. At Wisconsin, faculty members know that even if they themselves are not familiar with what is happening in that discipline, a colleague down the hall is likely to be.

This leads to one of Law in Action's more subtle benefits. It is agnostic. It owes no allegiance to any particular political philosophy, or branch of the social sciences or humanities. The test of a good theory is simply how well it explains the observed phenomena. This no doubt contributes to the sense of collegiality and shared enterprise that has characterized our faculty over the years.

Starting one's research with a real-world problem also explains the strong bond between Law in Action and the Wisconsin Idea. Service to the state, nation, and increasingly the world not only allows our faculty to use their expertise in solving the problems

of others, but also creates an invaluable learning opportunity for the faculty involved. I can point to several of my own research projects over the years that trace their origins to work I did on various corporate law committees or consulting projects.

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Our rich Law in Action tradition is an important part of who we are, and it will remain an important part of who we become. It is still flourishing and developing after all these years, and it occupies a central position in our Strategic Plan. Law in Action gives us the focus to confront the challenge of remaining one of the nation's pre-eminent law schools. With your help, we will continue building our national reputation for excellence and our commitment to the Law in Action philosophy. It is a philosophy that has served UW Law School graduates well over the past century, and it is one that may prove even more relevant for tomorrow's graduates as they face an increasingly complex, competitive, and challenging world.



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