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THE LAW TEACHER

Institute for Law School Teaching Spring 1997

Food for thought

Contest brings Contracts principles into students' own world

By Bruce A. Markell

Sometimes it is hard for Contracts students to understand the cases and statutes they read because these sources discuss or assume knowledge that is not within their experience.

Not many students know about bid procedures for public contracting or have participated in complex real estate transactions, but almost every Contracts casebook has cases involving them. In a similar vein, all too often students think (incorrectly) that something within their experience is an example of what is being discussed. Students often feel, for example, that they are being charged unconscionable rent.

The problem is in matching students' experiences with the material being discussed. I have attempted to solve it, not by picking materials more in tune with students' experiences (I am not yet ready to do a casebook), but by having *the students* match the material to something they find familiar.

I have done this by asking students, on their own, to analyze contract issues they see in literature and movies. Because voluntary assignments are never popular (especially in the first year) I've added a twist. I announced at the beginning of the year that there would be a "literary contest" open to all. To enter, students needed to pick a passage from a literary source or a scene from a movie, identify the relevant contract issues present, and then resolve the issues by using the materials discussed in class. In short, I asked them to make up their own exam, and then provide their own answer.

To encourage contributions, I promised to award a free dinner for two for the best contribution. (In response to the inevitable question, I told students I did *not* have to be one of the two.) On the handout setting forth the formal terms of the competition, I also told them that I was to be the sole judge, and that I would be looking for originality in selecting the source, an ability to identify relevant issues in that source, and precision and quality of analysis. Finally, in the small print I put a cap on price of the dinner ($150, including the cost of no more than one bottle of wine or champagne).

So that everyone could follow the progress of the competition, I asked the students to post their entries to the newsgroup that I had set up for the class (See my article, *Electronic Newsgroups Keep Discussions Going*, The Law Teacher, Spring 1995, at 12). I periodically reminded the class to check on what others had written and that the competition was still open.

To enter, students needed to pick a passage from a literary source or a scene from a movie, identify the relevant contract issues present, and then resolve the issues by using the materials discussed in class.

In a class of 100, I received 15 entries. These ranged from an analysis of the offer contained in "A horse, a horse, my kingdom for a horse" in *Richard III* to a mock judicial opinion in the case of The Pied Piper v. The Town Counsel of Hamlin. Along the way, students analyzed issues found in Charles Bukowski's poetry, Chaucer's *Canterbury Tales*, and David Guterson's *Snow Falling on Cedars*. All entries were original and well written, and many were amusing.

Many students found the process helpful in sorting out their first-year Contracts experience. Early in the competition, I told the class that they could show me their entries before submitting them in case they had any questions. Many students took advantage of this offer. In the process, almost every one of them told me the project was much harder than they initially thought. Actually trying to apply law to known situations pointed out for them where their analytical skills needed improvement. I think this improvement resulted in part from the fact that they started

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Metaphors help students write more logically

By Kathy L. Cerminara

It is a recurring problem for those who teach legal writing: How does a professor express to a first-year law student the logic behind legal memorandum structure?

Logical flow may be second nature to those who have spent years reading and analyzing cases. First-year law students, however, often are still struggling to read opinions when they draft their first legal memos. How is a legal writing professor to explain legal logic, other than IRAC or CRAC, in concrete terms familiar enough to help the neophyte case reader draft his or her own piece of legal writing? The following three techniques explain this foreign concept with concrete metaphors.

How does a legal writing teacher explain to her students the logic behind the structure of legal memoranda?

The inverted pyramid

One option is to use the inverted pyramid. Most judges use an inverted pyramid format when writing opinions; after identifying the issues and the relevant facts on appeal, a judge begins with the most general law that applies. This might be the statutory provision in question, or a list of the elements of a tort, for example. Then the judge progresses to the first rule over which the parties are fighting. (He or she may get there immediately, or may reach the disputed rule by setting forth the legal principles which naturally precede it in analysis, in ever-narrowing terms.) At that point, the judge analyzes the rule's application to the facts and reaches a conclusion. Then he or she somehow indicates that it is time to move on to the next issue, do the same thing there, and so on. Similarly structured memos work best.

By beginning with the broadest statement of applicable law, the judge is beginning with the broad base of an upside-down triangle of analysis. By moving through ever-narrower rules to focus on a particular disputed rule, the judge is working down through that triangle. When analyzing each disputed issue within this overall upside-down triangle of analysis, the judge again starts with a broad base (a legal rule) and works his or her way down through factual application to the point of the triangle (a conclusion).

Using this concept to explain memo-writing has at least two advantages. First, it may already be familiar to some students. Those who have taken newswriting courses or have worked on high school, college, or professional publications know about the inverted pyramid. I usually have a few such students in each class; using this metaphor to explain memo structure allows at least these students to grasp onto the pyramid's familiarity to help deal with the unfamiliar. Second, a professor can easily depict the inverted pyramid concept visually by drawing a large, upside-down triangle encompassing a number of smaller ones. The visual image may assist those students who learn best through graphics.

Giving directions to a driver from out of town

Another solution is to liken memorandum-reading to the process of driving in an unfamiliar location, and to ask the student to use the memo to direct the driver to his or her destination.

For example, it is often best to begin the discussion portion of a legal memo with a paragraph or two detailing the basics of the area of law in question. In a memo about tortious wrongful discharge, for example, the professor may want to see an introductory paragraph explaining the legal principles generally applicable to at-will employees, including an explanation that even those employees can sometimes recover from their former employers if they can show tortious wrongful discharge. The writer should explain, briefly, the underpinnings of the doctrine, and then, either in that paragraph or the next, list the elements of the tort.

Asking students to imagine that they are explaining things to the uninformed reader, beginning with an introductory,

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Contest

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with known subject matter; the contract rules were new enough without compounding the problem by trying to master the complexities of bid procedures or real estate sales.

The entries were so good that I awarded second and third prizes of a pound of coffee and a cookie from a local bakery (and thus kept within the food theme of the contest). On the student evaluations at the end of the year, many students mentioned that although they did not participate, they avidly read other students' entries and had discussions (even arguments) about the probity of each submission's legal analysis.

The winning entry was from Joseph Heller's *Catch-22* — an excellent analysis of Milo's lack of good faith in concurrently entering into contracts to both defend and attack bridges in Germany during World War II. My final cost was $95 (Bloomington, Indiana, does not have a lot of expensive restaurants) but the benefits to the class far exceed that sum.

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Writing

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context-setting, road map, facilitates their beginning this way. Students map out the rest of the memorandum by laying groundwork at the very beginning, just as they would begin giving directions to a driver from out of town by handing him or her a road map or explaining the general layout of the streets. If they keep that out-of-town driver in mind, and remember that one must sometimes include landmarks and explanations of difficult turns when giving directions to such a person, students can better explain cases and holdings properly, with adequate factual background and explanation, to the uninformed reader.

In addition, the concept of providing a road map for the reader at the beginning of a memo allows students to think concretely about the necessary components of the remainder of the memo. After establishing the groundwork and the basic elements, students next must address, element by element in a tort case, the merits of the particular case before them in light of the relevant law. While many students easily can do this in encapsulated form within each element, they often have difficulty stringing the apparently disjointed portions of their memos together into a coherent whole. Transportation metaphors help students do so.

I usually ask my students to consider whether an out-of-town driver would be lost for lack of landmarks or signals if the student had given directions the same way he or she had written the memo. When a driver wants to cross a river, for example, he or she looks for a bridge. When he or she wants to move between two highways, he or she examines the map for a connector between those two highways. Similarly, when moving from discussion of one element to discussion of another in a legal memo, the reader needs a bridge or a connector. When explaining the logical interconnection between claims or arguments, students must remember to include street signs or landmarks so the uninformed reader can find his or her way, just as an out-of-town driver needs street signs or landmarks to navigate a city. Such bridges, connectors, street signs, and landmarks can range from headings and subheadings, to phrases such as "the next element is," to entire transitional sentences.

When explaining the logical interconnection between claims or arguments, students must remember to include street signs or landmarks so the uninformed reader can find his or her way, just as an out-of-town driver needs street signs or landmarks to navigate a city.

The road map image gives students concrete metaphors for their abstract writing process. The metaphors, in turn, give both students and professors easy references as they progress through a memo. It is easier to write, "You need a stronger bridge here," between two sections of a memo that require more of a link than it is to explain the concept of linking.

Visualization

Finally, one can use visualization to assist students in structuring memos in logical order. Popular as a psychological tool for preparing for a competition, examination, or experience, visualization can help students bring memos to life in the drafting stage.

To encourage students to visualize, I engage them in a dialogue paralleling the conversation the parties to the case might have. While this works best with a single student or a small group, a professor could adapt the technique to work with an entire class.

Taking the tortious wrongful discharge example again, I ask students to imagine a conversation between the discharged employee (the plaintiff) and her former employer (the defendant). The plaintiff might begin a conversation about her firing by saying, "Hey! You can't fire me! I'm a great employee!" The employer would reply, "Of course I can fire you. You serve at will, so I can fire you any time I like." The parties might argue back and forth about whether the employee in fact served at will or had some implied contract, say for termination for cause only. In any case, at some point, whether "winning" on that argument or not, the plaintiff might say, "Well, even if I *was* an at-will employee, you can't fire me in violation of public policy." She then would describe what she meant and how she thought her discharge violated public policy. Finally, the parties would argue about whether the alleged public policy was the type that could serve as the basis for a tortious wrongful discharge claim, and, if so, whether the plaintiff had been dismissed for the reason alleged.

Constructing such a conversation helps students see that there is no mystery involved in structuring a memo. Moreover, the technique doubles in value once a teacher combines the conversation technique and the IRAC or CRAC method, asking students to use an IRAC or a CRAC each time the conversation switches speakers. Students can visualize the conversation and incorporate IRAC or CRAC into the conversation itself. One of my students thinks of the parties as tossing a conversational ball, sending, in his words, a "volley of CRACs" back and forth until they reach some conclusion.

Visualization can help students by bringing their assignments to life and encouraging them to actively participate in the learning process. Students can literally act out the conversation after completing their research. This active learning is more valuable than their passively parroting a memo format. Finally, students who have memory difficulties can tape-record the conversations as they visualize them; later, they can play the tape back to use in drafting.

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Bloom's taxonomy: Teachers' framework

By Paul S. Ferber

The last several years have seen a growing inquiry into ways to enhance legal education by drawing on learning theory and cognitive psychology. One potentially powerful tool is Bloom's taxonomy of educational objectives.

Developed to classify the cognitive goals for education, Bloom's taxonomy establishes a set of standard classifications that can provide a framework for discussion and development of many aspects of legal education. This article focuses on using the taxonomy to structure evaluation tools, and provides an example of how I restructured my first-semester Contracts final examination to test specifically for a wide range of student learning.

The taxonomy is a list of six educational objectives that focuses on student behaviors. It can give teachers a starting point for discussion and development of many aspects of legal education.

<u>Bloom's taxonomy</u>

The taxonomy is a list of six educational objectives. In developing the list, Benjamin Bloom and a group of other educational psychologists sought to develop a classification of objectives consistent with relevant and accepted psychological principles and theories. The classification focuses on student behaviors which are the goals of the educational process. The six categories are:

Knowledge: The student can recall or recognize an idea. Knowledge is remembering what was covered in a way close to the way it was originally encountered in the educational process. This step includes a range of complexity, from remembering simple facts to remembering a complex theory. The progression is from the specific and relatively concrete to the more complex and abstract. An example of a question requiring a student to demonstrate knowledge is: *What are the elements necessary to create a contract?*

Comprehension: The student can grasp the meaning and intent of the material remembered. There are three types of comprehension behavior: translation (being able to put what one knows into other language); interpretation (being able to reconfigure what one knows in a way which makes it more accessible by focusing on the relative importance of the ideas, their interrelationships, and their relevance to generalizations in the original communication); and extrapolation (being able to make inferences with respect to implications, consequences, and effects that flow from the knowledge). An example of requiring a student to demonstrate comprehension would be: *Describe the essence of the objective theory of contract formation.*

Application: The student can select and correctly use the appropriate knowledge to solve a new problem. An example of a question requiring a student to demonstrate ability to apply knowledge would be: *In view of the following facts, was a contract formed?*

Analysis: The student can break down material into its constituent parts and detect relationships among the parts and the way they are organized. Skill in analysis includes five specific abilities: (1) to distinguish fact from hypothesis; (2) to identify conclusions and supporting statements; (3) to distinguish the relevant from the extraneous; (4) to determine how one idea relates to another; and (5) to detect unstated assumptions.

An example of an exercise requiring students to demonstrate analysis is the process of briefing a case.

Synthesis: The student can combine separate elements and parts from multiple sources to create a pattern or structure not clearly there before. Synthesis requires creative behavior. An example of a question requiring a student to demonstrate ability to synthesize would be: *To what extent do the cases of* X v. Y, M v. N, *and* A v. B *establish a new rule of contract formation?*

Evaluation: The student can use specified criteria and standards to make judgments about the value of ideas, solutions, methods, or other material presented. It is critical that the student be given clear standards to use in making the evaluation. An example of a question requiring a student to demonstrate the ability to evaluate would be: *To what extent are the cases* C v. D *and* R v. O *consistent with the objective theory of contracts?*

<u>Using the taxonomy to draft examinations</u>

Having planned a wide range of learning goals for my Contracts class, I felt obliged to use an evaluation tool that addressed that range of learning. Historically, I used traditional fact patterns to test students' abilities to identify issues raised, articulate legal rules and policies, and apply them to resolve the issues. This type of question evaluates the extent of a student's comprehension and application learning. I supplemented this type of question with multiple-choice questions covering a wide range of substantive law. This type of question tested comprehension and, to a lesser extent, application.

Because I had used Bloom's taxonomy in setting the goals of the course and the design of individual classes, I realized that my traditional questions were insufficient to fully evaluate my students' learning. Therefore, I added three additional types of questions.

To test for analysis and synthesis as well as comprehension and application, I drafted the following question dealing with the doctrines of consideration, reliance, and unjust enrichment as bases for enforcing contracts. (The theories of bargain, reliance, and unjust enrichment were prominent themes throughout the course.)

> *The doctrine of consideration, as set forth in Restatement (Second) of Contracts section 71(1) and (2), was once thought to be the central concept in determining*

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whether a promise would be enforced by the courts. As the doctrines of reliance and unjust enrichment gained greater acceptance, promises which would not have been enforceable for lack of consideration became enforceable.

Analyze the statement in the preceding paragraph, taking into consideration the following Restatement sections:

A. 71(1) and (2),
B. 73 and 74,
C. 86(1) and (2),
D. 89(a), and
E. 90(1).

Your answer should include:

1. a definition of the concepts of consideration, reliance, and unjust enrichment and an explanation of the policies underlying each concept;

2. an explanation of the elements of each Restatement rule; and

3. a discussion of the relationship between the concepts and the rules in each of the Restatement sections identified, including a brief discussion of a case we read this semester which supports your reasoning.

Because I had used the taxonomy in setting the goals of the course, I realized that my traditional exam questions were insufficient to fully evaluate my students' learning.

The question was particularly effective in determining the degree to which individual students could relate policy to rule and connect apparently different rules that were supported by the same policy.

The second new type of question focused on the students' ability to analyze case law. Because so much of what we do with students early in law school is to work on analyzing cases, I believed it was appropriate to have the students demonstrate the extent to which they had developed the ability to break down a new case into its important component parts. I combined that goal with the presentation of a substantive area of contract law that we had not covered during the semester to test the students' ability to grasp new contract concepts (in this question, third-party beneficiaries). I had told the students before the exam that the exam would include a question that would involve a new area of contracts.

The decision in Sisters of St. Joseph of Peace Health and Hospital Services v. Russell *is attached, along with two sections from the Restatement (Second) of Contracts [defining the kinds of third-party beneficiaries]. The case deals with new subject matter. Analyze the opinion and the Restatement sections. Your analysis should include:*

1. a statement of all issues raised by the case;

2. a summary of the court's analysis of the law and facts underlying the resolution of those issues; and

3. an evaluation of the extent to which the case is consistent with the Restatement sections.

I expected the students to perform very well on parts 1 and 2 because the analytic process required is exactly what they had been doing throughout the semester. I expected excellent results on part 3 even though it called for the most sophisticated aspect of cognitive learning — evaluation — because the standard for the students to use to evaluate the decision was simple: the definitions of the two types of third-party beneficiaries recognized under the Restatement.

The responses to the question were highly effective. The aspect of analysis in which the answers varied most was in their discussion of the court's use of facts to support its reasoning.

The last new type of question I used was a drafting problem — pure application. My goal in using the question was to evaluate the students' ability to use their knowledge of the law of conditions to draft some simple contract provisions.

You have been retained by Kringle Widget Co. to help draft the language for a contract Kringle has negotiated with Hummer Bugg Mfg. Co. Hummer will pay $1 a widget and buy however many widgets it needs for its manufacturing business in 1997. Hummer wanted a quantity discount, and the parties agreed that Kringle would give Hummer a 50% discount on all widgets Hummer buys in 1997 in excess of 10,000. Kringle wanted to have the freedom to end the contract if Hummer does not purchase at least 2,000 widgets within the first six months of 1997. Kringle also wanted to impose a finance charge of 1% per month for late payments (not received within 30 days after the widgets are delivered).

Draft the provisions of the contract to implement the above agreement.

From an application standpoint, the question was only moderately successful. There was only a weak correlation between the students' knowledge of the law of conditions and their ability to draft a series of sentences implementing the agreement. The effectiveness of the draft answers turned as much or more on the students' ability to interpret the agreement and to write precisely, clearly, and succinctly. A question that provided the actual contract and asked the students to identify the conditions would evaluate more effectively the students' ability to apply their knowledge of conditions to new situations.

Bloom's taxonomy can help law teachers to develop clearer evaluation techniques. As more teachers begin using these concepts, we may find that the evaluation process becomes more useful. Using evaluation tools that clearly focus on a range of intellectual skills should allow us not only to evaluate students' performance more accurately but also to help them focus on the skills that need the greatest effort for further development.

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Institute's fourth conference is set for July

The Institute for Law School Teaching will present its fourth annual conference on law teaching on July 11 and 12, 1997, at Gonzaga University in Spokane. The aims of the conference are to help law teachers recognize that different students learn concepts and skills in different ways at different times and to provide teachers with tools that improve the learning environment so that all students can succeed in law school.

Teach the whole class; reach diverse students

The theme for this year's conference was inspired by sixteen hours of interviews with non-traditional students at Brooklyn, Hastings, Iowa, New Mexico, North Carolina, and Seattle University law schools. The result is a forty-minute videotape, during which students discuss what hindered their learning and what enhanced it. The tape helps teachers understand how traditional law school pedagogy affects student learning.

We know that learning is most effective when the pedagogy responds to various learning styles; when the subject matter is relevant to students' experiences; when the instruction addresses processes for learning; when teachers give students the opportunity to reflect and express their perspectives and values; and when the curriculum is designed to accommodate the students' evolutionary transition from novice to expert.

We also know that many things affect students' learning: prior educational or economic background; level of exposure to professional, business, and legal arenas; experience with the values that are implicit in legal reasoning and policy; and degree of self-confidence.

The two-day conference will help law teachers expand on these ideas by integrating three types of information:

(1) the experience and suggestions of nontraditional students with diverse backgrounds,

(2) the experience and wisdom of legal educators (classroom teachers and academic support people), and

(3) current higher education literature on teaching and learning.

The first day of the conference will focus on two major questions: What hinders learning, and what enhances learning? Participants will view the videotape, and presenters will share their perspectives as experienced teachers and provide insights from the higher education literature on teaching and learning. Participants and presenters also will meet in small groups to share experiences and discuss the students' descriptions of what hinders and enhances learning.

During the second day of the conference, participants will generate and share specific ideas about teaching and learning activities to enhance the performance of all of their students. Participants will meet in small groups with others who teach similar subject matter or skills. Each participant will share a teaching idea with other group members. Those small groups will develop additional ideas to expand mainstream pedagogy. Small groups will share their ideas with each other so that all participants have a number of new ideas to use in their teaching next fall.

Registration fee and deadlines

Attendance at the conference will be limited to fifty to facilitate small-group experiences. The roster will be filled in the order that the Institute receives the registration form *and* conference fee ($425; checks only; payable to Gonzaga University). *Refunds*: Attendees must notify the Institute in writing to receive refunds. If notice is received on or before June 2, 1997, a full refund will be provided. No fees will be refunded if notice is received after June 2, 1997.

Lodging and transportation

Cavanaugh's River Inn — adjacent to the conference center — is offering rooms for attendees at a reduced rate. To take advantage of the rate, participants must make reservations before July 1, 1997. *Rates*: $57 for single; $67 for double/double (two beds for two to four people). For reservations, call 1-800-THE-INNS or (509) 326-5577 and mention the Institute for Law School Teaching. Shuttle service from the airport is available.

Meals

Breakfast, lunch, and dinner on Friday, July 11, and breakfast and lunch on Saturday, July 12, are included in the registration fee. The dinner will feature wine-tasting and a Pacific Northwest menu at Arbor Crest Wine Cellars, with a panoramic view of the Spokane River and surrounding mountains. Because of hazards at the site, minors will not be permitted. All meals will accommodate vegetarian diets.

"Teach to the Whole Class: Effective Teaching Methods for a Diverse Student Body"

INSTITUTE FOR LAW SCHOOL TEACHING SUMMER CONFERENCE: JULY 11-12, 1997

Name: ______________________ Phone: ( ) Fax: ( )

School: ______________________ E-mail: ______________________

Address: ______________________ Courses you teach: ______________________

City/State/Zip: ______________________

☐ Enclosed is a check for $425. *(Includes all meals on Friday, July 11, and 2 meals on Saturday, July 12.)*

Return this form *and your check* (payable to Gonzaga University) to:
Institute for Law School Teaching, Attn: P. Prather
Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528

Teach the whole class; reach diverse students

Five experienced legal educators will make presentations on the first day of the conference and will serve as small-group facilitators on both days.

Charles Calleros began his teaching career at Arizona State University in 1981. Since then he has taught Contracts, Torts, Civil Rights, Legal Writing, and Civil Clinic. He also has served as associate dean and has taught at Stanford Law School as a visiting professor. He is the author of a textbook (*Legal Method and Writing*), an article on training a diverse student body, and numerous articles on free speech and discrimination law. Over the years, Professor Calleros has earned three Outstanding Faculty Member awards from A.S.U. and other organizations for his teaching, scholarship, and community service. He has presented his views on legal writing and multicultural education at the conferences of several organizations, including the Legal Writing Institute, the AALS, Society of American Law Teachers, and the Annual Conference on Race and Ethnicity in Higher Education.

Gerry Hess has taught at Gonzaga University School of Law since 1988. He currently teaches Civil Procedure, Environmental Law, Environmental Skills Lab, and Remedies. Previously, he taught Commercial Law, Creditor/Debtor, and Legal Writing. Before attending law school, Professor Hess taught grades 2, 4, and 5. He has won four teaching awards at Gonzaga. He is the chair-elect of the AALS Teaching Methods Section. He is the co-editor of *The Law Teacher*, and is currently drafting an article (*Listening to Our Students: Hindering and Enhancing Learning*) and co-authoring a book (*Techniques for Teaching Law*) about law teaching. Professor Hess is the founder of the Institute for Law School Teaching and has served as its director since 1991.

W.H. (Joe) Knight has taught at the University of Iowa since 1983. His principal subject areas are Commercial Transactions, Contracts, and Banking Law. He also has taught International Business Transactions, Debtor/Creditor Law, and a seminar examining critical race theory. He is a member of the University's Literature, Science, and the Arts faculty in the College of Liberal Arts where his critical race theory seminar is cross-listed and available to both undergraduate and graduate students. From 1991 to 1993, he served as associate dean of the law school. Professor Knight has served as a visiting professor at both Washington University and the Duke University Schools of Law. At Duke, he became the first visiting faculty member to receive the outstanding teacher award. One of the main reasons he entered law teaching was his belief that he could do a better job than the people who taught him did — an attitude he thinks everyone in legal education should have.

Paula Lustbader is on the faculty of Seattle University School of Law, where she created and directs the Academic Resource Center. She has conducted faculty trainings and presented at national conferences on academic support programs, learning theory, teaching methods, and teaching to diverse students. Her writings include *A Theoretical Foundation for Academic Assistance Programs* and *Academic Assistance Pedagogy: Theory and Implementation*, which are two chapters for the forthcoming LSAC Handbook on Academic Support Programs; "*Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, which will be published in the Willamette Law Review; and *Teach In Context: A Response to Diverse Students' Voices*, which is in progress. She is 1998 chair-elect and a current executive committee member of the AALS Section on Academic Support, is an executive committee member of the AALS Section on Teaching Methods, and is a member of the board of the LSAC Subcommittee on Academic Support.

Laurie Zimet became the director of the new Academic Support Program at the University of California, Hastings College of the Law in 1996. Before that she was on the faculty at Santa Clara University School of Law where she was the director of the Academic and Minority Success Program for eight years. During that time, the program became a model for other law schools, and Santa Clara had the lowest disqualification and highest bar passage rates in the history of the school. She has chaired national committees and made numerous presentations (academic support, teaching methods, and legal writing and analysis) at conferences sponsored by the AALS, Society of American Law Teachers, LSAC, Canadian Access to Legal Education Group, Practicing Law Institute, FDIC, and Chevron. She is often assisted in her work by a legal beagle named Mensch.

Conference schedule

Friday, July 11, 1997:

Time	Event
8:00 a.m.	Check-in, breakfast buffet
9:00 a.m.	Welcome, introductions, overview
9:30 a.m.	Session 1: What Hinders Learning? • Videotaped interviews with diverse students • Presenters' perspectives and review of literature • Small-group discussions
12:15 p.m.	Lunch
1:45 p.m.	Session 2: What Enhances Learning? • Videotaped interviews with diverse students • Presenters' perspectives and review of literature • Small-group discussions
4:30 p.m.	Adjourn
6:30 p.m.	Dinner at Arbor Crest Wine Cellars

Saturday, July 12, 1997:

Time	Event
8:00 a.m.	Breakfast buffet
9:00 a.m.	Session 3: Generating Ideas to Enhance Learning • Small-group discussions • Prepare to present ideas
Noon	Lunch
1:30 p.m.	Session 4: Sharing Ideas to Enhance Learning • Small-group presentations
4:00 p.m.	Final thoughts and evaluation

Fiction draws students into the culture of law

By Ronald W. Eades

While teaching a required course that students did not want to take, I began a little experiment that seems to be working. I required my American Legal History students to read some outside materials they would find entertaining. The students then had to write book reviews of the material. Initially shocked to get an assignment like ones they had learned to dread in high school, they eventually learned the reviews could be a useful part of their law school experience.

The works should reflect something about the way in which our culture views law, should present those ideas in a stimulating or thought-provoking manner, and should be exciting to read. In addition, I wanted to find a variety of fictional formats.

Several years ago, the faculty at the School of Law, University of Louisville, decided our students were not being sufficiently exposed to materials outside of the core, rules-oriented courses. The school instituted a requirement that the students take a course from a list of alternatives that included American Legal History. The students were not pleased. None of the law firms that regularly recruited on campus appeared to do very much legal history work. None of the students could recall ever hearing one of our former graduates wax eloquently about a million-dollar legal history case currently in litigation.

I supported the unpopular requirement because I believe law is a reflection of the culture that produces it, and students should have some understanding of that culture. I agreed to teach a section of American Legal History and to let students learn about the culture of law by reading fictional works. To insure they accomplished the reading in a studious manner, I required and graded book reviews.

My first task was selecting the fictional works from which the students could choose. I had several criteria. The works should reflect something about the way in which our culture views law, should present those ideas in a stimulating or thought-provoking manner, and should be exciting to read. In addition, I wanted to find a variety of fictional formats — novels, short stories, and plays. Each student had to select two works, and only one could be a short story.

Naturally, *Billy Budd* by Herman Melville was easy to place at the top of the list. As a short novel that appears in every law and literature discussion, it provided a simple starting place. *To Kill a Mockingbird* by Harper Lee was also an easy choice. Those two items allowed the students to see discussions of rights, justice, prejudice, and breakdowns in the judicial process. For the adventurous students, I added *The Trial* by Franz Kafka. Obviously that work does not relate to the American experience, but I felt it was sufficiently universal to be appropriate. That has been a difficult work for students who have tried it.

I selected some shorter works to add a variety of interesting topics. *The Lottery* by Shirley Jackson was a horrifying tale that many students had read when they were younger. When they read it in law school, however, the strict, traditional legal procedure that produced the meaningless execution took on a new meaning. I also added *The Hack Driver* by Sinclair Lewis. It is a delightful short story about the experiences of a new law firm associate. The students enjoyed the work and saw it as a prediction of things to come.

I offered a few plays. Because the course spends a little time on the Salem Witch Trials, *The Crucible* by Arthur Miller was a natural. *Inherit the Wind* and *The Night Thoreau Spent in Jail*, both by Jerome Lawrence and Robert E. Lee, also provided a fictional account of issues that are raised in the course. For the student who wanted a more classical offering, I allowed students to select either *The Taming of the Shrew* or *The Merchant of Venice*. Both of these Shakespeare plays raise issues of the role and rights of women, justice, mercy, and blatant bigotry.

The next problem was to set some limits on the format of the reviews. I wanted the reviews to accomplish a few simple goals. Of course, I had to check to see if the students had actually read the works. And I wanted the students to think and analyze the relationship between law and culture. Finally, in the interest of efficient grading, I wanted the reviews to be short and direct.

The reviews were limited to no more than five pages each. The first page had to contain the name of the work and the author, and it had to answer the question: "Did the student think that other students would benefit from reading the work? Please explain." There were several reasons for this instruction. The first page of every review was removed from the student's work and placed in a ring binder on reserve in the library. This allowed other students to have a quick source as they were selecting the works they would read. I have reused the better ones each year. In addition, the question directs the students to think about why the work may have some relevance to the study of law.

The rest of the review also had specific requirements:

- A brief summary of the work that should extend no more than one paragraph.
- A description of what the student felt was the most interesting part of the work.
- A discussion of what the work revealed about the nature of law or the nature of society.
- An explanation of whether the presentation of the nature of law or society was consistent or inconsistent with the student's own view of that subject.

Using that format, I was able to make some comparisons of the quality of the consideration and analysis that the students had brought to their reading. The summaries of the works and the discussions of the most interesting parts allowed me to determine whether the students had seriously read the material. The discussions of the nature of law or society forced the students to think about the relationship

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Ways to integrate Indian law into your curriculum

By Cynthia Ford

I served as the chief judge of the Suquamish Tribe in western Washington before returning to Montana to teach. I quickly discovered that the published Civil Procedure casebooks compared the state and federal courts but contained nary an entry reflecting the existence, much less the function, of tribal courts.

I set out to ensure that Montana students learn something about tribal courts in their first-year course. I developed a set of materials that I use to teach a two-hour segment on tribal courts after the unit on subject-matter jurisdiction. I have two explicit goals for this segment: to transmit some very basic knowledge, and to interest students in pursuing more advanced courses in Indian law.

After I added this subject to my course, I began to wonder if and how other teachers were dealing with tribal courts.

After I added this subject to my Civil Procedure course, I began to wonder if and how other teachers were dealing with tribal courts even though the published casebooks ignored the subject. I applied for a grant from the Institute for Law School Teaching to explore this question more thoroughly.

The first part of the project was to survey Civil Procedure teachers throughout the country, asking them to describe their treatment of tribal courts and basic Indian law. One hundred and eighty-three professors replied. One-hundred and fifty nine (87%) indicated that they did not discuss any Indian law concepts. Forty-four (27.5%) of those who currently do not discuss Indian law indicated they would be interested in adding an Indian law component. Twenty-three teachers (12.5%) discuss some aspect of Indian law. Ten of these devote one hour or less to the subject; six use two hours; and one spends six hours.

As the second part of my project, I wrote a law review article, *Integrating Indian Law into a Traditional Civil Procedure Course*, 46 Syracuse L.Rev. 1243 (1996), which discusses the importance of Indian law, describes its place in legal education, and reports the survey findings about the relatively few courses that broach the subject. The article explores some possible reasons why traditional Civil Procedure teachers and casebooks ignore Indian law. Finally, it advocates inclusion of some basic information about the role and existence of this third, independent court system.

One of the reasons that so few Civil Procedure professors teach about tribal courts is that they don't know much about the subject themselves; many law schools either do not or only recently have begun to teach courses in Indian law and the casebooks and treatises are silent in this area. Even for those with good intentions, venturing into a whole new topic requires time and energy.

The third part of my project deals directly with this problem. I have compiled a packet of teaching materials, available through the Institute for Law School Teaching, that includes cases to copy and assign to students, along with detailed teaching notes for an introductory lecture and for each case. Three are cases decided by the United States Supreme Court that stress the federal policy of tribal self-government and the integral role of the tribal courts in tribal sovereignty. These landmark cases also govern the interplay between tribal and federal courts. The packet also contains two cutting-edge cases currently on appeal, which the students can use to apply their understandings of the concepts they've just studied, and which they should be able to follow during their law school studies.

I hope my "cookbook" approach will make it feasible for more Civil Procedure teachers to follow my advice and add this subject to their syllabi. Indian law is also applicable to other courses in the orthodox law school curriculum, such as property, estates, constitutional law, federal courts, and family law. A series of teaching packets in these areas would likewise encourage these professors to expand their own knowledge and to transmit that new information to their students in context.

If you would like a copy of the Indian law teaching materials, contact the Institute for Law School Teaching at P.O. Box 3528, Spokane, WA, 99220-3528, phone (509) 328-4220 (ext. 3740).

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Book reviews

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between law and the culture of law.

I continue to teach the course on American Legal History and want to continue the experiment with the book reviews. Both the students and I enjoy this break from the typical law school reading assignment. I have a long reading list of fiction and non-fiction, law-related materials that I have prepared over twenty years of teaching. I intend to select different items from this list as alternatives for the book reviews. In addition, I want to continue to experiment with the format of the reviews.

I also have one additional future experiment in mind. Since today's students are video intensive, and there are a substantial number of excellent law-related movies available, I would like to add movie reviews to the course. I could imagine students writing reviews of the movies *To Kill a Mockingbird*, *Twelve Angry Men*, or *Inherit the Wind.*

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Procedure students 'discover' exams

By Greg Sergienko

One difficulty in using small-group exercises is providing the right incentive for participation. Using a grade to provide an incentive may make students too competitive, and may reward fast learners at the expense of students who ultimately learn the material just as well.

On the other hand, if an exercise is not graded, some students will slack off, and those who work hard will feel burdened and may fear their grades will suffer by participating in an exercise when they could be studying graded material.

Ideally, the exercise will provide its own incentive. This is especially important when the exercise develops skills that final exams do not test, so that the desire to do well on the final exam does not provide a reason for active participation.

One area where I like using small-group exercises in my Civil Procedure course is in teaching discovery. The students need experience in thinking about how to use the discovery rules as part of a discovery plan, and reviewing cases in the book doesn't provide this. To encourage students to participate actively in a discovery exercise, I allow the students to use the discovery rules to discover information relevant to the final exam. The desire to do well on the exam creates its own incentive for participation. Because the students share all results, they think cooperatively, not competitively. Finally, they begin thinking about discovery as a related series of rules that they can use.

To encourage students to participate actively in a discovery exercise, I allow them to use the discovery rules to discover information about their final exam. The desire to do well on the exam creates its own incentive for participation.

I try to have about fifteen groups and divide the class into groups of from two to four members, depending on class size. Each group must act unanimously and can request the production of documents, ask an interrogatory, or designate someone to ask a deposition question. Each "discrete subpart" of a discovery request counts as a separate request. There is no automatic disclosure under rule 26(a)(1) and no duty to supplement.

Discovery is in waves. I allow an initial deposition, followed by submissions of interrogatories and requests for production, followed by my reply to the interrogatories and requests for production, followed by a final deposition. I prohibit physical and mental examinations, on the grounds that a physical exam is irrelevant and that the instructor is conclusively presumed sane.

I encourage different groups to coordinate with others to eliminate duplicative questions. I tell the students that ideally they will collaborate on an overall, class-wide plan for discovery and that they may want to select one member from each group to participate in an overall allocation of responsibility and then meet separately as groups for drafting. Before the exercise, I give the students a handout along the following lines:

> *Most cases get resolved before trial. Thus, pretrial discovery has become one of the most important skills for litigators. However, knowing the individual rules of discovery doesn't make someone good at discovery. Real mastery of discovery requires at least two additional skills.*
>
> *First, one needs the ability to think strategically about how to use combinations of the rules to have an overall plan for discovery. Thinking strategically requires you to consider the advantages of different types of discovery. Some types of discovery allow you more flexibility and surprise; other types of discovery make it harder for an opponent to keep information from you just because an individual doesn't remember things. I hope that the exercise will encourage you to develop this sort of thinking, not only in discovery, but elsewhere.*
>
> *A second additional requirement for being good at discovery is to use indirection to get what you want. Here's an example from our police-stop hypothetical [in which the students come up with class definitions for victims of alleged police brutality]: In pursuing the case, you want to discover instances of police brutality following a traffic stop. If you ask the police department, "Identify all instances of police brutality following a traffic stop," they will cheerfully reply, "There weren't any." (If there were cases where a jury awarded damages for police brutality, they'll tell you — but no gain to you, because you probably knew about them already.) That's probably a defensible position on their part, so you'll have used up one of your interrogatories to no effect.*
>
> *Many lawyers use interrogatories with this sort of loaded language in an attempt to force the opposing party to admit wrongdoing about the ultimate issue in the case. However, the loaded words narrow the question, leaving a loophole for the other party. Proceeding by indirection, you could ask for all instances in which an initial traffic stop led to an arrest of someone on charges of resisting arrest, which were later dropped. The fit between the cases you've identified with this question and your image of police brutality cases won't be exact, but it's a darn sight better than anything you're going to get out of the police department if you ask directly about police brutality. This question can be tinkered with at the margins: You might eliminate the requirement that charges be dropped, or say that you wanted to know about charges of resisting arrest that ended in acquittal, or ask about traffic stops where the police subsequently called for an ambulance. Answers to these questions will identify situations where no complaint was made, but where you might want to investigate further. Asking questions like these also tends to reduce*

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Discovery

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objections on the grounds of irrelevance.

Here, you don't know if all of the final exam has been written yet. As a back-up to questions about the exam itself, you need to ask about information that indirectly informs you about the likely nature of the exam. I won't tell you what that might be — that's your job.

A subsidiary goal of the project is to give you experience working in groups. Here, you've all got to cooperate in doing this discovery, both within your small group and with the other small groups. At the same time, you may have slightly different ideas about the questions you want to ask. Practicing working with comparative strangers is one reason I assigned people to groups. (The others are avoiding the prom-date-anxiety phenomenon, and, I'll admit, administrative convenience.)

After the questions are done, I have a debriefing, in which we talk about things the students could have done better. In addition to helping them learn, it helps me evaluate their performance.

The first time, students didn't respond well. Some groups did not complete their questions, and many questions were not well drafted. It may have been their expectations about the appropriate course requirements and the addition of the exercise to the syllabus after the course had started.

Subsequent times have worked very well. I was satisfied from the quality and coordination of the questions that the students had learned a lot about discovery.

The other time, there seemed to be less planning and the questions were less coordinated. If anything, however, the final exams for this class were the strongest, and many showed real signs of strategic thinking in how to handle a case that I would not have expected for first- or second-year associates, much less first-year students. I think the discovery exercise helped to develop these skills.

Typical discovery included past exams, model answers, and comments on students' answers to past exams. Students then would ask about what topics I thought were important or what I thought an examination should test.

In the process of framing their discovery questions, the students learned for themselves about how to do a discovery plan. They decided that they wanted some kinds of information first, so they always sought discovery of past exams and model answers before asking questions related to those exams.

> *In the process of framing their discovery questions, the students learn for themselves how to do a discovery plan and how to phrase questions. One year, they missed discovering a midterm exam because their request covered only* final *exams.*

Students also learned about how to phrase questions. One year, students missed discovering a midterm exam because their request to produce covered only *final* exams. Discussing where the students failed to discover information that they might have liked gave real force to the importance of asking the right questions. Another year, the discovery questions asked for "all things that might be related to civil procedure." Students learned about the danger of over-broad questions when they had to sort through the contents of a library cart full of casebooks, papers, law reviews, and notes.

The exercise also has some intangible benefits. I notice an increased *esprit de corps* in the class. This doesn't seem to be accompanied by any resentment of me at hiding the ball about the final exam, perhaps because students get information that professors often don't provide. Even when professors provide this information, the students' participation in asking the questions gives them an ownership in the process that a mere handout about exam philosophy could not provide.

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How to submit your article for *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 fall edition of *The Law Teacher* is September 5, 1997.

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:

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The e-mail address is: ilst@lawschool.gonzaga.edu.
For more information, call (509) 328-4220 (ext. 3740).

When students' names escape you . . .

By Rick Snell

I have a major problem. I have great difficulty remembering names of students. I do have some retention capacity on my brain disk, but it overloads after a capacity of about 30 names and faces.

This is a problem because in the course of a semester I will be teaching 300 to 400 different students in three or four different courses. I also will be encountering another 100 to 150 students I have taught in the previous two years in the corridors of the law school, in the library, or out on the street.

This is a serious problem for me because my own experience and the educational literature indicate that the recall or recognition of students is a vital element in the student-teacher relationship. This year I have experimented with an introduction exercise to help break the ice with my students and to give me some background to add to the faces.

My own experience and the educational literature indicate that the recall or recognition of students is a vital element in the student-teacher relationship.

In the first lesson with a class, I explain my problem and why I am concerned about it. I then put up on the projector screen details about myself which I do not mind the students knowing: my name, educational qualifications, previous employment, courses I have taught; I also provide details about my family, hobbies, interests, and background.

I talk for a few minutes about why I support Geelong (an Australian Rules football team that is a perennial runner-up); how a non-animal-loving person ends up with a family that has a goat, two dogs, a Shetland pony, a horse, a cat, two fish, two rabbits, and a guinea pig; and my love for the music of Dylan, Springsteen, and the blues. In the days after this exercise, I find students often using something from my own introduction as a means of opening contact with me.

I then hand out sheets that ask each student to fill in his or her name, background, education, interests (hobbies, activities, etc.), skills (army training, drummer, languages, sports, graphic design, etc.), computer skills, and the three most important things they want from the course (apart from a good grade). I ask the students to put down only the details they care to share or do not mind people knowing.

After the lesson, I spend several hours reading the sheets. I feel much closer to my students even without being able to link the names to faces. I learn, for example, about students who have never traveled outside Hobart (a town of 140,000 people) in their short lives, or about a young person who has spent 12 months working in a bakery in Japan. I discover a successful businessman whose wife is dying of cancer, and a young woman who has just failed to crack the international tennis circuit. In one course I learn about a military intelligence specialist with ten years of tank experience, a SAS-trained soldier from the United Kingdom, and three officers in the army reserve (all the ingredients for a coup once our banana republic status is confirmed). Before this exercise they were just "students" in one of my classes.

I use the students' information sheets to refresh my memory throughout the semester. Before lectures I might look at a couple of the sheets and try to match them to faces during the lecture. I also suggest that students reintroduce themselves each time they approach me until I tell them to stop.

About four weeks into the course I am ready for my "performance." I pick out a row in the middle of the lecture hall seating 150 students and I start to ask a series of questions, addressing each of the students by name. As I go along the row, the students recall my problem and know that I have been making an effort. Eventually my performance comes unstuck ("Excuse me professor, I'm Trang, not Bev."). But the class and I know that at least I am trying to think of them as individuals.

These are simple techniques but they have helped me a great deal. Often it is the basics that will take us a long way in our journey as teachers: remembering students as individuals, keeping up our love for a subject, taking time to have fun. As I was writing this I received a Christmas card from one of my students; she wrote: "You've reached out to students in a way no other lecturer has (*i.e.*, you remember not only the names, the country of origin, the day-to-day trials and tribulations . . . you also remember what it's like to be a student)."

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