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THE LAW TEACHER

Institute for Law School Teaching

Spring 2000

The Law Professor as Student, or National Velvet, I'm Not

By Jan C. Costello

Ferri's ears prick forward as we near the jump. My Arabian mare is moving easily, her strides regular as a metronome, judging the take-off point — eager, but not rushing. On her back I am poised correctly in the two-point position: My heels are down, my legs firmly around her sides, my seat just slightly out of the saddle, my chest up, shoulders back, eyes looking straight ahead between her ears. One stride away from the fence I feel Ferri gather herself for the leap; I close my legs to signal her to take off and move my hands forward in a crest release to give her more rein. She jumps smoothly, arcing over the fence in what feels like just a larger version of her normal canter stride. I move with her in perfect balance, enjoying her soaring strength. We land in harmony and Ferri canters happily on, sensitive to my directions as I turn her toward the next jump in the course.

Well, that's how it happens in my dreams. In real life, this is more like it:

Two strides away from the fence, I start to wonder if this is such a good idea, after all. The fence, an 18-inch-high cross rail that both Ferri and I could step over if necessary, suddenly looks about six feet high. I stiffen in anticipation, clutching at the reins and leaning too far forward. Confused by my mixed signals, Ferri takes off one stride too soon, bounding in a longer arc to clear the fence. The larger leap throws me off balance. My legs come off her sides, my heels fly upward, and I fall first forward onto her neck and then backward into the saddle, hitting her in the mouth with the reins. Annoyed, upon landing Ferri breaks into a rough, jolting trot. I respond by hauling harder on the reins, which she ignores, tossing her head.

At about this point my riding instructor, Karene Cohen, calls out, "BREATHE, Jan!" Breathe? I think indignantly. Here I am practically rigid with terror, trying to keep my heels, legs, chest, hands, and eyes where they're supposed to be — and on top of that to remember where the next jump is on this course — and Karene wants me to breathe?

Ferri has some advice for me, too. She rolls her eyes back at me, and snorts in disgust, "Relax, Mom. I'm just going to jump this pathetic little cross rail and canter

around the ring to the next one. You know I'm not going to hurt you. Geez, your two-year-old toddler sits on my back while I eat my lunch. It's going to be fun, Mom. NOW LET GO OF MY MOUTH!"

I have learned to trust Karene and Ferri, so I follow their instructions. Although my heart is pounding and my mouth is dry, I loosen my death grip on the reins and take a deep breath. Once I do that, my chest opens up and I uncurl from my fetal crouch over Ferri's neck. As I sit up, my seat bones connect firmly with the saddle, and my legs drop down and around my horse. Feeling my legs close around her, Ferri rounds her back up under me and moves smoothly forward, coming willingly into contact with the reins again. All of a sudden, we're back in balance — and I can think about the next fence. It's a miracle!

This would be a better story if it happened only once, but the embarrassing truth is, it happens in almost every riding lesson. I have to learn the same thing over and over again — as Karene and Ferri (and my Appaloosa gelding, "Hobo," Ferri's predecessor) can attest. Although there are "natural" riders in the world — people who have an innate talent for riding and who progress rapidly to a high level of skill — I am not one of them. National Velvet, the heroine of my childhood reading, was one such rider; although she never had a lesson, she and her beloved Piebald won the Grand National steeplechase.

I am not National Velvet. I am 49 years old, asthmatic, uncoordinated, chronically exhausted, stiff and sore, and packing more than my share of cellulite. All the things that effective riding demands are terribly hard for me to do. After years of taking lessons, reading books on riding,

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The Law Professor as Student

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watching advanced competitors, and practicing hour after hour on my own, I'm still just a marginally competent rider (or, as Karene says when she's feeling generous, "not terrible.")

It's pretty embarrassing to have to admit that I'm only marginally competent at anything — especially at something I want to do so badly. Like most law professors, I'm used to success in the role of student — being the class star who sits in the front row and volunteers. It's been a shock to my ego to experience life from the bottom, rather than the top, of my horseback riding class. During my first year of lessons I fantasized about giving Karene — as well as any horse show judges before whom I competed — copies of my resume. "See?" I would say, "Advanced degrees!

Responsible jobs! And I'm a law professor and TENURED and everything. So I really am a person worthy of respect — even though I'm having a little trouble right now keeping my heels down, legs around, shoulders back, etc., and I've forgotten the order of jumps in this course."

But in my heart I knew that success in other areas of my life didn't entitle me to success at riding. Heaven knows the horse doesn't care about my resume! I had to accept that I was not a "natural" rider and that I would likely never be as good a rider as someone with that gift. But I could become a competent rider, step by step, identifying each skill that I needed to develop, making sure I understood it — and then practicing it over and over until, one day I got it right. (And then, of course, losing it again when I tried to combine it with another, more difficult task...) Over the years I have built one skill upon another and slowly become — not excellent, not very good, but better than I was! And to get where I am as a rider I have had to work harder than I ever did to achieve academically or as a practicing lawyer or a teacher. Perhaps for that reason I take almost more pride in my riding.

Coincidentally, about the time I started riding lessons, nine years ago, I began to co-teach with my colleague Jenny Kamita the Legal Process course. This course, part of Loyola's Academic Support Program, is open to second- and third-year students in academic difficulty. By definition, students in Legal Process are not "succeeding" in law school; they have had exceptional difficulty in their first or second year. And certainly many other students, while not on academic probation, also struggle to "get it," to understand what law school requires and to master those skills. For all of them, the reality of law school has fallen short of their dreams.

When they enroll in Legal Process, or come to talk in my office, these students often are embarrassed. They were successful students as undergraduates. Many of them have been successful in careers other than law. All of them have demonstrated strengths and talents in their lives outside law

school. Sometimes they make a point of mentioning these achievements. They want me to know that they really are people worthy of respect, even though they're having a little trouble right now with outlining, or understanding procedural due process.

They are torn between rage and despair. They tell me about the student last year who sat next to them, didn't take any notes, never briefed cases, read the commercial outline the night before the exam, and got a 92 in the course.

They briefed every case, never missed a class, lost the love of their life because they insisted on studying so much — and still barely passed. It's unfair! they cry. It's so

frustrating to watch these fellow students, for whom law school seems to come naturally, succeed with less effort.

I understand, I tell them. I may not have when I first became a law teacher, but I sure do now, after all these years in the saddle. It may not come "naturally" to you, just like riding doesn't come to me, but you can learn how to make it "second nature," — step by step, identifying

each skill that you need to develop, making sure you understand it — and then practicing it over and over until, one day you get it right. Then you combine it with another skill, and build on it, and build on that — and you will get better. And when you have mastered it in this way, you can take a pride in your achievement that the "natural" legal thinker cannot.

Sometimes, they believe me. And as the semester goes on, I watch them working to build their skills, and I see it get better. And then I think, "Well, heck, they're doing so well, maybe I should take it as an omen. I'll try cantering that course next week..." Other times, grading exams, or marking comments on draft papers, I'll get frustrated because I don't see the improvement I hoped for. I complain out loud, "They know better than this! I just told them in class last week! How could they make these mistakes?" And then I remember what happened last Sunday morning in my riding lesson, and think, "Oh, I can understand how." So I erase my tart comments from the margins and plan to review the material in the next class.

I think perhaps all law professors should try being students again, try learning something that they passionately want to do, but at which they are just not very good. It could be golf, or origami, or playing the violin. It doesn't have to involve a horse. But for those of my colleagues who are interested, I'd be happy to call your local riding stable for you, and set up a lesson!

*I am not National Velvet.
I am 49 years old, asthmatic,
uncoordinated, chronically
exhausted, stiff and sore,
and packing more than my
share of cellulite.*

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The Seven Principles of Effective Feedback

By Jon M. Garon

The Seven Principles of Good Practice in Undergraduate Education emphasize the following: active learning, time management, student-faculty contact, prompt feedback, high expectations, diverse learning styles, and cooperation among students. While all these principles have validity in the law school setting, one of the most important is effective feedback.

In law school, faculty members provide students with feedback every day. The Socratic method stresses active student participation, instant feedback and reinforcement by the professor, and the student's subsequent response, with the information loop repeating until the student learns the new skill. In a one-on-one setting, this model could be ideal; in larger groups, however, student participation tends to lessen.

To reach the entire class, the professor should create an opportunity for full participation. Professors must involve students at a level sufficient to provide

feedback and reinforcement until each pupil has acquired the intended skill or knowledge. Frequent written assignments, quizzes, labs, and client projects all serve this function. The form of the activity is less important than the quality of the interaction it generates.

The key to successful instruction, then, is effective feedback and reinforcement. Feedback provides students with the information about their performance they can then use to improve their skills. Reinforcement provides positive or negative rewards to promote student response. Students often read only those portions of assignments covered because there is no positive reinforcement to do more. In this way, reinforcement can interfere with feedback. Students are given the best opportunity to meet the instructor's objectives when the instructor provides both good information, upon which the students can reflect on their learning, and explicit, positive reinforcement for demonstration of the skills the instructor is attempting to instill.

I have identified seven principles for effective feedback in legal education. While these techniques are most frequently present in legal writing and professional skills courses, they apply equally to all law school subjects.

1. Effective feedback should be clearly understood by the student. Furthermore, the feedback must be seen as something useful. Students clearly cannot reflect on information they do not understand. Instructors should provide information that builds on what the student knows. This provides students the cognitive tools needed to use the information effectively.

2. Effective feedback should be timely. It must closely follow the students' work to better help them reflect on what they did and why they did it. Reinforcement, too, must closely follow student behavior to be effective. Exams reviewed months later have far less effect than those

returned the next day.

3. Effective feedback should be immediately usable by the student. If students put the feedback into practice immediately, they can build upon the information needed for the next assignment. Since students improve in small successive steps, feedback should come to the students in sequence. If it comes out of sequence, students often end up confused. The result can be frustration and negative reinforcement.

4. Effective feedback should be consistent. The feedback must build on the same themes and correct the same mistakes each time. Students compare the information they receive with their classmates to try to synthesize the information. Students also use each incidence of feedback to build toward the next project. Effective feedback is consistent from both student to student and project to project.

5. Effective feedback should be comprehensive. The feedback must cover each of the criteria set out for grading. An instructor must give value to each skill he or she wishes to improve. Grading only for analysis negatively reinforces writing skills. Students will not invest time or effort in activities that are not valued - and hence reinforced - by the instructor. The more explicit the criteria, the more they are reinforced. Further, explicit criteria help students know what to study.

6. Effective feedback should be supportive. It should encourage the student to attempt to improve. Negative reinforcement may help discourage particular behaviors, but it can also reduce motivation and disrupt the learning process. This does not mean ignoring mistakes. Instead, the instructor should identify both the weak and strong performance, and stress what the student can do to continue to improve.

7. Effective feedback should be valued. Students must recognize the value in the feedback and treat it as meaningful. When students discount feedback for any reason, its importance diminishes and so does the effect it will have. Student dislike of the subject matter, confusion about the assignment, or delays in feedback will all result in lowering the lesson's effectiveness. Students who are motivated to value feedback will engage in the learning process more intensively and utilize the information with greater effectiveness.

I recently implemented my seven principles of effective feedback while teaching Professional Skills. The students' success in the skills course led me to use this approach in my subject matter courses as well.

My method of teaching Professional Skills has three features. First, we discuss each skill explicitly in class. Course materials and discussions explore each of the component skills step-by-step. Emphasis is placed on the steps

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The key to successful instruction, then, is effective feedback and reinforcement.

Book review: OUTCOMES ASSESSMENT FOR LAW SCHOOLS

By Martin Burke

In his remarks at the groundbreaking ceremony at Chapman University School of Law in Orange County, California, Anthony T. Kronman, Dean and Professor of Law at Yale Law School, noted:

“Today the American legal profession is in turmoil. The organized bar has lost much of its authority. The country’s leading firms have been transformed in basic ways. The aims of legal education are increasingly unclear to teachers and practitioners alike. And a new and aggressive culture of commercial values, which claims for itself a moral as well as a material superiority, is spreading through the profession as a whole.”

How appropriate that these remarks be made by the dean of Yale Law School to the faculty, students, and supporters of a new law school that has recently gained ABA provisional approval. Presumably, implicit in Dean Kronman’s description of the changing legal landscape is the admonition that “business as usual” cannot, and should not, be the norm for either a new law school such as Chapman or even well-established and highly regarded law schools such as Yale. If, as Dean Kronman indicates, “the aims of legal education are increasingly unclear to teachers and practitioners,” then surely the time is now for the faculty and other constituencies of law schools to re-examine the mission of their schools, to review their curriculum and their teaching, research and service activities in light of the school’s mission, and to assess whether their law schools

are actually accomplishing their stated missions.

Perish the thought that a dean or a faculty member would suggest such an undertaking! At a new deans’ meeting not many years ago, an experienced law dean cautioned his new colleagues not to initiate a curricular review or revision effort. The danger, suggested the dean, is that such efforts require enormous time commitments from both faculty and administration, tend to create dissension within a faculty, and often result in no significant changes - except, perhaps, a change in the deanship. Unfortunately, one need only review the self-studies prepared by some law schools as part of the ABA sabbatical accreditation process to understand how difficult it is to engage faculty in a serious evaluation of their institution. Similarly, a review of the minutes of many, if not most, law faculty meetings would likewise suggest that faculty members are not likely to be interested in spending much time discussing curriculum or teaching techniques. Indeed, considering the abhorrence expressed by many for faculty retreats or meetings, one has the distinct impression that law teachers simply want to be left alone to teach their courses and do their scholarship.

It is against this backdrop of a changing legal environment, the related uncertainties regarding the aims of law schools, and faculty reticence to engage in curricular and institutional review that Greg Munro presents his book, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS*. In the book, Munro proposes that law schools develop and institutionalize a comprehensive assessment program. Munro indicates in the preface that the purpose of his book is “to excite and

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Effective Feedback

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that make up writing, editing, analysis and synthesis, client counseling, negotiating, and learning. Second, the discussions of each step are presented in the context of the others. I use client counseling as a broad paradigm through which the student/lawyer demonstrates every other skill. By using a single broad paradigm, the students have a common framework that they can use to organize all their skills and techniques as lawyers. Third, course materials provide the students with written statements on each criterion used for grading. Neither the criteria nor the numerical valuations change during the semester, so students can compare their competence on each exercise. The reward system attempts to value the reflective learning as well as the substantive projects, so that students invest the necessary time in learning about their own thought processes.

By applying the seven principles of effective feedback as

a guideline for designing new course problems and grading systems, instructors have the opportunity to identify the skills, values, and knowledge they truly seek from each course. Students benefit because they understand what is expected in much greater detail, and they can measure their progress toward the goal. This also provides reinforcement and feedback to the instructor. The feedback loop is continuous. The reflective process shapes not only our students, but ourselves. For me, at least, this has become a very good way to learn.

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Outcomes Assessment

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inspire those who find reward in promoting student learning of law and making their law schools effective centers of law in society.” Presumably, Munro in this statement has described all of us who teach in law schools, and thus his book and its challenge are for each of us.

Why should anyone read the book or accept Munro’s challenge? In his conclusion, Professor Munro describes the anticipated benefits for those schools and faculties implementing a comprehensive assessment program:

“Teaching will improve, will make more sense, and will be more enjoyable.... Faculty will not have to suffer from the nagging feeling that standards are dropping and that students are not learning like they used to.... [and] above all, faculty and student can find reinvigoration in effective efforts to improve curricula, instructional strategies, and educational quality; build institutional community identity, renew curricular meaning and purpose; and enhance satisfaction with the academic enterprise.”

The promise of such a panacea for many of the problems of legal education likely will pique the interest of some and make skeptics out of all. Nonetheless, for those willing to invest the time and intellectual energy, Munro’s book and the assessment program it proposes can make an important difference.

OUTCOMES ASSESSMENT FOR LAW SCHOOLS purports to be a comprehensive handbook on assessment for law schools. It not only describes the assessment movement as it has emerged in undergraduate education but specifically focuses on outcomes assessment in law schools. In its specific emphasis on legal teaching, OUTCOMES ASSESSMENT FOR LAW SCHOOLS represents a pioneering effort in assessment scholarship. The book provides practical guidance on the development of an overall assessment program for law schools as well as methods of assessment to improve teaching and learning in individual law courses. One of the book’s strengths is Munro’s provision of concrete examples to demonstrate various aspects of assessment. In addition, Munro anticipates various obstacles to the establishment of assessment programs, including resource concerns, and he suggests ways to address those obstacles. As a faculty member who has been instrumental in the development of an assessment program at the University of Montana School of Law, Munro makes his suggestions based on actual experience.

If OUTCOMES ASSESSMENT FOR LAW SCHOOLS has no other effect, it will encourage professors to think about how they teach their courses. Munro challenges professors to

inform their students of the goals and learning objectives for each course, to devise methods of engaging students in the learning process, to utilize a variety of assessment techniques instead of a single blue book examination, to be clear about the criteria upon which student performance will be evaluated, and to provide prompt feedback to students. While these recommendations certainly reflect traditional principles of good teaching familiar to every student of learning theory, one suspects that the majority of law courses taught in this country could be greatly improved if Munro’s recommendations were implemented.

With the decrease in law school applications experienced in recent years and the creation of a number of new law schools, the importance of clarity of mission and coherency in curriculum has perhaps never been greater. In this regard OUTCOMES ASSESSMENT FOR LAW SCHOOLS is particularly timely. Faced with limited resources, growing competition for students, and a changing legal environment, law schools must consider more carefully their specific niche in legal education. Most schools can ill afford to attempt to be all things to all students. And yet, schools persist in that effort. The assessment program urged by Munro provides a mechanism for the effective marshaling of limited education resources while at the same time revitalizing the academic enterprise.

Dean Kronman stated in his Chapman lecture that:

“The purpose of a legal education ... is to train law students ... to think like lawyers, which means, broadly speaking, to be attentive to the facts and to know which ones in any given situation are important; to be able to tell a story with the facts, to master the power of narration; to recognize what others hope to achieve, even or especially when they have a hard time defining their own ambitions, and to appreciate empathically a range of human purposes and values and ideals wider than one’s own.”

Even if he were to accept Dean Kronman’s characterization of the purpose of legal education, Munro would pose a couple of basic questions in response: How would a faculty structure a law curriculum to accomplish Dean Kronman’s purpose, and how would that faculty know whether it had succeeded? OUTCOMES ASSESSMENT FOR LAW SCHOOLS suggests the mechanism that provides answers to those questions. It is a book that can assist every law school to understand and accomplish its mission while at the same time providing a method for schools to address a changing legal environment. It is a book that legal educators should not overlook.

Martin Burke and Gregory Munro teach at the University of Montana School of Law, Missoula, MT, 59812; (406) 243-4311; fax (406) 243-2576; jmb@selway.umt.edu and munro@selway.umt.edu.

How to Order

OUTCOMES ASSESSMENT FOR LAW SCHOOLS

Greg Munro’s OUTCOMES ASSESSMENT FOR LAW SCHOOLS, published by the Institute, is available for \$36.

To order a copy, contact Paula Prather at pprather@lawschool.gonzaga.edu.

Reflecting on Our Teaching

Two Days of Thinking, Walking, Writing, and Talking



June 22-24
2000

Registration Deadline
May 1, 2000

◆
Sleeping
Lady
Conference
and Retreat
Center

Leavenworth
Washington

Seventh Annual Summer Conference Institute for Law School Teaching

General Information:

This year's conference will offer participants an opportunity to step back and reflect on their lives as teachers. Previous conferences focused outward, on techniques, the whats and hows of teaching. This year we'll turn inward to concentrate on the who, on the person who teaches. How does who we are affect how we teach, and how does teaching affect who we are? What does it mean to lead a professional life as a teacher of law? What aspects of ourselves are the most supported and engaged by the work we do? What aspects are the most threatened?

The conference will be held at Sleeping Lady in the Cascade Mountains, a conference center providing an ideal setting for reflection. It will be limited to 30 participants, making it possible for us to function as a group. Activities will include large and small group discussion, writing, reading, and time for solitary reflection. We hope the conference will allow participants to look at their teaching through a variety of lenses, to meet people with similar concerns and goals, and to come away with renewed energy for teaching.

Schedule:

The conference will begin with dinner at 6:30 p.m. on Thursday, June 22, and end at 4:00 p.m. on Saturday, June 24.

Conference Facilitator: Mark Weisberg

Mark Weisberg, B.A. (Yale), J.D. (Harvard), has been teaching at the Queen's University Law Faculty for 31 years. He's interested in ethics, profes-

sionalism, and how people learn and develop as professionals, as well as in all forms of writing. In the Law School he teaches Legal Imagination, Legal Ethics, Effective Legal Writing, and Jurisprudence, and he collaborates with a Medical School colleague in teaching an inter-faculty course called Images of Nurses, Doctors, and Lawyers in Literature. He's cross-appointed to the Faculty of Education and is Faculty Associate at the Queen's Instructional Development Centre, where he works with faculty members to improve teaching across the campus. Last semester he co-taught a graduate course on teaching and learning for doctoral students interested in a teaching career. For his work with students and colleagues he recently received provincial and national teaching awards.

Location: Sleeping Lady Conference and Retreat Center in Leavenworth, WA

Sleeping Lady is sequestered on 67 acres of valley woodland beside Icicle River on the sunny, eastern slopes of Washington's Cascade Mountains three hours east of Seattle. Named after the mountain profile overlooking the center, Sleeping Lady's mission is to provide a conference setting where nature, arts, outdoor recreation, and healthful dining inspire creative thinking and encourage meaningful exchange. It is within a few minutes of hiking trails, alpine lakes, white-water rafting, fly fishing, mountain biking, tennis, horseback riding, rock climbing, golfing, and seasonal fruit picking in world-renowned orchards.

Sleeping Lady's well-appointed guest rooms are located in five clusters surrounding courtyards, each featuring

ten units. Each unit has a private bath. Rooms typically have a queen-size bed with a single bed in an alcove or two twin beds on the ground level with a queen-size futon in an overhead loft. Gourmet meals feature Northwest cuisine and offer fresh seasonal herbs, vegetables, and fruits grown in Sleeping Lady's own organic garden. Sleeping Lady is a no-smoking facility (both indoors and outdoors). Sleeping accommodations are available for occupancy after 3:00 p.m. Check out time is 11:00 a.m. Pets are not permitted at Sleeping Lady.

Sleeping Lady is located in Leavenworth, Washington, 121 miles east of Seattle and 190 miles west of Spokane. The closest airport is in Wenatchee, a 36-minute drive from Sleeping Lady. Horizon Airlines provides direct flights daily to Wenatchee from Seattle and Portland (Oregon). Transportation from Wenatchee to Sleeping Lady is available via taxi, limo, or rental car. Those who choose the three- to four-

hour drive from Seattle to Sleeping Lady will be opting for spectacular scenery as they pass through the Cascade Mountains.

Conference participants are responsible for making their own travel arrangements. Upon request, the Institute will provide participants with names of others who are interested in carpooling from Seattle or Wenatchee.

For more information about Sleeping Lady call 800-574-2123 or visit their website at www.sleepinglady.com.

Registration and Deadlines:

Registration fee: \$295.00.

Deadline: Monday, May 1, 2000.

Registration is restricted to 30 participants. We strongly recommend registration by early April. The roster will be filled in the order that the Institute receives both the registration form and the check for the full payment of the registration fee and accommodations.

Accommodation Rates:

Single room: \$189.00 per person per night
 Double room: \$124.20 per person per night
 Triple room: \$102.60 per person per night
 Quad room: \$91.80 per person per night

These rates include your room and three meals per person per overnight stay, beginning with dinner on check in day and ending with lunch on check out day. Guests of conference participants must pay the same accommodation rate as participants.

Room Assignment: Although most participants who request a single room will be able to have one, we can not guarantee single rooms for everyone. Early registration will increase your chances of getting what you request.

Refunds: If the Institute receives your cancellation notice on or before May 19, 2000, a full refund will be provided. No fees will be refunded if the Institute receives notice after May 19, 2000.

Questions? Contact Paula Prather, Program Coordinator, at 509-323-3740 or pprather@lawschool.gonzaga.edu.



“Reflecting on Our Teaching”

Conference Registration

Institute for Law School Teaching Summer Conference: June 22-24, 2000 Sleeping Lady Conference and Retreat Center, Leavenworth, WA • Registration Deadline May 1, 2000

Name: _____

Phone: () _____ Fax: () _____

School: _____ E-mail: _____

Address: _____ Courses you teach: _____

City/State/Zip: _____

Accommodations (Rates include room and three meals per person per overnight stay, beginning with dinner on the day of check in and ending with lunch on the day of check out.)

Check one: Single - \$189.00 per person per night Triple - \$102.60 per person per night
 Double - \$124.20 per person per night Quad - \$91.80 per person per night

Guest(s)? Please provide their names: _____

Please note: Sleeping Lady is a no-smoking facility (indoors and outdoors) and does not permit pets.

If you are interested in carpooling, indicate which airport you expect to use: Seattle Wenatchee

I am registering for the Conference (June 22-24, 2000) \$ 295.00

I will be staying ___ nights at _____ per night \$ _____

My guest(s) will be staying ___ nights at ___ per night per guest \$ _____

Total payment enclosed \$ _____

Questions? Contact Paula Prather (509-323-3740; pprather@lawschool.gonzaga.edu)

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

Attorney Trust Accounts: Teaching the Basics Using a Classroom Simulation

Steven Wechsler

In recent years the legal profession has increasingly called upon legal educators to better prepare students for their entry into the active practice of law. In particular, the bar has been urging law schools to devote more attention to an assortment of skills and to the development of professionalism amongst their students, soon to be lawyers. Legal academics have responded, providing skills training in a wide variety of areas, including trial and appellate practice, effective legal research and writing, interviewing, counseling, and negotiation. These skills are taught using a broad array of techniques, such as live client clinics, simulations, externships, and classroom exercises.

The project described in this article focuses on a skill and body of knowledge that are central to the practice of law and that every lawyer should be conversant with, yet that receive little attention in most law school curricula: the technical ins and outs of maintaining the lawyer's trust account in accordance with the specific requirements of the jurisdiction's version of Model Rule 1.15 or Disciplinary Rule 9-102. The peculiar thing about this particular skill is that while every practicing lawyer *may* need to know it and be able to put it into action at a moment's notice, many lawyers never actually have to run a trust account in a lifetime of practicing law. Lawyers who practice as partners or associates in large law firms often find that someone else, such as a managing partner or possibly an accounting department, deals with these issues. Even lawyers who do not personally run trust accounts, however, are responsible for properly safekeeping clients' funds and should be conversant with the operation of these accounts. Moreover, in these days of increased lawyer mobility, a large-firm lawyer who was heretofore insulated from the day-to-day operation of the trust account may suddenly be a sole practitioner who must run his or her own account.

Law schools usually incorporate the subject of trust accounts into their professional responsibility courses. Typically, this coverage involves a review of the pertinent sections of the Model Rules and Model Code, with perhaps a few principal or note cases of lawyers who were disciplined for either deliberate or inadvertent mishandling of client funds. In most law schools, one would be unlikely to find more than a class hour devoted to the subject. From this short lesson, most students learn that as lawyers they must have a trust account, must not ever commingle their own money with that of their clients, and must never steal or even borrow money from the trust account. Occasionally, law faculty may devote more time to the subject; some CLE videos provide a higher level of detail.

These classroom discussions are certainly valuable. They call students' attention to the important rules concerning

trust accounts and client funds and ideally imbue the students with some sense of the critical importance of these rules. The typical law school class, however, neglects extremely significant questions for the student about to be a lawyer: *Exactly how am I supposed to carry out the mandate of the Rules or the Code? What books and records do I need to set up and maintain, and how do I go about entering each specific transaction?*

Two factors may account for the lack of such specifics in typical law school curricula. First, many law students have little experience in business, financial, or accounting matters and have difficulty with these concepts. (In an informal poll of one of my own classes, only about half of the students claimed to reconcile their own checking accounts on a monthly basis; a significant number did not know what it meant to reconcile a bank account.) Second, the subject matter may seem obvious, to both those who are knowledgeable and those who are ignorant. People who have some accounting knowledge may find the details rather trivial, while those who don't may assume there is nothing much to be learned or that a computer program will handle all the problems.

The Trust Account Simulation

With this background in mind, I devised a semester-long simulation exercise to teach students how to operate a lawyer's trust account on a daily basis. The simulation has two goals. The first is to explicate the basic mechanics of running a trust account. These mechanics include identifying what books and records are necessary and how to enter various transactions into them, as well as learning how to reconcile the books to the monthly bank statement. To give the simulation even a rough resemblance to real life, the exercise requires a large number of transactions. Various problem transactions, such as how to deal with a returned settlement check, supplement the more mundane items.

The second goal of the simulation is to convey to students the importance of timely and accurate record keeping in their trust accounts. Since many busy law students tend to procrastinate, this attempt to inculcate values rests on a system of grading penalties intended to motivate prompt handling of transactions. My hope is that the lesson will carry over to actual practice.

Although I originally conceived of this simulation as just a trust account exercise, it soon became clear that to learn the lesson of "no commingling" students would have to maintain not only a trust account, but a business account as well. A side benefit of introducing the business account is that it prompts a discussion of the business side of the

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...I devised a semester-long simulation exercise to teach students how to operate a lawyer's trust account on a daily basis.

Attorney Trust Accounts

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practice of law, as well as doubling the number of opportunities for learning to reconcile bank statements.

How the Simulation Works

At the beginning of the semester, the students receive an introductory handout describing the goals of the exercise and introducing them to the Rules or Code provisions that apply to trust accounts. The handout also includes all of the forms needed for setting up the necessary books and records and detailed instructions on how to do so. Each student creates a notebook containing both a business account and a trust account. Each account includes a check register with a running balance, checks, deposit slips, and a place to file bank statements. In addition, the trust account records include blank forms to be used for each client—these are sub-accounts of the master trust account. This preliminary handout also reviews the class rules regarding record keeping and the submission of student work and stresses the stringent penalties that may be imposed for failing to make the necessary entries accurately and promptly.

Once the students have set up their books, they begin to receive transactions. A “transaction” is a piece of paper that describes an event requiring some entry in one or more of the student-attorney’s records. It may include an incoming check described in the transaction. For example, a typical business account transaction might be, “Pay the phone bill. You owe the phone company \$197.55.” A typical trust account transaction might be, “You settled a case for Charlene Client for \$150,000; attached below is the insurance company’s check in settlement. You had this case on a one-third contingent-fee basis and have advanced the expenses listed below.” This transaction would include a mock check for the mentioned amount, together with a list of expenses advanced on behalf of the client.

For each transaction, the student must decide what to do next. The transactions do not reveal which account they are intended to affect or what the student’s appropriate action should be. In the examples given above, the student would need to draw a check for the phone bill and post it in the business account check register. The insurance check would have to be deposited in the trust account with entries made in that account’s check register and in Charlene Client’s sub-account. This action would be followed by a calculation and disbursement of the settlement to the client and the lawyer

by drawing the appropriate checks out of the trust account, with the concomitant entries. This settlement transaction provides an opportunity to discuss in class the problem of how to deal with the disbursement of uncollected funds: How long must the lawyer wait before disbursing that settlement? Students must also obtain the client’s endorsement (provided, upon request, by the professor) and draft a letter to the client explaining the final settlement and accounting in the case. Some of the more complex transactions raise a host of additional ethical issues.

Virtually every transaction requires some action regarding either an incoming or outgoing check. In addition to the book entries, the students must also actually process the checks and deposit slips. The professor acts as the bank or banks involved: Students drop off their incoming and outgoing checks, with appropriate paperwork attached, in the simulated “banking system” — actually a box outside the professor’s office. With the aid of an assistant, the professor processes the checks, just as depository and payor banks would in the real world. At one-month intervals, students receive bank statements with canceled checks for each of their accounts. They then must reconcile their books to their bank statements.

The professor collects the students’ books of accounts in class at unannounced intervals and checks them for the promptness and accuracy of the entries. The exercise runs for approximately eight to ten weeks out of a 14-week semester, allowing time for class discussion and for down time while the books are out of the students’ hands.

Conclusion

The trust account simulation exercise can work well in a variety of law school settings, such as a course in professional responsibility or lawyering skills, or a live-client clinic. This exercise involves a lot of work, for both faculty and for students. I believe, however, that it is probably the best way to teach this essential skill to law students who do not have a prior grounding in the subject.

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Submit articles on teaching and learning skills 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 September 1, 2000. 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.

Have You Checked Out the CALI Exercises Lately?

Robert M. Lloyd

If you're one of the many law teachers who tried CALI's computer-based learning exercises in the past and found them frustrating, boring, or just plain unhelpful, it's time to give them another try. Like every other type of software, CALI's exercises have improved tremendously in the last few years, and if you're not recommending these exercises to your students, you're short-changing them on a valuable learning experience. I've been researching the reasons students use or don't use computer exercises, and it's become clear that students will use these tools if their professors recommend them. Conversely, if their professors don't recommend the exercises, the students will ignore them.

We pride ourselves on the fact that in class we force our students to learn actively. Wherever possible, we use class discussion and Socratic dialogue rather than the straight lectures used in so many other disciplines. But all too often when students leave the classroom the studying they do is the most passive imaginable. They read hornbooks uncritically, and they memorize rules from commercial outlines. They even short-cut case analysis by buying canned briefs.

The better CALI exercises force students to think. Most often, they present a series of problems that the student has to analyze using the principles she learned in class. The problems are sophisticated, so it's not just rote learning.

The best exercises go even further. Just like a good classroom teacher, they ask follow-up questions. Rather than just tell students why their answers were wrong, they explore the misconception that led them to choose the wrong answer. Even if the students get the right answer, the computer may ask them about the reasoning that led to that answer. It's a form of artificial intelligence. A professor who has taught a subject for a few years learns what misconceptions students have about a particular subject, and she writes an exercise to correct the misconceptions and reinforce the correct analysis. The computer makes this approach even more efficient by allowing students to deal in depth with the areas where they are having problems and go lightly over the things they already understand. In the best exercises, any individual student sees only a small fraction of text screens. The computer doesn't show the rest because the student's answers to the previous questions have shown knowledge of the material. For the student, it's the next best thing to having a one-on-one session with the professor.

Not all of CALI's exercises are this sophisticated. But CALI has published a large number of exercises, so you can choose those that best fit your needs and your approach to the material. To get you started, I've reviewed CALI's most popular exercises and listed those that I like best for the basic law school courses.

CONTRACTS — Scott Burnham, *The Parol Evidence Rule*

The parol evidence rule is perhaps the most difficult topic in contract law. Because there are subtle differences among its several formulations, it would seem an unlikely candidate for computerized teaching. But this exercise really gives the student an understanding of the rule. It covers the material in more depth than most of us have time for in class. Unlike lectures and hornbooks, it doesn't leave the student behind. It asks questions every step along the way. If students don't understand the material when it's initially presented in textual form, they'll get it again as part of the feedback to the wrong answers to the questions that follow each segment of text. There are enough questions that even the weakest student will understand the material presented by the end of each segment.

PROPERTY — John A. Humbach, *The Estate System and Basic Future Interests*

These two exercises cover in detail the most difficult and frustrating material in the first-year property course. They can make the course go more smoothly for both the student and the teacher. The material is broken into the smallest possible segments—generally one or two short screens of text—and each segment of text is followed by a series of questions that reinforce the material and make sure the student has understood it. It will take students a while to work their way through these two exercises, but when they do they'll have a much better understanding of the material. Requiring students to use these exercises will allow you to move more quickly in class and reduce the frustration that normally goes along with teaching this material.

TORTS — D. Douglas McFarland, *Intentional Torts and Negligence*

Each of these exercises is an in-depth exploration of the topic. There is a step-by-step progression beginning with the most basic issues. At each step along the way, there is a short textual explanation followed by a number of questions testing the student's understanding of the concept. It takes a good bit of time to complete the exercises (the author suggests four to five hours each), but the students who work their way through them will have a good understanding of the subjects. Time spent on these exercises will be much more rewarding than time spent with outlines or hornbooks.

The feedback from the questions makes sure that students understand each concept fully before they move on to the next one.

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The Research Quiz Show

By Brannon Heath

We give a research exam at the end of first semester that counts 20 percent of a student's grade. It is a multiple-choice exam that emphasizes the process of legal research. Students prepare by doing a series of research exercises from Ruth Ann McKinney's *LEGAL RESEARCH: A PRACTICAL GUIDE AND SELF-INSTRUCTIONAL WORKBOOK* (West 1996) and by researching a problem for a memorandum. Beth Mobley, the head of public services in our library and a superbly qualified reference librarian, helps teach basic research skills to my students.

This year I wanted to inject more life into our review of research skills, so I decided to stage a quiz show. I put a table and four chairs in the front of the room. I gave each contestant a noisemaker to signal that he/she knew the correct answer. One noisemaker was a toy phone. Another was a dog's toy - a rubber jack-in-the-box that emitted a loud squeak when squeezed (also, a man's head popped up). The third noisemaker was a child's key chain rattle, while the fourth was a pair of plastic hands that clacked when waved. This strange choice of noisemakers became necessary when I could not find little metal clickers at the toy store, and my quiz was scheduled for the next day. The noisemakers proved a huge success.

I divided the students into four groups. Each group sent a member to join the panel at the table. Each panel was given three questions to answer. I put the questions on transparencies and projected them on a screen in the front of the room. The questions focused on the sources and

process students had learned for a particular research exercise along with questions about New York courts. Students were awarded a point for each correct answer. After three questions, I summoned a new panel.

As moderator, I posed the questions and decided which noisemaker had rung first. Beth Mobley served as the judge. I gave her a whistle, which she blew when a student gave an incorrect answer or when too much time had elapsed.

I rewarded the team that won the first quiz with an extension for their second research exercise. I awarded the winners of the second quiz "magic" pencils to use when taking the final research exam. For the first quiz, we did not have time to go over mistakes, so I used my discussion forum on TWEN to answer questions and suggest sources of study. For the second quiz, we factored in time to go over the quiz and answer student questions.

The quizzes were very successful. Students loved them as they provided a break from stress caused by the struggles with their memoranda. They allowed me to involve our librarian in a more casual way than she usually gets to interact with students. On the final exam students performed as well as, if not better than, when I have done a more standard question-and-answer review.

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CALI Exercises

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EVIDENCE — Roger C. Park, *Character Evidence Under the Federal Rules*

This is the most frequently used of all CALI's exercises and for good reason. It's not only an excellent teaching device but a lot of fun as well.

Five cases are presented: a negligence case, the trial of Lizzie Borden, a bank robbery case, an entrapment case, and a larceny case. In some of the cases, the student is given a summary of the parties' contentions and then asked a series of questions about particular evidentiary issues that might arise. When the students answer, the computer doesn't always indicate immediately whether their answer was right or wrong. Instead, there are follow-up questions designed to probe the reasons for choosing a particular answer. Even when the students choose the right answer, there are sometimes questions designed to get them to change their minds. Studies have shown that this type of delayed feedback leads to better understanding and retention.

In other parts of the exercise, students are given a transcript of the testimony, one question or answer at a time, and instructed to object at the appropriate points. The computer evaluates each objection, and at the end of the segment it gives an explanation of the judge's rulings. After that, the computer runs students through each of the objections they might have made but did not and requires them to rule on each of these objections.

I thoroughly enjoyed doing the exercise even though I don't teach evidence and (if my performance on the exercise is any indication) don't remember much from when I studied it.

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Seeking Contributions to New Book

The co-authors of a new book on teaching law, Steve Friedland, Gerald Hess, and Stephen Sepinuck, are 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 the new and experienced law teachers to plan and deliver effective courses. Each chapter addresses one of the fifteen courses most students take during their legal education:

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 take a little time this semester to contribute your ideas to TEACHING THE LAW SCHOOL CURRICULUM. Of course, 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 via e-mail (preferred) to pprather@lawschool.gonzaga.edu or send a disk or paper to Institute for Law School Teaching, Attn: Paula Prather, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528.

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