



GONZAGA UNIVERSITY

THE LAW TEACHER

Institute for Law School Teaching

Fall 1993

Boring

By Robert E. Rains

Let us speak the truth. Law school is too often, er, you know, kind of, well, boring. Was it any different when you were in law school?

Oh yes, and also irrelevant. This, of course, is not exactly surprising inasmuch as we — law profs, that is — are, by and large, refugees from the practice of law specifically, and the real world in general. The major distinction among us is simply the remoteness in time of our flight to the asylum.

Every now and then I break bread with former students enthralled by the practice of law. I always ask two questions. How was law school? Their eyes glaze over as they struggle to find an honest answer that won't be too insulting. Did you learn anything that has actually been useful in your work as a lawyer? They ponder that one a while. I can almost see the mental search of those long-closed files. Then the light dawns. Gosh, no, they invariably conclude.

Now before you turn the page (or worse) in anger, let me reassure you of that which you are already thinking. These hackneyed condemnations don't apply to you (or me) personally, only to our colleagues collectively and to our grandiose, if ill-defined, mutual endeavor.

In the words of a now out-of-favor revolutionary, what is to be done? The problem is to bring reality into a largely unreal exercise. This is, of course, not exactly an original brainstorm. The trick is how to do it. Langdell tried to concoct a science out of cases. (Methinks the result was closer to alchemy.) Others have come up with moot courts and moot court teams, live clinics and that perfect oxymoron: simulation clinics.

All of these methods may — to borrow from medical terminology — provide valid aid to students if administered in homeopathic doses. Overdone, they will invariably induce iatrogenic disorders in the patients.

Now, despite what you may think when you read final exams, law students are pretty darn smart. By the second week of school they know us for what we are. Dare I say it? Fossils! But, as any paleontologist will tell you, there is still much to be learned from fossils. The analogy is apt. From

our students' perspective, anything that occurred before roughly last week has the reality and significance of, say, the War of Jenkins' Ear. And because they have been raised in the ahistorical era of the sound-bite, students cannot readily understand the framework of law — much less justice — from traditional law school fare.

I have no answers, only a few suggestions. We must intersperse traditional legal education methods with media that are user-friendly for students. But the TV show, film, etc., must always be a supplement to, not a substitute for, traditional law school programming.

Every year, my most successful class transpires when I show the PBS video, *Eyes on the Prize, America's Civil*

Rights Years, Episode 2: Fighting Back (1957-62), to my Education Law Seminar students. They are assigned to read *Brown v. Board of Education* and its 1960s progeny prior to class. But they just don't get it. Then they see the National Guard with bayonets drawn at Little

Rock's Central High and lawyer Thurgood Marshall and Old Miss ablaze and public schools chained shut by government decree. The reaction tends toward actual disbelief. It cannot be true; it can't have happened. Then I bring out my secret weapon: a black colleague who grew up in Alabama in that era, who calmly relates the conditions under which she fought for what every one of my students has always taken for granted, the right to attend high school. Her one-hour visit to my class, by the way, would dispel anyone's doubts about the critical need for multiculturalism in legal education.

Continued on page 2

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Inside

Doctors in the classroom	3
An inventory for teaching analysis	5
Graded assignments	7
Institute grants	10

From the director...

By Gerald Hess

Welcome to the first edition of *The Law Teacher*. We hope you find it helpful, interesting, and enjoyable (or at least one of those). We learned a lot and had a good time putting this first edition together.

The Law Teacher is a project of the Institute for Law School Teaching. Gonzaga University School of Law established the Institute in 1991. The Institute is committed to helping legal educators become excellent teachers. That commitment is reflected in the Institute's mission statement:

"Gonzaga University School of Law aims to uphold the Jesuit tradition of educational excellence. Gonzaga recognizes the obligations law schools owe their students and society to provide a learning environment to help students achieve the highest academic standards and to prepare students to assume their responsibilities as effective, moral attorneys. The Institute for Law School Teaching has been established to help Gonzaga and other law schools meet those obligations. The Institute has several goals: first, to

serve as a clearinghouse for ideas to improve the quality of education in law school; second, to support research concerning effective teaching in law schools; and third, to sponsor conferences regarding law school teaching."

The Law Teacher is directed toward the Institute's clearinghouse goal. Our Grant Program and Summer Conference projects are designed to meet our other two goals.

Special thanks are in order for all the authors who submitted articles for publication in *The Law Teacher*. Their willingness to share their ideas on teaching and learning can open a dialogue with other legal educators. That dialogue can help all of us become better teachers.

Gerald Hess is an associate professor of law at Gonzaga University School of Law. He is director of the Institute for Law School Teaching.

Boring

continued from page 1

(The *Eyes on the Prize* series is generally available in public libraries, and I'm more than willing to act as an agent for my colleague.)

Another eye-opener for students is Frederick Wiseman's film, *Titicut Follies* (available through Zipporah Films, One Richdale Ave., Unit #4, Cambridge, MA 02140, telephone 617/576-3603), depicting conditions in a Massachusetts "correctional" mental institution. I show this to students in my Disability Law Seminar. I want students to feel what long-term institutionalization meant for mental patients. Then I take them on a field trip to a local state mental hospital. (Be careful. Hospitals often want to give students a sanitized tour. Insist on visiting locked wards and forensic units. At least one of our state hospitals has preserved an underground tunnel with rings fastened into the walls for chaining up the "patients.") Our local institution has a small, but excellent museum on site, with extensive photographs, electro-shock paraphernalia, and — best of all — a log book of commitments, going back to the mid-1800s. Students are edified to see that one could be institutionalized for such aberrant behavior as reading novels or extensive studying.

Field trips can be enormously useful, although cumbersome for large groups and sometimes expensive. With the gracious assistance of Justice Blackmun, I once took a group of clinic students to the Supreme Court to observe the oral argument of a case that would affect a number of our clients.

Sometimes, however, if you can't take the students to reality, you can bring reality to them. One of our state appellate courts was happy to schedule a panel to hear a full week of argument on our school's premises. Students were in and out of that room all week long. Similarly, the Social Security Administration's Office of Hearings and Appeals has had a program — of which I've taken advantage — to hold administrative hearings at law schools. With the claimants' written permission, a local administrative law judge scheduled four hearings one morning at our school.

and my entire Administrative Law class attended. As a double learning opportunity, the cases were presented by students in my Disability Law Clinic. (You can bet they were over-prepared when they had to represent clients in front of their peers!) Although the formal program apparently no longer exists, SSA continues to encourage its ALJs to perform such public service. As a practical matter, I suggest contacting your local OHA at least two months prior to the date that you would like to have the hearings.

John McKutcheon's brilliant song, *The Red Corvette* (from the *Water From Another Time* album, (Rounder 11555) Appleseed Productions, 1025 Locust Ave., Charlottesville, VA 22901 (\$12 for cassette)), invariably brings the house down in Family Law. It also, I hope, teaches students, in a way they are not likely ever to forget, the need for both spouses to maintain reasonable control over the sale of marital assets. (Sorry, but I won't explain the song any more fully in print; you'll have to get it yourself.)

Finally, when all else fails, try doggerel. I have inflicted my own effort at verse, *The Cautionary Ballad of Susan M.*, 40 J. Legal Educ. 485 (1990), on an Education Law seminar to try to demonstrate the futility of educational malpractice litigation. The sequel, *Susan M. Reprised*, 43 J. Legal Educ. 149 (1993), maybe, just maybe, will illustrate the concept of *res judicata* to first-year Civil Procedure students, so that even if they don't remember the phrase, they still get the idea.

The point is that law school does not have to be as, well, you know, as it tends to be. With a little leavening, one can get a rise out of the students. And they just might learn, and remember, something valuable.

Robert E. Rains is a professor of law at The Dickinson School of Law. He is indebted to his 12-year-old daughter for the title of this article. (The emphasis is on both syllables.) You may contact Professor Rains at The Dickinson School of Law, 150 South College Street, Carlisle, PA 17013-2899, (717) 243-4611, FAX (717) 243-4443.

Using doctors to teach law students

By W. Dent Gitchel

Ten years ago, I left private practice as a trial lawyer to teach litigation-related courses such as Trial Advocacy and Evidence at the University of Arkansas at Little Rock School of Law. While I still teach those courses, I have added a Law and Medicine Seminar to my repertoire. I utilize physicians as expert witnesses in Trial Advocacy workshops to give my students an opportunity to examine real doctors in a simulated courtroom setting. My Law and Medicine students observe doctors at work and spend time communicating one-on-one with physicians.

The philosophical basis

The years I spent dealing with physicians as expert witnesses in bodily injury and medical negligence cases have given me some appreciation of the problems that physicians and lawyers experience when forced to communicate with each other. I have listened many times as lawyers attempted, without success, to elicit technical information from medical witnesses in a way that jurors could comprehend. Also, I have experienced first-hand the difficulty lawyers and physicians encounter when they are forced to converse across the chasm that separates the two professions' approaches to solving problems.

Doctors and lawyers have trouble communicating. Each profession speaks its own peculiar dialect. Doctors and lawyers have different objectives. More significantly, the members of each profession are trained to approach problems in different ways. The physician seeking to diagnose and cure a

patient's illness has no use for an adversary system of problem-solving. The physician seeks data empirically and adopts no preconceived, desired diagnosis or treatment regime. The physician rejects no fact because that fact does not support a desired diagnosis. On the other hand, the lawyer-advocate always has a predetermined goal — the client's victory. The lawyer utilizes facts that support that result and rejects facts that do not.

The situation is complicated by the fact that lawyers and doctors often simply do not like each other. Many physicians believe that most of the problems with America's health care system can be attributed to lawyers who file frivolous suits against doctors. Conversely, some lawyers see physicians as overpaid, self-indulgent egotists, and virtually all lawyers agree that injured patients should have recourse against physicians' negligent blunders.

Despite these difficulties, doctors and lawyers are frequently thrown together in a courtroom, where it is critical that they overcome their inability to communicate and set aside their mutual aversion in order to convey vital information to a jury. One of the basic premises of my efforts to foster interaction between my students and practicing physicians is that medical evidence will be more effective — and further the goal of achieving fairer trial decisions — if the lawyers who ask the questions and the doctors who answer them have some elemental appreciation

of the operational methods, the professional goals, and the semantic peculiarities of one another's professions.

Overview of our programs

Our law school is located in the same city as the University of Arkansas for Medical Sciences (UAMS) and the state medical examiner's office. This proximity makes frequent visits easy. The faculty and staff of UAMS, as well as the state medical examiner and his staff, have offered their unreserved cooperation and encouragement in our efforts.

Both the Trial Advocacy and Law and Medicine courses lend themselves well to using physicians to teach law students. The Law and Medicine Seminar is unique in the extent to which law students are allowed to participate on the job with members of the medical profession. The doctors cooperate enthusiastically. They seem to feel that the experience is as beneficial to them as it is to the law students.

Trial Advocacy

Our interdisciplinary efforts began when I telephoned the chairs of the Pathology and Psychiatry Departments at

UAMS, seeking physicians to role-play expert witnesses in Trial Advocacy workshops. Much to my surprise, several residents and even some staff physicians volunteered. For a couple of years I continued that system of recruiting volunteer

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witnesses each year.

One day, the residency director in the Family Practice Department contacted me and suggested that UAMS require every Family Practice resident to participate as an expert witness in a Trial Advocacy workshop. This was music to my ears. I collaborated with a couple of UAMS physicians to develop a problem based on an actual patient's medical records. Since that day seven years ago, every Trial Advocacy workshop group has devoted a three-hour session to examining a "treating physician" in a mock bodily injury suit. The residents approach the experience eagerly, because they know it prepares them for the day when they will be called upon to serve as expert witnesses in real cases. These same residents later have an opportunity to show my Law and Medicine seminar students how they work in their natural habitat.

The next major step was when the director of Clinical Pathology Laboratories, a physician who has often testified as an expert witness, agreed to deliver a lecture to my Trial Advocacy class. After the lecture, he agreed to furnish pathology residents and staff physicians each year to testify as pathologists in Trial Advocacy workshops. He has continued to lecture to each Trial Advocacy class, and we have devoted one workshop session to the examination of forensic pathologists.

Continued on page 4

Using doctors to teach law students

continued from page 3

Law and Medicine Seminar

The Law and Medicine Seminar is, on its face, a rather ordinary, two-credit law school elective. Enrollment is limited to twelve students in their final semester of law school. Each student is required to submit a paper for the final grade. There is no final examination.

However, our course is unique in that it allows each student to share in the working experiences of physicians. These field trips give my students an appreciation of the practice of medicine that no amount of reading or discussion could achieve.

One of our first field trips — not exciting, but essential to an understanding of the practice of medicine — is an afternoon each student spends in the Family Practice Clinic at UAMS paired one-on-one with a resident. The law student accompanies the resident, sitting in the room as the resident takes patient histories, performs physical examinations, and prescribes treatment. Of course, the Clinic obtains prior patient approval of the law student's presence. Between patient appointments, students observe the physicians entering notes in patient records and also converse informally with the doctor to whom they are assigned. Each student then tours a hospital ward with the resident on call.

Another field trip requires students to visit the UAMS Gastroenterology Department for "morning rounds" and a roundtable discussion, at which the director of the department reviews cases with the attending physician, the residents, the fellows, and medical students. Afterward, the students observe an endoscopy procedure.

Students also spend a busy evening shift in the Emergency Room at University Hospital. The students often stay all night, and are sometimes pressed into service to help hold down violent patients, to wheel gurneys, or to stop blood. This experience gives students an appreciation for the sometimes heroic nature of a physician's work that no other experience imparts.

Students also spend a morning in the operating room observing surgery. After standing at surgeons' sides during operations, students typically emerge with a new understanding of the technical and physically demanding

nature of surgery, as well as the high level of tension in an operating room.

Finally, I take the students in small groups to the state medical examiner's morgue to observe an autopsy. The medical examiner selects cases of suspected homicide or other particular interest to future lawyers. The students usually approach the morgue with some trepidation, expecting to undergo a grisly ordeal. They are frequently surprised by the clinical, non-

gruesome atmosphere that surrounds post-mortem examinations.

Observation of an autopsy often is something of a metaphysical experience. These visits usually stimulate discussion, in and out of class, of the mystical nature of life, of the overwhelmingly obvious absence of the spark of life in corpses, of violence in society, and of the need to control the availability of guns. To see death helps us appreciate life.

Conclusion

My interdisciplinary efforts are based on an abiding belief that when lawyers and doctors have opportunities to meet and share experiences in nonadversarial situations, greater mutual understanding and respect usually results. Mutual understanding and respect can only benefit our patients and clients.

W. Dent Gitchel is a professor of law at the University of Arkansas at Little Rock School of Law. Law teachers who are interested in copies of the medical witness problem that Professor Gitchel uses in his Trial Advocacy course may contact him at University of Arkansas at Little Rock School of Law, 1201 McAlmont, Little Rock, AR 72202-5142, (501) 324-9437, FAX (501) 324-9433. For his exercise on examining forensic pathologists, Professor Gitchel uses problem 101 in the problems volume of Kenneth S. Broun & James H. Seckinger, Problems and Cases in Trial Advocacy, Law School Edition (4th ed. 1990). For his Law and Medicine Seminar, Professor Gitchel uses William J. Curran, et al., Health Care Law, Forensic Science, and Public Policy (4th ed. 1990).

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New Internet forum for law teachers

LAWPROF is an Internet discussion list for legal educators. The list's moderator, Professor Edward P. Richards of the University of Missouri at Kansas City, describes it as "a forum for all with an interest in legal education, rather than a list focused on technology." It is open for discussion of all phases of legal education, supplementing lists such as AI-LAW, which focuses on computer applications.

The list is open to all law teachers at universities and professional schools. To subscribe, send an electronic mail message to:

listserv@chicagokent.kentlaw.edu

The body of the message should read:

SUBSCRIBE LAWPROF <your name and institution here>

After you subscribe, any message sent to the list will be delivered directly to your electronic mail address. Additional information, such as how to sign off or obtain a list of subscribers, will be sent to you with confirmation of your subscription.

The "listowner," who handles the technical aspects of list management, is David Kiefer, LEAP Programming Director. You may contact him for technical assistance at (312) 906-5303 or at dkiefer@mail.kentlaw.edu. Professor Richards can be reached at (816) 235-2370 or at erichard@medlaw.win.net.

Teaching legal analysis: An inventory of skills

By Lisa G. Lerman

It is unfortunate that our first-year courses are titled and organized as if their only objective were to impart legal doctrine. In my Contracts class, the teaching of substantive law is an important goal, but may be less important than teaching the skills of legal analysis.

Over the last few years, I have moved toward a skills-based approach to teaching Contracts. In part this reflects my orientation as a clinical teacher (my first few years in teaching were as a full-time live-client clinician), and in part it is a reaction to the apparent and expressed educational needs of the students in my Contracts class. Some students come into law school with intellectual skills that enable them to learn the complex skills of legal analysis with little explicit guidance. Most students, however, are better able to learn legal analysis and problem-solving if they are not only asked to do it, but shown how and given opportunities to practice each of the component skills.

This article contains an inventory of skills that are necessary to do legal analysis. The development of this inventory helped my teaching, because it required me to articulate more precisely what skills I want to work on during class. This led me to focus more explicitly on skill development, to allocate more time to discussions focusing on skill development, and to talk with the students about the skills that I was trying to teach them. The students responded very positively to my increasing emphasis on Contracts as a "skills" course and to the road-mapping I offered them.

My suggestion to other teachers is not to use my inventory, but to make your own. The process of examining one's own teaching and identifying and refining one's goals is more useful than adopting the goals of another. If I have a clear idea of what I am trying to teach, and why I believe that my goals are worthwhile, and let my students know what my goals are, they are in a better position to learn effectively.

1. Prerequisites

I begin with a list of skills which each of us possesses in different degrees and all of which are necessary to do legal analysis. Weakness in one or more of these areas could present an obstacle to learning the skills of legal analysis.

- a. Logical thinking
- b. Organizing ideas
- c. Oral expression (includes the ability to think and speak simultaneously, requires self-confidence)
- d. Writing (basic skills in exposition, grammar, spelling, and punctuation)
- e. Reading comprehension
- f. Listening, attentiveness
- g. Formulating questions (identifying what one doesn't understand and articulating it)
- h. Figuring out what is being taught and what will be tested
- i. Thoroughness and attention to detail
- j. Judgment, common sense

- k. Note-taking (making a good record of class discussion for future study)
- l. Sensitivity to ethical dilemmas
- m. Creativity, imagination
- n. Ability to concentrate
- o. Time management and planning (making and implementing decisions about what to study and how to study, and monitoring and adapting one's study plans as the semester goes on)

2. Comprehension of law and facts (presented in court decisions)

- a. Understanding facts
 - 1) Understand what happened in a case or the facts of a problem
 - a) Comprehend an unfamiliar context (e.g., disposal of spent nuclear fuel)
 - b) Learn unfamiliar vocabulary
 - 2) Understand the legal importance of facts to:
 - a) Distinguish those that are important from those that are not
 - b) Recognize ambiguities and omissions in a statement of facts
- b. Understanding a legal doctrine
 - 1) Understand the scope of the category of rules of which the doctrine is a part
 - 2) Learn what are the sources of law in that category
 - a) How each source came into being
 - b) How much authority each source has
 - c) The relationship between the sources
 - 3) Understand the structure of the source of law in which a particular doctrine appears
 - a) Recognize the parts of a rule
 - b) Understand the meaning of each part
 - c) Understand the relationship of the parts
 - d) Distinguish the general rule from the exceptions
- c. Understanding a judicial opinion
 - 1) Discern how an opinion is structured and identify its parts
 - 2) Understand why and how the law and facts of other cases are used
 - 3) Understand why and how statutes are applied
 - 4) Understand why and how secondary sources are used
 - 5) Understand the non-law factors that contributed to the analysis
 - 6) Understand why and how an opinion departs from previous ones and how the departure is justified

3. Synthesis of multiple sources of law

- a. Explain the relationship between multiple sources of law on a particular topic
- b. Identify the concepts or elements that are common to the various sources
- c. Identify those concepts or elements that differ among the various sources
- d. If the synthesis is of case law, recognize these similarities and differences as to both facts and law

Continued on page 6

Inventory

continued from page 5

- e. Explain which similarities or differences are most important and why
- f. Explain patterns or trends that emerge from an analysis of the group of sources

4. Critical thinking about cases and statutes

Development of facility in recognizing and exploring:

- a. Why the rule is x rather than y
- b. Whether x is the best possible rule, or what would be a better rule
- c. What is the relationship among a group of rules
- d. What purposes are accomplished by particular rules
- e. What interests are reflected in particular rules
- f. What ambiguity exists in a rule, and what are the sources and consequences of that ambiguity
- g. Whether the rule reflects an incorrect understanding of facts or false assumptions about a situation
- h. What is the history of a rule; in what context has it been developed, and how has it changed over time
- i. What is the economic impact of a rule
- j. Does the rule have different impact on different groups (e.g., consumers, families, sellers, buyers)
- k. What is the impact of the background, experience, social class, personality, sex, race, age, religion, marital status, sexual preference, education, intellectual ability, etc. of the decision maker (judge, lawyer, legislator, etc.) and the parties or persons affected by the rule

5. Application of law

Students need to learn how to take a set of facts, identify the legal issues that are presented in those facts, identify the relevant rules of law, and figure out what result would be produced by applying the law to the facts. In each court decision judges identify and apply the law to reach a result. In class we use judicial decisions as models of analysis, and the students are often asked to do their own analysis of written problems assigned as homework and then discussed in class.

- a. Application of a statute to a set of facts
 - 1) Overcome the foggy nauseous math-anxiety type of feeling that so often accompanies first encounters with statutes
 - 2) Determine whether the statute applies at all or whether it is binding or persuasive authority with respect to the matter at hand and, if so, identify the relevant section(s)
 - 3) Understand the relationship of different provisions in a statute
 - 4) Read the statute word by word and identify the questions that must be answered about the facts of the problem
 - 5) Distinguish the part of a statute that states a general rule and the parts that state exceptions to the general rule
 - 6) Identify the relevant parts of any sources (commentary, precedent, scholarship) that help to understand what each word in the statute means and what questions it suggests
 - 7) Answer each question raised by the statute about the facts of the problem
 - 8) Use the statute to understand the logical sequence

- between the answers to the various questions
- 9) Draw a conclusion from the sequence of answers to the questions
- 10) Recognize questions asked by the statute that can be answered in more than one way and follow through first one analysis and then another
- 11) Recognize the purposes of the statute and assess whether the analysis comports with its purpose
- b. Application of a court decision to a new problem
This involves all the skills listed above and, in addition, requires the students to:
 - 1) Draw analogies, or make distinctions, between the facts of a case and the facts of the problem
 - 2) Construct arguments based on those comparisons or contrasts.
- c. Application of multiple sources of law
5a and 5b in this list look at what is required to simply articulate the relationship between a case or statute and a new problem. Another set of skills involves doing the synthesis described in section 3 above for a problem-solving purpose. This would involve the additional skills of:
 - 1) Constructing arguments for one or more parties based on the patterns identified in section 3
 - 2) Determining the possible conclusions that might be drawn from the application of multiple sources to the problem
 - 3) Evaluating which conclusion is most persuasive and why

6. Sensitivity to ethical issues

- a. Alertness to and ability to analyze ethical considerations that are raised in judicial opinions
- b. Recognition of ethical questions presented in the facts of a case but not addressed in an opinion
- c. Sensitivity to ethical questions and constraints on the application of law to solve a problem

7. Problem-solving

Essentially what lawyers do is solve problems by determining what legal constraints or tools exist that relate to the problem, integrating the legal and non-legal factors that affect the problem, and developing some advice, an argument, or a strategy. All of the above-listed skills are building blocks, the purpose of which is to enable legal problem-solving.

Lisa G. Lerman is an associate professor of law at The Catholic University of America, The Columbus School of Law. This article is based on an outline prepared for presentation at a meeting of the Section on Legal Writing, Reasoning, and Research, at the Annual Meeting of the Association of American Law Schools in San Francisco in January 1993. Professor Lerman acknowledges advice and assistance from Mary R. Falk, Lissa Griffin, J.P. Ogilvy, Philip Schrag, Lucia Silecchia, and students in her fall 1992 Contracts class. To obtain a fuller, written explanation of her teaching goals, you may contact Professor Lerman at Columbus School of Law, The Catholic University of America, 620 Michigan Ave., N.E., Washington, D. C., 20064, (202) 319-5140, FAX (202) 319-4459, e-mail: lerman@cua.edu.

Using graded assignments: The benefits and burdens

By Katherine Pratt

Grading is not fun. However, I recently decided that it might be worth some extra work to improve students' preparation for class and to give them some feedback before the final exam, so I began experimenting with using graded assignments in my classes.

Although I have tried various methods to improve class preparation, I decided that I needed to try something new last spring when I taught the Basic Federal Tax class to first-year students. As you can imagine, the first-year students approached the tax class with much fear and loathing. In addition, several large writing projects were due in Legal Research and Writing during the term, so I was concerned that many students would be absent (either physically or mentally) when those project deadlines approached.

I wanted to prompt the students to prepare thoroughly for class and to stay engaged throughout the term. In addition, I wanted to provide them with some feedback before the final exam, so that they would be less panic-stricken about the test. I decided to have the students turn in homework assignments which I would then grade and return to them.

During the first week of class, I announced that I would adjust a student's grade on the final exam a maximum of one grade step up or down (for example, from a B to a B+) based on the student's class participation, preparation, and attendance. In order to evaluate the students' preparation, I graded their answers to the problems.

The students wrote out their answers to the assigned problems, as if they were writing exam answers. A day or two before we covered a given problem in class, I collected the students' answers to the problem, graded them, and returned them before the class in which we discussed the problem. The students prepared their answers without knowing whether I would ask them to turn them in on the day they were due. I asked the students to turn in their answers about two-thirds of the time.

I evaluated the answers using a "no credit," "check minus," "check," or "check plus" standard. Using this format, the grading was much quicker than exam grading, although I did take time to write comments on papers when they were warranted.

Not surprisingly, giving the students feedback seemed to greatly facilitate their learning. The students' attempts to analyze statutes, regulations, cases, administrative pronouncements, and policy considerations progressed dramatically over the course of the term. At the end of the semester, the students wrote terrific exams.

Although I had anticipated that the students would benefit from receiving feedback throughout the term, I failed to anticipate the benefit to me of reading the students' answers before we discussed a problem in class. Usually, we teachers have little idea of what goes on in the heads of most of our students until the final exam. For the most part, we are forced to read the faces of our silent students, like tea leaves, for signs that they either understand or are lost.

Although I have, in the past, thought that I was a pretty good judge of the level of comprehension in a class, I will never again trust my view of what is going on in my students' heads unless I read what each one thinks. Reading the students' answers was an eye-opener, and frequently led me to add material to my class notes that I never, ever, would have thought to add without the feedback from students. I

know that I taught my students better as a result of receiving feedback from them throughout the term.

In addition, using graded assignments fostered a good student-teacher rapport. I admired the students for their consistent and considerable efforts to master the material. They appreciated the fact that I took the time to give them feedback on their work.

Using graded assignments also improved class participation. Having already attempted to answer an assigned problem on their own, the students were quite enthusiastic about solving the problem in class. Although class participation improved overall, I especially noticed increased participation by women in the class. Research indicates that male students are more likely to speak in class than female students, especially if the student is unsure of the answer. Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. Legal Educ. 137, 141-43 (1988). Perhaps having a prepared answer to the problem boosted the confidence of the women students in my class, prompting them to speak more often.

Requiring advance preparation of the problem also encouraged the students to learn actively. They were forced to learn the material as best they could on their own, in order

to answer the problem. This active preparation allowed the students to understand and retain more of what went on in class. Several students remarked that Tax was surprisingly easy to review

because they had learned the material the first time they had studied it.

In addition, requiring advance preparation of the problems helped to mitigate any differences in intellectual ability in the class. Some students no doubt had to work harder than other students to prepare the answers before class, but by the time we began to discuss a topic, everyone had achieved a basic level of understanding of the topic at hand. Instead of feeling as though I had to choose between boring some students or proceeding too quickly for others, we all proceeded together from a common starting point.

What are the potential drawbacks of using graded problems, other than the obvious one of needing to write the problems and grade the assignments? Using graded problems raises certain ethical issues. If students may not work together on the problems, how do you enforce that rule? Do you treat violation of this rule as an instance of cheating? If students are allowed to work together, how do you know that an answer is a student's own work? I allow my students to discuss the problem in a group, but each student must individually draft his or her own answer. Several students told me that they had enjoyed discussing problems with a group of students and had benefitted academically from the experience.

Using graded assignments produced many more benefits than I had anticipated. Although I share your distaste for grading, in my view the benefits far outweigh the burden of grading assignments.

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Using a book critique as a writing assignment

By David I. Levine and Adeline G. Levine

From time to time, law professors have been encouraged to use writing assignments in their teaching. See, e.g., Kathleen Bean, *The Use of Writing Assignments in Law School*, 37 J. Legal Educ. 276 (1987). We have had good success in using a twelve- to fifteen-page book critique as a writing assignment in small classes for law students.

Law students are expected to digest an incredible number of appellate opinions, a fair number of substantive notes, and small dollops of law review articles in the typical law school course. They are almost never expected to read entire books, and certainly never given the opportunity to relate such reading to their core assignments. The book critique is useful as a guided exercise, which enables the students to focus their thoughts about a subject through the prism of describing and reacting to an author's complete presentation in a book.

In our teaching, we have handed out a list of "approved"

readings from which the students may choose a book for this exercise. Of course, we have also allowed the students to select their own book, with permission. We hand out a critique guide with the list of books. In order to enable students to benefit from the reading that others in the class have done, we require students to turn in the critiques about one month before the end of the term. We find that students then refer to their particular books in class discussions.

David I. Levine is a professor of law at the University of California, Hastings College of the Law. Adeline G. Levine is an emeritus professor of sociology at the State University of New York at Buffalo. For a copy of their Guide to the Writing of Critiques, contact Prof. David Levine at Hastings College of the Law, University of California, 200 McAllister Street, San Francisco, CA 94102-4978, (415) 565-4600, FAX (415) 565-4865, e-mail: weinbgj@itsa.ucsf.edu.

Integrating supplemental materials in core courses

By Arthur J. Sabin

Core courses in law curricula have many purposes: to introduce the discipline of legal reasoning, to challenge students to learn through the Socratic method, to introduce components of the common law system, and to deliver a body of knowledge of the particular area of the law being taught. The usual method of addressing these tasks involves the use of casebooks, which, in the hands of competent teaching, achieves these goals.

By their design and content, casebooks survey essential principles, propositions, and approaches. The editor makes no attempt to relate a body of law to any particular state. While many law professors see little need or purpose in dealing with the law in the state in which their school is located, there are valid arguments for doing so. These include reducing the general to the concrete specifics of a state's body of law and legal system, reflecting the pragmatic fact that most students will be practicing in the state where the school is located. Furthermore, students have a natural curiosity about how their specific state has dealt with a particular issue.

One way to do this is to use supplementary materials. For example, in my Torts class I hand out selected pattern jury instructions covering concepts that arise during the course. The jury instructions express abstract concepts in understandable terms and inform students about their state's law. They also give the students insight about the operation of the court system and the role of judges and juries.

I also supplement the casebook with leading cases from the state, which demonstrate the reasoning of the state's courts on particular issues. These materials similarly narrow the students' focus from the general to the specific and also demonstrate how courts deal with the usual variety of issues raised in an appeal — not just a single or narrow range of issues in the edited casebook rendition.

As the course progresses, I hand out additional supplemental cases to punctuate how the state has recently

handled the area of law under consideration. This helps students to understand that what they are learning is more than theory: Here are cases that demonstrate how *our* state has actually dealt with the problem. This opens up the opportunity for critical analysis of the state's position in the light of casebook examples.

At appropriate points in the course, articles from newspapers, bar journals, or commentaries on a specific area will help students to explore the issues and examine divergent views. For example, when dealing with the concept of punitive damages, I bring in articles on different sides of the issue to breathe fire into the arguments as well as to inject the pragmatics of the economic impact.

Other supplementary material might include extracts from statutes to demonstrate the connection between case and statutory law and the role of the legislature in the legal process. For example, after studying the common law categories of persons who come on the land of another, students study the Illinois statute merging categories. Students then discuss majority and minority views on the matter, as well as the obvious impact of the statute on the common law.

Using selected supplementary materials can engage students in the law of the state where their law school is situated. And there is an impressive array of ancillary benefits. The specific law of every state, together with current arguments over relevant issues, should yield significant pragmatic benefits for all of the typical core courses.

Arthur J. Sabin is a professor of law at John Marshall Law School. For more information on using state law materials to supplement core courses, write to Professor Sabin at The John Marshall Law School, 315 South Plymouth Court, Chicago, IL 60604, (312) 987-1441, FAX (312) 427-7743.

The video "bite"

By Lee Stuesser

Good teaching involves capturing and harnessing the interest of students.

One technique that I use to generate interest is the video "bite." I avoid instructional videos, and turn instead to movies and television. My objective is not to use the video to instruct, but to illustrate. I look for short scenes that capture an issue. I then use the video to initiate discussion.

A perfect example is the opening scene from the movie, *The Star Chamber*. In the early morning hours, two undercover police officers observe a young man walking down the street. On a "hunch," one of the officers decides to talk to the man. The man flees. The chase is on. It ends with the man fleeing into his home, but not before he drops something into his garbage can. The police officers do not search the garbage can, but wait for the contents of the can to be dumped into a garbage truck that is just approaching. They find a handgun that connects the accused to several murders. Flowing from this discovery, the accused is questioned and fully confesses. Authorities search his home and find various items stolen from the murder victims.

The scene moves to the courtroom. All is for naught. The handgun and all evidence flowing from its seizure are ruled inadmissible. Why? The accused's Fourth Amendment right to protection from unreasonable search and seizure was violated. How? The accused retained a "reasonable expectation of privacy" in the contents of his garbage can.

"Garbage," you say. Not so. There is precedent, including the case of *People v. Krivda*, 486 P.2d 1262 (1971), which is mentioned in the scene, and *California v. Greenwood*, 486 U.S. 35 (1988), in which Justice Brennan provides an eloquent defense of the reasonable expectation of privacy in one's trash and the intimate secrets contained therein.

Where does this lead? It leads to discussion on the notion of "reasonable expectation of privacy"; it leads to discussion on the whole issue of exclusion of evidence flowing from a violation of the Constitution; and for my students, it leads to discussion of the Canadian approach under our Charter of Rights and Freedoms.

The video "bite" in a vivid and visual way acts as the standard law school hypothetical. Like most of our hypotheticals, it is extreme and exaggerated, but it serves as an excellent catalyst for discussion.

Next time you are watching a movie, think about the video "bite."

Lee Stuesser is an associate professor of law at Robson Hall, University of Manitoba. For more information on using video "bites" in the classroom, contact Professor Stuesser at Faculty of Law, Robson Hall, The University of Manitoba, Winnipeg, Manitoba R3T 2N2, (204) 474-9773, FAX (204) 275-5540.

Summer 1994 conference

The Institute will hold its first annual summer conference on law teaching on July 15 and 16, 1994, in Spokane, Washington.

The two-day conference will feature six workshops. Participants will be able to choose four of the workshops to attend. Workshop presenters will include law school professors and professional educators. Likely topics for the workshops include:

- Effective Discussion Techniques
- Student Learning Styles
- Cooperative Learning
- Psychology of Adult Learning
- Evaluation of Students
- Visual Tools

Participants will have the opportunity to meet in small groups to share ideas about teaching. Before and after the conference, participants will be able to enjoy a variety of summer activities in the great Northwest.

The number of participants will be limited to 50, so that each workshop and idea-sharing session will be a small group experience. Look for more details about the conference and a registration form in the spring edition of *The Law Teacher*.

Submitting manuscripts

The Law Teacher encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become better classroom teachers. Articles should be 500 to 1,500 words long. The author should describe the idea and tell readers where they can get more information on the topic of the article (from a book, another article, or the author). Footnotes are neither necessary nor desired.

The deadline for articles to be considered for the spring edition of *The Law Teacher* is February 1, 1994.

You may submit articles on paper. If you have composed your manuscript on a word processor, please also include a copy of your article on floppy disk. Submissions through electronic mail also are welcome.

The editors will review all manuscripts; those that are accepted will become the property of the Institute for Law School Teaching.

Manuscripts, comments, and letters should be sent to: The Institute for Law School Teaching, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528; (509) 328-4220 (ext. 3740). The e-mail address is: ilst@gulaw.gonzaga.edu.

Institute offers grants for legal educators

The Institute for Law School Teaching established an annual grant program in 1991. The purpose of the grant program is to encourage and support research on teaching and learning in law schools.

Each spring, the Institute announces the goals of the grant program for that year and solicits grant applications. During the past two years, the Institute has received many excellent applications for worthwhile projects. In 1992, twenty grant applications were submitted and four grants were awarded. In 1993, twenty-nine applications were submitted and three grants were awarded. Grant awards ranged from \$450 to \$4,000; the average award was \$2,850.

The Institute recognizes the need for much more research on teaching and learning in law schools. The grant program represents only a small step in the quest to improve the quality of law teaching. However, these seven projects funded by the Institute will be significant additions to the literature.

The Institute awarded grants for these projects in 1992:

- **A Study of the Use of Peer Teachers in Law Schools.** University of Missouri-Kansas City School of Law; Professors Julie Cheslik and Barbara Glesner. The grantees surveyed law schools about peer teachers (student mentors, tutors, teaching assistants), including their selection, responsibilities, supervision, and effectiveness. The products are an article reporting the results of the general survey and an article that addresses a separate survey of law schools that use teaching assistants in legal research and writing programs.
- **Law Faculty Seminar: Educating the Educators.** Touro College Jacob D. Fuchsberg Law Center; Professors Louise Harmon and Deborah Post. This project included a faculty retreat where professional educators presented information on student learning and effective teaching strategies. One of the educators also prepared a bibliography of literature from the field of education that would be helpful for law teachers. The project product will be an article describing the faculty's efforts to incorporate adult education theory and techniques in their courses.
- **Understanding the Relationship Between Law Students' Learning Styles and Law Students' Performance.** University of Dayton School of Law; Professor Vernellia Randall. The grantee administered two instruments to first-year law students to identify their learning styles. Then the grantee developed and administered two more instruments to identify students' study strategies and habits. The project product will be an article analyzing the relationship between learning styles, study strategies, and success in the first year of law school.
- **Legal Reasoning: Managing Coherence in Problem-Solving Discourse — A Comparative Study of Forward and Backward Reasoning in Medicine and Law.** The Catholic University of America Columbus School of Law; Professor J.P. Ogilvy. Texas Southern University Thurgood Marshall School of Law; Professor Anthony Palasota. Central Texas Medical Foundation; Carmen Wong, M.D. This project uses an experimental design to study the

reasoning skills of doctors, lawyers, medical students, and law students. The product will create a model of legal reasoning that will help diagnose students' problems with legal analysis.

The Institute funded these projects in 1993:

- **Law School Teaching Styles: Conversations with Students (A Television Program).** University of Detroit Mercy School of Law; Professor Lawrence Dubin. This project will produce a videotape of various teaching styles (Socratic, lecture, role playing, etc.). For each teaching style, the tape will include a law professor privately discussing the teaching technique and the objectives for the class, portions of the actual class, and student reactions to the teaching method.
- **Surrogate Legal Education: An Evaluation of Law School Farmout Programs.** Texas Tech University School of Law; Professor Charles Bubany. The grantee will analyze law school externship programs. The project includes a literature survey of reports and commentary on externship programs, an empirical review of the externship programs of eight Texas law schools, and recommendations about the future of externship programs.
- **Teaching Skills Through the Substantive Law: Integration of the Principles of the "McCrate Report."** Pace University School of Law; Professors Leslie Garfield and Michelle Simon. This project has two components. First, it will research and evaluate how law schools teach writing skills through substantive courses. Second, it will produce a comprehensive teaching manual for teaching writing through substantive courses. The manual will describe the benefits of this teaching method and will contain model syllabi, sample problems, and model answers.

The Institute's next round of funding in the grant program will take place in 1994. Look for an announcement in the spring 1994 edition of *The Law Teacher*.

The Law Teacher

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Opinions expressed in *The Law Teacher* are those of the individual authors. They are not necessarily the opinions of the editors or of the Institute.

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