



GONZAGA UNIVERSITY

# THE LAW TEACHER

Institute for Law School Teaching

Fall 1995

## Hardhat teaching

By Gregory M. Stein

For the past five years, I have taught a Land Acquisition and Development Seminar. This upper-level course tends to attract the ten or fifteen students in each class who, like their teacher, cannot walk past a construction site without peering over the fence for a few minutes.

Several times in past years, students have suggested that it would be valuable to visit a construction site at some point during the semester; perhaps to meet with the owner, the general contractor, and the architect; and to get a sense from people in the business about how a project progresses. For some reason, I never followed up on their suggestions.

But an irresistible opportunity arose last year, when the University of Tennessee College of Law began a thirty-month renovation and expansion project.

Toward the end of the semester, the university's director of facilities planning, the general contractor's project manager, and the project architect met with the class and me. By this point, students had spent most of the semester representing the various parties involved in the construction of fictional Trumpet Tower. They had studied the intricacies of development financing and had drafted and negotiated construction and permanent loan documents. They had examined the American Institute of Architects' standard construction documents. But nothing that I did in class could simulate bargaining leverage, scheduling desperation, time pressure from actual clients (as opposed to a fictional client who grades students at the end of the term), sinkholes, unexpected aquifers, or heavy rains. In short, the students had been playing poker with chips not backed by cash, and I needed to bring in people not unlike their future clients to import some reality into the Trumpet Tower project.

I entered the special class session with some trepidation. Although I had practiced real estate law for four years and had been exposed to construction law, I had been teaching for five years and was increasingly worried that I had become rusty. Perhaps my background provided an accurate portrayal of the world of 1990, but was I hopelessly out-of-date? Perhaps the books and documents we had used in class were credible, but are the scholars who write in the field as knowledgeable about the construction process as I had always optimistically assumed?

I was introducing experts to the class who could credibly dispute my knowledge. I was reminded of the time in seventh grade when I became convinced my Spanish teacher was actually making everything up as she went along, perversely inventing grammatical rules and verb tenses, perhaps teaching us Portuguese or a fictional childhood language of her own. How would we have known? Back then, I would periodically turn on old UHF channel 47 — the local Spanish-language station — as a way of verifying

her credentials. Today, the students would verify mine.

The class went quite well, at least as best as I could judge. Nearly all of the students showed up for this optional session on a beautiful

spring Friday at the peak of the dogwood season. I had asked each of them to bring in a short list of questions — in particular, questions about local practices that they had asked me during the year and for which I had been able to offer only uncertain answers. Nearly all of the students asked pointed questions based on their increasing knowledge. They received straightforward responses from knowledgeable, skilled experts. They interacted, as professionals, with professionals.

The first hour of the two-hour session produced a few substantive law surprises. As it turns out, lien waivers, a topic on which we had spent a great deal of class time, seem to be infrequently used on projects in this part of the country. And the AIA form documents are only rarely negotiated in state projects — the state simply drafts supplementary conditions, attaches them to the commercially prepared form document, and seeks bids on the package. But all in all, the first hour of the class accomplished exactly what I had hoped, by adding the one missing ingredient — reality — to

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*How taking my land development students to a construction site was like watching UHF channel 47.*

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*From the director*

## AALS annual meeting turns attention to teaching

By Gerald Hess

Legal educators with a keen interest in teaching should be excited by the program announcement for the 1996 AALS Annual Meeting. The San Antonio meeting appears to have a greater focus on teaching and learning issues than any AALS annual meeting for the past ten years.

As in years past, the Teaching Methods Section will present a program on an important pedagogical issue. This year the program deals with goals and methods when teaching emotion-laden issues. In this interactive session, law teachers will talk with each other about their experiences in teaching issues that generate strong emotions in the classroom. Panelists and audience members will discuss practical methods they have used to break classroom taboos about these difficult subjects.

Both the content and the format of the plenary session are promising. The session will address how students learn and how we can collaborate to be more effective teachers. Further, rather than using the typical "talking head" format, the plenary session will include a variety of techniques, including simulations, small groups, and

discussion.

Many of the AALS section programs will focus on teaching and learning; for example, Section on Academic Support (Understanding Learning Styles, Cultures and Contexts to Enhance Teaching), Section on Labor Relations and Employment Law (Innovations in Teaching), Section on Insurance Law (Mass/Toxic Torts, Insurance Law and Insurance Law Pedagogy), and Section on Agriculture Law (Teaching the 1995 Farm Bill).

I hope law teachers with an interest in learning and teaching will take advantage of these sessions. Over the last several years, the sessions that focus on pedagogy have been well attended. I hope that trend continues this year. Let's give the AALS positive reinforcement for its increased emphasis on teaching.

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## Hardhat teaching

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my simulation class.

The second hour of the session probably was less valuable substantively but far more memorable. It also was the hook by which I had enticed everyone to attend — a guided tour of the construction site, a journey inside the chain-link fence that had separated us from the various people doing mysterious and noisy things inside "the hole." I now can claim to have taught the first class in the new law school building, and so what if the building is not built yet and I did not actually "teach" the class?

The architect led us through the building plans, pointing out some of the more subtle features. We learned that fire-prevention systems are among the most difficult to design, because they must be connected to so many of the other building systems. And we observed how the Americans with Disabilities Act has altered building design.

Based on my two-hour experience with hardhat teaching, I recommend it highly. In some portions of the law school curriculum, such as clinical teaching, this is already standard fare. In other areas, it simply would not work. I could not, for example, offer a similar experience to my Law and Economics students (except, perhaps, in Chicago, or maybe Arlington). But in those areas of law practice that occasionally produce the equivalent of a new law school building — and there are more than you might think — the benefits seem incontestable. Thus, a Securities Law teacher might take her students to an all-night session at the printer's, or a Health Law teacher might visit the general counsel's office of a major hospital. And Real Estate professors need not wait for

their own law school buildings to be renovated — any local construction project might work just as well.

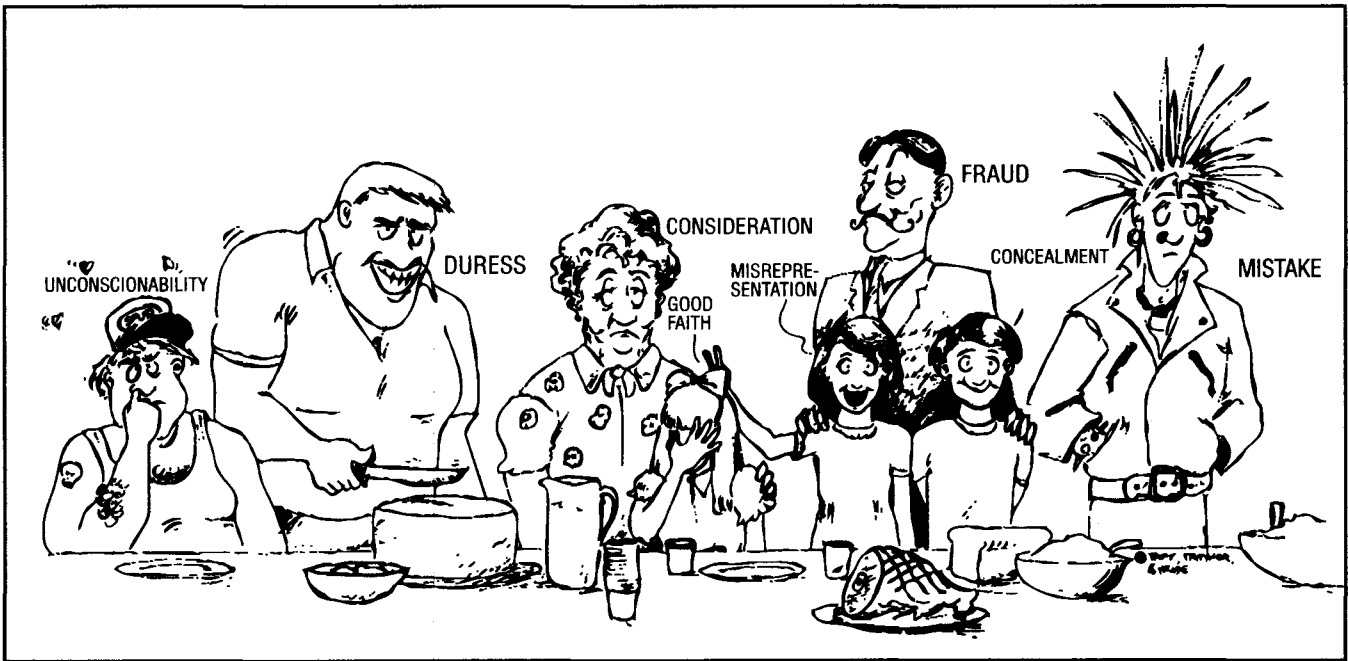
The students benefited in several ways. They received more complete responses to some of the questions they had asked in class. They started to see how lawyers and business persons interact as useful members of a productive team. And they began to develop the confidence that they really knew more law than they thought they did, and that their own legal proficiency would continue to develop long after graduation.

I benefited, too. I was able to see students, who knew little about an area of law just fourteen weeks earlier, asking articulate questions and receiving answers from people who obviously respected their growing expertise. And I had the satisfaction of turning on old channel 47. Even as I increased my own knowledge, I was able to confirm that the teacher did, in fact, have something useful to offer, and was, in fact, teaching them *real* Spanish.

And, best of all, we were able to spend that second hour down in the red East Tennessee clay, watching the subs pour concrete, and crowding around the bed of the contractor's dusty red pickup to peer at the building plans that rippled gently in the spring breeze, on a warm Friday afternoon, at the peak of the dogwood season.

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"A Picnic of Contract Elements"

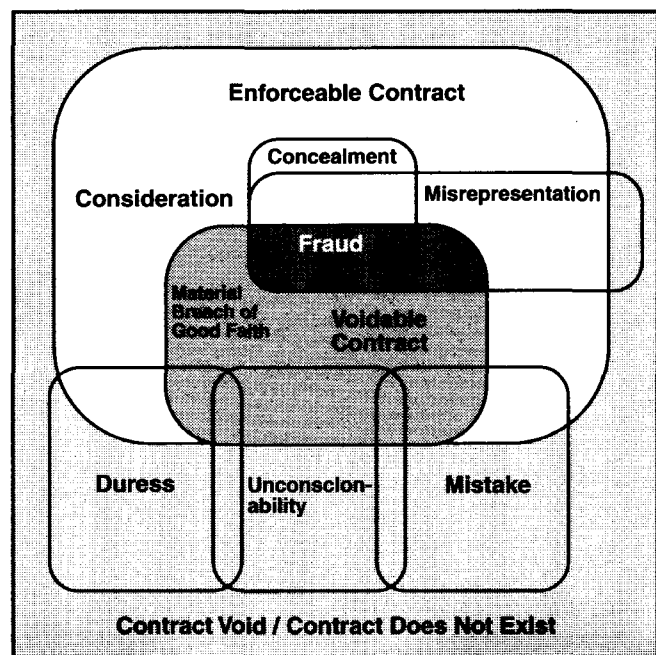
## For some, pictures worth more than words

By Stephen L. Sepinuck

Many students learn better visually than textually. To help those students, I use many graphics in my materials and in class. One of the most effective uses for graphics is to have students participate in their creation. This makes them more invested in the graphic and requires that they really master the material.

There are several ways to get students to participate in creating a graphic. Sometimes I produce a template and ask students — either in class or as part of their homework — to fill it in. For example, I ask them to map out the parol evidence rule of U.C.C. § 2-202 by filling in a chart indicating what types of evidence are admissible under what circumstances. Other times I ask students to create the graphic completely on their own. For example, in *Contracts*, after covering the contract policing doctrines (e.g., fraud, duress, unconscionability, mistake, and frustration of purpose), I ask students to present a one-page graphical depiction of how these doctrines interrelate. I then use their work to focus class discussion on the relationship of the various doctrines. For example, the graphic on the right is a Venn diagram submitted by one group of students. It demonstrates a great deal of high-level thinking about the material, and it also prompted an interesting class discussion about whether there is a greater relationship between the doctrines of concealment and mistake than the graphic suggests.

Students are often quite excited about these projects, and frequently exhibit a significant amount of insight into the material. Moreover, they often produce different types of graphics. For example, in addition to several Venn diagrams, I also received a wide assortment of flow charts, as well as the amusing illustration above (which was accompanied by text describing the attributes of the characters depicted).



Venn diagram

There are at least two benefits to this. First, it is a helpful reminder that students may think about the material in a completely different way than I do. If I know that, I can be more sensitive to their learning styles and perhaps be more likely to disabuse them of any misunderstanding they may have. Second, and perhaps more important, it also may prompt me to think about the material in a new way.

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# Scrambled sentences — deconstructed

By Arthur Austin

I was intrigued by Professor Brannon Heath's "scrambled sentence" exercise for her overwhelmed students. See *Scrambled Sentences: A Puzzle Worth Solving*, *The Law Teacher*, Fall 1994, at 12.

Professor Heath scrambled twelve sentences that she cut from a memo on a Legal Method problem and challenged her students to reassemble them in the proper order. Professor Heath followed this with a new challenge: She numbered the cut-up sentences in the *correct* order and again

asked the students to reassemble them. Only one group realized the sentences were already in the proper order.

The exercise reminds me of a deconstructionist technique known as "double session." The best-known practitioner is the movement's leader, Jacques Derrida, whose best-known double session posed a face-off between the prose of Hegel the philosopher (on the left side of the pages) and the words of the thief-turned-writer Genet (on the right side). According to Christopher Norris, it is Derrida's "most graphic demonstration of how texts can invade each other's space." It is what deconstructionists call intertextuality and shows that meaning cannot be contained within the limits of a text but instead is vulnerable to attack by other texts. Text is therefore borderless.

The double session is by no means original with Derrida. According to Ted Morgan, William S. Burroughs'

biographer, Burroughs discovered a similar technique by accident; a friend sliced through a pile of newspapers, then made a mosaic out of the strips. Calling this the cut-up method, Burroughs cut out strips — sentences, words, paragraphs — and mixed them to create a new form of

literature. Burroughs even thought "that by mixing up medical articles they would locate a cure for cancer."

The ultimate challenge for Professor Heath and her students is to compose a double session of differing views from case

opinions, commentators, and whatever other literature is relevant. The winner would be the person who can create the most explosive conflict, something on the level of a double session of reciprocal invasions by Camille Paglia and Katherine MacKinnon. Or how about Larry Tribe "encountering" with Robert Bork on the same page, or some vigorous intertextual exchanges between Stanley Fish and Nadine Strossen? In my judgment, the most provocative double session would be an intertextual challenge between Professor Morris Zapp and Henri Mensonge.

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## Three teachers receive Institute research grants

Three law teachers received grants for research during the 1995-96 academic year. The total amount awarded was \$12,000. The research projects are:

- *Indian Law in the Required Civil Procedure Curriculum*

This project is designed to help address the lack of knowledge of Indian law and issues among most American law students, particularly about the existence and role of tribal courts, by encouraging the inclusion of basic Indian law concepts in required Civil Procedure courses. Professor Cynthia Ford of the University of Montana School of Law will develop teaching materials for a two-hour segment on tribal courts for use in a Civil Procedure course and will disseminate the materials to all interested teachers of Civil Procedure.

- *Upper-Class Writing: Course Requirements, Teaching Training, and Feedback Materials*

Upper-class writing programs are important parts of law schools' curricula. Unfortunately, these upper-class

programs usually receive less attention than their first-year counterparts. Professor Lissa Griffin of Pace University School of Law will develop an upper-class writing curriculum and accompanying teaching materials that can be used by experienced writing teachers and by other teachers whose courses or seminars are used to satisfy upper-class writing requirements.

- *Boston City Hospital/Northeastern University School of Law Domestic Violence Advocacy Project*

In a novel collaboration between the Emergency Department at Boston City Hospital and the Domestic Violence Advocacy Project at Northeastern University School of Law, staff and students from both institutions are conducting an interdisciplinary research, education, and services project. The project will produce and disseminate a teaching protocol of client-centered education. The protocol will include a comprehensive, written description of the project and evaluation of its results; a curriculum for training students to conduct open-ended, client-centered interviews; and a curriculum for training supervising attorneys. Professor Cristina Poulter is the project director.

# Cultural legends bring theory closer to home

By Mark Wojcik

I worked last year in the Republic of Palau, a small Pacific island nation that gained its independence on October 1, 1994.

Using one of the legends of Palau, I created mock trials for high school students. The legend was of Surech and Tulei, which the Palauans view as their equivalent of Romeo and Juliet.

Surech was a beautiful woman. Tulei, her boyfriend, was the handsome nephew of the great chief Mad ra Ngebuked. Hearing Tulei speak of Surech's beauty, the chief said "Bring me her face so I can see it." Tulei was horrified by his uncle's request. For Tulei, these words had three possible interpretations. First, the chief could have wanted simply to meet the beautiful Surech. This, however, seemed too easy. Second, the chief might have wanted to see Surech in case he wanted her for himself. The chief had the right to have the most beautiful woman; if he demanded, Tulei would have to give her up. Third, the chief might have wanted Tulei to cut off Surech's head so he could see only "her face." Tulei knew the chief kept a collection of the heads of his enemies.

Tulei took Surech to a remote island, where he remained silent for several days. Surech asked Tulei to explain his strange silence. He told Surech of his dilemma: The chief either wanted her head or wanted to steal her from him. Surech asked sorrowfully, "How long have you been keeping this to yourself?" She sadly began to weave a basket. When Surech finished, she bent over the basket, and Tulei used his machete to cut off her head. Tulei took the basket to the chief, who then banished Tulei from the village.

We used a courtroom at the Palau Supreme Court to put Tulei on trial for the murder of Surech. The Palauan students assumed the roles of prosecutors, defense attorneys, witnesses, judges, and court clerks. The classes discussed whether Tulei was acting on the chief's orders (the Nuremberg defense), whether by weaving the basket Surech

consented to be killed (and whether a person can "consent" to be killed), whether the possibility that the chief would steal Surech would justify her murder, and whether Tulei had any factual defenses to the crime. In presenting their cases, the students were especially proud of their use of scientific evidence and lawyering techniques they learned from broadcasts of the O.J. Simpson trial on Palauan television.

The exercise was important for these students. Because judicial proceedings in Palau are conducted in English rather than Palauan, the students gained familiarity with the procedures, language, and translation process used in their own courts. They transcended the language barrier that bars access to the

courts. (The situation is similar to that in Haiti, where the courts use French rather than Haitian Creole.) If enough Palauan students become interested in law, the need for American lawyers may someday subside as Palauan lawyers and judges bring the Palauan language into Palauan courts. The alternative would be to lose the rich Palauan language.

Also, the students gained familiarity with the court proceedings and with career opportunities they may not have considered previously in this country, which has no law school. And the students learned a Palauan legend that, sadly, few of them knew. The tradition of teaching legends to children may fail when there are distractions such as broadcasts of foreign murder trials on television.

Teaching a Palauan legend to Palauan students made me realize that here in the United States there must be hundreds of local legends of which I am unaware and which might provide useful classroom hypotheticals while preserving the important tradition of oral history.

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## How to submit articles to *The Law Teacher*

*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 15, 1996.

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  
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# Thoughts on questioning students

*By this time Gertrude Stein was in a sad state of indecision and worry. I sat next to her and she said to me early in the afternoon, What is the answer? I was silent. In that case, she said, what is the question?*

– Alice B. Toklas, *What Is Remembered* (1963)

By Richard G. Fox

Questioning students, and addressing their questions, is a feature of the Socratic method of teaching law. It is a two-way process.

## We question them

We often question students to get an immediate confirmation that they have received the information we think we have transmitted to them. All we are asking is the message be retransmitted. In this case, the student's mind may be no more than a reflector.

Other times, we question students to demonstrate the inductive or deductive propositions that flow from the material we have "taught." Or we may use the questioning to orchestrate conflicting interpretations of the material, to break the monotony of straight lecturing, or to maintain interest in the class or topic.

We should avoid using questions to punish or discipline students. If discipline is required, be direct in addressing the disruption rather than use the student's lack of knowledge as a weapon. Students always should have an "out." If they can "pass," or admit that they don't know, you still can call upon them at the next class so that they are not let off the hook.

We assume, in questioning students, that we should receive an immediate answer. Sometimes it is better to be prepared to allow them time to think about the answer. Students often give uncritical answers to questions posed by the lecturer, because they are not given enough time to produce a better one. Reflection time is valuable for understanding. Some strategies for giving students time to think about the ramifications of the problems posed are:

- Utilize "think-pair-share." Pair students or small groups of students with a view to requiring them to discuss the problem and opening up class discussion at the next session.
- Use follow-up questions. ("Why?" "Do you agree?" "Can you elaborate?" "Tell me more." "Can you give me an example?")
- Withhold your personal judgment. Invite other students to respond to the answer given by a student. Suggest they interrogate the respondent.
- Ask for a summary from another student. ("Could you please summarize John's point?") This promotes active listening.
- Survey the class. ("How many people agree with the author's/presenter's point of view?")
- Divide the class into plaintiff vs. defendant, prosecution

vs. defense, etc., and set them against each other. Appoint a jury/judge to resolve the conflict of ideas.

- Allow the answering student to nominate the next student to respond. ("Will you please call on someone else to respond?")
- Require students to defend their reasoning against different points of view. Either play devil's advocate yourself, or ask the class to consider the question from the position of someone holding a particular point of view. ("What would the right-to-life people say about this?")

• Ask students to "unpack" their thinking. ("Describe how you arrived at your answer." "Think aloud.") Ask those who are making comments to their neighbors to share them with the class. Even half a thought will do for starters.

- Call on students randomly, not just those with raised hands.
- Let the students develop their own questions and answer them. If there is a flood of questioning, let the flood flow; tolerate what appears to be chaos. Let everyone have a go. Listen and summarize.
- Cue student responses. ("In answering this, I want you to think about (a), (b), (c) . . .")

## They question us

Student questions to the teacher serve many different purposes. They come with different levels of confidence in their legitimacy. Questions serve the students' needs; they may serve or inhibit our objectives. They often need to be orchestrated in some fashion.

We should remember that students' questions are a window into the great unknown. Be alert to fundamental misconceptions that may underlie a question; those misconceptions may be more widely shared than you think.

A fool can ask a question which the wisest person cannot answer. We often have to answer questions by not answering them. Recognize that some "questions" never require an answer, but are rather in the form of a statement that invites a response. When a questioning student seeks a response, why do you have to be the one to give it? Ask another student to do so.

Be alert to the shy, diffident, and tentative questioner. Such a student may begin a question with "This will sound silly but . . .", or may question his or her neighbor rather than ask you directly. Reinforce these questioners by responding to them.

Then there are the confident, highly visible (front-row center), sometimes clever questioners (or show-offs). They seduce your attention. If allowed to dominate, they will provoke reactive non-cooperation from other members of the class. Take an active role in trying to prevent this. Invite questions from those who have *not* put up their hands.

Be aware that some questions may be deliberately

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*We should remember that students' questions are a window into the great unknown.*

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# Exam bank ready for deposits and withdrawals

Last spring the Institute created a multiple-choice question bank to assist teachers who use or are considering using objective exams as a means of student assessment. Thanks to the willingness of many teachers to share their work, we have received and distributed 56 exams in the following areas:

Administrative Law; Civil Procedure; Community Property; Conflicts of Law; Constitutional Law; Contracts; Corporations/Business Associations/Agency & Partnership; Criminal Law; Criminal Procedure; Environmental Law; Estates, Wills, and Trusts; Evidence; Federal Estate and Gift Tax; Federal Income Tax; Insurance; Labor Law; Product Liability; Professional Responsibility; Property; Remedies; Torts; U.C.C. Article 2; and U.C.C. Article 9.

In addition, we have received requests for multiple-choice questions in the areas of Antitrust, Employment Law, Family Law, Immigration Law, Intellectual Property, Law Practice Management, Legislation, Mediation, and Securities Regulation. Questions are distributed in October and March and on an as-needed basis.

In order to expand the variety of questions, the

Institute encourages all law teachers to contribute to the bank. Send us your questions (with the correct answers indicated) in either hard-copy or electronic form (on a diskette or via e-mail). We can accept ASCII or ANSI text files, Ami Pro 1.2-3.0, MS Word for Windows 1.0-6.0, WordPerfect 4.2-6.1, DisplayWrite 4.0-5.0, and Rich Text Format (RTF). If you e-mail your questions, be sure your e-mail program is MIME-compliant or is capable of sending a binary file. The Institute's e-mail address is [ilst@gulaw.gonzaga.edu](mailto:ilst@gulaw.gonzaga.edu).

With your questions, please include a cover memo that specifies the restrictions you want placed on the use or distribution of your questions.

Any law teacher may request copies of questions. To do so, write to the Institute on your law school's stationery, identify the subjects for which you want to receive questions, and indicate your willingness to comply with contributors' restrictions on distribution of their questions. As new contributors send questions to the bank, the Institute will mail the new questions to teachers who have requested questions in the subject area during the preceding two years.

## Questions

*Continued from page 6*

diversionary, particularly if students know you are easily led off the topic.

While we ought to welcome questions, their timing and relevance often will not be appropriate to the topic under discussion, or will interfere with coverage of the material within the time allowed. Consider these strategies:

- Accept the question, but reassign it to a more relevant slot. ("That's a good question, but wouldn't it be better if we look at it when we get to the next issue?")

- Reinterpret a question. ("What I think you are asking is . . .")

- Ask stooze and phantom questions. Ask a student to ask a question in class (often because the student asked a pertinent question after class, but you would like the discussion shared with everyone else). Sometimes no one asked a question, but you can pretend someone did.

- When too many questions threaten continuity and timing of material, be up front: "I won't take any more questions for the moment. I need the last 15 minutes to complete the material I wanted to cover in this class. I will take questions after class."

- What if you don't understand a question? Consider: (1) asking the student to restate the question; (2) asking another student or students to explain what the question is; (3) reinterpreting the question so as to answer a question that you do understand which appears to be on the topic.

- What if you don't know the answer to a question?

Consider: (1) saying you don't know; (2) discussing with the class the principles or policies that may provide an answer; (3) indicating you will look it up by the next class; (4) asking the class to look it up by the next class, and compare results; (5) indicating what you think the answer might be, but qualify it by identifying what additional case law or legislative material would have to be checked in order to confirm your tentative conclusion.

- What if a question is explicitly or implicitly racist, sexist, or provocative (sometimes deliberately so)? Invite members of the class to make explicit the values or attitudes implicit in the question, rather than doing so yourself. Reverse roles ("How would you react if you were in this situation?") or appoint the questioner legal representative of a disparaged group and invite him or her to present the case for his or her clients; change or widen the context in which the attitude is being expressed in order to drive home its implications.

- Have all the questioners write down their questions on pieces of paper. Overnight classify them and, at the next class, take up all the themes contained in the questions. This is particularly useful and time-saving at pre-exam review time.

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# Teaching should coordinate form, function

By Ruta Stropus

**M**uch has been said lately of the “new” ways to teach. “Collaborative learning,” “experiential learning,” and “peer review” quickly have become familiar phrases in law teachers’ vocabulary.

We have begun to understand that different people learn differently, and some of us have begun to teach differently. Especially in teaching writing, there are many opportunities to experiment with different types of teaching methods. However, before embarking on this experimental journey, we should think about the purpose of the teaching method.

## Coordinate form and function

A teacher should spend time thinking not only about *what* she will teach but also about *how* she will teach it. The teaching

method must serve a purpose. One should not do something “creative” in the classroom just for creativity’s sake.

Sometimes, traditional lecture is the best way to teach something. For example, I teach a legal drafting course. In trying to teach students how to draft a will, I have to give an overview of estate law, just to provide the context students need to complete an assignment. Lecturing is the most appropriate method to teach this material.

Form should follow function. Lecture might be the appropriate method if you are trying to provide a context or background, or to make sure everyone understands basic concepts.

## Balance the methods

No one method is perfect or suitable for everyone. I balance the teaching methods I use by keeping a record of what I did in the previous class and what I plan to do in the following class. I like to follow lecture classes with either group or individual exercises. For instance, if I lectured in the last class on the principles of organizing a document, in the next class I have students review a sample document and

evaluate it in terms of these principles. Sometimes, I team students up into small groups and have them review the document as a team. At the end of the class, all the teams present their opinions to the class as a whole. Other times, students review the document individually and complete a “critique” sheet that they turn in to me. I consciously vary the group and individual activities so that all students, whether they prefer to work with a group or by themselves, have a chance to maximize their learning.

Especially after a lecture class, I like to give quizzes to test students’ understanding of the material. Sometimes I grade the quizzes or ask the students to exchange papers and grade someone else’s work; sometimes we use the quizzes solely for

discussion purposes. This variety keeps students on their toes and lets me track how well the class understood me.

## Seek student comments

Although semester-end evaluations are helpful in assessing the course as a whole, they are not retroactive. I prefer to know whether my teaching methodology is working while the class is in session. I periodically ask students to write down what they have learned in the course so far and how they learned it. I then ask a student to share a “tip” with the class — the one thing that has helped her most so far. Mid-semester, I ask students to fill in an evaluation sheet for the course, in case I need to make any adjustments.

Most importantly, I try to really listen to what students are saying. I do not want to get so caught up in trying out a new teaching method in each class that I forget about the big picture — maximizing student learning.

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## Institute’s third conference is scheduled for June

**T**he Institute will hold its third annual conference on law teaching on June 28 and 29, 1996, in Spokane, Washington.

The two-day conference will feature six workshops, from which participants will choose four. Workshop presenters will include law professors and professional educators. Likely topics for the workshops include:

- Using Graphics
- Diversity in the Classroom
- Principles of Adult Learning
- Technology to Assist Teaching
- Student Moral Development
- Assessment of Learning and Programs

Participants will meet in small groups to share ideas

about teaching and to address common teaching problems. In addition, participants will have time to meet informally to discuss law teaching with other motivated teachers.

June is a great time of the year in the Pacific Northwest. Participants will have a chance to vacation in the area before and after the conference. In and around Spokane are beautiful parks, many lakes, and the best public golf in North America. Within a half-day drive of Spokane are Seattle, the Columbia River Gorge, Hells Canyon, Glacier National Park, and the Canadian Rockies.

The number of participants is limited to 50 so that each workshop and idea-sharing session will be a small-group experience. Look for more details and the registration form in the conference flyer to be mailed to all law schools in January.

# The YUK word

By Brannon Heath

**B**reathless, late, the student bolted into my classroom. "Have I missed the YUK word?" I knew then that my experiment had worked for at least one student.

YUK, my abbreviation for "yucky," implies disgust or repugnance. I chose it to dramatize literate readers' reactions to common grammatical errors. At the beginning of my Legal Methods class each year, I explain that there are certain errors I find so jarring and disruptive that my mind stalls when I read them. I no longer can focus on what the writer is saying; all I see is the error. I tell my students that many others — judges, attorneys, clients — react the same way.

I tell students I will devote the first few minutes of each class to the YUK of the day. From then on, I explain, that error should not appear in their written work. If it does, I will write YUK in the margin. That mark will signal that I stalled, that I was annoyed, and that I focused on the error rather than the content of the work.

I begin with the YUK its-it's. I find the confusion between the possessive and the contraction the most common mistake in first-year students' papers. I have seen the error in printed publications, in memos from university offices, and in notices on bulletin boards. It is such a common error that I usually have to repeat it as a YUK 2, reinforcing my distress and disbelief at finding it in a set of papers.

My choice of the YUK depends on the class. In

addition to commonly misused words, I intersperse punctuation rules on the use of the comma, rules on agreement and the use of apostrophes. Sometimes a YUK arises from a memo or brief problem. This past semester, we spent a few minutes on the difference between "affect" and "effect," both as nouns and verbs, because our moot court issue was whether a certain action effected an unconstitutional taking under the Fifth Amendment. Needless to say, a YUK that mistakes affect for effect presents a more subtle problem than some of the simpler, more glaring mistakes.

I wish I could report that my students never make a YUK mistake after I explain it. Alas, they do. But they do not make nearly as many mistakes as they did before I introduced the YUK of the day. They also become more conscious and critical of the grammar and usage of material they read. Equally important, the YUK of the day allows me to begin each class with something students know counts and helps them. Thankfully, there is less paper rattling, shuffling to seats, and settling in. I even find myself explaining what YUK means to other students who see the YUK of the day on the blackboard after class.

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## Journal may help students think more about ethics

By Patrick Hetrick

**A** child asks his father, a merchant, to teach him about "ethics."

"Say a customer comes in and buys a portable tape recorder," the father explains. "The customer pays for it with a crisp, new \$50 bill. As he is walking out of the store, I notice there are actually two \$50 bills stuck together. 'Ethics' is: Should I share it with my partner?"

This old joke illustrates the illusory meaning of "ethics." Changes in society's concept of morals, combined with several landmark court decisions and heightened competition among lawyers, have helped convert the law in many respects from a profession to a business. These changes have undermined notions of right and wrong, both in law schools and in the profession.

Entering law students are confused about even the most basic moral and ethical values. Perhaps this value-free backdrop is healthy. After all, it challenges law teachers to carefully examine current rules of professional responsibility, define "ethics," and reason through the process with students. In this environment, students have a right to ask: "What does it mean to be an honest lawyer? Why should I

aspire to be one? How will I be sure that I am one?"

However, I am amazed at the paucity of guidance for both students and teachers on the subject. It is senseless to point fingers, unless one is located in front of a mirror.

One idea that I am considering is to give a "professional responsibility journal" to each entering law student. Students would carry the journals to all their classes, and would make entries throughout their three years in law school. The ever-present journals would serve as reminders to deans, teachers, students, and visiting lawyers that they always must consider the ethical context of their activities.

I would like comments from others who may have tried this approach. Please contact me if you have suggestions.

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# Critique is critical in teaching lawyering skills

By Ralph M. Cagle

**L**earning lawyering skills, such as negotiations, requires students to participate in exercises that encourage them to consciously develop their skills. Teachers should provide informed and impartial critiques immediately after the exercises.

This quickly becomes a resource problem. Teachers (at least, this teacher) cannot individually critique many (more than two per student) of the student exercises unless the number of exercises or students is unduly restricted. Also, critique by a single instructor can narrow perspectives from which students envision the dynamics of the skill and risk the perception that there is a “right” way (*i.e.*, the instructor’s way) to practice the skill.

Part of my solution has been to make extensive use of practitioners and student peer evaluators. There are many collateral benefits to this beyond the availability of evaluators. I train these evaluators in the techniques of the critique method, although time for training is always at a premium. Training is essential because

critique is a powerful learning tool. If used inexpertly, it can do more harm than good. I also train students, whose work will be critiqued, about techniques they can use to maximize the learning experience. Again, time restraints are a limitation.

## Guide for evaluators

You will be teaching students basic lawyering skills (client interviewing, oral advocacy, and negotiations) by seeing them perform the skills in simulation exercises and then providing an individualized critique of their performance. We know that “learning by doing” is a very powerful experience. However, its success depends on whether the critique helps the students to understand how they need to improve and encourages them to do so. This learning method demands hard work by faculty and students alike in the form of thorough preparation and diligent application. Here are some guidelines for performing effective critiques:

- *Be prepared to critique.* Read and know the case file. Anticipate what problems may arise. Think about how you would perform the exercise. Take a minute or two to organize your critique before delivering it.
- *Be selective.* Select one or two points on which to critique and fully develop these points.
- *Start with a positive comment.* People tend to be more open to constructive criticism if they hear it after being reassured of their “worth.” In every performance, there is something that can be praised.
- *Be specific.* Relate your critique to specific events in the student’s performance of the simulation. To do this well, you need to take accurate, detailed notes during the exercise.

- *Be constructive.* If you offer negative feedback, don’t just criticize but suggest alternatives of what the person could have done differently. Focus your critique on an area that you think the student will be able to improve.
- *Be succinct.* Get to the point of your critique. Don’t ramble on.
- *Be honest.* Your job is not to be popular, but to help the student improve. Tell it like it is, but be supportive. Note what was done well, but only if it was done well.
- *Take responsibility for your critique.* Present the critique in the first person (“I think . . .”; “In my experience . . .”; “I think the better practice is . . .”). Avoid presenting points of critique as universal principles unless, of course, they are (*i.e.*, “Never address the court as ‘Hey, dude!’”).
- *Critique the performance, not the person.* Do not be judgmental or sarcastic. Tell the person what you saw or heard and the effect it had on you. Don’t just label it as “good” or “bad.”

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*Training is essential because critique is a powerful learning tool. If used inexpertly, it can do more harm than good. I also train students about techniques they can use to maximize the learning experience.*

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- *Make the student a partner in the critique.* Ask questions. (“What were you trying to achieve?”; “What do you think went wrong?”; “What alternative approaches might you have tried?”)
- *Teach by example.* A critique is a performance unto itself. People learn as much or more from how we say things as from what we say. Incorporate good communications skills into your critique. Use eye contact. Listen intently. Use gestures. Put emphasis in your voice. Be adaptable. Speak in plain English.
- *See the larger picture.* Remember to teach the class as well as the individual student. The students will listen to your critiques of others and compare them to their own. Excessive praise for one may affect how students receive your critiques of others.

## Guide for students

You will be learning basic lawyering skills by practicing these skills in exercises that realistically simulate law practice. You will then receive individualized feedback from experienced practitioners, who have been trained in the techniques of effective critique. To maximize the learning opportunities afforded by this learning method, you need your own “critique skills” — that is, the techniques of how best to receive and implement critique. The following guidelines should be helpful to you:

- *Listen to the critique with care and an open mind.* Try not to take the critique as personal criticism. Don’t get defensive or immediately argue with or reject the critique.
- *Be sure you are clear about what has been said.* If you are not clear or don’t understand, ask.

*Continued on page 11*

# Slavery a good place to start with con law

By Charles A. Rees

**S**lavery: Was it the near-fatal defect of our Constitution? Was it part of a necessary compromise to create a new Union? Or was it a flaw only in hindsight, based on the perspective of our more enlightened age?

The topic of slavery (and its aftermath) has much to tell us about the framers and about our Constitution, history, politics, and people. I began to think more about the

topic at a conference on Constitutional Law, sponsored several years ago by the Association of American Law Schools.

At the conference, Sanford Levinson encouraged participants to make slavery a major topic of the introductory course in constitutional law. Professor Levinson said slavery should be taught, not just to develop cultural literacy and political awareness, but also to raise crucial issues about lawyers' professional role, about contemporary legal features of our society, and about law and morality. Suzanna Sherry encouraged participants to teach their Constitutional Law students not only the latest Supreme Court decisions, but also the history of the Court, the Constitution, and the United States.

I left the conference determined to provide my students more historical materials on slavery and its aftermath. How

to do so was the question; most casebooks pay only scant attention to slavery.

I have developed a lesson to be used during an introductory class in a basic Constitutional Law course. I assigned students to read the Constitution; the history of the adoption of the Constitution and its most significant amendments; a fragment of the *Slaughter-House*

*Cases* dealing with African slavery, *Dred Scott*, the Civil War, and the 13th, 14th, and 15th Amendments; the Sit-In Cases of the 1960s; and federal civil rights legislation (Reconstruction and contemporary).

I found the lesson useful, and I believe my students did, too. Law teachers who are interested in using the topic of slavery as a starting point for constitutional awareness easily can incorporate the lesson. Contact me to receive a copy.

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*Slavery raises crucial issues about lawyers' professional role, about contemporary legal features of our society, and about law and morality.*

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## Critique

Continued from page 10

• *Focus on specifics.* Try to learn as specifically as possible things you might do to improve your performance in the future.

• *Keep your perspective.* See the critique as offering you new choices, rather than dictating the one right way to do something.

• *Clarify.* If you disagree with the critique, respectfully — but directly — raise the issue and ask for comment (but only after the instructors have completed their critique).

• *Ask questions.* If you want feedback on a specific matter and didn't receive it, ask (time permitting).

• *Don't overly rely on any one person's critique.* Compare it, to the extent possible, with others' (including other students participating in the exercise). Ask others who may know you and whom you trust about the substance of the critique.

• *Pay careful attention to the critique of other participants in the simulation.* This is an opportunity to learn additional aspects of the skills involved. It also is a more objective

perspective from which to observe the dynamics of the critique method.

• *Look for ways to use the information.* At the end of the critique session, ask yourself, "What do I know now (or know better than before)?" Write it down. That is the standard of success of a simulation/critique exercise.

• *Say "thank you."*

• *Look for opportunities to implement what you learned from the critique.*

• *Save your evaluation forms (self and faculty) and any notes of what you learned.* Review them the next time you are about to perform the activity that was the subject of the critique. Learning fundamental skills is an incremental process.

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*Pay careful attention to the critique of other participants in the simulation. This is an opportunity to learn additional aspects of the skills involved.*

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# Institute offers resources to help law teachers

One of the Institute's functions is to serve as a clearinghouse for ideas on how to improve the quality of legal education. Toward this end, the Institute publishes teaching materials that any law teacher can put to use immediately, regardless of the courses they teach. These materials are:

*GETTING GRAPHIC 2™* by Corinne Cooper

Use of graphics is a powerful educational tool. This book covers both the "why" and "how" of using graphics in law school classrooms. Professor Cooper begins with a summary of learning and schemata theories and the role of visuals to aid students' understanding of complex ideas. Then she describes the functions and types of graphics, including tabulation, timeline, chart, reconstruction, continuum, diad, diagram, graph, matrix, flowchart, Venn diagram, illustration, and picture. Examples of graphics used in various law school courses are included. The book ends with practical tips for designing visuals. Cost: \$20.

*A Day In The Life Of Law School Teaching*, a videotape produced by Larry Dubin

Through an Institute research grant, Professor Dubin created a video program designed to stimulate discussion among faculty members about law teaching methods. The 35-minute tape has five segments. For each segment, Professor Dubin interviewed the teacher before class, taped a class, and then interviewed students. Each segment allows the viewer to hear the teacher explain the teaching method, to see portions of a class, and to learn from students the impact of the teaching method on their thoughts, behavior, and feelings. The courses represented are Contracts, First Amendment, Criminal Law, Negotiations, and Evidence. Cost: \$20.

*The Science and Art of Law Teaching* (1995 conference materials)

The Institute's objective is for participants at its annual conferences to leave each workshop with ideas that they can incorporate in their courses immediately. The teaching tools developed for the workshops and the teaching ideas presented by the participants are collected into a complete set of written materials for use as a resource by teachers who did not attend the conferences.

Each of the six workshops presented at the 1995 conference has a section in the materials. The sections cover (1) the "why" and "how" of multiple-choice examinations (by Steven Friedland, Nova Southeastern Law School), (2) effective discussion techniques (by Lynn Daggett, Gonzaga University Schools of Education and Law), (3) ways in which lawyering skills can be introduced or taught in the classroom (by Lawrence Grosberg,

Director, Lawyering Skills Center, New York Law School), (4) cooperative learning techniques designed to improve higher-order thinking skills (by Jim Cooper, Professor of Graduate Education, and Director of the Network for Cooperative Learning in Higher Education), (5) a model for effective course planning (Vernellia Randall, University of Dayton School of Law), and (6) the use of verbal and nonverbal communication in the classroom (by Kathryn Landreth, United States Attorney for the District of Nevada).

In addition, the conference materials include innovative teaching ideas from 26 experienced law teachers. Cost for complete set (nearly 300 pages): \$60.

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## *Bibliography*

This publication annotates articles written since 1985 about law school teaching methods and techniques, and it describes higher education publications that focus on teaching. The Bibliography steered away from the theoretical in favor of the practical; the emphasis is on "how-to" material.

The practice-oriented articles selected for annotation in the Bibliography have direct, practical application to the classroom setting. The Bibliography also includes "Teaching and Learning in Law School: An 'Alternative' Bookshelf for Law School Teachers" by Paul Wangerin of The John Marshall Law School, an essay aimed at law teachers interested in insights from higher education literature. The Institute sent the Bibliography to all law teachers in the United States and Canada in the spring of 1994. Complimentary copies are available.

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If you would like to order one of these publications or to get more information, please contact Paula Prather, program assistant for the Institute for Law School Teaching, by calling (509) 328-4220 (ext. 3740), faxing the Institute at (509) 324-5840, or e-mailing us at [ilst@gulaw.gonzaga.edu](mailto:ilst@gulaw.gonzaga.edu).

## ***The Law Teacher***

Volume III, Number 1

*The Law Teacher* is published twice a year by the Institute for Law School Teaching. It provides a forum for ideas for improving teaching in law schools and informs law teachers of the activities of the Institute.

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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ISSN No. 1072-0499