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Collaboration on examinations

By Douglas R. Haddock

During the past 15 years, in almost all of my exams, I have used a simple process designed to make examinations a learning experience as well as a means of evaluating performance. About two weeks before classes end, I distribute to students a document titled "Information on Facts and Law." I present a story that involves a fair amount of detail with the potential for numerous legal questions and disputes relevant to the subject matter of the course. The document also contains a variety of statements about the law and usually includes a number of pertinent statutes. I inform students that most of the examination problems will be based on the facts and legal doctrine presented. I encourage students to study the document in preparation for the exam and to ponder what legal questions and problems might arise. Students take this advice seriously and often become engaged in the process, preparing for real examination problems in a meaningful way. In studying and discussing the material with other members of the class, students create and work through their own problems and thereby gain a better sense of the subjects they have studied. Many students, I believe, find this focused and creative review the most valuable learning experience of the semester, one that takes them far beyond what I can cover in a three-hour examination.

In recent years, going a step beyond this "focused and creative review," I have given a number of take-home examinations in which students have been allowed to collaborate. On two occasions, I set no limits on the number of students who were permitted to work together. In other exams, I have limited the size of the groups. In no case have I required students to work with others on the exam, although some colleagues have suggested that I should. Based on student response, I have come to the tentative conclusion that collaborative exams can be effective in helping many students better learn legal theory and doctrine and develop the skills involved in resolving legal problems. I allowed collaboration in the final exams for my first-year Property I and II classes in 2001-2002. In the fall of 2001, however, I divided the exam into two parts, allowing collaboration on only half of the exam.

Concerns about Collaboration on Exams

The prospect of allowing law students to collaborate on final examinations presents some issues for both the professor and the students. My primary concern is that the process presumably compromises, to some degree, the evaluative function of exams. When groups of individuals are graded on the basis of a collaborative effort, some students' grades will be different from the grades those individuals would have received working alone. This criticism, usually stated in terms of a free-rider problem, is the main one voiced by students. This is a significant concern, and it is one reason I combined collaboration and individual work in my fall semester exam this year. Based on conversations with students after that fall semester exam, however, I am concerned that this might have created an undesirable group dynamic. I would have more reservations if most or all of the students' grades in any given semester were based on collaborative work. In this sense, perhaps I am a free-rider among my colleagues.

I don't know whether there is any way to establish empirically the effect of collaboration on grades, but I have gathered some pertinent and interesting information. For the fall semester exam in 2000 I compared the Property grades of each of my students with the grades they received in three other first-year courses. Of 156 students (two sections), I identified 14 examples of "potentially significant deviation" between the grades students received in Property compared with the grades they received in other courses. The test I used for "potentially significant deviation" was this: The Property grade in these examples was at least three grade levels lower or higher than any grade the student

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Collaboration on examinations

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received in the three other courses. (We use a ten-grade system from "A" to "F." There are no "A+" grades and no pluses or minuses on grades of "F" or "D.") A Property grade of "B" and all other grades of "C" or below would represent a potentially significant deviation. In six cases the Property grade was at least three grade levels higher, and in eight cases it was that much lower than the students' other grades. Twelve of these students worked with others on the exam and two worked alone.

I also have concerns about various dilemmas students might face because of the opportunity to collaborate. The students are free to choose those they will work with on the exam. I worry that a few students might not successfully find collaborators even though they would like to do so. Some colleagues have suggested that I should assign the groups, but I've resisted doing so. On the other hand, some students seem to feel compelled to collaborate because they assume a group will have an advantage over an individual. Based on my experience, this is a mistaken assumption. The grades of individual exam-takers have consistently followed essentially the same pattern as those of groups.

Benefits of Collaboration on Exams

Whatever the drawbacks of permitting collaboration on examinations, my impressions at this point are that the advantages outweigh any disadvantages. The primary benefit of collaboration on exams is that it seems to help many students learn the subject matter and develop the skills of practicing law more effectively than ordinary course work and traditional examinations. Evidence of this proposition has consistently surfaced in surveys I have taken and in conversations I have had with students. Three first-semester students had rather vigorously contended with me,

in a good-natured way, over the prospect of being allowed to collaborate on the exam. They felt that each student's performance should be evaluated and graded on its own merits. That semester I did give a collaborative exam, and these three students decided to work together. One of the three visited my office some weeks later to tell me he had changed his opinion. He and his colleagues had spent the exam period in a cabin somewhere in the Texas hill country, and he described those two or three days as the most beneficial learning experience he had ever had.

Overall, I believe that student opinion on collabora-

The primary benefit of collaboration on exams is that it seems to help many students learn the subject matter and develop the skills of practicing law more effectively than ordinary course work and traditional examinations.

tion in examinations has been favorable. Consider the responses given by students to a request that they rate the fall 2000 Property exam as a teaching/learning device: Excellent - 46 students; Good - 63 students; Neutral - 17 students; Poor - 7 students; Very Poor - 3 students. In other words, 80 percent of the students thought the collaborative exam was either excellent or good as a learning experience, and only

7 percent thought it was poor or very poor. Based on these surveys and numerous conversations with students over the past seven years, I believe that collaboration on some examinations can produce beneficial learning experiences for many law students.

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Submit articles to *The Law Teacher*

The Law Teacher encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become 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 3, 2003. Send your article via email, if possible. After review, all

accepted manuscripts will become property of the Institute for Law School Teaching.

The Institute's address is: Institute for Law School Teaching, Gonzaga University School of Law, P.O. Box 3528, Spokane, WA 99220-3528, E-mail: ilst@lawschool.gonzaga.edu.

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Teaching the same course a different way

By Angela Gilmore

At Nova Southeastern University Law Center, substantive courses are offered in basically three formats: classes, seminars, and workshops.

Classes may contain as many as 100 students, and students' grades are typically determined by their performance on an exam. Seminars are generally capped at 18, and students are evaluated on the basis of a substantial research paper and class participation. Workshops are capped at 20, and professors are free to design both the classroom component and the evaluation mechanism as they deem fit.

Last year, after having taught Nonprofit Organizations as a traditional class several times, I offered the course as a workshop. Because I wanted the workshop to incorporate the learning of both substantive law and practical skills, I pared down the syllabus to allow time for in-class projects and presentations by the students. In the traditional Nonprofit Organizations class, we cover issues of state law relating to the formation, operation, and dissolution of nonprofit organizations and charitable solicitation. In addition, we discuss federal tax law concerning the organization and operation of several different types of exempt organizations, particularly charitable, social welfare, and social/recreational organizations. To make room for in-class assignments, I limited the coverage of exempt organizations to public charitable organizations, commonly referred to as 501(c)(3) public charities.

I had four major goals for the workshop. I wanted the students to:

- Learn what it means to represent charitable organizations as a practicing attorney,
- Become familiar with the substantive law concerning charitable organizations,
- Develop and practice skills that attorneys representing charitable organizations use while representing their clients, and
- Have fun.

During the third week of class, I invited an attorney to speak to the workshop about representing charitable organizations. By this point in the semester the students had an overview of this area of the law and were able to ask informed questions of the speaker. This accomplished my first goal.

It was important to me that the students learn about the relation among common law, constitutional law, state statutes, and the Internal Revenue Code in the regulation of charitable organizations. The text for the course was Schwarz and Fishman, which I supplemented with problems and exercises that I drafted. During the first part of most of the workshop sessions we covered the material in fairly traditional ways with me at the front of the room. During the second part of the session, the students would divide into small groups to work on problems and other exercises involving the material we had earlier discussed. This gave the students the opportunity to work with their colleagues applying the law to hypothetical fact patterns. In addition, the students were required to write a research paper. This

assignment gave the students the opportunity to explore in depth an issue related to charitable organizations that was of particular interest to the student. These three teaching techniques accomplished my second goal.

Providing the students with practical experience was my third goal. I devised two drafting assignments for the workshop. One was an individual project, the second a group project.

The individual assignment required the students to draft a contract. One complaint that I have often heard uttered by students is that they graduate from law school without having ever drafted a contract, so I decided to include such a project in the workshop. This project required each student to hire an executive director for the organization that their group had created, according to the directions set forth in the assignment.

For the group assignment, I had the students divide into self-selected groups of no more than four. Each group was required to form a charitable organization under state law. I did not give the students much more direction than that, although in class we had discussed formation issues and the purposes for which nonprofit organizations can be formed. This exercise required the students to study the Florida statutes to determine which documents were necessary for formation, the filing fees, and where to file. To help the students understand the connection between state nonprofit law regarding formation and federal law regarding qualification as a 501(c)(3) organization, the students were required to draft a memorandum discussing why their organization would be entitled to exemption under 501(c)(3) of the Internal Revenue Code.

The most difficult project to devise for the workshop was the public speaking assignment. In addition to forming a nonprofit organization, each group was also directed to create some sort of resource tool for their organization. Some of the examples given to the students included a manual for directors describing their legal duties to the corporation or a guide discussing charitable solicitation. The public speaking assignment required each group to present its organization and resource tool to the class.

The students' projects exceeded my expectations. They developed PowerPoint slides, Web sites, newsletters, brochures, and overhead presentations designed to introduce their organizations to their relevant communities, beneficiaries, and potential donors. While some of the resource tools were not technically legal resources, they were descriptive and informative.

The benefits of offering a course as a workshop are many. Among them are small class size, greater interaction with and between the students, and time during the semester to evaluate assignments and provide feedback to the students. While I will do some tinkering with the workshop based on my evaluations and student comments, I believe that the goals I had for the course were met. And yes, the students and I had fun.

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Book review: *From Expectation to Experience*

By Ronald Benton Brown

Yoda, the Jedi master, repeatedly admonished young Luke Skywalker that fear leads to anger, anger leads to hatred, and hatred leads to the Dark Side. James Boyd White echoes that warning in his book *From Expectation to Experience* (University of Michigan Press, 1999). Professor White explains the teaching cycle as follows: Hope leads to expectation; expectation leads to disappointment; disappointment leads to acceptance; and acceptance leads to new hopes for the next class. Thus, the cycle continues. Unstated is the warning against straying from this path. If the teacher allows disappointment to produce anger rather than acceptance, that anger will lead to the Dark Side. Too many law teachers have gone over to the Dark Side. They are the curmudgeons of legal education. They are consumed by their disappointments and their anger. No class is ever good enough. Their negative spiral, like a black hole in space, threatens to destroy their students.

Professor White, in contrast, understands The Force. Like Yoda, he offers to teach the way, but followers must be willing to undergo the rigors of discovery. The lessons may be difficult to understand and, sometimes, difficult to accept. Things may not be what they seem. The lessons are not connected in linear format, but one would hardly expect that in the teachings of a philosophical master. It is not enough to understand the separate points because they are just evidence of The Force. We must learn to accept The Force itself and go with it.

Professor White hopes this book will make law professors look beyond their students' immediate goals of passing the bar and getting that first lawyer job. He wants law professors to help their students achieve meaningful lives, beginning with finding meaning in their professional lives. That is the path to students' satisfaction. Helping them along the path is what provides satisfaction to their teachers. The students need to see the possibilities of a rich professional life in various venues, a life that is based on civic responsibility and action. They must learn that being a lawyer cannot be reduced to a mere trade or commercial venture. It is a learned profession, a discipline of thought and argument, involving the use of legal materials. Traditional legal education falls far short of Prof. White's hopes for it.

He challenges the reader to accept the limits of the traditional case method, particularly when used after the first year, and try for more. He challenges the reader to consider other possibilities modeled on a liberal arts curriculum. Neither doctrine nor policy should be eliminated,

but both should be put into the proper context. He asks us to consider the negative impact of the law school's traditional hierarchical rewards system and the limited impact and value of traditional legal scholarship.

For White, the use of language is at the center of lawyering and legal education. At a minimum, law students must be trained to communicate effectively and to understand the limits of even the best writing. But language is more than that to lawyers. It also structures how lawyers think about ideas, concepts, and problems. White illustrates that by examining how lawyers deal with religion, corporations, and abortion. In these lessons, he reveals the limitations of language and traditional lawyer thinking.

White favors using literature as a tool for teaching real lawyering. From literature, students gain insights into people and cultures. From the curious experiences,

students are prepared for the problems they may encounter in the profession. Achieving fluency in the language of law is one of the most important goals of legal education. Likewise, the study of humanities better equips students to experience a meaningful life in the law because it increases the chances they will understand what is going on, be able to take a productive part in it, achieve satisfying results, and appreciate those results.

When I first began reading this book, my hopes for enlightenment were high. Here were lessons from a master to whom I could immediately relate. Later I got bogged down in the details of the illustrations. That was a frustration, a disappointment. But when I later thought about what I had read, I realized that what I had learned was worth the effort. I had achieved acceptance! Now I have hopes that I can utilize some of these thoughts in teaching and writing and in areas beyond the law school. Perhaps Prof. White will be disappointed to realize how little this reader understood, but it seems certain that he can deal with that disappointment, accept it, and begin the next project with high hopes. May The Force be with you, Professor White. And may it be with other law teachers, including me.

Professor White . . . wants law professors to help their students achieve meaningful lives, beginning with finding meaning in their professional lives.

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Teaching a collaborative seminar

By Louis J. Sirico, Jr.

Until three years ago, I had never taught a seminar. In fact, I had avoided seminars. I viewed the typical seminar as a collection of students, each writing a paper independently of the other students. In the closing weeks of the course, the professor might attempt to introduce some interaction, perhaps by assigning a few students to critique another student's paper. Thus, I saw the seminar as one of Kurt Vonnegut's "granfalloon," that is, an organized group of people who think they have something meaningful in common, but don't. I would rather teach what Vonnegut would call a "true karass," a group of people whose lives are bound together in profound ways. (See Vonnegut's novel *Cat's Cradle*.)

When it came my time to teach a legislative drafting seminar, I drew upon the pedagogy that I had practiced in teaching legal writing. I decided to reject the individually oriented seminar in favor of a collaborative seminar, one in which students would genuinely help one another turn out excellent products.

At the beginning of the course, I told the students what I had in mind. Students would choose problems that concerned them. Each student would draft a statute, ordinance, or regulation that addressed the problem and also write a detailed commentary explaining and advocating the legislation. The commentary would resemble a legislative committee report. In almost every class meeting, each student would explain at what stage of the process he or she stood and what problems the student was facing. Then the rest of the students would offer their assistance. Each student would also hold several individual meetings with me where I would review their efforts and make suggestions. In short, we would help one another.

In fact, we adhered to this plan and really did help one another. I was often pleasantly surprised at the information and suggestions that students offered their colleagues. Some students could offer factual information about the issue. Others could suggest alternative ways to deal with it. Still others could offer advice to insure that people or organizations

would not find ways to circumvent the proposed legislation. (Offering this advice and helping students in learning to use precise language were my primary contributions.) As a group, the students had far more to offer than I as an individual could have offered.

For example, a student seeking to permit beer sales on Sunday learned that the issue was entangled with Pennsylvania's system of state liquor stores and licensed beer distribu-

tors. He learned that the present system exists not because of moral concerns but because it raises substantial revenues for the state. A student wanting to preserve open lands realized that any new program requiring state funding faces a serious obstacle. He responded to critiques by developing a free market system to achieve his

goal. Another student was concerned that powerful groups avoid financial disclosure laws by making contributions to issue advertising instead of political candidates. He realized that he would have to settle for a statute that still permitted some contributors to avoid the requirements of any statute that he could devise.

In the closing weeks of the course, I decided not to hold a mock legislative hearing, with each student facing a "legislative committee" composed of other students. Although other colleagues had found that format to be effective, I decided to continue the collaborative process. Students would make their presentations and expect other students to offer constructive suggestions. Students would not turn in their final products until after the presentations. With this format, the presentations would serve as the final collaborative effort.

The seminar worked splendidly. The students helped one another significantly and perhaps learned more about the value of working with others. I can't wait until I have the chance to teach the seminar again.

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[E]ach student would explain at what stage of the process he or she stood and what problems the student was facing. Then the rest of the students would offer their assistance.

Institute Collaborates with Japanese Law Teachers

North American legal educators are helping their Japanese counterparts learn law teaching methods. Japan is currently in the process of changing its legal education system to the American, graduate-school model. Professor Yasutaka Machimura of Asia University in Tokyo and the Institute for Law School Teaching are collaborating to produce faculty development materials for Japanese legal professionals.

We have completed a videotape designed to introduce Japanese law teachers to principles of good teaching practice. That video is based on the Institute's "Principles

for Enhancing Legal Education" video and faculty development materials created by Paula Lustbader (Seattle University), Laurie Zimet (Hastings), and Gerry Hess (Gonzaga). Japanese law teachers soon will have another teaching resource available to them. *Techniques for Teaching Law*, by Gerry Hess and Steve Friedland (Nova) – with its collection of 137 innovative, classroom-tested teaching and learning tips contributed by law teachers in the U.S., Canada, and England – is being translated by the Japanese Bar Association for distribution in Japan.

Four distinctions and a pet peeve

By Chris K. Iijima

One of the most helpful things I have learned as a teacher is to try to have something thematic as an organizing principle for each class. That is, have an idea not only of what information you want the students to learn, but how that information fits into the larger picture of what you are trying to teach. It's also important to relate it to other areas you have covered or will cover. For example, if you were going to teach the idea of stare decisis, you might put it into the context of the tension within the law between the need for stability/predictability and the need for flexibility, and how the reinforcement of either value has social consequences. You could then discuss the specific elements of stare decisis by referring to your organizing theme.

Moreover, I have found that having some overall concept of how I wanted to approach a class or course has helped me avoid some common pedagogical pitfalls, which I refer to as Four Distinctions and a Pet Peeve:

- The distinction between “hiding the ball” and challenging students;
- The distinction between lack of focus and being flexible in the classroom;
- The distinction between “war stories” and drawing lessons from experience; and
- The distinction between being a “soft touch” and being compassionate

“Hiding the Ball”

There was nothing more frustrating nor aggravating to me as a law student than a professor who I believed was “hiding the ball.” That is, a professor who thought that challenging me was the equivalent of playing a game of 20 questions that I could not win. One law professor has described the Socratic method as essentially a “set of games.” He describes them as: “Corner” (the professor drives the student into an intellectual corner); “One Up” (the professor is always able to “win” the “dialogue” by evasion or changing contexts); “The Chamber of Horror Gambit” (reducing the student’s argument to an absurd conclusion). (Paul N. Savoy, *Toward a New Politics of Legal Education*, 79 *YALE L. J.* 444, 457-60 (1970))

I believe that having some general organizing theme allows you to go beyond playing with questions about information and doctrine in the cases. Learning doctrine is and should be relatively easy. The real challenge for student and teacher is to discover together not only “what the case says” but what the case means, by struggling with the implications

of questions for which answers are difficult for a teacher or a student. I have found that students associate “hiding the ball” with the former and rarely with the latter – because in the latter, there is no ball to hide – only issues for which there are no definitive answers.

Focusing

The use of a thematic class approach also allows you the flexibility to veer off course occasionally – perhaps

prompted by a student’s question. You can either relate something in the question to the overall theme of the class, or you can delineate clearly what issues and ideas are central to the lesson and what are collateral. In fact, I have found that if I listen well to a student’s question, which at first blush may seem totally unrelated, irrelevant, uninformed, or ill-mannered, I usually can find a nugget of relevance that would allow

me to return to the general theme. Unless, of course, the question is irrelevant, uninformed, and ill-mannered. I had a brilliant model when I taught as an instructor in the NYU Law School Lawyering Program. Professor Anthony Amsterdam, after a particularly collateral question, would carefully state, “I think what you’re really asking is . . .” and then rephrase the question brilliantly to fit into his general theme. The tension between rigidity on the one hand – never considering anything outside the given material – and a lack of a coherent focus on the other is resolved if the teacher can rearticulate and refocus questions back to the original theme.

“War Stories”

I used to love professors who told war stories in class. They are vivid and wonderful insights in the world of law that students hunger for. But there are two kinds of stories based on experience – those with value that is primarily descriptive and those with value that is more didactic. Both are valuable but are often confused in practice.

There is no worse comment about a law professor than students telling each other that “all he does is tell war stories.” Yet, there can be no higher compliment for professors to receive than students telling them that their class is exciting because it includes examples from practice. I think the difference lies in knowing the purpose of the story so that you will be able to utilize it most effectively. Some stories are mostly for entertainment, others to provide an example of a concept, and some are worth structuring discussions

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Four distinctions and a pet peeve

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around because they highlight important concepts. If you are going to tell a war story, you may want to think about mining it for more than a glancing example of an issue you are discussing. Invariably you will uncover other issues about the value of preparation, about client/attorney interaction, about how various tasks/mistakes/insights interact with one another, or about how to approach life as a lawyer.

“Soft Touch”

The last distinction has to do with classroom management. How do you be considerate and humane without becoming manipulated by your students? Of course, I’m assuming that you want to be a law professor who is considerate and humane. I’m sure most of us don’t remember very many from our law school days, but the few who were remain vivid.

I have always believed that I should model the kind of lawyer I want the students to be: firm but flexible. I always tell them that if one needs accommodation, it is always easier to ask for it before something is due. I tell them that I am always willing to discuss a reasonable request to extend a deadline or modify a requirement, but that it will take an emergency to deal with it after the deadline. Most students are very receptive to the idea of not wanting to set an unfair precedent to their classmates, so their expectations are usually modest.

Moreover, if you want to be innovative with curriculum or presentation in the classroom, you should also consider being a different kind of law professor outside the classroom. I have found that students often resent those who attempt to be nontraditional teachers in the classroom but remain aloof and traditional in their other interactions.

“Pet Peeve”

All of which brings me to my Pet Peeve: law practice is not only about the holdings of cases. It is also about adversaries, and clients, and judges, and court personnel, and office staff, and witnesses, and billing, and office space, and finding a private life. Similarly, law teaching is not only about imparting information, it is also about finding those things about what we teach and practice that get us excited – so that we can, in turn, excite those whom we teach.

I have always believed that law schools are too concerned with doctrine and not concerned enough about the dynamics of policy and people; too focused on getting students to appreciate a result and not focused enough with having them appreciate process; too enamored with the idea that law is about analytical reasoning and not that it is also an activity in which analysis, intuition, creativity, common sense, organization, emotional and intellectual perspective, cultural and political insight, and compassion all interact.

Law and law teaching should not be about only rules and information. They should be about understanding and serving people. We need to find spaces for teaching that fundamental concept to our students in everything we do.

[S]tudents often resent those who attempt to be nontraditional teachers in the classroom but remain aloof and traditional in their other interactions.

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Institute Announces New Advisors

We are pleased to announce that the following teachers have agreed to serve on the Institute’s Advisory Committee until the fall of 2004:

Steve Friedland (Nova Southeastern)
Barbara Glesner Fines (UMKC)
Joe Knight (Washington)
Larry Krieger (Florida State)
Greg Munro (Montana)
Sophie Sparrow (Franklin Pierce)
Judith Wegner (North Carolina)
Paula Williams (Tennessee)
Laurie Zimet (Hastings)

The following individuals comprised the Institute’s inaugural Advisory Committee and began their two-year terms in the fall of 2000. We are grateful to them for sharing their ideas, feedback, and perspectives on the Institute’s programs and look forward to continuing to work with them in an unofficial capacity.

Susan Apel (Vermont)
Charles Calleros (Arizona State)
Larry Dessem (Missouri-Columbia)
Paula Lustbader (Seattle)
Gary Minda (Brooklyn)
Mark Weisberg (Queen’s)

A method for teaching common law argument

By Curtis Nyquist

In my Contracts course I emphasize the skill of common law (vs. statutory) argument in both my teaching and testing. I teach this skill by asking students to comb through cases in search of segments based on argument. Courts often rely on argument (lightly rewritten) in drafting opinions, although you can never be sure (unless the case reads “The plaintiff/defendant argued . . .”) and not all opinions display argument. Once students have located an argument, I ask them to identify the argument type, critique and improve it, and generate a counter argument. I combine this method with other, more traditional methods of teaching argument.

I divide common law argument into three types: fact-based, case-based, and policy-based. Although the best legal argument is seamless, in a first-year course there are good reasons to separate types.

In fact-based argument, the parties use the facts of their dispute to argue that a rule does, or does not, apply. For example, the Wisconsin Supreme Court has adopted section 90 (promissory estoppel) of the Restatement (Second) of Contracts. In a Wisconsin promissory estoppel case, then, one of the parties will argue that the facts support recovery under section 90 and the opposing side will argue that the facts do not support recovery (e.g., there was no reason to expect that the promise would induce action by the promisee because of such and such).

In case-based argument, the parties analogize or distinguish a prior case in light of factual similarities or differences. The apocryphal story of the lawyer faced with a case on all fours against him, who argues “Your honor, this case is completely distinguishable; why, even the names of the parties are different,” makes the point that factual similarities or differences are relevant only in light of some rule.

Policy-based argument focuses on the purposes and policies underlying a rule and argues that the facts are either within, or outside, those purposes and policies. In addition, policy argument tries to convince the court that good consequences for society will flow from a finding in your favor and/or horrible consequences will flow from a decision for your opponent.

I introduce the method in the first meeting of the course, students include argument in their briefs of the cases, and I include it in my Socratic dialogue, even when there is no obvious argument section in a case. Asking the question about each case keeps argument in the forefront of students’ minds.

The most important parts of the method are asking students to critique and rewrite arguments and to generate counter arguments. For example, in *Hinson v. Jefferson*, 215 S.E. 2d 102 (N.C. 1975), the plaintiff bought an empty

lot from the defendant but was unable to build a home because the land would not support a septic system. One of the plaintiff’s theories was rescission based on mutual mistake. The court distinguished a prior mistake case that had denied rescission:

There are, however, several important distinguishing factors between the *Miller* case and our case. First, the purchaser in *Miller* was a developer-speculator; in our case the purchaser is a consumer-widow. Second, the property in *Miller* was not rendered valueless for its intended use, but only rendered less valuable because it could not be developed as densely as originally anticipated; in our case the property was rendered totally valueless for the intended use.

Once students have located an argument, I ask them to identify the type, critique and improve it, and generate a counter argument.

The student discussing *Hinson* generally correctly identifies the paragraph as reflecting the plaintiff’s case-based argument and also correctly points out that the argument falls far short of what I would expect on examinations.

At this juncture there are three options:

- Ask the particular student to identify the weaknesses in the argument and generate an improved argument;
- Break the class into small discussion groups (“Pick two or three students sitting near you, discuss the argument’s weaknesses, and develop an improved argument.”) and have groups report back to the entire class; or
- Have the entire class discuss the deficiencies in the argument and then have each student write an improved argument (and exchange with a classmate who writes comments on the improved argument).

The argument in *Hinson* is weak because, although it points to factual differences between the cases, it fails to connect the differences to the rule (like many students on the midyear exam and – sadly – some students on the final). The plaintiff in *Miller* was a developer-speculator while the plaintiff in *Hinson* is a consumer-widow. What difference does that make under the rule of mutual mistake?

(*Hinson* provides a teachable moment due to casebook editing. The full report of the case does offer some discussion of why the differences matter under the rule. When the class has completed the *Hinson* exercise, I read the court’s explanation from the full report, and we then critique that.)

Once the argument in the case has been critiqued and

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Teaching common law argument

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improved, I have students generate a counter argument (e.g., “In *Hinson* what would the defendant argue in citing *Miller* as an analogous case?”). The three options (particular student responding/discussion groups/writings) are available here, also. I don’t grade the written work, but it gives me feedback on the class’s progress, and it provides students an opportunity to practice for my exams (argument counts for approximately 50 percent of the grade in the course).

As the year progresses and students become more skilled in developing arguments, the class can be divided in half and each group given a separate task (“Students on the right side of the room work in discussion groups to critique and improve the defendant’s policy argument found on page 593 of the text, and the left side work in discussion groups to generate the plaintiff’s policy argument on this issue.”). I also work to erase the seams between argument types. Why should a court adopt a broad or narrow reading of a prior case? Because of policy concerns. Why should ambiguity about whether a rule applies be resolved one way or another? Policy. And so on.

In my experience, the virtues of this method (beyond the obvious training in common law argument) are:

- It produces an additional type of critical reading;
- It highlights the importance of skills training in legal education (a point that first-year students

continually forget – they are much more comfortable passively gathering information);

- It forces students to argue both sides of an issue;
- It emphasizes the contingency of law by continually reminding students that a court opinion is a choice between conflicting, often evenly balanced arguments;
- It provides opportunity for students to work in groups; and
- It encourages rewriting.

A final point is that the method allows even the weakest students to work toward improving their exam performance by practicing a discrete skill heavily tested on my examinations. Toward the end of each semester I also offer extra sessions on other exam skills (issue identification and framing, answer organization, etc.), but legal argument is integrated into the course from day one.

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A will-drafting exercise

By Diane Klein

Wills and trusts is a challenging, engrossing area of law. Unfortunately, students often don’t think so. How can we bring Wills and Trusts classes to life? In my institution Wills and Trusts is a required, four-unit, second-year course. Many students come in expecting the course to be dry and boring and that it is a course “for rich people” (or their lawyers). Some are further daunted by the fact that I teach the class in two two-hour blocks, rather than the four 50-minute periods used by most of my colleagues. In the hopes of stimulating student interest (and sharing my excitement and enthusiasm for the subject), I have looked for practical ways to liven things up.

My first step in this direction relates to the books assigned. Although I had the great good fortune to be taught by Jesse Dukeminier at UCLA School of Law (I think of him as the Truman Capote of trusts and estates law) and use his casebook, my primary “text” is the actual Annotated Texas Probate Code. I have concluded that my students are best served by an in-depth study of the probate code and leading cases applicable in the jurisdiction where

most of them are likely to practice and take the bar. By the end of the semester, each student’s edition of the Code is well-thumbed, and students can confidently maneuver through it. I supplement the casebook and Code with Mark Reutlinger’s excellent *Wills, Trusts & Estates: Essential Terms and Concepts*.

These materials ensure that students feel that they are learning the “real” law of Texas, rather than the “law of nowhere” so many casebooks appear to contain. The sense that this “bar course” will really prepare them for the Texas bar ensures a higher level of participation than might otherwise be expected. My next goal is to get the students thinking like estate-planning lawyers (albeit at a basic level).

The appropriate practical exercise in a Wills and Trusts class is obvious, though underutilized – having the students draft an actual will. For the past two years in my class, the midterm assignment has consisted of a will-drafting exercise together with a family tree, for intestate succession purposes. In the spring of 2001, students drafted

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A will-drafting exercise

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their own wills. This past spring, I used a more full-fledged, role-playing approach and had the students pair up to draft one another's wills. Each student served as both client and lawyer. As clients, students must provide lists of assets and bequests. Lawyers and clients meet to discuss the plan and review draft documents. Although the project does not count for more than 15 percent of the grade, most students spend a significant amount of time and effort on it.

In both years, the assignment required the students not only to draft but also to execute the will. Most of this year's students also included self-proving affidavits (the precise language of which is provided by statute in Texas). Drafting, and especially executing, an actual will, an instru-

ment that could take legal effect in the unlikely event that a student died, riveted students' attention in a way that an abstract discussion of notions like *animus testandi* never can do. Those students who wanted to be sure that the will drafted for the assignment never took effect quickly learned the ins and outs of holographic revocation. The students' first impulse – simply scrawling “no animus testandi” or “sample will” across the bottom of a formally executed and attested will – won't work, however “obvious” it might seem.

The comments I provide on the wills also put the students in an unusual position for a law student – imagining answering or explaining their drafting to a lawyer or dissatisfied heir of a client, rather than sitting as a would-be appellate judge, evaluating the work of others. It is much easier to critique some nameless lawyer's bad drafting than to explain your own unclear or infelicitous language.

The will-drafting exercise and follow-up comments open students' eyes to the dramatically forward-looking nature of will-drafting and the imagination required of a first-rate estate planner. Instead of analyzing only the imaginary-seeming estates of long-dead testators in books, students actually have to consider what will happen (and what the testator *wants* to have happen) if she has another baby, if his brother the executor predeceases him, if the family home is sold 10 years before the testator dies. Students must wrestle with the actual issues facing will-drafters – how many highly specific bequests to leave, how much to dispose of through a residuary clause, how best to anticipate after-acquired property, and when changes in

the estate are so significant as to warrant the drafting of a new will or codicil.

The interactive or role-playing component of the assignment also brings vividly to life a point Wills and Trusts and Estate Planning professors often make – that the legally or financially “best” plan is not necessarily what the client wants. For example, I advise my students that it is often desirable to have a non-natural person (a church, an educational institution, a charity, etc.) as a

contingent residuary legatee. In their role as lawyer, most students urged this upon their partners – but as clients, they suddenly realized that they simply might not want to do this, whatever its purported “advantages.” Students learned that educating and persuading clients – up

to a point – is a crucial part of estate planning.

Most of all – and I admit to the obvious bias of someone who enjoyed practicing in this area only very briefly – actually drafting a will and participating in setting up even a rudimentary estate plan is *fun*. Because of the many rules, it has the feel of a “game,” while at the same time students at least get a taste of the intimacy and gravity of this area of the law. Each year, a number of students go all out on this assignment, using proper paper and backing and staging elaborate execution ceremonies with real notaries (part of the self-proving affidavit process under Texas law). Many review and adapt various form wills available online and elsewhere, although this is not required. While only time will tell if any of them actually enter this area of practice, I like to think that those who do will remember (probably with a mixture of pride and embarrassment!) the first will they ever drafted – for my class.

Drafting, and especially executing, an actual will, an instrument that could take legal effect in the unlikely event that a student died, riveted students' attention in a way that an abstract discussion of notions like animus testandi never can do.

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INSTITUTE RESOURCES AVAILABLE

Principles for Enhancing Legal Education by Gerald Hess, Paula Lustbader, and Laurie Zimet. What principles define good pedagogical practice in legal education? How can principles of good practice be implemented in the law classroom? These questions and their answers are the subject of this videotape (28 minutes) and the accompanying materials (27 pages). The videotape and materials apply the principles, explore their implications, and describe practical methods to implement them in the law school classroom. \$150

Teach to the Whole Class: Barriers and Pathways to Learning by Laurie Zimet, Paula Lustbader, and Gerald Hess. This faculty development kit is designed to help legal educators increase their effectiveness in the classroom and improve the learning of their students. The 34-minute videotape consists of feedback from diverse law students about what hinders and enhances their learning. The written materials (73 pages) include lesson plans for using the kit; overheads; handouts; discussion questions; notes on teaching and learning principles; and an annotated bibliography on diversity, learning, and teaching methods. \$199

Outcomes Assessment in Law Schools by Greg Munro. Law schools and individual law teachers interested in implementing a comprehensive assessment program will benefit from this book. It 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. The book provides concrete examples to demonstrate various aspects of assessment. The author anticipates obstacles to the establishment of assessment programs and suggests ways to address those obstacles. 246 pages. \$43

Techniques for Teaching Law by Gerald Hess and Steve Friedland. This book addresses a broad range of pedagogical issues in the context of legal education: the teaching and learning environment, course and class planning, questioning and discussion techniques, visual tools, experiential learning, computers, simulations, collaborative learning, writing exercises, feedback to teachers, and evaluation of students. The first chapter describes three models of learning and three conceptions of effective teaching. The subsequent eleven chapters each address a particular pedagogical issue, beginning with a summary of the applicable educational principles, followed by teaching ideas and techniques contributed by experienced legal educators. The heart of the book is the collection of 137 innovative, classroom-tested teaching and learning tips. The collection covers all types of law school courses: first-year, upper-level, writing, and clinical. Some of the ideas introduce fresh approaches to basic classroom planning and management matters. Many of the methods involve active learning. Others offer tips for using technology in teaching law. Finally, the contributors offer insight about creative ways to give students feedback and to evaluate student performance. 370 pages. Available from Carolina Academic Press, www.cap.press.com.

Rules for Monica by Charles Calleros. This videotape facilitates a faculty-led student workshop on case analysis and synthesis, outlining, legislative analysis, and essay

exam-taking, all in a familiar, accessible, non-legal context: a parent developing rules for her teen-aged daughter on a case-by-case basis. To obtain a copy, contact Charles Calleros at charles.calleros@asu.edu. \$10

Taking Law School Examinations by Kent Syverud. In this videolecture Kent Syverud, Dean of Vanderbilt University Law School, offers exam-taking advice for students. His insights on taking law school examinations are based on 15 years of going over exams with hundreds of students. The 60-minute videolecture addresses seven main topics: (1) Preparing for Law School Exams; (2) Types of Exams; (3) Classic Mistakes in Answering Law School Exams; (4) A Suggested Approach for In-Class Exams; (5) Take-Home Exams; (6) Common Questions About Law School Exams; and (7) After the Examination. \$20

A Day in the Life of Law School Teaching by Larry Dublin. This 35-minute videotape features in-class demonstrations of five teaching methods. \$20

GETTING GRAPHIC 2[®] by Corinne Cooper. This 64-page book covers the “why” and “how” of using graphics in law school classrooms. \$20

Bibliographies. Two special editions of the *Gonzaga Law Review* annotate articles and monographs written about law school teaching and describe higher education publications that focus on teaching. The Institute sent the special editions in 1994 and 2000 to all law teachers in the U.S. and Canada. No cost.

Conference Materials. Teaching tools and ideas from Institute conferences. \$60 each

2001 Conference: “Assessment, Feedback, and Evaluation” – Contains information from 23 workshops on assessment, feedback, and evaluation. See a complete list of workshops and presenters at law.gonzaga.edu/ilst/PubsResources/2001mats.htm. 360 pages

2000 Conference: “Reflecting on Our Teaching” – Helps law teachers think about their lives as teachers. The collection includes articles, exercises, and essays on teaching that are organized into categories: (1) Imagining a Teacher, (2) Prompts for Reflecting, (3) Fear in Learning and Teaching, (4) Professionalism, (5) Reflections on (Legal) Education, and (6) Resources for Reflecting. 225 pages.

1997 Conference: “Teach to the Whole Class: Effective Teaching Methods for a Diverse Student Body” – Provides information on effective teaching methods for a diverse student body and includes an annotated bibliography; articles on diversity in the classroom, learning theory, and teaching methods; and teaching tips from conference participants. 260 pages.

Faculty Development Workshops. The Institute consults with law schools to develop faculty development workshops focused on teaching and learning.

**To obtain any of these resources,
contact the Institute for Law School Teaching
unless otherwise indicated.**

Why I use “Seinfeld” as precedent

By Irma S. Russell

My students enjoy “Seinfeld” – sometimes even more than Contracts class. But I have stopped worrying and learned to love popular culture in the classroom – when it helps convey legal concepts. “Seinfeld” provides some good examples of how popular culture can stimulate student interest and make points of law more memorable. Visualize Kramer and Newman dancing in a frenzied circle, each with one hand clutching a radar detector and the other hand gripped around a motorcycle helmet. The two agreed to trade the goods (a sale under the Code), but neither trusted the other enough to deliver first. Neither let go, but each was tendering (“putting and holding” as required under UCC), in a scene more dramatic but essentially similar to tender by commercial actors who lack trust in one another. In another episode, Jerry tried to return a blazer to a store. He told the clerk he was returning it for “spite.” When the clerk explained the store’s policy allowed only returns based on customer dissatisfaction, Jerry tired to back-pedal to fit his declaration to the test: “Well, that’s it. I am dissatisfied.” Too late! The clerk reasoned that once Jerry gave spite as his reason, his assertion was not to be believed, illustrating pretext and bad faith. (This scene can also be used to explore the concept of a buyer waiver of objections under the UCC by a failure to particularize. See UCC 2-605.)

Other episodes on the show provide good contract coverage. Perhaps the most striking recurring theme relates to the way people as well as courts rely on the totality of circumstances as the test for decisions. Students want a single-factor test with a yes/no answer, rather than the open-ended, nuanced, messy, and indefinite standards sometimes found in common law decisions. Now when students object to a particularly complicated and involved inquiry by a court, I give “Seinfeld” as precedent. The show is not about “nothing.” It is a story of young adults trying to figure out the rules in a post-modern society that seems to lack clear norms. Like us, they grope both for the test and for relevant evidence. They consider anything and everything that seems applicable to the inquiry. For example, Elaine asks Jerry if she has to break up in person with the guy she has dated a short time. It is so much easier by phone. Jerry argues that buying soup fulfills his promise to buy dinner for a friend who gave him a suit. George whines that the office rules did not clearly prohibit sex with the cleaning lady.

Now he has been fired.

Serving as the judge on the first two questions, Jerry and Elaine use a totality of circumstances test. Jerry questions Elaine about the boyfriend she wants to dump. How many times have they gone out? How expensive were the dinners? Did she have sex with him? On the issue of whether soup is dinner, Elaine asks, “What kind of soup was it? Was it minestrone? Did he have bread with it?”

[“Seinfeld”] is a story of young adults trying to figure out the rules in a post-modern society that seems to lack clear norms. Like us, they grope both for the test and for relevant evidence.

The person serving as the judge asks these questions in a contemplative, pensive way, appearing to ponder whether other questions might shed additional light on the question. Just so, in many cases of the common law, everything counts. Cases point toward relevant inquiries in a given area. But often they do not begin to (or pretend to) exhaust

the relevant inquiry. Contract principles and cases employ a mix of common sense and practical wisdom that is reflected in numerous ways in the common experience and understanding of students and people generally. This is what I want to tap into: recognition that there is often no simple, exhaustive test for difficult situations. Like people, courts face questions that do not fit squarely in the tests formulated. Like us, courts ask, “What kind of soup was it?”

One argument against using examples from television shows like “Seinfeld” is that the examples trivialize the law. While this criticism concerns me, I believe that the presentation of such examples need not have this effect. My intent is simply to get the attention of the students and to connect the concepts we study to something familiar or already accepted. I am not trying stand-up: “Hey, what’s up with this consideration thing, anyway?” When a joke is funny, it is because you “get it.” The realization is immediate and visceral. If jokes or references to popular culture help students “get” contract principles, it is time well spent.

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PowerPoint Bibliography

By Ken Strutin

PowerPoint can enhance the law school learning experience by providing a flexible option for presenting course content. This bibliography is a collection of select publications and websites addressing PowerPoint's role in legal education. The materials listed include specific course applications, pedagogical critiques, and websites with step-by-step guides for creating classroom presentations. This collection of resources provides a good starting point for law teachers interested in learning to use the program and to understand PowerPoint's impact on the learning process.

PowerPoint in Legal Education

- Ann E. Brenden and John H. Goodhue, *Persuasive Computer Presentations* (ABA 2001) www.abanet.org/lpm/catalog/511-0462.html
- Angela Caputo, *Using Images to Help Teach Legal Research* in TENTH ANNUAL NATIONAL LEGAL RESEARCH TEACH-IN TRAINING KIT 68 (AALL 2002), www.aallnet.org/sis/ripssis/teach_in.htm
- Robert H. Kelley, *Present Property: PowerPoint Is Effective Class Tool*, THE LAW TEACHER, Fall 1998, www.law.gonzaga.edu/ilst/Newsletters/Fall98/kelley.htm
- Douglas L. Leslie, *Approaches to Teaching Contracts: How Not to Teach Contracts, and Any Other Course: PowerPoint, Laptops, and the Casefile Method*, 44 ST. LOUIS L.J. 1289 (2000)
- Wanda McDavid, *Microsoft PowerPoint: A Powerful Training Tool*, 5 PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING 59 (Winter 1997)
- Alison Sulentic, *Adventures in PowerPoint*, THE LAW TEACHER, Fall 1999 www.law.gonzaga.edu/ilst/Newsletters/Fall99/sulentic.htm

PowerPoint in Non-Legal Education and Commentary

- Lisa Guernsey, *PowerPoint Invades the Classroom*, NEW YORK TIMES, May 31, 2001 www.nytimes.com/2001/05/31/technology/31POWE.html
- Jerry L. Haugland, *Using Computer Technology and Course Web Pages to Improve Student Performance in Accounting Courses*, 1998 Mid-South Instructional Technology Conference www.mtsu.edu/~itconf/proceed98/jhaugland.html
- Steven F. Jackson, *The Use of PowerPoint in Teaching Comparative Politics*, TECHNOLOGY SOURCE, May 1997, ts.mivu.org/default.asp?show=article&id=541
- Steven F. Jackson, *Classroom Use of PowerPoint Slide Show* (1998), www.chss.iup.edu/sjackson/Complex97/
- Ian Parker, *Absolute PowerPoint: Can a Software Package Edit Our Thought?*, NEW YORKER,

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- Harry E. Pence, *PowerPoint and Cooperative Learning: An Ideal Instructional Combination*, TECHNOLOGY SOURCE, July 1997, ts.mivu.org/default.asp?show=article&id=527
- James Garner Ptaszynski, *Using PowerPoint in Academic Meetings and Professional Presentations*, TECHNOLOGY SOURCE, June 1997, ts.mivu.org/default.asp?show=article&id=535

Creating Presentations for the Classroom

- Winifred Anderson and Barbara Sommer, *Computer Based Lectures Using PowerPoint*, TECHNOLOGY SOURCE, November 1997, horizon.unc.edu/TS/featured/1997-11.asp
- *PowerPoint in the Classroom* (Produced for Microsoft), www.actden.com/pp/
- *PowerPoint Tutorial: Technology for Teachers* (Oregon State University), www.orst.edu/instruction/ed596/ppoint/pphome.htm
- Martha C. Sammons, *Using PowerPoint Presentations in Writing Classes*, TECHNOLOGY SOURCE, August 1997, horizon.unc.edu/TS/featured/1997-08.asp

PowerPoint Resource Guides

- *10 Minute Guide to PowerPoint 98* (Que), sunsite.net.edu.cn/tutorials/tmg-power/htoc.htm
- Jeffrey Beard, *Punch Up Your PowerPoint Presentations*, AMERICAN LAWYER MEDIA, February 6, 2002, www.law.com/cgi-bin/gx.cgi/AppLogic+FTContentServer?pagename=lawView&c=Article&cid=ZZZ05940EXC&live=true&cst=1&pc=0&pa=0&s=News&ExpIgnore=true&showsummary=0
- *Duke Resource Guides: Using PowerPoint in Courses* (Center for Instructional Technology at Duke University), cit.duke.edu/resource-guides/methods-powerpoint-presentations.html
- *Element K Journal*, www.elementkjournals.com/
- *PowerPoint Master Class*, www.zdnet.com/anchordesk/story/story_4542.html
- *Presenters Online*, www.presentersonline.com
- *Presenters University*, www.presentersuniversity.com

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Teaching law teaching

By Brian MacNamara

Doctors are taught how to diagnose, lawyers are taught how to argue, and actors are taught how to perform. Shouldn't law professors be taught how to teach? Law school instructors are charged with the awesome mandate of indoctrinating their students in the law and producing capable and competent graduates. Many – if not most – new professors, however, are ill prepared for the task.

Once appointed, the fledgling adjunct or assistant professor is, too often, sent into the fray without armor, weapons, or battle plan. The new law professor is expected to know how to teach either by divine guidance or by virtue of having spent many years on the other side of the lectern. An adjunct instructor's handbook, directions to the classroom, and a pat on the back are deemed sufficient.

Law schools can, and should, do better. Realizing that the recently minted instructors lack formal education in the skills necessary to perform adequately in the classroom, schools must implement in-house training and evaluation programs.

Prior to the start of each semester, the school should implement a short course for newly appointed instructors. This need not be an expensive or complicated endeavor. A series of seminars covering the spectrum of law teaching – all the way from the basics of classroom instruction to more mundane considerations, such as how to order books – should be delivered by appropriate faculty and administrative personnel. A solid footing in the basics of professional school instruction and administration would ease the transition from law student or practicing attorney to faculty member and would allow the instructors to approach their initial class assignments more effectively and more confidently.

The school should prepare written materials that adequately address more than just administrative concerns. Guidelines and suggestions regarding the conduct of classes and the use of visual aids and other instructional materials could be drafted to assist the new instructor in the preparation and delivery of lectures. Developing these guidelines and suggestions into an online manual for faculty members would allow for frequent updating and easy access.

One-on-one mentoring programs with a senior faculty member should be an integral part of the law school's commitment to developing the teaching abilities of inexperienced instructors. Mentors should be available on a regular basis to answer questions, review class performance, and offer suggestions. Frequent interaction with a senior faculty member not only serves to enhance the junior member's teaching abilities but also fosters a sense of academic camaraderie important to the nurturing of the budding professor. This is particularly important for adjuncts who, because of

their part-time status, often feel alienated from the full-time faculty.

A series of mandatory seminars should be instituted to explore various teaching techniques. Many colleges already employ these better-teaching seminars to a limited degree. Unfortunately, they are often underutilized. Attendance should not be optional. Even senior faculty members can benefit from learning new techniques. Two years ago I had no idea how to use Blackboard as a teaching tool; now online teaching is an integral part of every course I conduct.

Classroom evaluation by faculty members and students has long been a staple of teacher evaluation. Unfortunately, the standard practices of once-a-semester evaluation by a senior faculty member or once-a-semester evaluation by the class completing pre-printed evaluation forms does little to either assess the professor's abilities or assist him or her in

becoming more effective in the classroom.

Junior faculty should be evaluated on a more frequent basis. Different senior professors should attend various classes, unannounced, throughout the semester.

Every effort should be made to accomplish some evalua-

tions early in the semester. Discovering and correcting an annoying mannerism or ineffective presentation technique early would benefit the instructor and students alike.

Technology should be used to its fullest extent. Videotaping and recording classes would allow instructors to review their performance with more experienced professors. Actually seeing and hearing oneself is an effective tool that has been used successfully in teaching trial advocacy, acting, and public speaking. It would be no less effective in teaching the art of teaching. Scant attention is paid to effective delivery. Yet anyone who has sat through an hour-long lecture delivered by a stationary speaker in monotone without visual aids knows how quickly the mind starts to wander and the words fall on deaf ears.

Student evaluations, in their current form, are almost worthless to professors seeking to improve their teaching skills. Because students fill out the evaluations toward the end of the semester and the forms are submitted directly to the administration, the professor doesn't even get to review the class evaluations until after the class is completed. It is singularly unhelpful to find out halfway through the semester that the students in the back of the class can't hear you or that you speak too fast.

Students should be afforded an opportunity to anonymously submit evaluations and suggestions on an ongoing basis. This could easily be accomplished online. It would be easy to set up a system whereby students could complete an evaluation/suggestion form online that would then be sent by e-mail to an administrative server. The comments

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Teaching law teaching

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would then be forwarded to the appropriate instructor. Such a system would protect student anonymity and afford the professor real-time input into his classroom performance, thereby enabling him to address any problems immediately.

That good teachers are born and not made is a commonly believed truism without foundation. The same used to be claimed about trial lawyers, actors, and athletes. While no one would dispute that certain innate attributes enhance an individual's capacity to excel in a given endeavor, basic skills can be taught to the masses. Law school teaching is no different. There are certainly those exceptional professors who have a feel for the classroom and are exciting, effective teachers without the benefit of formal instruction. Many with lesser natural

ability, however, can become capable instructors – able to conduct interesting, informative, and thought-provoking classroom experiences for their students – with a modicum of guidance.

That good teachers are born and not made is a commonly believed truism without foundation.

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The five stages of grading

By Cindy G. Buys

As a new law professor, I have just survived the emotional roller coaster of exam grading for the first time. In just two semesters, I have identified in myself the following five stages of grading:

- Pleasant anticipation,
- Shock and disbelief,
- Anger,
- Depression, and
- Acceptance.

I first approach my exams in a pleasant state of anticipation. (Remember, I'm a new law professor and I teach relatively small, upper-level, elective courses.) It was such a *good* class, with in-depth and widely participatory discussions. Surely, the learning I observed in the classroom will be evident on the exams. In fact, I think, the exam was probably too easy and I'll have trouble separating the good from the less good and applying the mandatory curve.

After grading the first set of essays, I am in a state of shock and disbelief. Where were these students all semester? They had to have been in the classroom since we have a mandatory attendance policy. Didn't they hear anything I said? Didn't they *read*? I'll be lucky to be able to pass a single student.

Next, I become angry. What a waste of my time. Why do I need to read their entire outline in the exam answer? Do they think I don't have anything better to do? Just answer the question asked! I specifically said, "Answer A, B, and C." How could this student have left out B entirely?

Don't they *read*?

This is so depressing. I spent hours and hours planning and preparing for each class. I used new technology to help them learn better. I gave ungraded quizzes so they could assess their progress. I encouraged them to ask questions. Am I such an awful teacher that this is all they learned? Maybe it's my fault. Maybe my instructions weren't clear. Maybe I left out a crucial fact. I go back and re-read my essay question and instructions. No, it's all there.

Finally, acceptance. A few students actually correctly identified most of the issues. A few not only stated the correct legal test but applied it and supported their analysis with relevant facts. Someone was listening. These few bright spots sustain me and give me hope. I re-read all the answers and decide, on the whole, that they may not be what I had hoped for, but they are acceptable. I will try again next year.

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Why do you teach?

We are interested in knowing why you teach. Please tell us your story in 350 words or less. Send your story to the Institute at ilst@lawschool.gonzaga.edu.

Why I Teach

By Suzanne Darrow-Kleinhaus

I came to the practice of law after 12 years as a technical writer. After practicing for several years, I jumped at the opportunity to teach at the law school where I had graduated only a few years before. I am now an associate professor of Legal Methods at Touro College, Jacob D. Fuchsberg Law Center. I could tell you about my students and the classroom and how it comes alive with ideas when we connect, but the truth is that my father said it better in a letter he wrote to me. I consider it one of the most precious gifts I have ever received. My father, Albert Darrow, wrote:

“The Teacher”

Dear Suzanne,

Harry Truman once said “it makes not much difference what sort of a building you’re in when you’re after knowledge, but it does count entirely on who teaches you.”

Many teachers are bright, quick, intelligent and articulate – and yet they are not good teachers. Why is this so? It’s not very difficult to answer once you pause a bit and think. They lack the other attributes that make a teacher a success. To succeed you must be a complete person. In addition to being smart and articulate, you need to have wit and charm. You have to be able to teach the subject matter in such a way as to make the student interested and motivated to learn what you are trying to teach.

In the end, what the teacher must have most of all is dedication. The teacher has to say, “I can, I will, I must – teaching is not everything, teaching is the only thing.” Such a teacher is worth all of the gold in Fort Knox.

Never let go of your dream to teach and to write. It is who you are.

I remember 55 and 60 years later many of the teachers who motivated me. Mr. Wechsler and Mrs. Jerome in English, Mrs. Calabria in Spanish, Mr. Berkowitz in History, my sixth-grade teacher Miss Keenan, and my music teacher Miss O’Hara. I and others like me are their legacy.

“Knowledge is the lamp that never goes out” and the torchbearers are the great teachers, who by their dedication to service instill in us the idea that we all have value.

Love,
Dad

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The Law Teacher

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