GONZAGA UNIVERSITY

THE LAW TEACHER

Institute for Law School Teaching Spring 2002

Lawyering from day one

The first-year trial practicum

By Russell E. Lovell, II

Legendary Harvard Law School Dean Roscoe Pound believed that the application of law has a decidedly human dimension. Dean Pound, who made a distinction between "law in action" and "law in the books," fully appreciated the legal knowledge that every lawyer must possess to succeed. But he also knew professional success required a synergy of knowledge with advocacy, counseling, and problem-solving skills. Drake's First-Year Trial Practicum not only implements Dean Pound's insight, it represents Drake's response to the indictment, popularized in the movie "Patch Adams," that the first year of professional school education often is too detached from the patients or clients whom the students hope to eventually serve.

Drake Law School's "Lawyering from Day One" mission is reflected in an experiential education pyramid: Observation - Simulation - Participation. Experiential learning begins with Drake's First-Year Trial Practicum, in which every student observes an actual jury trial in the spring semester of the first year. From jury selection through jury verdict, students are placed in an educational setting that includes small-group discussions led by clinical faculty, seasoned judges, and veteran attorneys. Lectures and practice panels focus on the key legal and procedural issues and on the litigation strategies and techniques of the lawyers trying the case. The Trial Practicum is not a moot court or mock trial experience. The case observed is an *actual* jury trial. Conceptually, it may be helpful to think of it as the laboratory component to the classroom.

The critical role of the "real world components" cannot be emphasized enough. The Trial Practicum would be just another law professor's idea gathering dust without the judiciary's embrace, and the cooperation of court and security personnel and prosecution and defense counsel. A felony criminal jury trial in your on-campus courtroom is not something you order from West Publishing Company. It happens only because the judiciary, and counsel, are confident that the integrity of the trial, and security, will be preserved.

The first two Trial Practicums involved burglary (*State of Iowa v. Stephen Blumberg*) and murder trials (*State of Iowa v. John Molloy*) tried by 12-person juries, with district judges Arthur Gamble and Larry Eisenhauer presiding. There were real defendants and victims and county attorneys and defense counsel trying the cases. Both resulted in convictions that have been subsequently affirmed by the Iowa Court of Appeals, and both defendants are serving prison terms. The third year featured a civil trial, *Ken Downing v. City of West Des Moines*, that involved allegations of constitutional tort and defamation. It was tried by an eight-person jury which awarded the plaintiff $10,000 in damages. District Judge Rob Blink presided. Prior to Judge Blink's ruling on court-awarded attorneys' fees, the case was settled for $40,000.

The 2001 Trial Practicum involved the trial of an armed robbery, *State of Iowa v. Clarence Willis*, presided over by Judge Robert Wilson. The three-and-a-half day trial resulted in an acquittal. As criminal trials are high drama, the students fully appreciated that a man's liberty was at stake. Armed robbery under Iowa sentencing laws carries a mandatory prison time of at least 22 years. The case centered on the reliability of eye-witness testimony. The students' discussions, and undoubtedly the juror deliberations, centered on inconsistent testimony, credibility of witnesses, and the reliability of eye-witness testimony. The juror debriefing confirmed the initial vote was 9 to 3 for acquittal, and it was fascinating to listen to jurors explain their thoughts about the conflicting evidence that even-tually brought consensus for acquittal. The depth of our students' understanding and appreciation of the crucial difference between the "beyond a reasonable doubt" and the "preponderance of evidence" standards of proof gained from

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Lawyering from day one

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the Trial Practicum is not something that can be repli-cated through case analysis in a classroom. They learned from the juror debriefing that the jurors felt it was likely the defendant had committed the crime, but the jurors concluded defense counsel had succeeded in raising sufficient doubt as to the prosecution's case that they could not convict.

The Law School's excellent relationship with the bench and bar has been critical to the success of this curric-ulum innovation. Working with Chief Judge Arthur Gamble, we have had the complete support of the Iowa trial judges of the Fifth Judicial District. The Neal and Bea Smith Law Center's wonderful courtroom has enabled us to bring actual trials from the Polk County Court House in Des Moines to the Drake campus.

The week of the trial, and all its accompanying pro-gramming, represents only the tip of the iceberg in terms of the preparation and planning that go into each Trial Prac-ticum. The greatest challenge is identifying cases that actually will go to trial, that can be tried within one week's time, that can be tried at the Law School's on-campus courtroom with the consent of the litigants and counsel, and that are educationally valuable. Since more than 90 percent of cases settle, often on the courthouse steps, we have screened approximately 150 cases each year, in order to identify the case to be included and several backup cases. Some of the screening can be delegated to staff, but much must be personally done by the faculty member in charge. In January 2001, Judge Gamble issued an Administrative Order designating the Smith Law Center courtroom as a place to hold court under the Iowa Code. This order provides an important safety net for the Trial Practicum, as it permits the court to assign a case to the Smith Law Center should there be unexpected late settlements in cases that had been planned for inclusion.

The Trial Practicum is a week-long, five-day experience. The one-week time commitment enables us to include complex cases and enables students to observe the entire process from jury selection to closing arguments to verdict. The Trial Practicum not only brings to life the subject matter of several of the first-year courses, but it also creates a shared foundation for Evidence and other upper-level litigation-related courses, as well. The evaluations by students, faculty, attorneys, and court personnel have uniformly praised both the fairness with which each trial has been conducted and the dynamic learning experience each Practicum has afforded.

For many students, the highlights of each Practicum have been the debriefing sessions conducted after the con-clusion of the trial. The first is held with the lawyers who actually tried the case, the second with the jurors who decided the case. These sessions have enabled students and faculty to question the lawyers as to their strategies and to ask the jurors about both the rationale for their decision and the effectiveness of the lawyer's presentations. During the past two years the judges have enjoyed informal brown-bag luncheons with groups of 20 or so students.

Each year 15 or so lawyers have volunteered a week of billable hours to serve as small-group discussion leaders and practice panelists. The central and collaborative role the Trial Practicum design affords judges and lawyers in the educational experience contributes significantly to the program's success. This volunteerism has meant that the Trial Practicum has been incredibly low budget, making it a feasible curricular innova-tion at every law school. It also serves as a testimonial to the program's educational integrity – former justices of the Iowa Supreme Court, retired district court judges, senior partners in Des Moines' largest law firms, and busy public interest lawyers do not donate a week's time, year after year, unless they believe they are making a difference.

Drake's First-Year Trial Practicum is fundamental in concept and yet revolutionary in implementation, with the entire first-year class observing a week-long...jury trial, from voir dire to verdict, in a structured educational setting.

Many will recall the movie "Patch Adams," in which Robin Williams plays an irreverent medical student who is critical of a curriculum that provided no patient contact during the students' first two years of medical school. The movie demonstrated that effective medicine requires a holistic approach that includes learning compassion and communication skills so physicians can accurately diagnose and heal. The lessons of "Patch Adams" readily transfer to the study of law. The First-Year Trial Practicum teaches students about the trial as a story, about the judicial process and the responsibility of jurors in the decision-making process, about lawyers and effective advocacy, and much more. It introduces students to law in action in a way that no textbook can ever capture, to lawyers and lawyering, and to fundamental values of civility, professionalism, and public service. Drake's First-Year Practicum is fundamental in concept and yet revolutionary in implementation, with the entire first-year class observing a week-long Polk County District Court jury trial, from voir dire to verdict, in a structured educational setting.

Russell E. Lovell teaches at Drake University Law School, 27th and Carpenter, Des Moines, IA 50311; (515) 271-1806; fax (515) 271-4100; russell.lovell@drake.edu.

The writing tip of the day

By Donna Greschner

Old methods sometimes work the best. Although Web bins, Power Point, and interactive chat rooms are effective instructional aids, law professors still succeed with tried-and-true methods of teaching. Last year I improved students' legal reasoning and writing skills by combining conventional pedagogical techniques in "The Writing Tip of the Day."

In Saskatchewan, second-year students must take one legal theory course. Each course has 20 students and meets twice a week. Since one purpose of these courses is to develop writing skills, students must submit two papers, one midway through the term and the second on the last day of classes. Over the past decade, I have tried various techniques in legal theory courses to enhance the students' writing proficiency. I now teach Constitutional Theory, a course designed to raise issues of legal philosophy in the context of constitutional law.

[W]riting Tips went beyond grammar and punctuation. They encompassed the essential subjects of constructing flowing paragraphs, developing convincing arguments, setting appropriate tones for particular audiences...

In 2001, I decided to spend the first five minutes of each class giving students one tip about good writing. Before I began, I impressed upon them the importance of becoming the best writers they could be. Words are the only tools that lawyers possess, and the more adeptly that students handle words, the better lawyers they will become. To complement and set the stage for the "Writing Tip of the Day," I devoted one entire class during the first week of the term to matters of style, grammar, and revision.

I divided the Writing Tips into several thematic groups. The first cluster comprised general points about becoming professional wordsmiths, which I classified under the Delphic maxim, "Know Thyself." They included the following: Recognize your most creative time during the day, and use it, if possible; identify your personal style of writing; and acquire the tools of the trade, such as dictionaries, thesauruses, and grammar books. I brought into the classroom examples of excellent dictionaries and other reference material. I also recommended books about writing, such as Joseph M. Williams' classic, *Style: Toward Clarity and Grace* (1990).

The second group of Writing Tips focused on errors that I have repeatedly encountered in students' writing. In my experience, one or two out of every 20 students suffer from each problem. I call these common problems "yuk-yuks" – they are basic grammatical mistakes or stylistic infelicities that cause your readers not to take you seriously. I began with simple ones, such as confusing "it's" and "its." Other yuk-yuks were overuse of the passive voice, wordy nominalizations, and incorrect comma placement. In this section, I typically distributed a handout describing the problem and suggesting methods of fixing it. The handouts were exercises I had devised or several pertinent pages from a grammar text.

A third group of Tips, which were scattered amongst the others, offered ways of recognizing and constructing solid arguments. I stressed to students that, as lawyers, their purpose in writing is to present cogent arguments. If they could distinguish between good and bad arguments, they would become better writers, too. These Writing Tips supported the substantive content of the course, which contained a large section on judicial reasoning in constitutional cases. I took examples of different types of arguments and fallacies from the course readings. Again, I distributed handouts, which highlighted components of arguments, and suggested books, such as *Attacking Faulty Reasoning* by T. Edward Damer (4th ed., 2000).

These Tips enhanced class discussion because students learned to identify fallacies and more readily suggested ways of strengthening arguments made by authors of the course materials. Moreover, as the weeks progressed, students became increasingly frustrated with vague, confusing, or convoluted arguments, and they complained about some authors' writing styles. Hence, the Tips also showed students the virtue of writing clearly, accurately, and precisely. Several students later told me that they found these Tips especially illuminating.

Midway through the term, students submitted their first paper. In assessing each paper, I noted particular problems with writing skills, referring the student to the relevant tip or attaching new handouts addressing the difficulties. For instance, one student's paper was stuffed with tandem sub-ordination. My comments described the problem, and I gave the student an excerpt from a grammar book about ways of dealing with it.

Assessing papers in this manner augmented my knowledge of writing. I had to identify precisely a student's weakness, and I could not rely on general criticism about writing style, such as ubiquitous comments of "this paragraph is awkward," "reduce the passive voice," or the even bigger cop-out, "your writing style could be improved."

The fourth group of Writing Tips began after I had graded and returned the first assignments. These Tips used examples from the papers (without, of course, naming the students) to move beyond grammar and other obvious difficulties, such as overuse of the passive voice. They focused on more structural problems, such as building

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The writing tip of the day

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15 and 20 minutes, but it was time well spent. Many of them reinforced my comments on the student papers, and they integrated the earlier Tips about legal reasoning, using examples from the course readings and student papers. Examples included writing topic sentences, handling counter-arguments, composing a compelling factual narrative, and connecting smoothly a group of paragraphs into a persuasive brief or essay.

When I received the second papers, I saw considerable improvement in many students' writing. Most papers began with a thesis paragraph, flowed more coherently, and contained concise conclusions. All of them had far fewer grammatical and stylistic glitches. Some students told me later that they had invested more time in the papers, incorporating my comments from their first papers and the Tips. Indeed, one student told me that when he wrote his second paper, he revised his first draft for the first time in his six years of university education and he now understood the tremendous benefit of revisions!

Overall, students reacted positively to the Writing Tip of the Day. The anonymous student evaluations, which were conducted midway through the term and again at the end, contained many positive comments about the Writing Tip. Students told me, both during office visits and after the end of the term, that they greatly appreciated this feature of the course. For instance, one month after the end of the term, a student said that she thought the Tips and feedback on her first paper had increased her marks in other courses by at least a full grade. Several students suggested adding Writing Tips of the Day to every seminar and theory course.

As a pedagogical technique, the Writing Tip of the Day has several advantages. First, it is inexpensive, without need of fancy equipment. Second, it is not time-consuming for long-time teachers, who can draw upon their experiences in finding examples and devising tips. Third, it motivates students to work hard on their assignments. When students prepared their first paper, they already knew the common errors that I had mentioned in the Tips, and they could avoid them. The second papers were noticeably better, as students had more Writing Tips and feedback from the first paper under their belt. Fourth, it increased attendance. Students did not want to miss the day's Writing Tip, if only to know what not to do in their papers.

I think this technique succeeded because the Writing Tips went beyond grammar and punctuation. They encompassed the essential subjects of constructing flowing paragraphs, developing convincing arguments, setting appropriate tones for particular audiences, and other substantive matters. Each one was not merely a Writing Tip – it was a thinking tip.

Donna Greschner teaches at University of Saskatchewan College of Law, 15 Campus Drive, Saskatoon, Saskatchewan S7N 5A6, CANADA; (306) 966-5869; fax (306) 966-5900; donna.greschner@usask.ca.

Gonzaga Law Review wants teaching articles

Are you searching for a place to publish an article about law teaching and learning that is too long for *The Law Teacher*? Are you interested in reading more about legal pedagogy? A collaboration between the Institute and the *Gonzaga Law Review* may be just what you are looking for.

The *Gonzaga Law Review* will devote its first issue of volume 38 to the topic of teaching and learning in law school. If this issue is a success, the Institute and *Gonzaga Law Review* will focus one issue of the review each year on legal education.

A group of Gonzaga students and faculty will select articles for this issue. They welcome submissions of essays, articles, and book reviews. Any topic concerning teaching and learning in law school is ap-propriate for this issue. The editorial board encourages the submission of a wide variety of manuscripts. Examples include empirical research, reflective essays, humorous pieces, and higher education research applied to legal education.

The editorial board will review manuscripts for issue 38:1 from March through July of 2002. The board will continue to review manuscripts and make publication decisions on an ongoing basis until issue 38:1 is full.

If you are working on a manuscript or have been thinking about writing on the topic of legal pedagogy, please consider submitting your work to the *Gonzaga Law Review* for issue 38:1. To submit a manuscript, send it to: *Gonzaga Law Review*, 721 N. Cincinnati, Spokane, WA 99220-3528. *Gonzaga Law Review* also accepts electronic versions of manuscripts. For more information visit the Web site at law.gonzaga.edu/review and click on "Publications." To subscribe to the *Gonzaga Law Review* ($25 per year for three issues) and be assured of receiving this collaborative issue, send an email

Procedural posture – The underexplored continent of moot court

By Sanford N. Greenberg

Procedural posture is the underexplored continent of many appellate advocacy competitions. Getting competitors to explore this continent in more than a superficial manner isn't easy, but it's a goal worth pursuing.

Each year, I read numerous interscholastic competition briefs, judge oral argument practices, and accompany some teams to the competitions. Topics vary from constitutional law to intellectual property. Our teams, and their opponents, often display a sophisticated understanding of challenging substantive issues. And their oral advocacy skills greatly impress the real-world attorneys and judges who serve as competition judges.

What the competitors generally fail to understand, however, is the significance of what happened procedurally in the court(s) below. For example, was the case decided on a motion to dismiss, on a motion for summary judgment, or after a trial on the merits? Procedural posture plays a role in determining what test the trial court is supposed to apply in reaching its decision. It can determine the standard of review that the appellate court should apply. It also can affect what will happen if the appellate court reverses and remands for further proceedings in the trial court. Yet, when moot court judges pose questions on such procedural issues, especially early in the oral argument preparation process, the competitors may be stumped.

Advisors should encourage the competitors to pretend that these clients actually participated in the court below in a real case, with a real procedural history. Urge the competitors to imagine that the outcome of the appeal will affect real clients.

The difficulties often begin with the problems themselves. Those who draft moot court problems at times appear to have little interest in or understanding of procedural posture. My favorite example is a problem in which the court granted summary judgment *after* a trial.

Even if the problem doesn't contain such gaffes, competitors tend to focus on the problem's difficult substantive issues rather than think about procedural context. They may throw in a brief reference to standard of review. But they rarely show the same sophistication on procedural issues that they demonstrate on the substantive topics.

In a sense, it's easy to understand why moot court competitors don't adequately explore the procedural posture continent. Why should they worry whether a party would have sought to dismiss for failure to state a claim or sought summary judgment? Why should they check whether a notice of appeal was timely filed? Why should they care whether the appellate court is supposed to remand or just reverse if the trial court erred? After all, no matter how well an appellant's counsel may argue, the imaginary client isn't going to get another bite at the apple in the court below. No matter how much the competitions try to sim-ulate some aspects of the real world, everyone knows that this is, after all, *moot* court.

Getting competitors to take procedure seriously requires getting them to make believe that the appeal involves real clients. Many moot court faculty advisors already advise their teams to think of the clients as real to motivate the competitors to argue more persuasively. But that's only one reason to pretend that the clients really exist. Advisors should encourage the competitors to pretend that these clients actually participated in the court below in a real case, with a real procedural history. Urge the competitors to imagine that the outcome of the appeal will affect real clients. Above all, remind them that courts affect real parties not only by pronouncing abstract legal principles but also by applying those principles in the parties' own case.

By imagining that they represent real clients, moot court competitors should improve their performance in several ways. They are more likely to think about, research, and understand the type of procedural issues that this essay addresses. They can then frame arguments that are more pro-cedurally realistic. In some cases, they can argue that their client should "win" the appeal without setting an unnecessarily high hurdle to surmount. For example, if reversal is appropriate where a genuine issue of material fact can be established, a competitor representing the appellant shouldn't try to convince the court that the client must win the case on remand: "Your honors, all that Mr. Jones is asking this Court to do is give him a chance to prove his case in the trial court." And moot court appellees sometimes can take advantage of deferential standards of review in framing their arguments.

There is no guarantee, of course, that pretending moot court cases do involve real clients will produce these benefits. But if this approach does lead competitors to take procedural posture seriously, it should at least provide a valuable general lesson that may remain with the competitors long after they've forgotten the competition's substantive details. Once adequately explored, the procedural posture continent isn't easily forgotten.

Sanford Greenberg teaches at Chicago-Kent College of Law, Illinois Institute of Technology, 565 West Adams Street, Chicago, IL 60661-3691; (312) 906-5284; fax (312) 906-5280; sgreenbe@kentlaw.edu.

Risking collaborative learning in core courses

By Angela Mae Kupenda

Lawyers need to work well with others, especially with other lawyers. Unfortunately, this skill is rarely emphasized in legal education. Many students, legal employers, judges, and professors emphasize grades. Consequently, students are reluctant and fearful of having their final grades determined by group effort, although group effort is what lawyers frequently encounter in practice.

Keenly aware of these fears (and even more aware of how student disapproval could negatively impact students' evaluations of my courses), I went forward with my plan to incorporate collaborative learning in core classes. I did so with much confidence (and assisted by being recently tenured at my home school and by experi-menting with this method while away visiting).

My proposal received strong, mixed reactions. Some students were enthusiastic and shared articles on collaborative learning, lauding the benefits of varied teaching and evaluative methods in legal education. Others were fearful, arguing that trusting a group final exam and grade was risky.

Collaborating on Collaborative Design

As it turned out, the collaborative exercise was designed in collaboration with students. In fall 2000, while visiting at Boston College Law School, I taught Civil Rights (Section 1983). Since the class was small, we enjoyed many spirited discussions on how the civil rights statute should be redrafted or reinterpreted.

Around midterm, I thought a great exercise would be for the class, working in small groups, to be charged with reforming the law of Section 1983. I could video the sessions, and the students could be challenged to create clearer law (rather than just critiquing the present law). They could benefit from practicing how to obtain consensus. I asked the class to consider using this exercise for final grade purposes, rather than a traditional final examination.

My proposal received strong, mixed reactions. Some students were enthusiastic and shared articles on collaborative learning, lauding the benefits of varied teaching and evaluative methods in legal education. Others were fearful, arguing that trusting a group final exam and grade was risky. Since we were already at mid-semester and I had not raised this non-traditional grading criteria in the syllabus, we did not go forward.

Yet, building on the students' reactions, I solicited their help in designing a collaborative assignment for use the next semester. Through many outside-of-class discussions, we brainstormed and debated the benefits, costs, and parameters of such a grading component. With their help, I started to structure the exercise.

Creating a Collaborative Focus Throughout the Semester

During the spring 2001 semester, I was the Distinguished Visiting Professor of Teaching Excellence at Franklin Pierce Law Center in New Hampshire. I taught Constitutional Law to a class of about 140 first-year students. For the entire semester, a course emphasis was collaborative learning and how it could facilitate students' learning.

Learning from the previous semester, I made sure the syllabus clearly stated that a mid-semester, collaborative, outside-of-class, open-book examination would count 40 percent of their final grade. (Following the suggestions of my former students, the exercise would not count 100 percent of the final grade, as individual students need more control over their grade in a 4-credit course. On the other hand, the exercise would not count 5 percent or 10 percent, as a higher percentage would encourage fuller participation.)

Before mid-semester, I casually discussed the role and benefits of collaborative legal work. Also, I administered three 30-minute collaborative group exercises in class. During our coverage of justiciability, students worked together in small, self-selected groups on a written hypothetical. Then the class brainstormed the legal analysis together.

Again, after completing coverage of the power of judicial review, students participated in an in-class group exercise evaluating *Bush v. Gore*. This time the groups were randomly assembled, with students pulling numbers to determine their working groups.

Finally, as we completed the section on congressional power, students again worked in groups. This time I composed the groups and distributed a list of assignments. Although I did not tell the students, I intentionally assembled the groups so there would be diversity based on my perceptions of race, gender, nationality, personality, and political differences.

My goals for in-class exercises were threefold. First, I wanted students to learn constitutional law. They had an opportunity to learn alone in self-study, and they had an opportunity to learn with me in traditional Socratic-style class sessions. The group exercises gave them an opportunity to learn from each other.

Second, I wanted students to work with classmates with whom they did not normally associate. I hoped they would

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equally intelligent and interesting and could help them grow as lawyers.

Finally, in low-risk situations (in-class exercises were not graded, though class participation counted 10 percent of final grades), I wanted students to begin to learn the fun, stresses, and successes of collaborative ventures.

Structuring and Administering the Exercise

During the first six weeks of class, students were anxious about the upcoming mid-semester exercise. I tried to reassure them, but part of the difficulty was that I was still trying to figure it out myself.

The final structure: Students would complete the examination question working in self-selected groups of from three to seven members; they would submit one, typed response with a 10-page limit; they would not receive any assistance from any other person; and they would have from Thursday morning until Monday morning to complete the assignment. I was not available to mediate any group disputes. The registrar's office gave excellent assistance in handling the mechanics, which freed me to grade the papers blindly.

Of course, not all students were happy with the structure. Perhaps the most challenging complaints came from students who preferred that I select the groups. This complaint primarily was made by students who were taking the class as second- or third-years and quieter students who did not socialize much with the other students.

Although we addressed those concerns, I was unprepared for the reaction from a few international students. One explained to me privately, and later openly in class, that some international students were not confident with English language skills. He said he would not be invited to join a mostly American group. And he feared a group composed solely of international students would be disadvantaged, both because of English skills and because they may not fully understand American history and nuances in the examination question. I shared with him how I had coped as a black female when I was in all-white classes. In addition, in class I suggested that more varied groups would likely produce a richer response. The registrar's and student affairs' offices also worked to determine how the school could best meet needs of international students.

Evaluating Results

The feedback after the exercise was good. Although students completed a survey, I learned more from the many individuals and small groups that came by my office on their own to share their experiences. Perhaps the best way to explain these reactions is by sharing some of their comments:

"We really learned constitutional law. As we went over the fine points in our group, we finally understood the concepts we discussed in class."

"Our societal focus on majority rule should be reexamined. The majority can drown out a lone voice of dissent . . . that voice is often pointing the majority to something needing attention."

"Working with others is a drain on your time but is well worth it." (The exercise probably would have taken one student three or four hours to complete alone. Groups worked an average of from 30 to 40 hours.)

"Diversity is essential." (This comment was from a group composed of six white males. They had intentionally selected their group this way to avoid female or racial working dynamics. The group told me they learned that a more diverse group would have been more productive.)

"In my group we all drank, smoked, and ate a lot. Those who didn't smoke, started smoking. We have a lot to learn about managing stress before we become lawyers."

"I learned to be careful who I plan to practice law with. Intellect and ability to work with others do not necessarily go hand in hand."

Overall, students indicated they learned a great deal. Some even enjoyed the process. While they were completing the exercise, I, too, was trying to work collaboratively with a colleague. As to my effort with the colleague, well, let's just say, perhaps we professors could learn a lot from the students . . . .

Angela Mae Kupenda is on leave from Mississippi College School of Law. Through this academic year she will be at Notre Dame Law School, Notre Dame, IN 46556; (219) 631-7528; fax (219) 631-3595; Kupenda.1@nd.edu.

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 arti-cles to be considered for the next issue is September 6, 2002. 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.

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

Demonstrating and Deconstructing Our Teaching

GONZAGA UNIVERSITY

Ninth Annual Summer Conference
June 28-29, 2002

To Be Held At:
Franklin Pierce Law Center, Concord, NH

GENERAL INFORMATION

The Institute is moving its summer 2002 conference for law teachers to New England. ***Demonstrating and Deconstructing Our Teaching*** will be held in Concord, New Hampshire, on June 28-29, 2002. This conference is a collaboration between the Institute and Franklin Pierce Law Center, whose faculty have been committed to effective teaching since Pierce Law's founding in 1973.

The conference will provide opportunities for participants to experience a variety of teaching and learning methods, to hear seasoned teachers deconstruct those methods, and to participate in discussions about those methods. Participants will leave the conference with both the inspiration and the information they need to apply the ideas from the conference in their own courses next fall.

STRUCTURE OF THE CONFERENCE

Much of the conference will be built around concurrent, 75-minute workshops. Each workshop will involve a 15- to 30-minute teaching demonstration, either live or on videotape; a 15-minute deconstruction by the presenter (choices made and why); and 30 to 45 minutes of discussion and application to participants' courses. The conference will feature 18 workshops, divided into six sessions, spread over two days. During each session, three workshops will run simultaneously. Participants will choose which workshops they want to attend.

Participants will be able take part in an optional teaching lab, in which they can work one-on-one with experienced "teacher-coaches" to examine and develop a new aspect of their teaching. They may also choose to engage in a teaching and feedback workshop. At that workshop, each participant in the lab will have the option to do a 10- to 15-minute teaching demonstration and receive oral, written, and videotaped feedback.

A few students who are enrolled in an independent study on legal education may participate in the conference. These students may be present in some workshops.

LOCATION, TRANSPORTATION, AND ACCOMMODATIONS

Conference participants are responsible for making their own travel arrangements. Buses from Boston's Logan Airport and taxis from Manchester Airport (NH) service Concord. The Courtyard Marriott will provide shuttle service from Manchester Airport to its hotel for $5.00; reservations for shuttle service must be made two days in advance. Limited blocks of rooms have been booked in two hotels. For reservations, call one of the following choices and request the special rate for Franklin Pierce Law Center.

Centennial Inn – 96 Pleasant Street, Concord, NH 03301, (603) 227-9000, www.someplacesdifferent.com. *Rate:* $99 per room, per night. The Inn is about half a mile from Franklin Pierce Law Center. **Reservations must be made by May 3, 2002.**

Courtyard Marriott – 70 Constitution Ave., Concord, NH 03301, (603) 225-0303, www.courtyard.com. *Rate:* $99 single/double; $109 triple/quad. Shuttle service is available to Franklin Pierce Law Center (about 1 mile away). **Reservations must be made by June 5, 2002.**

SCHEDULE

The conference will begin officially on Friday, June 28, at 8:00 a.m. Participants who arrive in Concord on Thursday, June 27, may get acquainted during a complimentary, casual dinner from 6:00 to 8:00 p.m. at Franklin Pierce Law Center. The conference will end at 3:00 p.m. on Saturday, June 29.

REGISTRATION AND DEADLINES

Registration fee: $395.00. Attendance will be limited to fifty participants to facilitate small-group experiences. The roster will be filled in the order that the Institute receives the registration form *and* conference fee ($395.00; checks only; payable to Gonzaga University). *Refunds:* Attendees must notify the Institute in writing to receive refunds. If notice is received on or before May 24, 2002, a full refund will be provided. No fees will be refunded if notice is received after May 24, 2002.

MEALS

Dinner on Thursday, June 27; breakfast, lunch, and dinner on Friday, June 28; and breakfast and lunch on Saturday, June 29, are included in the registration fee. Dinner on Friday will be a festive, off-campus event.

CONFERENCE SCHEDULE

Thursday, June 27

6:00 - 8:00 p.m.	*Optional:* Casual dinner and reception

Friday, June 28

8:00 a.m.	Registration and continental breakfast
8:30 a.m.	Introductions
8:45 a.m.	Opening (Gerry Hess, Institute for Law School Teaching)
9:15 a.m.	Break
9:30 a.m.	**Session 1**
10:45 a.m.	Break
11:00 a.m.	**Session 2**
12:15 p.m.	Lunch
1:15 p.m.	**Session 3**
2:30 p.m.	Break
2:45 p.m.	*Optional:* Teaching Lab
4:45 p.m.	Adjourn
6-9 p.m.	Dinner

Saturday, June 29

8:00 a.m.	Continental breakfast
9:00 a.m.	**Session 4**
10:15 a.m.	Break
10:30 a.m.	**Session 5**
11:45 a.m.	Lunch
1:00 p.m.	**Session 6**
2:15 p.m.	Break
2:30 p.m.	Closing (Sophie Sparrow, FPLC)
3:00 p.m.	Conference adjourns
6:00 p.m.	*Optional*: No-host Dinner

SESSION 1 **9:30 - 10:45 a.m., Friday, June 28**

The First Class: Professor, Your Fifteen Minutes Are Up (B. Pardy, Queen s)

The unconditional attention of an audience lasts only a few minutes. Capture the imagination or concentration drifts. So it is with students in their first days of law school. In the beginning, they are acutely receptive to new ideas. After that, content begins to fill them up. Subsequent lessons, important as they may be, must compete for priority in the din of substantive rules and cases. If law students are most open upon arrival, then that is when the most important concepts about law should be delivered. This workshop will consider what to say and how to say it in the first moments of year one.

Teaching as Both Art and Science (P. Franzese, Seton Hall)

How can our teaching methods and styles be informed and influenced by what cognitive psychologists now know about how the mind works? Intelligence is multidimensional, and there are, for example, visual learners, auditory learners, kinesthetic learners, and associative learners. This session will demonstrate teaching techniques used in large-class, required courses aimed at reaching the whole class by accessing each of these learning modalities as a point of entry and then facilitating the assimilation and integration of course materials through the use of multiple styles. A multiple-sensory approach reflects the probability that learning styles can be expanded, thereby rendering the teacher and the learner more effective and more efficient.

Visualizing and Promoting Critical Thinking (S. Foster, Rutgers)

Critical thinking depends on the teacher helping students to develop a framework in which to analyze a particular subject and then helping them to step outside the framework to analyze future problems which might arise within that framework and which may involve re-imagining a different framework in which to analyze the same problem. This workshop will focus on how to help students visualize critical thinking. We will read excerpts from a case and portions of an article critiquing the case, or analytical framework employed in the case, to demonstrate how to walk students through a critical thinking project. By using the tool that we all have available to us – the blackboard – this workshop will demonstrate how to reveal (or unveil) to our students the process of conceptual and critical thinking.

SESSION 2 **11:00 a.m. - 12:15 p.m., Friday, June 28**

Managing Classroom Communications for High Expectations and Positive Feedback (B. Glesner Fines, UMKC)

We know a lot about effective classroom teaching. We know that setting high expectations for student learning is critical. More recent studies of stereotype threat (the threat of being viewed through the lens of a negative stereotype, or the fear of doing something that would inadvertently confirm that stereotype) emphasize that expectations of competence can affect performance. We also know that regular feedback is critical to student learning and that positive statements are more effective in enhancing student learning than are negative statements. We communicate our expectations and assumptions about student competence in a variety of ways. In this session, we will watch some video clips from actual classes to assess the teacher's expectation cues and use of feedback.

Teaching and Learning About Legal Education (J. Wegner, North Carolina)

This session will discuss a new type of seminar that makes legal education itself the topic of inquiry (particularly the nature of law school teaching and learning and the development of professional identity). Reflecting the collaborative work of faculty from ten law schools and the Carnegie Foundation for the Advancement of Teaching, the seminars have generally drawn upon a set of shared readings and instructional designs that feature some form of intensive student reflection. The session will provide in-depth information on how similar seminars might be developed in other law schools and the insights about legal education that have been learned.

To Teach Is to Create a Space (M. Weisberg, Queen

In our classrooms, we're often so busy covering material that we forget one of our goals might be to uncover it. Responding to this problem, educator Parker Palmer suggests that rather than conceive teaching in the familiar metaphor of filling space, we imagine that "[t]o teach is to create a space." Space for reflecting on what we're learning and teaching; space for multiple voices to be present and be heard; space for people to risk bringing what they care about to their work. What would a classroom that contained these spaces look and feel like? Can we model one in 75 minutes?

SESSION 3 **1:15 - 2:30 p.m., Friday, June 28**

Writing in Large Classes without Killing the (K. Nelson, Widener)

This hands-on workshop will explore the need to incorporate writing in law school classes and methods of providing student feedback without putting impossible demands on the professor's time. Attendees will also participate in a "post-writing exercise" critiquing a fictional intern's draft document. The exercise will illustrate one method of providing students with feedback on their writing while also reviewing course material and allowing students to "show off" their expertise. Background materials for the critiquing exercise will be available prior to the workshop.

Reading Across the Curriculum (R. Cochran, Dayton)

We know from studies that our students' reading skills will greatly influence their success in law school. These studies also inform us that many of our entering students have poorly developed reading skills and have rarely encountered primary sources. Yet, techniques gained from this knowledge of reading have been put into practice most frequently with small groups of students inside the law school. This workshop seeks to move reading skills training into a broader setting to reach more law students. Specific reading exercises are based on findings concerning reading for context, evaluation, prediction, and omission. The materials come from a variety of texts – legal and non-legal. This workshop demonstrates ways to begin to use our knowledge of legal reading skills across the curriculum in a variety of classes.

Teaching as Coaching (K. Harrison, Franklin Pierc

Many first-year students believe that memorizing rules is the same as learning the law. These same students understand that knowing the moves that various pieces can make does not make them chess players. I have found it useful to ask students to recall some competitive or creative activity with which they are familiar (e.g., basketball, chess, bridge, or cooking). I then attempt to relate learning a substantive area of the law to the way that they learned that activity.

SESSION 4 9:00 - 10:15 a.m., Saturday, June 29

Beyond the Fear Factor: Motivating Students after the First Year (J. Rosato, Brooklyn) [A]

Boredom. Apathy. Disengagement. No matter what you call it, law school professors all know the reality of students becoming less interested in preparing for and participating in their classes after the first year. This workshop focuses on two ways to reengage these students. The first approach is through respect and responsibility, by assigning students to "working groups" that lead class discussion. For example, the group might plan and act out a role play in front of the class. The second approach is through fun and games, by using materials such as movie clips to contextualize and personalize legal issues. Following a demonstration of these approaches, this workshop will focus on how they can be implemented in small and large classes.

Humor Them (A. McClurg, Florida International) [B]

Legal education is a serious endeavor, but its most memorable moments are often the most lighthearted ones. Professor Andrew J. McClurg will explore different ways to use humor to facilitate classroom learning and offer his insights on how and why to use it, as well as how and when not to use it. Professor McClurg, a recipient of numerous teaching awards, is author of *The Law School Trip*, a critically-acclaimed parody of legal education. From 1997 to 2001 he wrote a monthly humor column for the *American Bar Association Journal*. He also operates a legal humor website: www.lawhaha.com.

Teaching Issue Spotting (K. Kirkland, Franklin Pierce) [C]

Most of us test but do not teach issue spotting. This workshop will demonstrate a method used to teach issue spotting in a first-year, large-section civil procedure course. Students are divided into groups and asked to build hypotheticals that create certain procedural issues. The groups then exchange their hypotheticals and take one another's exams. Students are now trying to spot in the other group's hypothetical those same legal issues they were working to create as they built their hypothetical. Through the process of taking one another's exams and the guided discussion that follows, students learn that although legal issues may present somewhat differently from one hypothetical to the next, there are similarities that enable them to spot the issues however they present themselves.

SESSION 5 10:30 - 11:45 a.m., Saturday, June 29

Finding Integration and Seamlessness (C. Pang, Hawaii) [A]

This coming school year, I hope to revamp a traditional family law class into one that meaningfully introduces students to interviewing, counseling, case planning, fact organization, and letter writing. For me, the puzzle will be to do so seamlessly and without unduly sacrificing the rich doctrinal discussions that occur in a family law class. My demo will begin as an interviewing class and then will move into a discussion on parentage as a factor in child custody determinations. Challenges for me will include (1) showing students how skills and doctrinal learning enrich each other, (2) developing appropriate class materials, (3) thinking through class sequencing issues, and (4) moving seamlessly from "skills talk" to "doctrine talk."

The Writer's Narrative: Classroom Discourse About the Writing Process (A. McArdle, CUNY) [B]

Drawing on the work of narrative and relational learning theorists, this workshop will explore strategies for helping adult learners become more conscious of the process by which they learn a new skill, specifically, writing in a legal context. Novice legal writers often struggle with, and against, the frameworks and conventions of a new discourse and are left feeling stymied. Encouraging them to narrate the trajectory of their own writing process after they complete an assigned writing task offers a potentially empowering alternative. This session will examine techniques for eliciting individual process narratives and then will model an approach to structuring a conversation in the classroom around these self-narratives.

Providing the Skills: Know How to Drive a Car Take a Road Trip (L. Feldman, Brooklyn)

First-year students must develop the skills specific to law school studies to become expert learners of the basic foundations of legal studies (e.g., torts, contracts), as well as more specialized subsequent upper-class course work. In this interactive workshop, participants will take the driver's seat as first-year law students and explore the basic skills needed to successfully navigate law school. Skills covered start at the beginning – starting the car (close case reading and case briefing), progress through map reading (using the syllabus to navigate), and conclude with arriving at the destination (exam writing). The theme of the workshop is that incorporating basic skill-building into an existing pedagogic repertoire will provide students with techniques to successfully approach and master law school course work.

SESSION 6 1:00 - 2:15 p.m., Saturday, June 29

Using Movies in Teaching Law Students (D. Cooper, New England)

Using movies makes it easier to engage students in the subject matter of a course. In teaching the law and ethics of lawyering, primarily a rules course, films such as "A Time to Kill" and "The Verdict" can be used to teach ethics rules. This workshop features a live teaching demonstration in which a movie clip is used to teach Model Rule of Professional Conduct 1.6, Attorney Client Confidentiality. Other ways of using movies in teaching will be identified, and participants will discuss how they might use movies in teaching their own courses.

Making Doctrine Count (A. Michaels, Ohio State

In most law school subjects, a certain number of doctrines boil down to straightforward rules that simply must be covered. This workshop will explore ways of turning the teaching of such material from drudgery for professor and student into an engaging exercise that may succeed in more effectively conveying both the rules and broader themes. By way of example, Professor Michaels will provide an interactive demonstration of the way he teaches statutes of limitations in criminal procedure. The demonstration will be followed by Professor Michaels' deconstruction of the methods used and then discussion among workshop participants of their own techniques for turning doctrinal sows' ears into pedagogic silk purses.

Do You Hear What I Hear? (C. Nance, Arkansas-Fayet

How do we know what it is our students value? Teaching evaluations are an ineffective method of ascertaining student perceptions of teaching. They are limited in what they ask and are typically given only at the end of the semester. What is it students hear? Do they hear what it is we think we are teaching? This workshop will compare the difference between the students' perceptions of the classes taught by the presenter and her own perceptions, with an eye to determining whether what we value as teacher is of equal importance to students.

'Demonstrating and Deconstructing Our Teaching'

INSTITUTE FOR LAW SCHOOL TEACHING • SUMMER CONFERENCE: JUNE 28-29, 2002 • *Conference Location: Franklin Pierce Law Center, Concord, NH*

Name: ______

Phone: ( ) ______ Fax: ( ) ______ E-mail: ______

School: ______

Address: ______ City/State/Zip: ______

Courses you teach: ______

Check the boxes for the workshops you wish to attend (only one per session):

SESSION 1:	q A	q B	q C	SESSION 3:	q A	q B	q C	SESSION 5:	q A	q B	q C
SESSION 2:	q A	q B	q C	SESSION 4:	q A	q B	q C	SESSION 6:	q A	q B	q C

OPTIONAL ACTIVITIES:

Pre-conference event on Thursday evening, June 27 *(No charge)*

q I will attend the optional Thursday evening event.

q I will not attend the optional Thursday evening event.

Teaching Lab on Friday, June 28 (2:45-4:45 p.m.)

q I will attend the optional Teaching Lab.

q I will not attend the optional Teaching Lab.

q Enclosed is a check for $395.00.

(Includes dinner on Thursday, June 27; all meals on Friday, June 28; and 2 meals on Saturday, June 29.)

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

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

Lessons virtually learned

By Patrick Wiseman

I have offered a course on law and the Internet, on the Internet, nine times since the summer of 1995. The course has evolved over the years, and I've learned some lessons, not only about how to conduct an online course, but also about some ways to enhance my more typical off-line courses. In this essay I describe those lessons briefly, with the disclaimer that both the course and this essay are always works in progress.

Rather than describe the course in any detail, I invite readers to visit the course Web site at http://gsulaw.gsu.edu/lawand/. An online, presentation-style version of this essay is available at http://www.wwwebbb.org/wwwebbb/presentations/lessons/. Some screenshots representative of this course and the online components of a few others, and illustrative of some of these lessons, are available at http://gsulaw.gsu.edu/pwiseman/gallery/online/.

Here, then, are the lessons, in no particular order (but for the last):

1. Simplify

Simpler is better, more often than not. In early versions of the course, I used every chat tool available for our syn-chronous meetings, from Internet Relay Chat (the most venerable of chat tools) to a Multi-User Dimension (an online "space" in which users can both converse and "build"). Although experimenting with different tools can be useful, it can confuse students. Now we use one tool for our relatively infrequent chat sessions.

But do not over-simplify. Some incarnations of the course home page have been so simple as to be cryptic. I now strike what I think is a happy balance between simplicity and instruction. Take care not to let the technology impede the pedagogy; both over-complication and over-simplification can do that.

2. Use the Right Tools

Different tools are suited to different tasks. In my experience, synchronous chat tools are suitable for chatting but not for doing much in the way of serious substantive work. While this may be a function of my teaching style, which tends to be more conversational than controlling, asynchronous tools (e-mail discussion lists, online forums) seem to me to be much more suited to the serious work of delivering content, discussing issues, working on hypotheticals, and so forth. Chat tools, on the other hand, *are* well suited to brainstorming sessions and very small group work. They can also be very useful for "office hours," if a couple of students need to ask me for clarification on course requirements or procedures.

Avoid use of tools that rely on user discipline. In early versions of the course, the discussion took place on a single e-mail discussion list, which was archived on a Web site. To keep the messages in subject-matter order, I asked students to choose the general subject category from a prede-termined list and to use it in the Subject: line of their e-mails. As you might imagine, this met with limited success. Now, each week's topic has its own, separate forum and e-mail address, and it is much easier for students to post to the right forum than it is to remember specific subject categories.

Early on, I allowed the technology to drive the pedagogy; now, I try to make sure that the pedagogy is driving the technology.

3. Don't Teach

In a "constructivist" course such as mine (by which I mean a course in which students supply all the content), this is perhaps obvious advice: Make students do all the substantive work. But I think the advice has application to more conventional courses as well, where, even if the teacher knows more than the students, the most effective way for students to learn the material is to help them teach themselves.

As important as not teaching is exercising professorial restraint and resisting the temptation to intervene when the

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Lessons virtually learned

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don't. Sometimes, with the right technology, the pedagogy seems to take care of itself.

4. Take Risks

I provide an anonymous online site for my students to evaluate my courses as they proceed, risking hearing things I don't want to hear and providing an opportunity for inappropriate venting. I learn a lot from what students tell me on those pages, and so far nothing bad has happened. Unlike our usual course-concluding evaluations, which are of no help to the students currently in the course, continual evaluations, so long as I respond to them one way or another (which I do), give students a sense of ownership of the course.

Even (or maybe especially) risky use of technology can lead to pedagogical discovery.

5. Reinvent

Available online course tools certainly have their place, but I think many faculty members, after using them for a little while, find them constraining. Most faculty, of course, are not programmers and so have to live with the constraints, but if you either are or have access to a pro-grammer, then I urge you to reinvent with abandon. Faculty are a creative lot and will come up with far more than anonymous online evaluations, dynamic syllabi, and course-based face books. Pedagogical innovation, if not a necessity, can be the mother of technological invention.

6. Build Community

It is probably important in any course to foster a sense of shared enterprise, but it is especially important in an online course where students will not see each other while engaged in the course. Provide ways for students to get to know each other, perhaps by meeting face to face occasionally, by inviting students to introduce themselves in a class forum, or by providing an online "face book" of student pictures.

Hold students to some community standards (respect for each others' contributions to the community effort, a responsibility to contribute, etc.). I have rarely had to douse a flame war, but I do, early in each offering of the course, remind students that they are lawyers, not pundits, and that their contributions to our discussion should reflect that role. And be sure always publicly to credit students who make particularly good contributions.

These and other strategies can increase the students' sense of engagement with the course material and with each other, thus improving the sense of community in the course. If community is pedagogically important, tech-nology can provide it.

7. Accommodate Diversity

I'm not speaking here of the obvious (and legally required) need to make all course Web pages accessible to students with disabilities, but rather of the need to accommodate technological diversity. Unless you are fortunate enough to be in an environment where every student has state-of-the-art equipment, it is important to accommodate the lowest common technological denominator. So e-mail from your course Web sites should be in plain text, not HTML. And you should minimize the unnecessary use of images and video and other bandwidth-demanding bells and whistles. Often, low technology suffices pedagogically.

8. Automate

I am able to do things online that I would not dream of doing otherwise, either because they would take up too much time done manually or because there is no off-line equivalent. For example, providing students as a group with continual feedback on their forum performance (even if it's only quantitative) can be automated and is useful to them. Showing the passage of time on the class schedule or syllabus is not something that really has an off-line equivalent, but it has proven to be a popular thing to do. Even more popular (with my students, if not with my colleagues and associate dean) is my practice of allowing students to retrieve their grades by e-mail, something which I would not be especially happy to do manually for my 80-student first-year Property section. Also popular is my random selection of students for class participation, notice of which is automatically sent to the class forum at the beginning of each week. We also generate automatically, from our database of class rolls, e-mail addresses, and student ID pictures, e-mail distribution lists and online face books for every class.

But don't try to automate what cannot be automated. Giving individual, qualitative feedback probably cannot be automated. Grading non-objective exams probably cannot be automated.

Not only does pedagogy sometimes spawn technological innovation, but technology enables pedagogical innovation.

9. Reflect

As I have experimented with the use of Internet technology in my teaching, I have reflected on what works and what doesn't. I continue to do what works and to try new things. I have probably, on occasion, persisted in doing something that didn't work, in the belief that I was just not doing it right. Experimentation with technology and reflection on its pedagogical usefulness are invigorating and, I hope, keep my teaching fresh.

Patrick Wiseman teaches at Georgia State University College of Law, 140 Decatur Street, Atlanta, GA 30303; (404) 651-2063; fax (404) 651-2092; pwiseman@gsu.edu.

Money for nothing and work for free?

By James Edward Maule

People usually get paid to work. Sometimes they volunteer to work pro bono. Sometimes their parents "give" them chores. But to pay for the opportunity to work? That's insane. But that's law school.

Think about it. You (or a family member) shell out big bucks so that you can take courses taught by law professors who give you work to do. Reading assignments, writing tasks, class presentations, virtual classroom exercises, client meetings, courtroom appearances, hit-list member-ship, and dozens of other activities require the expenditure of time, calories, and mental energy. Like other things in life, the work just piles up, and the more you finish, the more gets added to the "to do" list. If you do everything, you'll be at it for 60 or 70 hours a week. Imagine!

To top it off, the work product rarely is perfect. Frequently it isn't good enough. You plow through the projects, respond in class, take exams, write papers, and then get grades that seem disproportionately inadequate for the effort you've expended.

There is No Easy Way

At least that's how it seems. The temptation to ease up looms large. The impulse to gripe surges. It wasn't like this in college, and it's not fun. There has to be an easier way.

There isn't.

At least not until someone invents the one-a-day vitamin that turns a mushy brain into an engine of knowledge, understanding, and perception. It's likely that the pill that turns couch potatoes into fitness gurus will hit the stores sooner.

Let's face it. You are here to learn. But not to learn the law, not to acquire information, and not, I daresay, to learn "to think like lawyers." Lawyers don't think any differently than the rest of the species. No, you are here to learn how to learn. To learn how to solve and prevent problems. In other words, to learn how to think. Period.

You get one chance at law school. Make it count. Picture the clients who will depend on you. If you cannot do it for yourself, do it for them.

Hard Work but Rewarding Work

And to learn, you must practice. And practice, as any accomplished athlete or artist will attest, is work. Hard work. Often tedious. Often tiring. Sometimes frustrating. Occasionally boring. And ultimately rewarding.

Practice takes time. Lots of time. Indeed, expecting law school to be less demanding of your time than lawyering invites disappointment. Thinking that spending six hours a week on a three-credit course is too much work guarantees deep shock when the time demands of a two-week trial arrive. Aside from the Einsteins who put in a few hours and earn "A" grades, the rest of us must commit to 70-hour weeks. All semester, not just at the end. But, hey, that still leaves 98 hours for other stuff.

It's Like Riding a Bike

One of my favorite metaphors is that of getting into appropriate physical condition for a particular type of activity. Like bike riding. Sure, it helps to watch someone ride a bike. It might help to read about it. But eventually, to learn to ride, one must get on the bike. And try. And fall. And try again, preferably with the advice of an ex-perienced rider who can spot bad habits, make suggestions, and cajole the novice into getting back on. Even ex-perienced riders, getting trained for a competition event, will try to find a trainer who will push them to the limit, i.e., to the point where resentment, even loathing, sets in. Until after the race is won.

Of course, athletic training differs significantly from law school. It's easy to see the long-term benefits of tolerating, and even coming to accept, the demands of a trainer. After all, it would be rather odd for the competitor-to-be not to have seen a bike race. But it's relatively uncommon for law students to have "seen" the practice of law. A lawyer in the family might provide some insight, but even that experience is more like sitting in an obstructed-view seat at the bike race. And forget about the TV shows. There's a reason they're called dramas or comedies, and not documentaries.

And therein lies the challenge. Acceding to demands from the faculty that you work at something that you don't understand, in order to attain the ability to do something that you haven't seen. Of course, this conundrum is one of the main reasons not only for developing and sustaining clinical and externship programs but also for students' wholehearted embrace of the experiences that those pro-grams provide.

Work Hard and Work Smart

The challenge of "real world" experiences teaches not only that time is a valuable commodity needing to be budgeted, but also that time limits the amount of work that can be effectively accomplished. Most law students start out with poor time-management skills, and some law firm partners claim they graduate with those same inadequacies.

Returning to the biking metaphor, a rider who pedals in neutral surely works hard. But not smart if the goal is to

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get from one place to another. Many law students, likewise, lose much precious time spinning their wheels while trying to decipher what is required to succeed in a course.

Just as each sport is different, so, too, is each course. Ever been to a gym and watch someone come in, go to a machine, look bewildered, and then start trying to do something? Something you know is foolish? Perhaps the person presumes that familiarity with similar equipment is sufficient. Perhaps he or she fears "looking stupid" by asking for help. Perhaps he or she doesn't respect the instructor's opinion. Most are lucky and escape death and injury, but many fail to do much for their muscles. It's not working smart to waste time that way. On the contrary, working smart means getting good information from good sources.

Why not ask the instructor? He or she knows best what the course demands. Why wait until the professor gives you the bad news that you're not on the correct route, especially if that news comes on your transcript? Why wait to be called on in class rather than giving it a go and finding out how you're progressing? Why wait until you're so frustrated that your energy turns negative, deepens the hole into which you feel you are sinking, and induces you to give up?

Do It For Your Clients

You get one chance at law school. Make it count. Picture the clients who will depend on you. If you cannot do it for yourself, do it for them. Be prepared for them. Do well for them by reaching down for that last ounce of effort, so that you can, for example, resolve a matter in your client's favor merely with a cite to controlling authority that you made time to find and learn.

You arrived ready to pay top dollar for a J.D. degree. Perhaps you felt like the auto financing ad theme: "I WANT IT. I DESERVE IT." But you've discovered that the money buys the experience of learning, not the degree. For the degree, it will be like your professional reputation. The piece missing from the ad. "I EARNED IT."

Jim Maule teaches at Villanova University School of Law, Villanova PA 19085, (610) 519-7135, fax (610) 519-6472, maule@law.villanova.edu. This article was originally published in an issue of Villanova University Law School's in-house weekly newsletter.

Motivating students to learn

By James B. Levy

Motivation is the fulcrum that moves student learning. Indeed, no learning can take place unless students are interested in the subject matter. And, at bottom, motivating students involves capturing both their interest and attention. All the time we spend as teachers developing a syllabus, preparing lectures, and creating classroom materials will mean little if we do not also appreciate the critical importance of stimulating our students' interest in the subject matter.

Motivating students to learn is a complex skill involving elements of psychology, student-teacher rapport, and the students' innate interest in the material presented. With respect to the latter, it's clear that students have to assume some responsibility for their own learning. More specifically, to get anything meaningful out of the experience, students need to show up to class wanting to learn. Even the best teacher cannot force students to learn about a subject they do not care about. Nevertheless, any teacher can develop the ability to positively influence student learning through an understanding and application of motivational theory. While numerous theories exist to explain human motivation (one commentator catalogs at least 32 of them), most share several elements in common that have direct application to the classroom.

Law students, like the rest of us, are more likely to engage in a subject if they see a good reason for doing so. In the parlance of motivational theory, this is referred to as the "value" component to student motivation. This component consists of both an intrinsic and extrinsic element. The intrinsic element refers to the extent to which the subject matter appeals to a student's personal, academic, or professional goals. Teachers, therefore, generally have little difficulty motivating students to learn in courses they self-select. The challenge for most teachers then is to motivate students in the required courses, especially in the unpopular ones such as legal writing, which I teach.

Obviously, the more we can do to make the material as interesting as possible, the more motivated students will be to learn it. Beyond that, we should do as much as possible to relate the classroom material to our students' goals of be-coming lawyers. When discussing material in class, illustrate key points with examples from practice. Try to relate the material to the kinds of real-life problems that students will face. One technique I use when teaching analytical skills is role-playing. For example, I will present students with a hypothetical legal problem based on the

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Motivating students to learn

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cases we have read for class and then place them in the role of attorneys who have to advise a client on an appropriate course of action based on their analysis of those cases. The more I do to make the classroom resemble what students can expect to happen in practice, the more success I have getting them to learn the material.

The extrinsic value component of motivational theory refers to the external rewards the teacher connects to the material. Grades and the desire for approval from teachers or peers are the most common examples. This aspect of motivational theory tells us that we can boost student motivation by adding graded components, such as quizzes and take-home assignments, or by making class participation count toward the final grade. I have experimented with using class participation as a course com-ponent, and motivational theory confirms my own experience that the quality of class discussion improves when I tell students it will count toward their final grade.

Motivating students to learn is a complex skill involving elements of psychology, student-teacher rapport, and the students' innate interest in the material presented.

Research tells us that intrinsic factors tend to be more powerful motivators than extrinsic ones. This same research tells us, however, that student motivation is optimized when the teacher relies on a combination of intrinsic and extrinsic factors. Thus, we need both to make the material interesting, important, and relevant to our students as well as create the proper academic incentives to encourage them to take it seriously.

There is also an "expectancy" component to student motivation. This means that students who believe they can succeed at a new skill or task are more likely to engage in it. Thus we can affect student learning positively by creating a supportive atmosphere in the classroom. This must be done with integrity, however, since false praise can undermine motivation when students perceive it as an insincere or facile attempt to control their behavior. No expert has ever suggested that merely heaping praise upon students will help them do good work. On the contrary, studies show that teachers who set high standards and then establish a supportive classroom atmosphere are the most effective at motivating students to learn.

The next aspect of motivational theory is the "affective" component, which refers to the students' emotional response to the task at hand. A classroom that engenders feelings of excitement, enjoyment, and interest will enhance motivation to learn, while classrooms that produce anxiety, stress, or boredom have a deleterious effect on student motivation. A practical example can be found in the emotional milieu we create through our Socratic dialogue during class. If we question students in a way that increases their fear of failure or provokes shame or embarrassment, then we negatively affect their learning. On the other hand, if we question them in a way designed to excite them about their ability to find the "correct" answer, we can positively influence their learning. It is vitally important that we be aware of the way in which the emotional atmosphere we create in our classrooms affects student learning. This is especially true in law school where studies show that students suffer more stress and anxiety than those enrolled in any other post-graduate course of study.

Connected to the affective component of motivational theory is the fact that our own attitudes about the material we teach can have a great impact on student motivation. Social psychologists have documented this phenom-enon, which they label "emotional contagion." In short, if we are enthusiastic about what we are teaching, we tend to make our students enthusiastic about it as well. Conversely, if we project disinterest or boredom or, worse, denigrate the material we teach, we tend to infect our students with those kinds of attitudes as well. Indeed, research shows that passionate teachers tend not only to better motivate students to take their courses more seriously but also inspire them to explore the subject matter further outside of class. In the end, that should be the goal of all good teachers.

James B. Levy teaches at University of Colorado School of Law, Fleming Law Building, Campus Box 401, Boulder, CO 80309; (303) 492-3391); fax (303) 492-1200; james.levy@colorado.edu.

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.

Professor Mark Dubois teaches first-year students research, writing, and basic lawyering skills. When he submitted his article, he told us: “As I write this, I am receiving the final papers of the first semester. I will spend Thanksgiving reading and grading them. And I wouldn’t trade the experience for anything.” Here is why Mark teaches:

Why I Teach

By Mark Dubois

A great philosopher once said that an unexamined life is not worth living. Yet it’s often hard (if not impossible) when we are involved in the day-to-day battles of a busy law practice to step back and take a moment to look at the “why” as well as the “what” of our professional lives. It was such an impulse that led me, during the summer of 2001, to take “of counsel” status at the firm where I was working and to join the faculty of the University of Connecticut Law School, an institution from which I had graduated 24 years before. And my first semester as an academic was a true education, both for my students and for me.

Of course, there was the usual adjustment when one moves from the private sector to the public. My office is about the size of the supply closet at my old firm (though not quite as well appointed). My income is considerably less than I used to pay in taxes, and I am still getting used to the idea that most of the rules that I have to follow every day are set by the folks who lock the doors, turn the heat on and off, process the mail, run the computer system, open and close the library, and provide the myriad other functions and support without which no institution could operate. It’s not that I can’t adapt to having my cheese moved. I have no cheese.

Why would anyone do this? Well, for starters, I have been able to share with two classes of bright and eager first-year students their first exposure to rule-based reasoning, how judges decide cases, and how societal values shape legal and moral choices as well as outcomes. I could not have imagined the joy of being there when the light finally clicked on; my charges began to synthesize the disparate elements of legal rules, case facts, and civil procedure into a cohesive whole; and they learned how to convey their understanding through good legal writing. In addition, I have been able to immerse myself in the law and explore the underlying questions of how our society makes rules and governs itself. These are pleasures so great that, if they wanted me to pay for the experience of teaching, I would gladly do so.

On top of all this, I have attended wonderful worksh

the viability of the death penalty as anything other than revenge, the purpose of the business judgment rule, the history of slavery and the appropriateness of reparations to Africa, relativism and rationalism as concepts necessary to understand Islamic fundamentalism, race-based preferences in law school admissions, and the hermeneutics of judging. I think it is fair to say that in the last six months I have examined law and lawyering more thoroughly and with more pleasure than in the many years since I left the academy and joined the “real” world.

Will I do this for the rest of my career? Who knows? I have been approved for appointment to the trial court bench, and if the Governor calls, I’m probably going to answer. However, if in five or 10 years I find myself right where I am today, I hope that I will continue to feel that I am giving as much to this profession as I have been lucky enough to receive.

Mark Dubois teaches at University of Connecticut School of Law, 65 Elizabeth Street, Hartford, CT 06105; (860) 570-5216; fax (860) 570-5222; mdubois@law.uconn.edu.

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

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