



GONZAGA UNIVERSITY

THE LAW TEACHER

Institute for Law School Teaching

Fall 2000

Integrating Theory in Large, Upper-level Classes

By Curtis Nyquist

It is comparatively easy to integrate theory in first-year courses and upper-level seminars. With first-year students, if you stress the importance of theory early and often they write it down and believe it. Course descriptions of upper-level seminars attract students with a bent toward theory. In my Perspectives: Readings in Contract Law seminar, students uncomplainingly spend the entire semester reading theoretical articles and books. The challenge is incorporating theory in one-semester, upper-level, high-enrollment courses. I teach three such courses (Secured Transactions, Negotiable Instruments, and Consumer Protection). The fact that these subjects are typically tested on the bar only widens the gap between what the students think the course should be about and what I think. After several years of trial and error, I have settled on a method of integrating theory in these courses that seems to work well.

First, I choose one or more law review articles that are of general theoretical interest and can also be directly connected to the subject matter of the course. I rotate several articles through the courses (contact me for a list), and a student taking all three courses would read four or five different articles. For the purposes of this essay I will use Duncan Kennedy's *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976) (hereinafter *F&S*) as an example.

My approach has three phases, and every class meeting has some theoretical component. The article is read and discussed during one of the middle weeks of the semester. The approach, then, divides the course into the first section, a middle week, and the final section.

First Phase

In the very first meeting of the course as part of the general introduction, I emphasize the importance of theory, introduce the article to be read, explain how theory will be incorporated in the course, and promise that theory will be tested on the final exam. In every subsequent meeting during the first phase I devote a few minutes of class time to a lecture about the article followed by time for questions. I label these mini-lectures "Five Minutes for Theory" and link the mini-lecture to a case, problem, or statutory provision

assigned for that day. For example, *F&S* distinguishes "rules" which are bright-line statements of law that appear to give the court little discretion (e.g., for the purposes of contract liability the age of majority is 18) and "standards" which are open-ended statements of some goal or policy that give the court wide discretion (e.g., the obligation of good faith in § 1-203 of the Uniform Commercial Code). In Secured Transactions, the rules/standards mini-lecture could be linked to the U.C.C. provisions for the effectiveness of a financing statement. Subsection 9-402(1) establishes a list of rule-based requirements (names of the parties, addresses, description of the collateral, etc.) while 9-402(8) creates a standards exception (a financing statement "substantially complying" with the requirements is effective as long as the error is "minor" and "not seriously misleading"). It might take a few class meetings and several more illustrations before the distinction sinks in, but once it does, rules and standards become part of the vocabulary of the course.

I discuss in turn each of the major themes of the article. In *F&S* there are seven major themes: rules/standards (1687-89); legal argument based on the rules/standards dichotomy (1720-13); individualism/altruism as contradictory ways of organizing society (1713-22); individualistic/altruistic substantive legal arguments (1710-13, 1722-24, 1737-40); general/particular (1689-90); formalities/deterrence (1690-94); and the history of conflict between individualism and altruism in American law (1725-37). In each mini-lecture I am careful to illustrate the theme with one or more examples from a problem, case, or statute.

Although the full article is not read until the middle week, I distribute it in the first class meeting, and the Phase One syllabus assigns those sections of the article covered in the mini-lectures. The goals of the first phase are to introduce

Inside

Skills Evaluation	3
Being a Great Lawyer.....	5
Call for Conference Presentations	11
Wonderful Websites	12

Integrating Theory

Continued from page 1

the major themes of the article, relate the themes to each other, prepare the class to read the article in full (many law students have forgotten that they know how to read theory), and connect the themes to the subject matter of the course.

Second Phase

During the middle week the students read and discuss the article in full. The major goals here are to ensure that they are able to relate the themes to each other and connect them to the substance of the course. For example, a case in Secured Transactions *In re Keefer*, 26 B.R. 597 (Bankr. D.

Idaho 1983) illustrates the connection between rules/standards legal arguments and individualistic/altruistic legal arguments. In the case a secured party filed a financing statement that did not give the debtor's address.

When the debtor filed for bankruptcy, the trustee challenged the filing for failing to comply with the requirements of 9-402(1). The secured party argued that under 9-402(8) it had substantially complied. The court rejected this "liberal construction" argument and held the financing statement ineffective. It scolded the secured party in language that illustrates how a lawyer arguing for a rules result will make individualistic substantive arguments (and, conversely, her opponent will make standards/altruistic arguments): "[T]he requirements . . . are not onerous"; "Here, there was not a failed attempt . . . but rather no attempt"; and "The petitioner's difficulties at this time stem from their own failures."

During this middle week (and during the third phase) I try to keep the discussion moving from a theoretical level to the nuts and bolts of the course, and then back to theory. In a discussion of *In re Keefer*, for example, I might ask why a lawyer urging the court to choose the rules alternative would be making individualistic arguments. I would then move to a close examination of the text of the case to find illustrations of the rules/individualism connection. Finally, I would return to a theoretical discussion. This persistent sliding back and forth between theory and application reinforces the connections between the article and the substance of the course. (Incidentally, *F&S* is a wonderful tool for skills training in statutory argument, particularly when combined with Karl Llewellyn's taxonomy of statutory argument *Canons on Statutes* found in *THE COMMON LAW TRADITION: DECIDING APPEALS* 521-35 [1960].)

In addition, during this week I broaden the discussion by including issues from other parts of the curriculum that reverberate with the themes of the article. For example, the issue in *Charles Thomas Dickerson v. United States*, 120 S.Ct. 2326 (2000), can be seen as a choice between maintaining the rule of *Miranda v. Arizona*, 384 U.S. 436 (1966), or adopting the standard of the federal voluntariness statute, 18 U.S.C. § 3501 (1994). In *Conflict of Laws, Restatement (Second)* summarizes the change in judicial philosophy from

the era of *Restatement (First)*, "[t]he essence of that change has been the jettisoning of a multiplicity of rigid rules in favor of standards of greater flexibility." See *Restatement (Second) of Conflict of Laws*, vii (1971). The goals here are to multiply examples of the themes and to encourage thinking across the artificial boundaries of the curriculum.

Third Phase

In the final phase I encourage the class to search continually for connections between the theoretical themes and the substance, with the goal of fully integrating the article and the course. When a student raises a connection, whether the comment comes from a practical or a theoretical perspective, I affirm and discuss the point and then move the discussion to the opposite perspective. My hope is that by the end of the course the class will demon-

strate equal facility at either end of the theory/application spectrum.

I also encourage the class to probe other courses for illustrations of the themes of the article. A student in Secured Transactions, for example, saw a relationship between the proposed new Article 9 choice of law rule for nonpossessory security interests and Llewellyn's approach to title in Article 2 (sale of goods). The proposed Article 9 rule is more "general" than current law because it replaces three rules with two. Llewellyn's approach was exactly the opposite. He took the pre-U.C.C. idea of title, which he called a "lump concept," and broke it into specific issues. The ensuing discussion both helped the class understand the general/particular concept and gave me an opportunity to elaborate on Llewellyn's role in the history of American legal thought.

In the final phase I also review the major themes of the article and gather up students who may have strayed along the way. I have, on occasion, offered an extra review session focused primarily on theory. Finally, I emphasize that good lawyering in any field of law demands that practitioners stay current and that following both the practical and the theoretical literature is essential.

Incorporating a theoretical perspective in these courses presents an intriguing challenge for faculty. My method allows theory to be first introduced and studied separately and then folded into the course. Enlisting student energy in searching for connections enlivens the classroom and, when combined with rotation of the theoretical articles, helps to keep these courses new. Most significantly, however, incorporating theory in these courses communicates to students the important message that theory is everywhere.

Curtis Nyquist teaches at New England School of Law, 154 Stuart St., Boston, MA 02116, (617) 422-7255; fax (617) 422-7453; cnyquist@fac.nesl.edu.

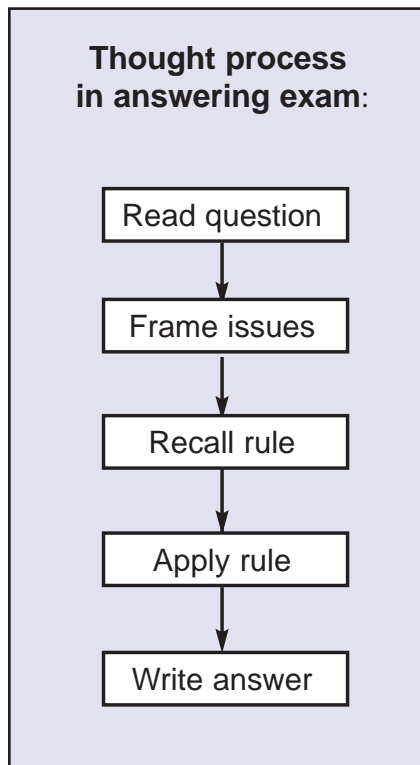
Skills Evaluation with Multiple-Choice Questions

By Greg Sergienko

Skills evaluation and multiple-choice questions are often thought to be inconsistent. Certainly, multiple-choice questions cannot easily test writing skills. However, multiple-choice questions can evaluate many skills used for legal analysis, and they even have some advantages over essay questions for this purpose. Multiple-choice questions can ask about only the facts, pinpointing students' difficulties in reading facts, or they can include a rule of law, pinpointing students' difficulties in applying rules. Moreover, multiple-choice questions provide fast feedback and statistical verification of their reliability. Thus, I received quick information on which questions seemed unreliable. Over the course of the semester, I was able to conclude that multiple-choice exams that test case- and rule-reading skills did better than conventional essay exams in predicting results on a performance, essay exam, which requires both case- or rule-reading and an essay answer. This article explains some of the uses of multiple-choice questions to evaluate skills, starting with an analysis of the limitations of essay and traditional multiple-choice exams.

The limits of complex questions in identifying student mistakes

Essay questions can test students' ability to identify relevant facts, apply the law to them, and organize and write an answer. Unfortunately, the very complexity of essay questions limits their usefulness in identifying where students make mistakes. The thought process in writing an exam answer is a chain with many links (illustrated at right), and when the chain breaks it is often impos-



sible to tell which link failed. Failure to address an issue can result from careless reading, which caused the student to miss a relevant fact; from not knowing the applicable legal rule, which caused the student to miss the significance of a fact that the student did read; or from inability to interpret the language of a memorized rule, which caused the student to miss the applicability of the rule.

The traditional multiple-choice exam tests knowledge of the law by asking questions about the legal rule and forcing the student to select among alternative statements of the law or by providing a fact pattern and alternative answers that apply the law to fact. This seems to be the exclusive mode of examination in law schools and on the bar. Multiple-choice questions requiring reading, recall, and application share the defects of essay questions. A wrong answer to a traditional multiple-choice question does not reveal where the student went wrong.

Skills-oriented multiple-choice questions

The limitations of essay exams and traditional multiple-choice questions have led me to develop skills-oriented multiple-choice questions. These questions examine separately abilities to read facts and to apply an unfamiliar rule of law.

These questions have important features for diagnosing students' difficulties and assessing students' skills. Frequent multiple-choice exams for testing skills during the semester allow the instructor to evaluate the success of instruction and provide students with the chance to evaluate their own progress. In addition, multiple-choice tests allow the teacher to provide students with quick feedback, which vastly increases its effectiveness.

The information about where students are going wrong is often a surprise to them. Two aspects of this have especially come to my attention. First, students tend to overestimate how carefully they read questions. Quantifying exactly how often they are missing relevant facts appears to be far more effective in encouraging careful reading than just telling them to read carefully. Second, students who make errors are often genuinely unsure about whether those errors came from their misremembering the words of the rule or from their inability to apply those words. Breaking down the process into rule knowledge and rule application provides them this information.

The next page contains an exam that illustrates skills-oriented multiple-choice questions. Questions 1 through 4 refer to the *Lamson* case. The correct answers have been *italicized*.

continued on page 4

Lamson v. American Ax & Tool Co. 177 Mass. 144, 58 N.E. 585 (1900)

Holmes, C. J.

This is an action for personal injuries caused by the fall of a hatchet from a rack in front of which it was the plaintiff's business to work at painting hatchets, and upon which the hatchets were to be placed to dry when painted. The plaintiff had been in the defendant's employment for many years.

About a year before the accident new racks had been substituted for those previously in use, and it may be assumed that they were less safe, and were not proper, but were dangerous, on account of the liability of the hatchets to fall from the pegs upon the plaintiff when the racks were jarred by the motion of machinery near by. The plaintiff complained to the superintendent that the hatchets were more likely to drop off than when the old racks were in use, and that now they might fall upon him, which they could not have done from the old racks. He was answered, in substance, that he would have to use the racks or leave. The accident that he feared happened, and he brought this suit.

The plaintiff, on his own evidence, appreciated the danger more than any one else. He perfectly understood what was likely to happen. That likelihood did not depend upon the doing of some negligent act by people in another branch of employment, but solely on the permanent conditions of the racks and their surroundings and the plaintiff's continuing to work where he did. He complained, and was notified that he could go if he would not face the chance. He stayed and took the risk. He did so none the less that the fear of losing his place was one of his motives.

Exceptions overruled.

Questions 1 through 4 require reading *Lamson*.

1. Who won in this case?

- a) *The defendant won in the trial court and on appeal.*
- b) The plaintiff won in the trial court and on appeal.
- c) The defendant won in the trial court, and the plaintiff won on appeal.
- d) The plaintiff won in the trial court, and the defendant won on appeal.

2. Which of the following facts is most significant to the court's result?

- a) The plaintiff signed a contract assuming the risk that axes would fall off.
- b) *The plaintiff knew that the axes were likely to fall off.*
- c) The accident happened as a result of negligence by people in another branch of the employment.
- d) The new racks made the drying process less safe.

3. In what situation would the *Lamson* precedent be most relevant?

- a) *The plaintiff smelled alcohol on the breath of the defendant, but allowed the defendant to drive him anyway, and was injured in an accident caused by the intoxication of the driver.*
- b) The plaintiff was an employee and was injured as a result of a defect in the defendant's flooring, which was unknown to the employee and caused an ax to fall on the employee from a higher floor.
- c) The plaintiff was an employee in the painting department, and the defendant was an employee in the ax-head installing department, who injured the plaintiff by throwing an ax head at his supervisor and hitting the plaintiff by mistake.
- d) The plaintiff was a minor employed by the defendant, and was suing for loss of brain function suffered as a result of continued exposure to paint fumes in the defendant's factory.

4. Which change in the law would be most likely to change the outcome of this case?

- a) *Different rules on assumption of risk in negligence cases.*
- b) Different rules on battery and other intentional torts.
- c) Different rules on extreme and outrageous conduct (intentional infliction of emotional distress).
- d) Different rules on the damages recoverable for personal injury.

5. Assume that the intent to accomplish a result exists if the actor desires the result or believes that the result is substantially certain to occur as a result of his acts. In which of the following situations does the intent to make contact exist?

- I. Calvin has thrown 100 slushballs at Susie, but because of his rotten aim he has missed each time. He realizes the odds are strongly against him, but he desperately wants to hit Susie, so he throws another slushball, which hits Susie.
 - II. Calvin was outside a stadium testing his new slingshot for propelling slushballs. He aimed his slushballs to fall inside the stadium. Signs outside the stadium advertised the sell-out crowd, but Calvin did not read the signs. Calvin hit someone inside the stadium, as was substantially certain to happen.
- a) Neither I nor II.
 - b) *I only.*
 - c) II only.
 - d) I and II.

Skills Evaluation with Multiple-Choice Questions

Continued from page 4

Question 1, which asks who won the case, addresses procedural knowledge and case reading. The “exceptions overruled” at the end demonstrates that the same person who lost in the trial court lost on appeal. From the opinion, it is clear that the plaintiff loses, although the opinion nowhere states that directly.

Question 2, which asks what facts are most significant, assesses reading skills. Its incorrect choices combine possibilities for missed facts and erroneous understanding of the court’s opinion. The first option, the signed contract assuming the risk, is legally plausible but factually erroneous. Someone with a correct understanding of the law but poor reading skills would be tempted to pick that. The second option is correct. The third option, that the accident was caused by people in another department, is factually incorrect and would support an outcome different from the court’s. The fourth option, that the new racks are less safe, is factually correct, but not important for the court’s assumption of risk argument.

Question 3 asks the reader to select the most analogous case. This tests the ability to transfer knowledge from one case to another. To do this, readers must understand the salient features of the plaintiff’s decision to encounter a known risk and give that more weight than scenarios that have facts that are superficially similar to those of the *Lamson* case.

Question 4 asks the reader to classify this case by selecting the area where changes would most likely alter the result in this case. The question is quite easy, because there is no hint of intentional torts, emotional distress, or damages rules in the case. A student who cannot correctly classify the case

is likely to have weak knowledge of general tort law or extreme problems in identifying the facts.

Question 5 asks the reader to apply a rule based on the standard definition of intent in torts. The correct answer is (b). Intent exists in I because Calvin hopes to hit Susie, even though he expects not to hit Susie. Intent doesn’t exist in II, because Calvin did not believe that he was substantially certain to hit someone, although it was substantially certain in reality. Here, providing the student the rule to work through means that the student learns it is his or her ability to apply the rule that needs improvement, not rule memorization.

Concluding Thoughts

I began using skills-oriented multiple-choice questions in a project to improve students’ skills and their success on the bar exam. Most students are receptive to these questions and willing to learn from the feedback they receive. The only substantial disadvantage is that drafting these questions is even more time-consuming than drafting ordinary multiple-choice questions. However, the benefits so far are worth it, and I am optimistic about the long-term results.

Greg Sergienko teaches at Western State University School of Law, 1111 N. State College Blvd., Fullerton, CA 92831; (714) 738-1000 (ext. 2530); fax (714) 525-2786; gregs@wsulaw.edu.

The Key to Being a Great Lawyer

By Bryan Thomas Pugh

“**Y**eah, I can get you 35 used keys. That shouldn’t be a problem,” the voice on the phone said. “You’re sure it’s no trouble?” I replied. “No trouble at all. I’ll have them in a bag for you tomorrow at the front desk of the Key Bank.” With that, the last piece of my last lecture to my very first class fell into place.

I had named my inaugural class “The Great Lawyers.” On the first day of class, I had them say aloud the phrase “I am a great lawyer” and had asked them to repeat the phrase three times, emphasizing a different word each time. “I am a great lawyer.” “I am a GREAT lawyer.” “I am a great LAWYER.” I then had them introduce themselves to those sitting around them with the phrase, “Hi. My name is...and I am a Great Lawyer!” Once the introductions had been made, I told them I worked only with great lawyers and I was glad to see that I was in a room full of nothing but great lawyers.

That was nine months ago. Now, it was the last week of the spring semester and time for me to let go of this, my

first class of students. I wanted to send them forth with something special. I wanted to thank them for their hard work, help them recognize how far they had come since that first day, and encourage them as they headed into final exams, summer jobs, and their second year. The inspiration for that final class came from my grandmother.

Three months before she died at 85, and only one week before she was diagnosed with multiple inoperable cancers, my grandmother gave two workshops at an international women educators’ conference in South Carolina. First as a teacher of young people, then as a teacher of teachers, my grandmother had devoted her entire life to educating others. On this particular occasion, facing a room full of the best and the brightest teachers from more than 15 countries, my grandmother began with a story that spoke of every individual’s ability to serve and contribute to the improvement of others. Since she was a meticulous note taker and a fastidious filer, I was able to find and use her notes from that day’s conference as the basis for her eulogy

The Key to Being a Great Lawyer

Continued from page 5

delivered three months later. In the margin of her lecture for that day, she had written a note to herself. "Next time, make sure to give everyone a key to take with them." I decided to use her presentation from that conference, and her margin notes, as my swan song to the "Great Lawyers."

Upon arriving to class that final day, each student was handed one of the secondhand keys I had obtained from the Key Bank the day before. I asked the students to clear their desks of everything but the key and to hold the key in their upturned palms. I then asked them to concentrate on their key while they listened to my story:

After arriving at his newly assigned church, a young minister and his wife met with the building custodian to take a look around the church and review the daily procedures for the church and the surrounding buildings. At the end of the meeting the custodian held out a key ring with three keys on it. "Well, sir, I suppose these are now yours," he said. "What are these?" asked the minister. "These are the keys to the church," the custodian replied. "This key is for the sanctuary, and this key is for the church office building." "And the third key?" "Well, sir," said the gray-haired man, "Nobody really knows what that key is for. I got it from my predecessor, who told me that he had gotten it from the fellow he replaced. I'm just passing it on to you." As the minister attempted to remove the key from the key ring to return it, the custodian said, "I think you ought to just keep it on the ring and take it with you. You never know when you might need it."

Later, as the minister and his wife sat around the kitchen table that evening, their thoughts turned to the mysterious third key. He pulled the key ring out of his pocket and placed the three keys on the table. The minister thought for a moment. "You know, the custodian was right. This key should stay on this key chain. Maybe this third key is the key that can open up a closed heart or, maybe, unlock the potential in a young person's life." "Yes, that's right," said the minister's wife, picking up on her husband's thought. "Maybe this key could free a grieving widow from

hopelessness or rescue the parent of a dying child from guilt." "This key should definitely remain on the key chain . . . as a reminder," the minister concluded. "Just in case."

At this point, I left the prepared text of my grandmother's presentation, moved out from behind the lectern, and asked my students to look up at me. I held my key out to them and continued. "What can you do with your key? What does your key open? Your key could be the key that frees a battered wife and her children from a life-threatening or abusive relationship. Your key could be the key releasing an innocent man from a soul-withering existence in prison. Your key could be the key that unlocks a single mother's dream of owning her own business enabling her to make a better life for herself and her family. It could help a disabled person gain access to a place he or she has never been or free someone with a devastating injury from staggering medical bills. Your key could be the key that seals the deal to bring much needed jobs and, more important, hope to an underprivileged community.

"No matter what grades you make in this class, no matter your class rank or GPA, no matter what accolades or honors you achieve or don't achieve while you are here, you still have a key. The things you have learned in this class and the things you will continue to learn while here in law school make your key very powerful and make you very special. You have the key in your hands. How will you use your key? What will you do with YOUR key?"

At that point I thanked them for their patience and their hard work over the past semester and the past year. I wished them luck on exams and good luck in their second and third years of law school. Then I left them with, "You are all Great Lawyers and you will always be Great Lawyers. Now take your key and go do great things."

Bryan Thomas Pugh teaches at Florida State University College of Law, 425 W. Jefferson St., Tallahassee, FL 32306-1601; (850) 644-5081; fax (850) 644-0576; bpugh@law.fsu.edu.

Submit articles on teaching and learning to *The Law Teacher*

The *Law Teacher* encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become more effective teachers. Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. The deadline for articles to be considered for the next issue is February 2, 2001. Send your article on paper (with a copy on diskette) or via email. After review, all accepted manu-

scripts will become property of the Institute for Law School Teaching.

Send manuscripts, comments, and letters to: Institute for Law School Teaching, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528, E-mail: ilst@lawschool.gonzaga.edu.

For more information, call (509) 323-3740.

Courtroom Visits as a Way to Learn Evidence

By Andi Curcio

How do you teach Evidence to students who have never been in a courtroom, let alone tried a case? This dilemma plagues me every year. Last year, I decided that students needed to see a trial to begin getting a sense of how evidence comes into play in the “real world.” So, on the first day of class, I announced that before the semester was over each student had to watch either an entire trial or two and one-half hours of a trial (whichever was shorter). A short paper about their courtroom observation would count for 10 percent of their final grade.

I did not assign particular trials or even tell students how to determine when trials were scheduled because part of the exercise involved the students’ learning how to find their way around a courthouse. Any trial in any courthouse would do. Because the paper was not due until a week after classes were over, the students had ample time to find a trial that interested them. The only restriction was that they could not spend the entire two and one-half hours watching only an opening or closing argument. The students also were encouraged to talk to the judge, lawyers, and clerks about what they had observed.

After observing the trial, students were required to discuss, in two to three pages, what they saw. The paper’s first paragraph was to contain enough logistics (date and time; courthouse and judge; parties’ names) to convince me the students actually attended the trial. The remainder of the paper was to be an analysis of what the students had seen. The students were allowed to write about anything that struck them during their observation. I made the following suggestions as potential topics: evidentiary objections that were made or that the students believed should have been made; the judge’s rulings; the jury’s reaction when objections were made and argued; the judge’s and lawyers’ demeanors and how they potentially affected the trial; what made a lawyer they watched seem effective or ineffective; how the jury reacted to the lawyers, witnesses, and judge. Virtually anything that the student thought while observing the trial was fair game.

At the end of the semester, I asked my 60 students to fill out anonymous questionnaires about their courtroom observation experience. The feedback I got surprised me. Despite the time commitment involved, every student thought it was a worthwhile experience and something I

should do again next year. They said that sitting in a courtroom and seeing a trial helped them understand how the rules they were learning actually worked. They also learned how important it was to know the rules of evidence well, because, as one student noted, “The evidence came in so fast that by the time I thought about the objection they were already talking about something else.”

For some students, the courtroom observation was a confidence builder. They saw practicing lawyers and for the first time thought, “I can do that.” For others, it was fascinating to think about strategic issues: Was the lawyer really sleeping during his opponent’s examination of a witness, or

was he just pretending to be not interested so that the jury would think the testimony was unimportant? One student saw a lawyer get caught making a misstatement. Watching the consequences of that was a lesson in itself. When students talked to the lawyers and judges, they learned about the thinking that went

into the judges’ rulings and the lawyers’ tactical decisions. This, too, was a valuable learning experience.

In sum, forcing the students to leave the law school building and see the law “in practice” was a positive experience. Their papers were generally good and thoughtful, and many students watched more than the required amount of a trial because they found it so interesting. And, of course, there were some students who appreciated simply not having their entire grade be based upon a final exam.

Next year, I will continue the assignment with a slight modification. I will require that the paper be turned in earlier in the semester so that we can incorporate the students’ observations into our classroom discussion. In addition, by getting into a courtroom earlier in the semester, students will learn firsthand why they must really know the rules of evidence. Finally, students will learn this valuable lesson at a point in the semester when they still have time left to study the material.

For some students, the courtroom observation was a confidence builder. They saw practicing lawyers and for the first time thought, “I can do that.”

Andi Curcio teaches at Georgia State College of Law, P.O. Box 4037, Atlanta, GA 30302-4037; (404) 651-4157; fax (404) 651-2092; acurcio@gsu.edu.

Problem Solving and Advocacy: Two Separate Skills

By Ronald Benton Brown

Law students generally find legal writing to be frustrating and confusing. But why? Before entering law school, they should have mastered the fundamentals of effective writing: Always have a good introduction, tie each paragraph to the next with an effective transition, warn the reader what's coming, emphasize critical factors by repetition, and so on. However, when students attempt to apply these principles to legal writing exercises, particularly in the context of exam writing, the results often are disappointing. I believe the problem involves trying to teach two different skills simultaneously, but without differentiating between them, particularly in substantive courses. I identify these two skills as problem solving and advocacy.

Problem solving is the process of logical deduction. Like the good detective, we start with the question posed and proceed to follow clues to the solution. We identify the issues, ferret out the legal rules and principles, and then apply them to the facts to reach conclusions. We must keep an open mind and consider all possibilities, even when they lead to a dead end. Once we have completed that process, tied up all the loose ends, and exhausted all the leads, we reach the logical conclusion and realize how the problem should be solved.

What should students do with the solution? Perhaps the assignment is to explain how the answer was reached. In that case, the student should merely reveal the solution process as it occurred. However, if the student wants to convince the reader that the answer was reached correctly, he or she should evaluate the audience and determine how best to reach it, get and hold its attention, and make the conclusions understandable and compelling. In other words, this is the time to use the good writing skills that the student should have brought to law school. A good introduction is needed. Transitions must hold the readers' interest and prepare them for what comes next. Important points must be emphasized. Repetition may be used for emphasis, but the style cannot be boring and repetitive without risking losing the reader's attention. Unnecessary verbiage should be eliminated. This is the process of advocacy.

Lawyers engage in advocacy in many situations: writing letters to counsel their clients; writing memos to the file, the senior partner, or to the court; writing trial or appellate

briefs; or writing law review articles. In all of these, the lawyer is trying to convince someone. However, what we often fail to emphasize, because it may seem so obvious to us, is that before advocacy is possible the lawyer must have something to advocate, i.e., the answer to the problem. That is why good advocacy can take place only after the problem solving has been completed.

Students have difficulties when they are unsure whether to apply problem-solving or advocacy skills. The problem may best be illustrated by that icon of first-year law school, IRAC. IRAC is a problem-solving strategy. By proceeding methodically through IRAC, a student can solve even the most difficult legal problem. But an IRAC solution, particularly a long one, is not good writing because it fails to pay attention to the needs of the reader. That requires an advocacy strategy.

Some teachers try to get that across to students by teaching CIRAC (conclusion, issue, rule, analysis, conclusion) as the first step in converting an IRAC problem solution into advocacy. Some students attempt to use advocacy skills for problem solving. These students feel tricked when they learn the secret of getting good exam grades is to forget about good writing and use IRAC.

This problem can be averted if we identify problem solving and advocacy as separate skills. In class we should be particularly careful to distinguish between the two. When presenting an exercise, we should specify what the student is being asked to demonstrate. If it is advocacy, we should be careful to provide enough time for students to complete the problem solving and then transform that solution into something that is written in an interesting and convincing manner. Perhaps of paramount importance to students, we should decide which skill we want to test and specify that to the students so they can respond accordingly.

Ron Brown teaches at Nova Southeastern University Shepard Broad Law Center, 3305 College Ave., Fort Lauderdale, FL 33314; (954) 262-6165; fax (954) 262-3834; brownr@nsu.law.nova.edu.

Negotiable Instruments Can Be Fun

By Susan Kosse

Now before everyone laughs at this idea (except, of course, all the Code teaching professors) let me explain: This was my first semester teaching a Code course. In my other courses, Administrative Law and Legal Writing, I always try to use technology and other resources to make the classes more interesting. When faced with the daunting challenge of teaching Negotiable Instruments for the first time, I reflected on ways I could spice up the course yet still teach students what they need to know. The following are some of my ideas.

Is this note a negotiable instrument?

After covering the requirements of negotiability, I designed three different notes. Each of these notes included three to four defects that would cause them to be non-negotiable. I divided my students into groups of three (I teach 35) and gave each group one version of the notes. They spent most of the class analyzing whether the note met the requirements found in U.C.C. § 3-104. Some of the problems included no signature, non-conditional promises, failure to state a definite time for payment, a “smiley face” for a signature, and “Non-negotiable” stamped on the bottom.

After the students analyzed the notes, I gave them three different checks. One had “Pay to the order” crossed out, one said “Non-negotiable” on its face, and one had “\$1,000” but only “One hundred” in the written part.

We all came back together, and I asked each group to tell me the problems with their notes and the applicable Code sections. We did the same for the checks. After everyone reported I handed out a model that had no defects so they could compare it to their problem notes.

The exercise worked well. It reviewed all the concepts we had been studying in a real-life application. It was good practice for the students to analyze an entire negotiable instrument without being told where the problems might be. Although we use a problem approach book that is excellent (Whaley’s *PROBLEMS AND MATERIALS ON PAYMENT LAW*), the problems break down U.C.C. § 3-104 into individual components (e.g., problems with a signature, problems with a definite amount of money, etc.). In my exercise, the students were forced to look at the entire note.

Is our client a holder-in-due-course?

For this exercise I asked another Negotiable Instrument professor to be our guest client. I based my scenario on *Asian International, Ltd. v. Merrill Lynch, Pierce, Fenner and Smith, Inc.*, 435 So.2d 1058 (La. App. 1983). The case involved a check. The court ruled Merrill Lynch was a bank and therefore was not affected by a missing necessary

indorsement. The court also held that Merrill Lynch had given value. The students knew nothing about the case except that they needed to ascertain whether our client was a holder-in-due-course.

They asked the client his name and what they could do for him. When they asked to see the instrument, I used PowerPoint and a LCD projector to display the check on a big screen. Through lots of questions they eventually came to the correct conclusion. I also changed facts from the case to test the students’ knowledge of Articles 3 and 4. For example, I told them to assume Merrill Lynch is not a bank. For further review, I had the client turn into a senior partner and the students had to explain, using Code sections, reasons for pursuing or not pursuing the case.

Who Wants to be a Negotiable Instrument Attorney?

For a review session, I created a PowerPoint presentation titled, “Who Wants to be a Negotiable Instrument Attorney?” I selected the “participants” randomly. Much like the more famous contestants on “Who Wants to be a Millionaire?”, my participants had three lifelines. They could ask the class for a vote, I could take two of the choices away, or they could phone a friend — which for them was asking another student. One sample question was:

- 1) What is an indorser’s liability:
 - a) I will pay the instrument.
 - b) I will pay the instrument if it is presented, dishonored, and I receive notice.
 - c) I will pay the instrument if it is presented, dishonored, and notice is given.
 - d) I will never pay the instrument.

The class loved the exercise and learned a lot. I have also designed “Who Wants to be an Oral Advocate?” for my Legal Writing Classes. You could incorporate this idea in virtually any class.

Conclusion

These exercises were a great way to review the first four weeks of classes. The students’ response was positive and they indicated they found the experience helpful. I found this method an ideal way to make sure all my students understood the principles upon which the rest of the course would be based.

Susan Kosse teaches at the Louis D. Brandeis School of Law, University of Louisville, Louisville, KY 40292; (502) 852-6373; fax (502) 852-0862; susan.kosse@louisville.edu.

Teaching the Core Curriculum

The co-authors of a new book on teaching law, Steve Friedland, Gerald Hess, and Stephen Sepinuck, are still soliciting contributions from legal educators.

TEACHING THE LAW SCHOOL CURRICULUM is designed to provide ideas, materials, and alternatives for teaching a variety of law school courses. The book offers guidance for both new and experienced law teachers on planning and delivering effective courses. Each chapter addresses one of these courses:

Business Associations	Family Law
Civil Procedure	Federal Income Taxation
Clinic and Externship	Legal Research & Writing
Constitutional Law	Professional Responsibility
Contracts	Property
Criminal Law	Sales & Secured Transactions
Criminal Procedure	Torts
Evidence	

Each chapter will have five sections: (1) Approach, (2) Materials, (3) Class Exercises, (4) Brief Gems, and (5) Evaluation of Students.

Approach: How can a teacher approach this course? This section will encompass global issues about a course, such as goals, organizational scheme, general philosophy, syllabi, and coverage. For any given chapter, it might include different teachers' thoughts on the following areas:

- whether the course is best taught through the problem method, case method, a practicum, or otherwise;
- the main principles or skills that students should take away from the course; or
- the key topics and the order in which they should be covered (e.g., whether Civil Procedure should cover the rules before jurisdiction and *Erie*; whether in Contracts damages should come first or last).

Materials: What kinds of materials will enhance the course? This section will include various teachers' views on:

- Textbooks. Discuss the merits of different types of basic course materials. For example, the Commercial Law texts authored by Keating, Mann, LoPucki, and Warren all purport to use a "systems approach," which seeks to show students how the law interacts with various non-legal forces to shape the way people interact in commercial settings.
- Handouts. Reproduce specific handouts that teachers have created and suggest ways to use handouts (i.e., hand them out all prepared, build them in class, or have students participate in their creation); or
- Other Resources. Suggest legal and nonlegal materials — print, audio, video, or of other electronic nature (e.g., Internet site; CALI exercises) — that provide useful background, evoke an emotive response, or promote discussion (e.g., a Harlan Ellison essay about being arrested, a segment from *Eyes on the Prize* concerning school desegregation, or Judge Kozinski's *New Yorker* article about hearing last-minute death penalty appeals).

Class Exercises: What teaching and learning activities work well in this course? This section will provide sugges-

tions for in- and out-of-class projects. It could include anything that promotes learning, such as simulations and role playing projects; drafting assignments; or collaborative problem solving.

Brief Gems: What succeeds in this course? In this section, teachers will share devices and ideas that have proven effective in their classes. They might be:

- useful analogies (i.e., prefiling a financing statement is like saving a seat at a movie theater or saving a place in line at the bank);
- humor (cartoons to illustrate concepts);
- ways to treat a particular case; or
- means to incorporate humanism, ethics, and professionalism into the course.

Evaluation of Students: When and how should students be evaluated? This section will include teachers' thoughts on feedback and assessment both during and at the end of the course. It may include suggestions about:

- helping students to perform self-evaluation;
- providing students with feedback before the end of the semester; or
- the variety of evaluation mechanisms (e.g., essay exam, objective exam, paper, journal, drafting exercise) most appropriate to the subject matter.

Please contribute your ideas to TEACHING THE LAW SCHOOL CURRICULUM. Anything you send that is included in the book will be attributed to you. The co-authors are looking for contributions as short as one paragraph and as long as two pages, single-spaced. Send your contributions to pprather@lawschool.gonzaga.edu or to Institute for Law School Teaching, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528.

Institute Advisors

The Advisory Committee of the Institute for Law School Teaching provides guidance to assist the Institute achieve its goal of improving the quality of teaching and learning in legal education. Advisory Committee members serve two-year terms. The current members are all legal educators, although members may come from other fields in higher education. The members of the Advisory Committee participate in the development of the Institute by sharing their ideas, feedback, and perspectives on the Institute's programs with the director and program coordinator.

The Institute gratefully acknowledges the contributions made by the current members of the Advisory Committee:

Susan Apel, *Vermont Law School*;

Charles Calleros, *Arizona State University College of Law*;

R. Lawrence Dessem, *Mercer University School of Law*;

Paula Lustbader, *Seattle University School of Law*;

Gary Minda, *Brooklyn Law School*;

Mark Weisberg, *Queen's University Faculty of Law*.

Call for Presentations

“Assessment, Feedback, and Evaluation”

Eighth Annual Summer Conference of the Institute for Law School Teaching, July 13-14, 2001

The Institute for Law School Teaching invites proposals for conference workshops on assessment, feedback, and evaluation of students and teachers. The Institute’s annual summer conferences provide a forum for dedicated teachers to share with colleagues innovative ideas and effective methods for legal education.

The theme for the July 2001 conference is “Assessment, Feedback, and Evaluation.” The conference will include assessment, feedback, and evaluation of law schools, teachers, and students. In this context, “assessment” is the process of articulating the specific competencies (skills, knowledge, values) that students should gain from a course or from three years of law school and the means to measure how well students have learned those competencies. “Feedback” includes ways teachers can provide developmental feedback to their students throughout the course and means for teachers to get feedback from students and peers to improve their teaching effectiveness. “Evaluation” encompasses the methods of appraising student learning (tests, papers, performance, and portfolios, to name a few) and processes for evaluating the quality of teaching.

The proposals should be for 75-minute workshops that are consistent with a broad interpretation of the conference theme. The workshops can address first-year courses, upper-level courses, clinical courses, skills and writing courses, and academic support. Workshops that explore either high- or low-tech methods for improving assessment, feedback, or evaluation are encouraged. Each workshop should include materials that participants can use during the workshop and when they return to their campuses. Presenters should not read their papers, but should model

effective teaching methods by actively engaging the participants.

To be considered for the conference, proposals must be limited to two single-spaced pages and include the following:

- The title of the workshop;
- The name, address, phone number, fax number, and e-mail address of the presenter(s);
- A summary of the workshop, including its goals and methods; and,
- A description of the material that will accompany the workshop.

The Institute must receive proposals by January 16, 2001.

Submit proposals to: Institute for Law School Teaching, Gonzaga University School of Law, Box 3528, Spokane, WA, 99220-3528.

The conference is self-supporting. The conference fee for participants is \$350, which includes materials and meals during the conference (two breakfasts, two lunches, and one dinner). The conference fee for presenters is \$150. Pleasant and reasonable accommodations are available near the new building of Gonzaga University School of Law, the site of the conference. Presenters and participants must cover their own travel and accommodation expenses.

For more information, please contact:

Gerald Hess, Director

(509) 323-3740, ghess@lawschool.gonzaga.edu, or

Paula Prather, Program Coordinator

(509) 323-3740, pprather@lawschool.gonzaga.edu.

Reflecting on our Teaching

REFLECTING ON OUR TEACHING is a new collection of materials to help law teachers think about their lives as teachers. These materials include articles, exercises, and essays on teaching by thoughtful, provocative practitioners. REFLECTING ON OUR TEACHING is organized into six sections:

- *Imagining a Teacher* provokes thinking about an ideal law teacher in a perfect world and poses questions like “What do you want in a teacher?” and “What relationship would she establish with you?”
- *Prompts for Reflecting* moves you from thinking about the ideal teacher to the teacher you are or try to be. It consists of a variety of prompts to help you develop a deeper sense of what matters most to you in teaching and learning, how you’ve developed as a teacher, and what you still want to learn.
- *Fear in Learning and Teaching* explores how much of our behavior as learners and teachers is driven by fear. It includes an exercise for getting rid of the internal critics

most of us carry around in our heads.

- *Professionalism* focuses on what it means to be a professional and explores questions significant for both lawyers and law professors: How do we respond to clients or students we don’t like? What characterizes an appropriate relationship between lawyer and client, teacher and student?
- *Reflections on (Legal) Education* contains amusing as well as challenging articles that ask you to consider how law should be studied and taught, whether legal education trains people’s judgment, and law school’s heavy emphasis on doubting as the only significant ingredient for developing a critical, independent mind.
- *Resources for Reflecting* provides information on additional materials to help law teachers reflect on their lives as teachers or to use in reflection workshops with colleagues.

REFLECTING ON OUR TEACHING (225 pages) costs \$60. To order a copy, contact the Institute.

Wonderful Websites for Law Teachers

By Kay Lundwall

Whether you are an experienced “surfer” or are just beginning to dip into the sea of information available on the World Wide Web, here are four Websites you will really want to visit.

Law Exams Online

Stuck for ideas for your final exams? There are a number of sites where you can view exams drafted by other law professors. The oldest site is the one created by Harvard Law School. This site contains exams given to Harvard law students over the past five years. Type in www.law.harvard.edu/academics. Click on “Examination Books.” You will have to choose the examination books for a particular year. The next screen allows you to choose exams arranged alphabetically by subject matter. For example, click on “C” for “corporations”. Some of the other law schools posting old exams include the universities of Arkansas, Kentucky, Pennsylvania and Texas.

Electronic Classrooms

Teaching a course for the first time or merely curious about how your colleagues at other schools teach your course? Visit the virtual classrooms at www.lexis.com. Click on the “Law Schools” link, and at the next screen click on “Virtual Classes.” On the virtual classroom page, click on “Go to Course List,” where you will find a list of virtual classes arranged alphabetically by school. (Be patient: it takes a few minutes for the list of schools to load.) While teachers who have produced virtual classrooms have the option to “lock the classroom door” and assign passwords to their students (and others) for entry, most classroom materials are freely accessible. The wealth of materials can be impressive. You may find a course syllabus, schedule of assignments, problems with student or teacher model answers, class exercises, copies of computer-generated slides and lecture notes, links to interesting cases or other relevant online information, cartoons, classroom discussion boards, and copies of old exams with critiques by the instructor. If you find a helpful site, be sure to e-mail compliments and questions to the person who created the site and ask permission to use material from the site. (Westlaw offers a similar electronic classroom called TWEN.) When you are ready to create a virtual classroom of your own, both Lexis and Westlaw will provide excellent assistance. Check with your regional Westlaw or Lexis reps.

Lists of Listservs

Are you feeling isolated? Do you have questions about your course material or want to discuss teaching techniques with colleagues at other schools? The University of Chicago has compiled a list of listservs (which are e-mail group-discussion lists).

If you go to www.lib.uchicago.edu/cgi-bin/law-lists and type in “teaching”, you will get a list of about 25 specialized listservs. Some are very general, such as LAWPROF, while others are restricted to a particular specialty, such as IMMPROF (immigration law professors), TAXPROF, BIZLAW, and DIRCON97 (restricted to directors of legal research and writing programs). Still other listservs focus on methods rather than subject matter: E-TEACH (discussion of electronic teaching and learning issues) and LEGALED (a United Kingdom-based discussion board for teaching and learning issues). The listserv list has a brief description of the focus of each listserv along with directions for adding your name to the subscription list.

Required Reading

Professor Bernard Hibbitts of the University of Pittsburgh School of Law publishes THE JURIST at www.jurist.law.pitt.edu. This site, created for law faculty, contains daily annotated links highlighting headline legal news stories; a forum in which law professors discuss legal implications and ramifications of top stories; a law school “feed” section which runs press releases, professional and academic announcements; and tips submitted by law schools. This site also contains subject guides, course pages (similar to the virtual classroom materials), conference and job announcements, and all sorts of other topics geared to law professors.

Kay Lundwall teaches at Florida Coastal School of Law, 7555 Beach Blvd., Jacksonville, FL 32216; (904) 680-7775; fax (904) 680-7771; klundwall@fcsl.edu.

The Law Teacher

Volume VIII, 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 and learning 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.

Co-editors: Gerald Hess and Dan Webster
Program coordinator: Paula Prather

© 2000 Institute for Law School Teaching
Gonzaga University School of Law
P.O. Box 3528, Spokane, WA 99220-3528
E-mail: ilst@lawschool.gonzaga.edu

All rights reserved

ISSN No. 1072-0499