GONZAGA UNIVERSITY

THE LAW TEACHER

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Try peer teaching

By Louis Sirico

Sometimes a teacher cannot get an idea across to his or her students. And sometimes a teacher cannot understand what is preventing students from catching on.

Thinking back to my law school days, I remember instances when a teacher tried to explain some legal rule or application of a doctrine and then faced a sea of perplexed faces. The students might ask questions and, despite the teacher's best efforts, remain confused. Sometimes one student would understand what the other students were missing and come to the rescue. I wish I could say that, as a teacher, I have never faced this problem. However, I suspect every teacher has.

The problem seems to arise most acutely when a course is reaching a particularly difficult concept. Every course seems to have certain "hard knots." For Torts students, the hard knot may be proximate cause; for Evidence students, it may be the hearsay rule. My Property students, however, face a number of these knots, principally estates and future interests, covenants running with the land, and land recording acts—in other words, nearly one-quarter of the course. Over the years I have improved my methods for teaching these topics; nonetheless, I inevitably fail to reach some students.

At the same time, students often help one another understand difficult material in settings outside the classroom, perhaps in a study group. However, students who do not study together miss out on this opportunity. Why not, I thought, enable students to teach one another in the classroom? In that setting, I am available to clarify and steer students away from misunderstandings.

Many of us already employ peer review exercises and small-group exercises. We can build on these methods by encouraging students to help one another via peer teaching in class.

Here is my procedure for peer teaching. After I work through some difficult material and take questions, I say, "Now, I'm going to give you a few minutes to talk with one another and explain to one another the material that we just covered." The students always comply readily. I think these moments also provide a welcome break from the intensity of the standard classroom routine.

Once the students start their conversations, some of them inevitably call me over to answer a question. Their questions give me some insight into what is troubling the class and, in turn, teach me how to improve my presentation of the material. When the class discussion seems to be getting too relaxed and students are clearly talking about other things, I reconvene the class. I then try to clarify the material, based on the conversations I have just had, take more questions, and move forward with the course.

Because we have become professional teachers and have delved deeply into our subjects, we sometimes find it difficult to place ourselves in the position of novices grappling with difficult concepts for the first time. To reach novices, we sometimes must invite the novices to become teachers as well as students.

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In praise of the carrot: *The lure of extra-credit proj-*

By Ronald Benton Brown

While teaching Contracts, it occurred to me that the students would learn the material better if they used it in a different way than the traditional classroom experience. What I had in mind was getting them to try to draft a contract that dealt with the situation they were experiencing. In short, I wnted them to try drafting an educational contract.

I had assigned extra work before and it was always greeted with shrugs and groans. What, more work! They thought they were being subjected to busywork and a waste of time. Approached with that mind-set, most students did their best to get the least possible out of the exercise. The teacher pushes, and the students push back. How could that cycle be broken? How could I get them to want to engage in this learning experience?

Then a student asked, "Is there any way I could earn extra credit?" What? That had not occurred to me. They wanted an opportunity to earn extra credit? When I asked other students, the answer overwhelmingly was "Yes." So I packaged the contracts drafting exercise as an extra-credit opportunity, which I have described in detail in an earlier edition of *The Law Teacher.* (*A Contracts Drafting Challenge*, The Law Teacher, Spring 2001 at 5, to be reprinted in G. Hess and S. Friedland, Teaching the Law School Curriculum (forthcoming).)

Not every student took advantage of the extra-credit opportunity, but most did. And not everyone who did the project put in sufficient effort to earn the credit or reap the educational benefits. But most did. But what was most interesting was that the attitude toward the project was so positive even among the students who did not do it.

Students in my other classes started asking if they could have extra-credit projects like the one I had offered in Contracts. So I devised a project for my Property class that involved a detailed analysis of a standard real estate purchase and sales contract and one for my Real Estate Finance Law class that involved a detailed analysis of a note and mortgage. These projects stimulated the students who were willing to work. They liked having the choice about whether to do the project. Any return of control to them, especially during their otherwise out-of-control first year, was appreciated. Students also liked the opportunity to alleviate some of the law school anxiety about grades by knowing that a good-faith effort on the project would provide this extra credit, which would be judged not by a traditional exam but on a project they could work on gradually over a long time period.

I enjoyed not having to struggle with students to get them to try learning this way. I enjoyed alleviating some of their stress from uncertainty over grades. And I have enjoyed hearing later on how much some of them learned from the experience. The trick, of course, is to design the right project: challenging enough but not overwhelming; a big enough grade reward, but not so large as to make the grading scale unreasonable once the extra credit is added in; and obviously beneficial to them so they can see that the experience is worthwhile and not just busywork.

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Resource for Reflection Available

"You would think I had seen a meteorite shower!
Or a wild mountain lion
or a famous work of art!
But it was actually seeing you
standing in the parking lot of CVS
that stopped my heart."
Joanne Hammil © 2001 JHO Music

Or in my case, it was actually participating in the summer 2003 conference of the Institute for Law School Teaching, "Reflecting on Our Teaching." The quote above is a round we sang. The conference was powerful and invigorating; it provided encouragement, time, and space to listen to our own guidance and request guidance from others, to receive the undivided attention of others as we worked on our teaching issues, to give voice to our hopes and imaginings, to work with our questions. It left me with a new appreciation for this work we do and for the extraordinary beings who do it.

Mark Weisberg, who teaches at Queen's University Law Faculty, and Jean Koh Peters, who teaches at Yale, facilitated. They compiled materials for the conference, which stand on their own as a rich resource for reflecting on teaching. The materials include exercises to guide reflection, excerpts from works on teaching, writing prompts, interesting quotations, and excerpts from unlikely sources that nevertheless reveal important teaching points. You can use the materials to guide your own reflection on your teaching, as a starting point for your own retreat, or as a source of inspiration about teaching. The Institute for Law School Teaching offers the materials for sale for $99 (plus shipping and handling). To order, contact the Institute at ilst@lawschool.gonzaga.edu. Happy reflecting!

Juggling failure and success

By Alex Glashausser

Athletes often talk about the mental side of their jobs. But professors rarely discuss the physical aspects of theirs. Should we strive to make our lessons sound in body as well as in mind?

I usually keep my actions in the classroom simple. I speak; I listen; I write. Sometimes I wrestle with a remote control to show a video clip. I avoid things I can't do. I don't have a stentorian voice that could "fill the room," as Professor Kingsfield (*The Paper Chase*) demanded of his students, so I don't try. I don't emulate my high school teacher who once tore a Manhattan phone book in two to make a point. (Why should I? I don't even remember the point.) And although I occasionally quote lyrics from popular music, I always turn down requests to sing.

Still, I sometimes ask a little more of my body. I once thought I had reached the pinnacle of physical professing by throwing balls to students. To help teach analysis and synthesis, I have often done an exercise that uses balls to represent cases. The premise is that the Glashausser Supreme Court has held public schools liable to children for injuries caused by throwing footballs in gym class because footballs are dangerous. As undangerously as possible, I toss other balls—a tennis ball, a golf ball, a Nerf football—to students acting as judges in various courts and ask them to examine the facts in light of our burgeoning body of law and decide each new case.

The exercise stimulates the class and simulates the common law. It teaches that principles are elastic, that the legal relevance of a particular fact (such as a ball's shape, weight, or material) is usually debatable, and that *stare decisis* notwithstanding, results can therefore be unpredictable. It also teaches that laptops are not built to withstand foul balls; accidents can make classes sound neither in mind nor in body but rather in tort.

This past semester, I decided to build on the ball exercise by trying a new physical feat: juggling. Throwing I can do; my neighborhood Wiffle ball team (don't ask) was a juggernaut. But my innate ability as a juggler? Naught.

A professor in these pages once urged us all to try learning something for which we have no talent. With a book as my guide, I practiced and became reasonably competent at handling three balls evenly. I tried uneven juggling, which involves throwing one ball higher than the others, and learned how to do it, if not fluidly. So far, so mediocre. Once I added a fourth ball, no amount of repetition helped. Occasionally I could delay the inevitable fall for a few seconds, but I did not come close to mastering the skill. The book made juggling look easy, but for me, it was not.

Even if I was not ready for the circus, though, I thought I might be able to handle the classroom. To introduce students to the art of advocacy, I took out three balls and named two of them after precedents; the third represented our facts. I juggled the three balls evenly, pointing out that in objectively analyzing our case we would compare it to others and examine relevant similarities or differences from various angles.

Having concluded that one of the two precedents helped our case and one hurt it, I then switched into argument mode. I explained that I would highlight the "good" case and minimize, but not ignore, the "bad" one. To illustrate, I started juggling unevenly: I launched our case and the helpful precedent high in the air for all to admire, while I shifted the third ball quickly from one hand to the other to soften its impact. I told the students that although I felt reasonably comfortable with balanced juggling, as they did with objective analysis, uneven juggling was trickier—as was advocacy.

Not having dropped any balls, I could have quit while I was ahead. I had not planned to go for the jugular. But someone asked the juggler to go further: "Can you do four?" I didn't stop to do what law professors do—think—about the risk of failure. If I had, I would have realized that the idea sounded in, well, sane. Instead, emboldened by the enthusiastic crowd, I found myself mindlessly grabbing another ball.

I told the class how adding another case to the mix could make my argument more thorough and persuasive. The more cases one tries to juggle, the harder the task, but the more impressive if one pulls it off. I tried, and it worked—for about five heartbeats. Then I fumbled all four balls, before I had the chance to throw some higher than others, and the demonstration was over.

As for juggling, I had failed. But the reaction of the class told me I had succeeded at teaching. First and foremost, the students understood the point of the exercise and saw the distinctions between objective analysis and advocacy. The second piece of feedback was more fortuitous: They told me how much they had appreciated my willingness to take a risk and challenge myself by reaching for something a bit beyond my grasp.

I responded by telling them that dropping the ball is not all bad. By trying, stretching, and falling short, we pave the road for improvement, whether as professors or as practitioners. As new lawyers, I continued, they might feel intellectually overwhelmed and physically overtired by their caseloads. Of course, they would not take on work they were not capable of handling competently. But even within the realm of ethical behavior, I stressed, they would face great challenges. My advice—which I hope sounded only in*telligent*—was to take a deep breath, merge the body with the mind, and start juggling.

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The document package exam as a teaching

By Eric J. Gouvin

Two facts seem obvious about law school exams: Professors dread preparing them and students dread taking them. These propositions seem like incontrovertible facts, but as Cole Porter once said, "It ain't necessarily so . . ." For instance, when I was a new teacher I did not dread writing exams. I found them to be a somewhat fun, if obscure, genre of short story writing. Nevertheless, even if I did not dread writing exams, my students dreaded taking my exams, especially when I got carried away and made my fact patterns too rich in detail.

Then 10 years ago, when I was first assigned to teach Corporate Finance, it dawned on me that my penchant for writing detailed exams could be put to good use by creating realistic hypothetical corporations to illustrate the concepts in the course and to test on the material. My fact scenarios developed into mini-simulations in which my students could participate. These mini-simulations are fun for me to create and more enjoyable for the students to complete. In addition, the technique helps me achieve important pedagogical goals.

When I planned my course, it occurred to me that my students' understanding of the subject would likely be highly distorted and abstracted if they learned it solely through the medium of appellate cases.

In Corporate Finance, an upper-level elective, students generally come to the class without having had any exposure to the transactions discussed in the cases or to the documentation at the heart of the legal controversies. When I planned my course, it occurred to me that my students' understanding of the subject would likely be highly distorted and abstracted if they learned it solely through the medium of appellate cases. To counter the inherent problem of teaching a transaction-based subject through a litigation-based book, I supplemented my casebook heavily with financial material, articles, and documents.

Because many of my students are "hands-on" learners, I decided to address their lack of context by creating and using hypothetical corporations throughout the course. I use those hypothetical corporations to illustrate the accounting, valuation, and financial aspects of the course. The class's contact with the hypothetical companies culminates in an exam that I have conceived to be a simulation of an actual corporate finance matter that an associate attorney in a law firm might be assigned to work on.

The simulation starts with a detailed fact pattern about two businesses that were originally family owned but that merged and went public. I call the resulting corporation Consolidated Corn and Tobacco, Inc. (COCOTO). The fact pattern is based on a company my firm once represented, which has since been merged out of existence, but is strongly spiced with facts from RJRNabisco. Toward the end of the term I give my students a document package composed of corporate articles of incorporation, bylaws, SEC filings, a Standard & Poors Company report, financial statements, and a trust indenture. They have a few weeks before the end of the term to digest the material. They understand that in order to answer the take-home exam questions completely they will have to master the documents.

Obviously, before I distribute the document package, I know what I am going to ask the students on the exam. The exam questions almost always turn on some corporate finance development that has been in the news during the term. I plant appropriate language and numbers in the documents to raise the issues that will be on the exam.

I give students about two weeks to review the documents and to ask questions either in class or during office hours. This serves at least two purposes: (1) it allows the students to learn about the documents and (2) it ferrets out the mistakes I made in preparing the document package (I have discovered that the most enthusiastic students quickly focus on inconsistencies in the presentation). I once tried this testing technique without the two-week review period and the students felt overwhelmed. It is an essential part of the learning experience that the students have a chance to digest this information and ask questions in class. I encourage the students to work together during this phase of the project.

On the last day of class, I give the students the "exam," which consists of additional facts that supplement the already well-developed story of COCOTO, along with perhaps some additional documents or newspaper articles and the questions that need to be addressed. Usually the students will not be able to answer the questions fully without using some data from every included document—including the financial statements. Once the exam questions have been distributed the students must work on their own.

This examination technique appeals to many students. Although I started using this technique in Corporate Finance, an upper-level elective, I have since used it in Secured Transactions (a widely subscribed elective) and Contracts (a first-year course). Even though this method of testing makes the students work hard, I have had positive feedback about it every time—except one time in Contracts. That time I did not give the students the two-week period to digest the materials but instead handed out the document package on the last day of class with the examination questions to be administered 10 days later in a timed

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The document package exam

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examination setting. I solicited feedback from the exam takers and realized that I had not prepared them adequately for the new type of testing and had scared them when they saw the casefiles. I learned from that unsuccessful experience to make the file more manageable when testing first-year students and to give the students more information about the examination technique and the goals I am trying to achieve.

The year following the unsuccessful Contracts exam, I administered a casefile exam as part of the Contracts midterm. I simplified the transaction significantly. I gave the students three weeks before the end of the term to digest the documents. When I polled the students about the exam it received overwhelmingly positive reviews. After the exam I used the same examination materials as an ongoing hypothetical in the second semester of Contracts to illustrate the ideas that are presented.

There are pros and cons to this testing approach. On the positive side, I perceive the following benefits:

- An involved, role-playing exam can be a lot of fun to prepare and, I believe, to answer.
- It allows students to engage the problem in a manner more like the way in which lawyers work to solve problems.
- If given as a take-home exam, the document package format allows testing on detailed technical subjects, such as accounting and valuation, that might otherwise be inappropriate for timed traditional exams.
- It gives the students the incentive to read and digest deal documents in a way that merely assigning sample documents as a part of a reading assignment never will.
- It allows a degree of collaboration, but ultimately it produces a work product specific to the individual student.
- It permits testing on how well students separate the wheat from the chaff.
- For students interested in the real world of lawyering, the simulation aspect helps them place the material in context and makes it more intelligible. Some students have informed me that applying the law to the information in the exam and the document package allowed them to pull all the course material together and really understand it.

On the down side I see the following:

- It takes a lot of energy and creativity to prepare the document package.
- The level of detail involved invites some mistakes that can cause trouble—e.g., the financials must all work out and be consistent with the other documents in the document package.
- The technique works best in upper-level electives where the students are self-selected and will enjoy being put through the paces in a simulated transaction. I have used this technique in first-year Contracts, but it must be done with a much lighter touch.
- Of course, if given as a take-home exam there will be concerns about honor code violations.
- The exam materials can be recycled, but they require extensive reworking every year to avoid the possibility that students hand down the answers from year to year.

As mentioned above, I have used this testing technique in Corporate Finance, Secured Transactions, and Contracts. Anyone who would like a complete package of one of my exams should contact me at egouvin@law.wnec.edu, and I will send you a hard copy of a recent exam and document package.

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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 arti-cles to be considered for the next issue is February 2, 2004. 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.

"Family" Law: *Multigenerational*

By Mary Szto

I love teaching older law students in my school's part-time program. They bring amazing life experiences to the classroom. I also know that they have incredible challenges: balancing full-time jobs, raising families, and taking several law courses a semester. Many of them tell me that they rarely have time for their families. They have to spend their weekends studying. I know this puts a tremendous strain on their families.

I once taught in a school where every year there was an annual Family Day. This school had no part-time program, and students were younger. Nevertheless, families of students, mainly parents, were invited to attend classes, tour the school, and have a terrific luncheon. This helped families be more supportive of their students. (I know it was also a good development event for the school).

The evening contained priceless moments for me. I learned—maybe more than anyone else there—that the study of law can

I wondered if this could be done on a smaller scale in my evening Property Law class. Sure enough it can, and the results exceeded my expectations.

What I Did . . .

I asked a student who has a talent for organizing events if she thought this was a good idea. Immediately she said yes and agreed to help coordinate food and decorations. In fact, originally, she was planning a surprise baby shower for a class member and we decided to combine the two events. Then I announced the event to the class two weeks ahead of time and asked them to begin inviting parents, spouses, and other loved ones.

I asked for input from students as to how class time should be spent, but I didn't get much feedback. I realized that the students were leaving that up to me.

As I prepared for the class I began to see the challenge and excitement of teaching a multigenerational law class. I had several objectives:

- To present an abbreviated version of the material to the law students that we had to cover anyway;
- To give family members of all ages a taste of what their loved ones endure every class in law school; and
- To bring a new level of joy and fun to the material that we were covering; to create a new form of "family" entertainment.

To my delight, on the night of our class the students filed in with pots of lasagna, eggrolls, brownies and other goodies, and relatives in tow. One student brought his toddler daughter, wife, and mother-in-law. Another brought his wife, twin son and daughter, and elder son, all under the age of six. They made quite an entrance; the whole class cooed as they took their seats. With each new family appearing, the excitement in the class grew.

A team of students set up all the food and decorations. We gave everyone about half an hour to eat. (There was actually enough food to feed the whole law school.) Then I turned off all the lights in the classroom and began to show a film clip. I had prepared a half hour of material. Showing the clip was a wonderful transition from food to law. The magic of a movie theatre filled the classroom! It felt like we *were* having a family outing!

I used the opening moments of *Chariots of Fire* to introduce our theme song and topic, covenants running with the land. Then I announced our two contests for the evening which were for all ages: a coloring contest and a poetry contest. The coloring contest was of two pictures, one of a burden running with the land, and the other of a benefit running with the land. For the poetry contest they had to write a one-sentence poem about either a real covenant or an equitable servitude. I figured that those who couldn't follow our case discussion would occupy themselves with coloring or poetry.

To my delight, everyone was attentive for the next half hour. I loved watching one rapt ten-year-old daughter of a student in the first row. One toddler looked like she was taking notes. I noticed also that spouses were fascinated by the process of our case discussion.

We discussed two cases, both from England, and so I told the class that we would pretend that we were in England. I used a mock accent to create this illusion. I addressed students as "Lady ____" and "Sir ____." The audience burst out laughing when one student also used a mock accent. (I then realized how ridiculous I sounded.)

During this class time I also asked the audience to use hand motions to illustrate the "inquiry" requirement of equitable servitudes and, of course, of "running with the land." At one point, I used the illustration for the coloring contest to demonstrate a difficult point in one case about the nonenforceability of one promise because of the lack of a benefit running with the land.

For our last half hour of class, the students led the group in other games, we had more food, and we announced the winners of the coloring and poetry contests. I solicited three judges for each contest from the audience. So the judges consisted of both law students and family members, including the ten-year-old daughter mentioned earlier. I was delighted that the coloring contest included entries from three-year-olds, law students, and spouses. It was truly multigenerational. I think only law students participated in

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Multigenerational teaching

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the poetry contest. One student became inspired and wrote a rap.

The evening contained priceless moments for me. I learned—maybe more than anyone else there—that the study of law *can* be a family enterprise and that engaging one's children, spouses, parents, and significant others in it can not only be fun but can make learning difficult concepts much easier for the students.

I also imagine that the evening spurred some relatives to consider attending law school, whether they were younger or older. (I tried to recruit the mother-in-law, who is a physician.)

I learned the only thing more fun than teaching law students is teaching law students *and* their families.

Here are comments from the students about the intergenerational class.

- "It was a great experience for my family to see me in a classroom setting and see what 'Mommy' has to go through studying late at night. . . . The best part for me as a mother was to show my son that education is important and he should follow through with higher education."
- "The experience was very positive, as we depend on the support of our spouses to make this law school experience positive. Great experience and idea for the family to make them feel part of what consumes a great deal of our time."
- "My wife was intimidated that I had another 'life.' She enjoyed meeting my friends. Now she can put faces with my stories."
- "My wife was surprised to find that the class was such a lively and humorous bunch. She said, 'They're not a bunch of nerds like you, honey!'"
- "Excellent idea! My girlfriend has a new understanding of the commitment of school and the relationships we develop in this stressful environment. It gave her some encouragement to pursue a master's degree."
- "The evening was a nice get-together and should be part of every semester."

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Second Chances

The day before graduation, the law faculty at Gonzaga received this email message, with the Subject line, "Thank you for allowing me to study at Gonzaga University School of Law."

Dear Law Professors:

I am writing to thank you for giving me a second chance to attend law school. I moved from rural Alaska to Spokane in June of 1998 and completed the entire first year of law school. I failed one class and was subsequently dismissed from Gonzaga University School of Law. Upon applying for readmission, I was told the entire faculty had to vote on whether to approve my re-admission.

Nonetheless, the faculty voted to give me a second chance and I am forever grateful. Upon successfully repeating my entire first year and surviving my second and third years, I am truly appreciative for the opportunity to continue working toward my goal of becoming an attorney.

Those of you who are new to the faculty and were not here to vote, I am sending this message to you for future reference. In particular, to let you know that if you are ever faced with voting whether to readmit a student, I want you to remember me and know that they can succeed. Perhaps everyone who genuinely seeks a second chance deserves it.

Last semester, I was on the Dean's Honors List and starting in September I will be working as a judicial clerk for Chief Justice Bryner of the Alaska Supreme Court. I mention these accomplishments for the benefit of those who may believe that students who fail are failures. Please do not give up on them, as you did not give up on me.

I would not be graduating this Saturday but for your assistance. Once again, I thank you all for your vote of confidence, your continued support, and for all that you have taught me. I will make you proud.

Thank you and farewell.

Most sincerely,

Karlin J. Itchoak
3L

Crumbling myths and dashed

By James Maule

Perhaps no greater hurt comes than from the dashed expectation. The canceled vacation. The rejection letter coming on the heels of a great interview. The other team's successful 60-foot desperation 3-pointer when your team is up 2 with 0:01 on the clock. In law school, it's not just the unexpected non-A grade. It's the classroom experience so different and so unexpected that it triggers the same emotions as do the cancellations, the rejections, and the losses.

That law school education differs in terms of subject matter isn't the issue. It's the existence of a different educational objective: to help students acquire the habit of "thinking like a lawyer" and to internalize the experience of "practicing like a lawyer."

The second one may be easier. It can be fun. It's part of the motivation behind the explosion in available clinic experiences. It's the simulated trials, the appellate arguments in competitions and in practice preparations, the drafting courses with mock clients, the pro bono extracurricular activities, and probably some other things I have overlooked. Indeed, all of these things require diligence and effort. No problem. Hard work is always a lot easier when it's fun and when it feels good.

It's the first objective that is such a thorn in most students' sides, at least until they catch on to the reality. Most students are unfamiliar with the practice-oriented endeavors, so there's little risk of dashed expectations. But all students have been enrolled in classroom courses, and thus all students bring expectations of what should happen in the classroom. When those expectations are reinforced, it is even more difficult to break old habits and junk old approaches. Yet tossing out routines is easy. The challenge is developing and learning new ones. It's particularly disappointing when it comes as a surprise that "the way I was doing things doesn't work anymore." It's even worse when people refuse to pretend that there is some way to get by with the old outlook.

Creating expectations of what law school education will be by relying on previous classroom experiences creates a set of myths. Deconstruction of these myths is an unpleasant task, and the temptation is to avoid doing so. It's much easier to twist one's participation in legal education to fit the myths. The result? The dashed expectations appear during the first legal job because employers do not, and cannot, twist their clients' problems to fit the myths.

Myth #1. Law consists of rules, so the only thing faculty should do is just to tell us what the rules are. Deconstruction: Law consists of the processing of rules in the context of facts. The rules alone are useless, and sometimes there are no applicable rules. In fact, the rules change, sometimes quite frequently, so just "knowing" the rules ultimately is useless. Thinking about the rules, how to use them, and how to change them brings perpetual value.

Myth #2. All we need are the answers, and if we don't get them, we're not being well taught. Deconstruction: If law consisted simply of questions and definite answers, computers would replace lawyers. Clients generally pay for advice when the answer isn't clear, when there are two sides to the story, when there are conflicting appellate opinions, or when there is no authority whatsoever. Often there is more than one possible strategy, creating answers of "It depends" or "Who knows?" To think there always is a "clear answer" is an invitation to serious problems in practice.

Myth #3. The professor's job is to teach us by providing information. Deconstruction: In graduate school, the responsibility for acquiring information is the student's. In theory, classroom discussion presupposes an equality of informational background among the participants. Sadly, it never quite works this way. The risk is that the professorial attempt to ensure that the informational background is not too dissimilar is translated into an "Oh, good, we get lectures and can take notes so we can regurgitate information on the examination just as we did in college" mindset. Yes, students are expected to have strong knowledge of the subject before entering class.

Myth #4. Anything not directly on point to the issue is a useless tangent. Deconstruction: One of the most important skills of an efficiently thinking lawyer is the adept use of analogies. When there is no answer to the resolution of question 7, it helps to look at the analyses used for questions 6, 8, and perhaps 43.j.2(a). Out on those tangents are the clues to resolving the problem confronting the lawyer or student that has no answer.

Myth #5. We are the ones who should ask questions, and good teachers do not ask questions in response to our questions or comments. Deconstruction: Not only is the asking of a question in response to a student question often the hallmark of the quasi-Socratic method, once and justifiably pervasive in legal education, it also is a genuine attempt to probe and develop a student's mind.

Myth #6. We don't need to attend school if we must teach ourselves, and thus law school courses should not be self-taught. Deconstruction: Law school is all about learning how to teach oneself. There are good ways and bad ways to teach oneself. By attending law school, students learn how to identify and use the method of self-teaching that is most effective for them. Introducing students to a variety of self-teaching methods that seem strange (and intimidating) because they are new and different is part of that process. Helping people learn to teach themselves is called education. Students attend law school to acquire a legal education, not to be taught law.

Myth #7. Good teaching requires that all communication occur in the classroom. Deconstruction: Does good lawyering demand that all communication occur in the courtroom or the partner's office? Intranets, e-mail, digital bulletin boards, on-line filing, and electronic

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Crumbling myths and dashed expectations

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conferencing permeate 21st-century legal practice.

Myth #8. We can do well by cramming at the end of the semester because that approach worked in college. Deconstruction: That approach doesn't work in the practice-oriented courses, and for the same reason it doesn't work in the other courses. Learning how to use rules in solving or preventing legal problems can no more easily be learned the night before an exam (or the night before a trial) than can an orchestra give a stellar performance of a new opus first encountered two hours before the house lights dim.

It's no fun finding out that class, practice, or life isn't tracking one's expectations. It's easy to translate that disappointment into "I hate law school," "I dislike this," "I resent that," or some other negative expression or to act out one's frustration in misbehavior of one kind or another. Rather than rebelling and griping, it's better to amend the expectation to comport with the realities of law and legal education and to abandon unrealistic standards. At that point, law school can become a fun experience that boosts self-esteem and enriches one's life. Far fewer cancellations, rejections, and losses.

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This article is an abridged version; the original version (with 15 myths) was published in the Villanova University School of Law Gavel Gazette newsletter, and can be found at http://www.law.villanova.edu/shared/gavelgazette/docs/2002/09-03-2002.pdf.

CALL FOR PRESENTATIONS

"Active Teaching and Learning"

Eleventh Annual Summer Conference of the Institute for Law School Teaching, July 9-10, 2004

The Institute invites proposals for conference workshops on active teaching and learning methods in law school. The Institute is committed to improving the quality of legal education. The Institute's annual summer conferences provide a forum for dedicated teachers to share with colleagues innovative ideas and effective methods for legal education.

The theme for the July 2004 conference is "Active Teaching and Learning." The Institute encourages proposals for workshops that explore effective uses of Socratic dialog and active alternatives to Socratic dialog, such as discussion, simulation, writing, experiential methods, and others. The Institute is interested in proposals for workshops that address successful methods to encourage student preparation and participation in class. Finally, proposals for creative workshops that are consistent with a broad interpretation of the conference theme are welcome.

The proposals should be for 75-minute workshops. The workshops can address first-year courses, upper-level courses, clinical courses, skills and writing courses, and academic support. Workshops that explore either high- or low-tech methods for active teaching and learning are appropriate. Each workshop should include materials that participants can use during the workshop and when they return to their campuses. Presenters should not read their papers but, instead, should model active teaching methods by engaging the participants.

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

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

The Institute must receive proposals by January 12, 2004.

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

The conference is self-supporting. The conference fee for participants is $400, which includes materials and meals during the conference (two breakfasts, two lunches, and one dinner). The conference fee for presenters is $200. Pleasant and reasonable accommodations are available near the new building of Gonzaga University School of Law, the site of the conference. Presenters and participants must cover their own travel and accommodation expenses.

For more information, please contact:

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Performance testing

By Teresa Buchheit Klinkner

There is a disconnect between law school curriculum and bar examination preparation. This gulf benefits only the bar review courses, not our students. Bar review courses will never be rendered obsolete; they are a necessary component to focus study in the final months before the bar.

However, there seems to be no compelling reason for law school professors to avoid including some bar examination preparation skills in the law school curriculum.

For example, the majority of bar examinations in the United States now include a "performance test" component. Yet, performance testing is an unknown format to many law professors in the United States because they took a bar examination that consisted only of essay questions and the Multistate Bar Examination (MBE). Humans tend to avoid things they do not understand. Law professors are human. Therefore, law professors tend to avoid performance test issues.

[R]equiring students to write a legal memorandum as a final examination is appropriate because the class had spent an entire semester on the topic.

My own firsthand experience with performance testing comes from sitting for the California bar after practicing for over a decade and teaching law school, as both an adjunct and a full-time professor. Within weeks of having graded Property exams in another state, I found myself sitting in a bar review classroom in west Los Angeles surrounded by hundreds of anxious, recent graduates listening to a Torts lecture. Assault, battery, and conversion . . . the experience was surreal. Besides grappling with the potential karmic implications of being a student again, I determined to learn more from the experience than just how to pass the bar. The simple lesson learned was that law professors have opportunities to incorporate some basic bar preparation information in every course in law school.

After practicing for the last couple of years, I returned to teaching. As a junior faculty member, I was asked to fill in for an ailing colleague and teach a section of Legal Analysis and Writing (LAW). The course involves student preparation of a closed research memorandum and an open research memorandum. The LAW course also includes a final examination, which is a performance test that requires the student to write an objective legal memorandum. Initially, I was surprised at the notion of a final examination in a writing class, as my experience had consisted of grading only memoranda and written assignments during the semester. However, requiring students to write a legal memorandum as a final examination is appropriate because the class had spent an entire semester on the topic. And, as an actual performance test experience, the students are given an opportunity to assess their time management, reading comprehension, analysis, and writing skills years before sitting for the bar examination.

The task of writing an objective legal memorandum is only one of the tasks that can appear on performance tests. Fact gathering, persuasive brief writing, and factual analysis are other skills commonly tested. The testing materials include a task memo, a file, and a library. The task memo gives some facts and direction. The "file" includes factual materials such as letters, depositions, or affidavits. The "library" consists of the cases, statutes, regulations, or other legal resource material that the student must read, synthesize, and apply to the facts. To review examination formats, a useful resource is the National Council of Bar Examiners website (www.ncbex.org), which provides sample multistate performance tests. By reviewing these and other samples available from your jurisdiction's bar examiners, one can quickly get a sense of how to structure such an examination.

One of the more difficult aspects of preparing the LAW examination was to make it feasible for first-year students to complete within the two-hour time frame available for the class. For my first-semester, first-year class, the examination included three very short cases and provided the "question presented." The "file" section was abbreviated so that relevant facts were given in the task memo.

During an optional examination review class, I reviewed performance test skills with the students. I circulated an example of a recent California performance test. By familiarizing the students with the format, I hoped that they would not panic at the sight of a different type of examination. Also, it demonstrated to students that the work they were doing even in the first year of law school was relevant to their common ultimate goal of practicing law. Judging from the final results, the students were able to handle the examination format and performed about the same as they did on their memoranda assignments.

Law schools should never teach bar examination preparation only. However, practical bar examination preparation should not be wholly excluded from law school classes. Law professors can incorporate some skills and methods in the standard course curriculum that will prepare students for the bar examination. With just a little extra effort, professors can create connections to the bar examination experience that result in tremendous added value for the students.

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Gonzaga Law Review
Issue on law teaching and learning

By Gerry Hess

The Institute and the *Gonzaga Law Review* collaborated to produce Volume 38:1 of the *Review* devoted to legal education. The contents of 38:1 vary considerably in topic and format, including essays, articles, and empirical studies. The strong common bond is the authors' commitment to helping legal educators improve the quality of teaching and learning in law school. In this issue you will find:

- An empirical study by Robin Boyle, Karen Russo, and Rose Frances Lefkowitz that demonstrates the effectiveness of an innovative teaching method, the Contract Activity Package;
- An article by Charles Calleros describing a way of teaching case analysis, legislative process, and statutory interpretation through a series of exercises built upon a video of a family working out rules governing social activities for a teen-age daughter;
- Kenneth Chestek's "moot case" approach to teaching the traditional skills that are the focus of most first-year legal writing courses (legal analysis and research; predictive and persuasive writing) and additional skills as well (client and witness interviewing, drafting pleadings, negotiating, and handling ethical dilemmas);
- Barbara Glesner Fines's article that exposes two types of teacher bias (credential and generational) that negatively affect student learning and suggests strategies for legal educators to enhance student performance through expectations, silence, and space;
- Draft "Guidelines and Commentary for the Evaluation of Legal Externship Programs" that J.P Oglivy offers as a vehicle to achieve consensus among legal educators concerning the standards for assessing these programs;
- An essay by Jack Sammons advocating a curriculum reform process to bring together the two dominant schools of thought about legal education—the traditionalists and the technicians—and ultimately to help students become good professionals;
- Adam Todd's article advocating the full integration of the goals of academic support programs into the culture of a law school and a systematic approach that engages the faculty and administration in the academic support mission;
- Mary Pat Treuthart's call for legal educators to employ service learning in their courses to deepen their students' understanding, to connect course work to human experience, and to encourage students to make public service an important part of their lives;
- My article exploring the process and value of journal writing for teachers to record, reflect upon, understand, and develop their assumptions and practices about teaching and learning.

To receive a free reprint of Volume 38:1 of the *Gonzaga Law Review*, contact the Institute (ilst@lawschool.gonzaga.edu).

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The Law Teacher

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Why do you teach?

We are interested in knowing why you teach. Please tell us your story in 450 words or less. Send your story to the Institute at ilst@lawschool.gonzaga.edu.

Why I Teach

By Angela Mae Kupenda

I'm sure you've heard the saying, "Those who can't, teach." While it is usually meant to disparage teachers, it can be taken as expressing a meaningful calling. Now, before you become outraged thinking that one in the academy is admitting lawyerly incompetence, let me explain. Let's face it. Although I desire to be, I can't be a congressional representative, trial lawyer, lobbyist, school principal, judge, law clerk, corporate lawyer, social activist, grassroots organizer, etc.—all in one lifetime.

So I teach. And, as I teach others who later make a positive difference in the halls of congress, politics, grassroots communities, corporations, elementary schools, etc., I get to indirectly affect many arenas in my lifetime. I teach, therefore, to make a positive impact on society in a way broader than one person normally can in a single lifetime.

Four years ago, my niece, Monica, was trying hard to learn how to ride her bicycle without training wheels. One afternoon, Monica left me a voicemail, saying, "Auntie, hurry to Nana's after work. She's taught me how to ride my bike." Now, Nana is my mother and she uses a wheelchair. She probably has not been on a bike in over 60 years. I wondered how she could teach Monica to ride, because Nana can't ride. When I arrived, Monica was racing around, confidently and expertly handling her big bicycle. As I stood with my mouth open, she yelled back that Nana talked to her and explained how to hold her body and balance. I looked over at Nana, who was sitting there in her wheelchair, beaming and looking as proud as Monica. I thought, "Those who can't, teach."

I teach in the way my fifth-grade teacher, the late Mrs. Mary Jane Pace, taught me to have a confident, bouncing-back-and-never-giving-up attitude, all while I was attending post-*Brown*—but still separate, unequal, and all-black—schools. She taught us to think for ourselves, to explore ideas without fear, to believe in the dignity and worth of all individuals. She taught us that we can do almost anything we set our hearts to. Mainly she taught us to be educated and responsible people and not educated fools, to use her language.

Why do I teach? I teach because I can't. I can't do it all and make a difference everywhere. But, maybe one day I will have made a difference in many other arenas, just like Nana and Mrs. Pace made in Monica's and my life.

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By Ben Bratman

It was a typical day in the paper-heavy world of civil litigation. As lawyer for a corporate defendant, I was drafting the client's responses to plaintiff's discovery requests. My mind wandered. I asked myself if drafting this document—identifying peripheral witnesses who "might have knowledge" but really wouldn't know anything, cutting and pasting perfunctory objections from previous responses, etc.—would somehow improve another person's life or make the world a better place. I then spent 15 minutes concocting a grossly attenuated link between a defendant's discovery response and a greater social purpose. (It was not billable to the client!)

It was experiences such as this that led me down a new career path to teaching. Logically, then, I could say that I teach for a not uncommon altruistic reason: to make a positive difference in the lives of others.

However, my reason for teaching is not that simple. After all, many practicing lawyers can and do improve the lives of individuals through advocacy in civil rights, domestic relations, and other fields. But lawyers who toil within the wide ambit of civil litigation attempt to make a difference within a limiting framework. It is a paradoxical framework in which attorneys spend relatively little time in the courtroom and most of their time in the office tending to paperwork and telephone calls as they manage the various pre-trial phases of lawsuits that take too long to get resolved, and then only sometimes with an outcome that makes a positive difference in the client's life.

Of course, non-litigation attorneys spend even more time off their feet and out of the courtroom than litigators do, so corporate work or the like did not suit me either. I am too much of a ham to sit in an office all day. Criminal trial work had some appeal, but who would make my trial schedule? What limitations would there be on how I could present my case or on how much I could "perform" before the jury? And what satisfaction could I get from talking to jurors who could not ask questions of me (nor I of them) and whom I'd most likely never get to know?

And thus my introspection led me to teaching and to identifying more specifically why I teach. Teaching provides me a flexible framework within which I have the autonomy to make a difference in ways I think best serve legal education and the legal profession. As I develop professional relationships with my students (whom the ham in me sometimes thinks of as my "audience"), every interaction I have with them, collectively and individually, is a unique opportunity to prepare them for a profession in which I hope *they* will make the difference.

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