



GONZAGA UNIVERSITY

# THE LAW TEACHER

Institute for Law School Teaching

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## Reclaiming purpose – our students’ and our own

By Daisy Hurst Floyd

Over the last three years, I have asked law students to help me discover the ways in which legal education affects their transformation into lawyers. My goal is to better understand the ways in which law students develop their professional identities and is spurred in part by the current crisis of meaning in the profession. What seeds do we sow in law school that are manifested, both positively and negatively, in the profession? To the extent that we are sowing the seeds for negative professional experiences, what can we do to mitigate that effect?

The most revealing – and most troubling – answer is that law school causes students to lose the sense of purpose that made them want to be lawyers. The loss is not only harmful to individual students, but it also has enormous negative consequences for the profession and for those served by the profession.

This realization was first brought home to me during a class discussion about the third year of law school. Third-year students described feeling apathetic, even paralyzed, about their legal studies and their futures as lawyers. Several described their journey from excitement about beginning law school to their disappointment with the reality of law school and their resulting perception of law practice. A second-year student, who had been listening attentively, suddenly spoke up: “It’s like the grief process,” she said. “Hearing their stories is like listening to the ways in which one moves through the stages of the grief process: there is loss, then denial, then mourning, then anger, then acceptance. The third-years have arrived at the acceptance stage. They have accepted that what they thought this was all about is not accurate. It’s turned out to be different from what they hoped.” As she spoke, there were murmurs of recognition and assent, along with some laughter at such a grim metaphor for the law school experience. We pursued her construct: If the students thought she was accurate about the grief process, what was the loss they had experienced? What loss had been grieved and now accepted as gone, what had they had at one point that was now dead?

Over time, my students have offered an answer: They recount losing the sense of purpose – their visions of what it means to be a lawyer – that brought them to law school. Not only have students been able to articulate the loss of this vision, but they have repeatedly described the loss as quick and traumatic, very much akin to a death, reinforcing the aptness of the grief metaphor.

Students come to law school with an idea that being a

lawyer is something meaningful, something important and valuable. They are drawn to a vision that includes a job undertaken in relationship with and on behalf of other people, helping clients to solve problems or to move through difficult times. While they may not have a detailed or even realistic picture of what lawyers do, students envision themselves engaged in professional work that is intellectually challenging and that has value and meaning. They arrive at law school with hope and expectation that their work as lawyers will have a positive impact for society as a whole. For many, the external rewards may also provide an incentive, but those are the only incentives for very few. It has become quite clear to me that my students want to feel good about what they do professionally, which requires that their work give them something beyond the superficial benefits of money and prestige.

Upon beginning law school, students quickly learn that law school values rational, objective analysis to the exclusion of other qualities, such as self-awareness and interpersonal relationships. They also learn that winning – as measured by the prizes of grades, law review membership, and certain jobs – is the most important goal. They believe that they must adopt those values as part of their changing professional identities. They believe that their personal visions of lawyering are naive and unrealistic. As a result, students replace their hopeful expectations for their work lives with minimal expectations for finding meaning and purpose in their work. They will accept unfulfilling work environments because they think that there is no other option.

These reduced expectations impose a terrible burden on new lawyers as they begin their professional lives. If we as legal educators are contributing to that burden, we are failing our students and our profession. We must find a way to correct that failure.

The question, of course, is how to do so. My students have helped me begin to see some possible ways.

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# Reclaiming purpose

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The first is that students are helped by strengthening or developing skills of self-awareness and reflection. I have used a variety of techniques to stimulate reflection. They include written essays, brief in-class reflective exercises, participation in a Web-based discussion board, class discussion, and longer experiential or research papers. I have also used the Myers-Briggs Personality Type Indicator as one method of discussing the importance of self-awareness and understanding of others.

Some students come to law school with skills of self-awareness and reflection; others do not. The time demands of law school, the competitive environment, and the emphasis on analytical reasoning devalue self-awareness and prevent reflection. Yet, these are essential skills for finding meaning and purpose in law practice, as well as for forming and sustaining relationships.

Similarly, students report positive outcomes from opportunities to develop connections with each other and with lawyers and other professionals. In some classes, I have hosted weekend retreats with students and between five and eight professionals, lawyers, and others (e.g., a doctor, journalist, ethicist, and psychologist). The retreats have offered time for intensive discussion on a variety of topics as well as for informal interaction. Additionally, lawyers and others have participated as guest speakers, in person or through electronic means. I have also brought lawyers into the classroom vicariously through fiction and nonfiction works, including biographies. Because many law students feel isolated, students report surprise and relief upon learning that their reactions to law school are similar to those of other students. This realization was particularly helpful in demonstrating to students that anxieties and even fear are normal parts of becoming and being a professional and not indicative of incompetence, as many had perceived in their isolation.

Additionally, students are reassured by hearing lawyers discuss their own successful searches for meaning in their professional lives and for achieving balance and integration of their professional and personal lives. They are relieved to hear professionals talk of dealing with fear and of making mistakes and correcting them. We have had intensive and energetic discussions of whether it is realistic to view work as a calling, as defined by Frederick Buechner: "The place where your deep gladness and the world's deep hunger meet." Meeting lawyers whom they admire and who are interesting and enjoyable to be with is reassuring to students, helping to mitigate the negative public perception of lawyers. One student's comment about the interactions with professionals is illustrative. They offered, the student said, "insight

to people starving for guidance, hope, and reassurance."

A number of students report a reclaimed sense of purpose from these experiences. From one student: "I walked away . . . feeling as though I did make the right decision by choosing this as a career path." From another: "I want to be the same person at work that I am within myself. I don't want to sacrifice my values or passions because my job requires it. . . . I now have more pride to enter the legal profession and to defend the profession. I also feel more optimistic about the practice of law." From a third, discussing a new perspective on the practice of law: "This perception allowed me to be much more hopeful toward the profession I've chosen to enter. . . . No longer is the path afforded at-

torneys riddled with traps and hazards by which I may fall victim. No longer does the profession look like a battlefield, riddled with the victims of the poor tactical and strategic choices made during the various battles and wars in which we fight. Instead, it is a picture of which Forrest Gump, ever willing to

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be only himself, would be proud."

As so often happens when we teach, my efforts to help students learn have resulted in my learning. In setting out to understand lawyers' development of professional identity, my own professional identity has changed. I learned about myself, engaged in reflection about the appropriate role of legal education and educators, and connected in new ways with my students and with professionals who were brought into the teaching enterprise. As I truly listened to students' reflections about their learning, their inner lives, and their professional and personal concerns, I developed a greater appreciation for the depth and complexity of their lives. I see them differently, which has broadened my vision of what it means to be a law professor, just as I was attempting to broaden their visions of what it means to be a lawyer. Thanks to my students, I have reclaimed my purpose as a teacher.

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# I swear by my tattoo

By Sheila Simon

Great ideas come from all directions, and many of my best arrive by accident. In a routine whinefest with colleagues last year, I was complaining about the number of students who regard the Issue-Rule-Application-Conclusion structure as an optional way to organize a memo. As a joke, I said that I wished I could tattoo the letters “IRAC” onto my students.

Well, I did it!

As a parent, I have known about temporary tattoos since my older daughter’s kindergarten carnival. That was the time I got a lovely butterfly tattoo on my hand one Friday evening. By Monday morning I had the scouring pad out trying to get the thing off before going to court. An important lesson in discreet tattoo siting.

I just brought temporary tattoo technology to the law school classroom.

A message on a body is a statement of importance. How many times have you scheduled a meeting with a student only to have the student whip out a pen and write the time down on his or her hand? Classic crib notes are scrawled on the body, too. And I have seen football coaches with a plastic play sheet taped to a forearm. Carrying a written message close to your body is a religious tradition with origins in the Book of Deuteronomy, which recommends binding certain prayers to the head and arm. A permanent tattoo is reserved for a message of great significance, such as your branch of military service.

I wanted to tattoo my students to show them the significance of the IRAC structure. IRAC is information you don’t want to lose. It can help in an exam. It can help you make key plays. And as far as importance, I see it as right up there with the Almighty and the Air Force.

So I ordered temporary tattoos. A local business that prints shirts, jackets, and other things did the design work and sent it off to be printed. All I had to do was tell the designer the words that I wanted. They made it look cool. In about four weeks I was ready to deliver my message.

It worked even better than I had anticipated. My students, most of whom are closer in age to my daughters than they are to me, knew all about temporary tattoos. The tattoos had instructions on the back for those who weren’t familiar: Slap it on the skin and hold a damp cloth behind it for half a minute, then peel off the paper. I brought a moist paper towel to class to pass around to

those who wanted to tattoo themselves on the spot. Most students eagerly joined in the tattoo-parlor fun. And as if it had been planned in advance, the first student to tattoo himself displayed his shoulder for the class in a pose that would make Arnold Schwarzenegger jealous. This is now my mental image of a strong structure.

One unanticipated bonus was what I call the freebie effect. Students seemed genuinely pleased to get this small treat. (If you need proof of this effect, open your desk drawer and check for pens and notepads from the most recent AALS conference.)

The message of the tattoos has lasted even though the physical image has worn off. One student came in

when he was working on a draft of his first memo. He proposed a new structure that he thought would work well for the problem. I asked him to guess how important I thought the IRAC structure was based on what words I chose to have him stick to his body. He got the message. He may well adapt the IRAC structure to fit future problems, but on

his first memo I wanted him to master the basics. And for the students who needed a reminder about structure after their first memo, I offered to tattoo them again. Receiving critique on writing is always hard, and using a tattoo to make it a little less painful is a good trick.

This good trick is not limited to legal writing classes. How about the requirements for adverse possession – aren’t they just begging to be on a tattoo? Yeah, yeah, you’re laughing now, but just wait, let the idea settle in and see if you don’t imagine a list of hearsay exceptions bulging on your biceps.

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# Sinners, Saints and Lawyers

## Exercises for teaching ethics

By Ben Sheehy

**E**thics is a difficult subject to teach and some may argue it is un-teachable altogether. Without starting a chase of that red herring, the fact is that ethics is a fundamental part of any profession, and particularly, the law.

### Teaching Legal Ethics

The tendency, when ethics is being taught at all, is to teach it as a traditional philosophy course, with readings from the Greats and a few contemporary authors. Unfortunately, this approach leaves the student with little in terms of concrete, directly applicable thinking and no practice to deal with the challenges facing him or her in a law office. The alternative of providing a series of cases in which lawyers or other professionals have failed to live up to their professional codes of conduct and been disciplined seems more like a medieval morality play. The challenge for the law teacher is to make ethics real. To make it what it is in real life: an integral part of daily practice of the profession. How to do that?

An approach welcomed by students and that seems to be effective is a practice dramatization. I have developed three cases that the students negotiate with one another, in which there are fundamental but common ethical dilemmas. Each of these dilemmas represents a different category of ethical problem very likely to be confronted in legal practice. The gravity of the dilemma can be experienced only in the real-life situation; however, the meaningfulness of the situation can be communicated through role play.

The pressing aspect of ethics in professional practice is not in understanding “What is the right thing to do?” although in part this is the question. The issue is more subtle. That is, “What can I do and still be within the bounds of my professional obligations and personal comfort?” Part of what creates the ethical dilemma is that the lawyer has a duty to act in a way that creates the dilemma but must avoid pressing it too far in order to avoid behaving in a manner considered to be unethical.

In three main areas the “what is right” issue and the reality of practice collide. These areas are: helping the client, conflict of interest, and taking advantage of a situation. Let us now examine three practical exercises that can be used to educate the students.

### Exercise 1: Helping the Client

The ethical question in helping the client is “How far can I go as a lawyer in helping the client?” The student can experience this in an exercise where the student acts as a lawyer representing the client in negotiations with a bank. The bank has concerns about the client’s ability to repay on the basis of sales reports provided by the client. The lawyer knows that the client’s sales are not as represented.

Nevertheless, this client has been a good client and promises a considerable amount of future business. Without this financing, the client is unlikely to be able to continue business.

The lawyer’s governing body prohibits the lawyer from misrepresenting facts to other lawyers. The bank, however, is dealing directly with the lawyer and not using its own lawyer. Here the dilemmas are: the lawyer’s desire and obligation to help the client to get financing, the lawyer’s obligation of honesty to other parties, and the lawyer’s internal conflict of interest in keeping a promising client.

### Exercise 2: Conflict of Interest

The conflict of interest dilemma grinds at professionals daily. The student experiences the dilemma in an exercise where a client has retained the lawyer to do a large amount of work within the next week. In anticipation of the work, the client has deposited a considerable sum in the lawyer’s trust account. The lawyer has an outstanding obligation to the landlord that is urgently overdue and needs a small portion of money held in trust to pay the obligation. The lawyer’s conflicting interests are holding money in trust until the work is done and an account rendered and making payments necessary to remain in business.

### Exercise 3: Taking Advantage

The ethical dilemma presented by the opportunity to take advantage of a situation is also commonly encountered. These situations arise when a lawyer has a specific advantage in a situation resulting from expertise, particular information, or some other such advantage. Ethically, the legal professional is required to take every possible step to advance the case of the client; however, the same ethical code requires the lawyer to deal ethically and not take advantage of a misstep of a fellow lawyer. An exercise giving students an opportunity to experience this dilemma is an instance when a lawyer acting for a lending client in a commercial transaction has an opportunity to register a security interest ahead of another lending party. If the other lending party is a bit slow in getting the security registered, should the lawyer register for her client?

To register ahead could permit that lawyer to negotiate an even better position for the client in exchange for giving up the first position. In addition to the obvious problem of sharp practice, the lawyer also needs to consider the potential liability for not registering immediately and perhaps permitting a third party to register ahead of her client. This exercise shows another aspect of conflict of interest more subtle than dealing with trust funds, but much more pervasive in the practice of law.

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# Exercises for teaching ethics

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To this exercise can be added the confounding factor that the lawyer who is late has previously engaged in unethical conduct toward the lawyer for the second lender.

## Setting up the Exercises

For each situation, the students can be divided into groups of between three and six. In each group, the students are assigned roles commensurate with the facts of the situation. For example, in the “how far can I go for a client” situation, one student (or more) plays the lawyer, the other the banker, the third the client. Each student in the group must get two fact sheets – one outlining the overall situation given to all the students in the group and one detailing the specific position, with confidential information and instructions on what is to be accomplished.

By working through these cases in a dynamic situation, the students get to “feel” the ethical dilemma. Ethics are dynamic, and as the situation develops the ethical tension grows. As students work their way through these exercises their appreciation of the ethical difficulties grows.

## Debriefing and Conclusion

After the exercise, a debriefing assists the students in understanding the conflicting thoughts, feelings, and loyalties they experience. The debriefing can be arranged as follows. All the students who took a specific role can discuss their thoughts and feelings together and prepare a consolidation of the experience for presentation to the class. Once each group has prepared a consolidation of the experience, the class can be called together and the specific facts of each situation disclosed to the group. This disclosure will permit the students to understand all the aspects of the ethical

dilemma. It may also change the way students see their own actions and cause them to wish to reevaluate their consolidated reports. A brief opportunity should be granted to the students to revise the reports. However, the students should be advised to keep track of their earlier opinions. Once they are ready, each group can present its consolidated report.

The subsequent class discussion can be guided around the different thoughts and feelings presented in the consolidated report. The consequences of actions taken by the students can be discussed as well. Finally, the students with the guidance of the professor can make some determination about the ethics of the various courses of action selected.

It is important that each student have an opportunity to experience the conflict of interest position in the foregoing situations. To that end, it is best to rotate the students through the exercises to ensure

that each has the opportunity.

This series of exercises has proved to be a very helpful and insightful way for students to understand the nature of ethical problems in the practice of law. It provides them with a number of safe opportunities to flex their ethical wings and consider after the fact, without grave consequences, the “rightness” or “wrongness” of their actions.

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## Submit articles to *The Law Teacher*

**T**he *Law Teacher* encourages readers to submit brief articles explaining interesting and practical ideas to help law teachers become more effective teachers. Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. The deadline for articles to be considered for the next issue is September 3, 2003. Send your article via email, if possible. After review, all accepted manuscripts will become property of the Insti-

tute 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](mailto:ilst@lawschool.gonzaga.edu).

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

# Computers in the classroom – New distraction, as old as day dreaming

A recent *New York Times* article sparked an interesting LAWPROF listserv conversation on how laptop computers in the classroom affect teaching and learning. The following excerpts, expressing varying points of view, are only a few of the contributions.

## Bill Slomanson:

As more and more students shift to laptops for the classroom, and ExamSoft for finals, technology presents a greater challenge to holding their attention.

But if my students choose Solitaire or day trading as an alternative to me, then this is MY problem. In this context, technology is actually a tool for self-assessment rather than a barrier to my lesson plan. It is my job to be more creative in finding ways to hold their attention. I rely on the potential for distraction as a gauge of whether I have more to offer than what may lurk on the other side of those increasingly ubiquitous laptop screens.

## Edward P. Richards:

While I can do a pretty good standup routine in Torts, there are lots of difficult areas in Administrative Law that defy the Robin Williams approach to learning. For students with short attention spans, there is no effective way to compete with computer-based distractions, much less online instant messaging and porn. While students have always done things to waste time in class, the pre-computer distractions were less compelling. More importantly, they were less distracting to others – a student might do the crossword or read a paperback, but in most classes they at least kept them hidden. With the computer we have given them open invitation to do other things, and to distract those around them as well. Students who go into a trance and type a transcript of the class provide a pretty noisy distraction to those around them. Even if we do not care about whether some students zone out in class, don't we have a duty to the students who are not yet zoned out?

## Bill Slomanson:

I agree we have a duty to the students who are not yet zoned out. What I'll dub technology's "Distractor Factor" helps me to fulfill that duty. It requires me to be ever-vigilant about making my class time more interesting and more useful than any distraction, including the technology revolution. I refuse to blame a lack of interest on anyone but myself.

I appreciate your challenge to my basic beliefs, which forces me to reassess them.

## M.H. "Sam" Jacobson:

The best way to get students off the computers and prepared for class is to give them something to do. Despite all of the literature about the effectiveness of active learning, most of our classrooms have students sitting and listening, the most passive of activities, while only one (the professor) or two (the professor and a student) get to talk about and be actively engaged in the material. If you let all of the students apply the information (e.g., to solve a problem) or discuss the information in groups, computer usage grinds to a halt, all of the students have to be prepared to be able to

solve the problem, and all of the students are actively engaged in the material because each has the opportunity to talk about it.

## Daniel A. Levin:

I essentially agree that it is the professor's obligation to engage students so that students choose to pay attention

to the class, rather than to non-course-related activities. My concern is with the power of a computer to distract other students. Some students always have and always will conduct non-course activities in class. Students have always been able to read a newspaper, do a crossword puzzle, work on homework for other classes, etc. Doing these things in class can distract other students and so I have always asked my students not to do so.

Computer screens can be large and are often filled with color and motion. This creates a new and increased power to distract students, at least those sitting beside and behind the screen in question. In summer 2002, I took a five-day computer law seminar at Harvard. It was an excellent seminar. A conference attendee in front of me was surfing the Web during much of the seminar. The Web sites this person was viewing were not related to the issues we were discussing in the seminar. Even though I was deeply interested in the seminar presentations and discussions, my eyes were drawn to the color and motion on the screen of the attendee Web-surfing in front of me. So I was distracted even though I really did not want to be. I tried to avoid looking at her screen, but that was difficult, as she often changed Web sites, creating motion on her screen. If she had been sleeping, reading a newspaper lying flat on the desk, or doing a crossword puzzle, I don't think I would have been distracted nearly as much, if at all.

## Ralph L. Brill:

Yes, students do play games, send email, surf the Web. Some get great training to be court reporters by attempting to write down everything that is said, without much passing through their brains. But in the pre-computer days, some read papers, passed notes, did crossword puzzles, played

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# Computers in the classroom

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tic-tac-toe, doodled; some wrote everything that was said in class longhand, without anything passing through their brains.

Are the student performances any worse than they were before? There obviously are some variables that would have to be accounted for, like a higher average LSAT for the current generation, but in my experience the answer is a resounding NO. Good teachers still get rapt attention. Classes taught after lunch still get some sleepy students and no one could wake them up. The computer is just the replacement for the pen; the students and their motivations stay pretty similar. I remember when schools wanted to ban students' bringing in calculators in accounting or math classes, or ban typing exams.

There are many things one can do to combat the problem. Counting class participation as part of the grade is one. Calling on students, randomly and repeatedly, helps. Using computers and projectors instead of blackboards can help, by forcing the students to at least look at the screen. I have taken the position that one needs to use many different devices over a semester. Some students are visual learners, so I draw a lot of pictures or scan photos into my PowerPoint or Corel Presentation screens. Some are aural learners, so I try to repeat important things at least three times during a discussion or summary, in non-identical terminology. Many can't understand without concrete examples, so I provide lots of examples, either orally, visually, by video, by acting out, etc. I use familiar people as the basis for examples, either people in the news, celebrities, or other professors. I constantly use humor as best I can. One hopes that something one does will work. In my opinion, though, artificially trying to control the students by turning off the access to the Web, or banning computer use, is not worth the effort.

## **Barbara Glesner Fines:**

While the distractions are new, the issue is as old as daydreaming. We cannot blame technology for distraction – it is a natural response. Prohibiting technology in the classroom will not keep minds from wandering. Students who are somewhere else – whether the *NYT* crossword puzzles, the cram for the following class, or the Internet – can indeed disturb their classmates and we do have an obligation to keep disruptions to a minimum, but again, the culprit is not technology, it is people.

We have a responsibility to all the students – zoned out or not – to make class time productive and engaging. Our responsibility is to engage those people with ideas. Entertainment and engagement are not the same thing, and surely our goal should not be for the students to be paying attention to us but to the ideas we are trying to explore. To engage students, lecture – even Socratic-punctuated lecture – is one of the most difficult teaching methodologies. Some folks are absolutely brilliant at engaging from the podium but I've personally only known a handful, and even they had

their days.

Surely the answer here is to find better ways to engage and energize the students in our classrooms. I don't think the answer is to simply ditch classroom teaching altogether – though that might be perfectly appropriate if delivering information is our sole teaching goal. If that were our only goal, and if students prefer to receive their information through technology rather than lecture, we could simply cancel all our classes (or make attendance optional) and spend the time developing engaging, accurate, thorough, and interactive CALI lessons, Web pages, and other electronic materials. But I think all of us share other skills goals better acquired in face-to-face interaction – critical thinking, confident dialogue, brainstorming, etc. The challenge is devising teaching methods that can actively engage students in learning these skills in large classroom settings.

If we're really looking for root causes of student disengagement in learning, I wouldn't point a finger at technology. I'd look at large enrollments, auditorium-style seating, etc. Ask your clinical teaching colleagues how many of them have students surfing the Web during their teaching.

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# Reflecting on Our Teaching 2003

## Three Days of Thinking, Walking, Writing, and Talking



July 16-19  
2003

Registration Deadline  
June 2, 2003



Sleeping  
Lady  
Mountain  
Retreat  
  
Leavenworth  
Washington

### Tenth Annual Summer Conference: July 16-19, 2003 Sleeping Lady Mountain Retreat, Leavenworth, Washington

#### General Information:

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

The conference will be limited to 35 participants, making it possible for us to function as a group. Each participant will be encouraged and aided in designing a "reflection event," designed to meet his or her individual, most-pressing needs for reflection and feedback. Each participant will meet twice daily in an ongoing small group, which will support each member in designing and carrying out his or her individual reflection event. Activities will also include large-group and other small-group discussions, writing, reading, and time for solitary reflection. We hope the conference will allow participants to look at their teaching through a variety of lenses, to meet people with similar concerns and goals, and to come away with renewed energy for teaching. The schedule will include ample free time for recreation.

#### Conference Facilitators: Jean Koh Peters (Yale) and Mark Weisberg (Queen's (Canada))

Jean Koh Peters is a clinical professor at Yale Law School, where she has taught since 1989. She currently supervises and teaches students representing refugees seeking asylum and children in child protective proceedings. She has frequently presented at the annual AALS Clinical Teachers' Conference and in 2001 was the opening presenter at the AALS New Teachers' Conference. She is the author of *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions* (2d ed., LEXIS Law Publishing, 2001). Her recent writing focuses on habits of cross-cultural lawyering, vicarious trauma, and finding a vocation in the law. She is also a mother, amateur musician, tennis and bridge player, novel reader, and jigsaw puzzle enthusiast.

Mark Weisberg, B.A. (Yale), J.D. (Harvard), has been teaching at the Queen's University Law Faculty for 34 years. He's interested in ethics and professionalism, how people learn and develop as professionals, as well as in all forms of writing. In the Law School he teaches Legal Imagination, Legal Ethics, Effective Legal Writing, and Torts, and he collaborates with a Medical School colleague in teaching an inter-faculty course called Images of Nurses, Doctors, and Lawyers in Literature. He's cross-appointed to the Faculty of Education and is Faculty Associate at the Queen's Instructional Development Centre, where he works with faculty members to improve teaching and learning across the campus. Recently he's co-taught a graduate course on teaching and learning for doctoral students interested in a teaching career. For his work with students and colleagues he has received provincial and national teaching awards. He lives in Kingston, Ontario, with his wife and three-year-old daughter, who is younger than one of her nieces.

#### Schedule:

##### Wednesday, July 16

6:00-7:00 p.m. Dinner  
7:15-8:45 p.m. Optional Evening Activity

##### Thursday, July 17

7:30-8:30 a.m. Breakfast  
8:30-10:00 a.m. Plenary  
10:15-11:45 a.m. Small Groups  
12:00-1:00 p.m. Lunch  
1:15-2:45 p.m. Plenary  
3:00-4:30 p.m. Small Groups (End of formal programming for the day)  
4:30-6:00 p.m. Free Time  
6:00-7:00 p.m. Dinner  
7:15-8:45 p.m. Optional Evening Activity

##### Friday, July 18

7:30-8:30 a.m. Breakfast  
8:30-10:00 a.m. Plenary  
10:15-11:45 a.m. Small Groups  
11:45 a.m.-12:15 p.m. Group Check In (End of formal programming for the day)  
Lunch  
12:15-1:00 p.m. Free Time  
1:00-6:00 p.m. Dinner  
6:00-7:00 p.m. Dinner  
7:15-8:45 p.m. Optional Evening Activity

##### Saturday, July 19

8:00-8:30 a.m. Breakfast  
8:30-10:00 a.m. Plenary  
10:15-11:45 a.m. Small Groups  
12:00-1:00 p.m. Lunch  
1:15-2:45 p.m. Final Small-Group Session  
3:00-4:30 p.m. Final Plenary (Conference ends)



# Australian study of student use of course Web site

By Andrew Field

It is now becoming almost *passé* to say that information technologies have changed the ways in which we teach courses in the law, and in other disciplines as well. Certainly the pages of *The Law Teacher* over the last few years indicate that in the United States the uses of the Internet in the delivery of law courses and materials have been, and are continuing to be, well explored. However, readers might be interested in a recent study undertaken by the author at a university in Australia that examined whether there was any correlation between the performance of business students as reflected in their final marks for a semester-long course in commercial law and the frequency of their visits to a Web site established to provide materials for that course.

The study was conducted at Monash University, Australia's largest university with a staff and student population of almost 50,000. The largest proportion of the students are enrolled in courses conducted by the Faculty of Business and Economics. Upon graduation, these students are required to have completed an introductory course in business or commercial law (i.e., Contract Law, Negligence, etc.). This study was based on the activities and opinions of just more than 500 students who were enrolled in Commercial Law from March to June, 2002. The course ran over the 13 weeks, with contact teaching hours comprising two hours of lectures and a one-hour tutorial (with discussion classes of about 20 students) per week.

## Background

When I commenced teaching at Monash University, one of the first changes I noted from my own student days was the volume of material provided to students over the Internet and the time it took to prepare it. When I was a student at law school a decade earlier, most courses revolved around a lecturer, his reading guide, and a case book. The law library was the additional aid. However, the lecturer from whom I assumed the teaching of Commercial Law was loading onto the subject's Web site an average of 30 overhead images per week for students to access and print prior to the lecture. In addition, the Web site also contained other materials, including course outlines, tutorial question books, assignment aids, past exam papers, and links to other materials. These were all materials provided in addition to the prescribed textbook.

The software package that allowed this was WebCT, which has been adopted university wide. Even though the Commercial Law course was an early user of WebCT, at no time was any audit conducted to see to what extent students were using the Web site or finding it useful. Thanks to one of the functions of the WebCT software, I noted that one of my students who was contributing greatly to class discussion had in five weeks accessed the Web site more than 150 times – which appeared to be a staggering figure. It posed

the (admittedly rather simplistic) hypothesis that there is a correlation between a student's final grade and the frequency of accessing the subject Web site.

## The Results

Once a student had initially accessed the site and downloaded the course outline, tutorial book, and a copy of the prescribed assignment question, there was in theory a requirement to access the site only once a week for the rest of the 13-week semester to download lecture notes. Perhaps a few other visits might have been anticipated to download copies of past exam papers or to access a useful research link, but it would have seemed unlikely that a student's visits to the site would go far into double figures. By the end of the semester, I found that on average students who passed the subject accessed the site 78 times.

Whether there was a correlation between student performance and use of the site was another matter. The following averages were recorded:

High Distinctions (mark of 80-100):	90
Distinctions (70-79):	84
Credits (60-69):	76
Passes (50-59):	75
Fails (40-49)*	61

(\*Figures for other fail students not included.)

At first glance, these figures show a trend. However, when it is considered that these are visits across a 13-week semester, the weekly differences are very low. Further, when the figures were broken down to determine how often the students visited the site in the second half of the semester (i.e., week 7 to week 13) – which would be a prudent course as it removes figures generated at a time when students were still familiarizing themselves with the site – a more uniform trend was observed. Specifically, the average number of visits to the site across each of the groups of students (with the exception of the fails) was in the low forties (i.e., 44, 46, 42, and 43 respectively; 34 for the fails). However, what it does indicate is that in the first few weeks of the semester the better-performing students were the students “first out of the starting blocks,” accessing the site more than anyone else in the first six weeks of the semester and setting a pattern to be continued for the remainder of the semester.

The volume of the visits raised other questions. Why were students accessing the site so often? Did they prefer it as a method of receiving teaching material to more “traditional methods” (i.e., listening and noting, etc.)?

A further survey was conducted of 100 of the students

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# Use of course Web site

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to ascertain how well information technologies have been integrated into the teaching of Commercial Law. The returns indicated that 99 of the students were visiting the site at least once a week, with more than half that number visiting the site twice a week or more often. Consequently, there was little surprise that more than 80 of the students were of the view that the site should be retained.

## Conclusion

What the study has revealed, therefore, is that although it might be considered that the better-performing students accessed the course site more often than other students, this was most evident in the early weeks of the teaching semester. What was more pronounced was the fact that the site was being accessed far more often by all students than had been presumed by the teaching staff, thus providing some evidence that the effort expended on such sites is valued.

And yet, despite these results that appear to endorse the use of Web sites to deliver course materials, responses to the final question in the questionnaire provide a pertinent foot-

note to this finding. When asked whether they would prefer to be provided with a hard (paper) copy of the course materials, 74 students responded in the affirmative with 59 of them indicating they would pay a fee to enable this. There is a clear suggestion that not all students are entirely satisfied with the use of the Internet to deliver course materials. Alternatively, at the very least it might be suggested that there is a business opportunity lurking for any "old world" printers.

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# Random walks down the aisle and class participation

By Christian Johnson & Linnie Wheelless

**A**fter attending a mock class discussion at the AALS Workshop for New Teachers, I developed a strong dislike for randomly calling on students. The leader of the session had passed out material to read ahead of class. As she began, she announced that she would call on participants randomly. Having not read the material, my stomach clenched and my breathing quickened. I knew that I was going to be embarrassed in front of the other newly minted law professors. At that moment, I believed that there had to be a better way to encourage class participation than randomly calling on students.

As I discussed this with my colleagues, I was stunned by the strong feelings held on the proper way to encourage class participation. I then had an epiphany. I decided to ask one of my former students her opinion on the whole class participation issue. When she stopped by for a visit, I put her on the spot:

**Professor Johnson (PJ):** Linnie, how do you feel about the way professors call on their students in class?

**Linnie Wheelless:** For the most part, I think it is a ridiculous system.

**PJ:** Really? Why was it so bad?

**Linnie:** It's the atmosphere, I guess. And I always felt like my professors were out to get me as they randomly called on students.

**PJ:** They aren't out to get anyone; they just want students to be responsible and prepared.

**Linnie:** I knew we were responsible for all the material, but sometimes I was so scared I'd get called on that I didn't even go to class.

**PJ:** But many professors sincerely believe that's really the only way to make sure you do the reading.

**Linnie:** I don't read because I'm scared, I read because I want to know the material. The professors don't seem to get it. If we don't read, it's because we are overloaded with other classes, extracurricular activities, or outside work. Some students are also either lazy or just don't like the material or the class. But even if I didn't get a chance to read, I would still benefit from class. And when the student obviously hasn't read, it's so painful for the rest of us to have to watch the professor pull the info out of the student.

**PJ:** What about the argument that if you know you're on call all the time, you'll be more engaged? Many professors believe that students will pay more attention and be less passive if they know that at any moment they might be called upon.

**Linnie:** Actually, it's just the opposite. If I'm worried about being called on, I look ahead at the next case to try to skim it and I don't even hear the current lecture. Even if I already read the case, I'm still looking over it just in case I'm the next victim.

**PJ:** But if you're going to be an attorney, you're always going to be on call. The judge may throw out a

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# Class participation

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question about a subject you don't know, and you'll have to come up with an answer. Or a client may ask you a detailed question about the mechanics of a corporate transaction. By randomly calling on students, professors believe that the students will learn how to think on their feet and respond to issues without prior notice.

**Linnie:** True. However, I am in law school to learn the law, how to analyze it, and apply it. I need to get some of the basics down or I'll never see the inside of a courtroom. Besides, when I'm a lawyer, my paycheck will depend on it. Here I get annoyed about paying to be embarrassed in front of my peers.

**PJ:** You always seemed to be prepared in my class.

**Linnie:** Case in point. You let students know when they are on call. That takes off some of the pressure, and we can actually pay attention to your lecture more closely.

**PJ:** I do seem to get favorable results from student evaluations when I designate students for a particular assignment rather than using the random approach.

**Linnie:** I'm sure some students read because they are afraid, but I really don't think a professor would want that to be the reason if he or she really thought it through. Ultimately, the student will face the ramifications of not reading – failing the exam, failing the bar, or even looking like a jerk in court. That's much worse than being called a slacker in Con Law.

**PJ:** I've always identified in advance those students that are going to be on call. Having taken me twice, how did that work?

**Linnie:** From a student's view, the discussion seemed to go more smoothly and efficiently when you focused on only those students who knew they were going to be called on in advance.

**PJ:** I always thought also that if the students knew in advance that they were going to be called upon, they typically would do a more thorough job in preparing.

**Linnie:** Not only that, but the other students were able to relax and focus on the lecture without worrying about whether they were going to be called upon.

**PJ:** You know, I have always wondered why you took that second course from me.

**Linnie:** I took Topics in Corporate Finance only because you were teaching it. I've never had a business course in my entire life.

**PJ:** Really? Just because I don't randomly call on students?

**Linnie:** Well, that and the fact that I'm still waiting to see that Wayne Newton impression in class you promised us during my second year.

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## Can law be taught effectively online?

*By Kathy Marcel*

What interests me most about law and lawyering is what I find along the cutting edge. As a young law teacher in the early 1980s, I became excited about a fledgling movement called alternative dispute resolution (ADR). Afterward, I worked as a court mediator and then later as a private mediator and facilitator, as ADR moved from innovation to the mainstream. In 1995, I facilitated several environmental policy projects that required me to use the Internet to work with stakeholders across the country. I saw the great potential such a global network offered for education and community building. I recently completed a graduate program in educational technology. For the past two years I have researched and evaluated online learning programs and systems and worked with faculty to design and develop online courses in a variety of subject areas.

To date, the law is the one field of professional study that seems to have eschewed interest in the potential for online education. I spoke with several attorneys recently

about the possibilities for using the online environment to teach CLE courses. These lawyers expressed concern that the format would require more time and effort than most practicing lawyers were willing to invest to complete their CLE requirements. As a result, the vast majority of online CLE courses use "talking heads" lectures delivered by subject matter experts.

When I began taking and developing online classes, I quickly discerned that the most effective Web-based courses had much in common with traditional legal education – the best online instruction, like the best law courses, is instructor-facilitated, student-centered, and interactive. The role of the online instructor, as with the role of a law teacher, is not to impart knowledge but rather to design an experience and guide students along a process of discovery through this experience. Unlike conventional teacher-centered education, students in a student-centered learning environment, whether computer-mediated or in a tradition-

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# Can law be taught effectively online? —

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al classroom, must actively participate in the educational experience designed by the teacher or, more likely than not, they will fail.

Given these similarities between the best online learning courses and the best law school classes, there is no reason why online learning cannot be adapted effectively for many law courses.

Indeed, most law teachers have an advantage over faculty in other disciplines because teachers of law tend to be comfortable as facilitative instructors. Below are factors to consider when designing and delivering an effective online course in law:

**Technology doesn't teach; teachers teach.** The most effective online courses are not self-paced tutorials but rather full courses designed, developed, and delivered by an instructor to meet the specific learning objectives of the course.

**Information is not instruction, and instruction is interaction.** A major problem with many online courses is that they are not courses at all but textbooks or other copious amounts of information uploaded to the Internet. One of the main reasons a well-designed instructor-led online course works is that students cannot be passive learners in the online environment.

**The best online courses are interactive and project (or experience) oriented.** There is no other reliable way for students to learn in the online setting or for instructors to evaluate what they have learned except by their activities and participation. The essence of a well-designed online course is student interaction with the course content, with the instructor, and with other students. Good projects or experiences for online learning are:

1. Authentic (i.e., based on problems students are likely to confront in the real world),
2. Designed for students to work on either alone or in groups, and
3. Broken down into weekly deliverables.

**Good online courses depend upon supportive technology.** The technology used for online courses must support the needs of the instructor, the students, and the content. It is not critical for an online course to heavily emphasize multimedia elements (e.g., audio, graphics, animation) – a little multimedia goes a long way. The best online learning systems include: both synchronous (e.g., chat, white board) and asynchronous (e.g., discussion threads, email) tools to simplify and encourage communications; calendars and gradebook tools that help instructors and students schedule, monitor, and track participation, assignments, and grades; and mechanisms such as bookmarks that help students identify, organize, and share

resources.

**Technology is not an end in itself.** There is no rationale to justify the substantial investments of time, money, and effort involved in creating, offering, or taking an online class unless there are compelling pedagogical or other benefits for distance learning in a particular environment.

Online courses may make it easier and more convenient for students to complete educational requirements and for instructors to deliver courses. The online format may expand the base of students and instructors beyond those who can attend traditional classes.

Online learning is not for everyone nor for every situation. Students and instructors must be highly motivated to work effectively in the online environment. Moreover, online learning may not be the most effective forum for the first year of legal education, which relies on the analytical modeling process derived from Socratic dialogue. However, many second- and third-year law courses focus on case studies, projects, application, or skill-building, which makes these areas appropriate for online education.

The online courses I took as a student were more convenient than traditional classes because I was able to complete most class requirements at any hour of the day or night. However, my online courses also tended to be demanding in time and effort and they forced me to take greater responsibility for my educational experience than was the case in traditional classes. Even for those of us who have developed and facilitated online courses, the best such courses require time, preparation, thought, effort, and finesse. For these reasons, I learned more as a student and became a better instructor in the online educational format than in the traditional classroom. In my view, the superiority of the online environment in certain settings makes it a viable alternative to traditional classes and therefore worth the extra time, effort, and cost.

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*Kathy Marcel is a former law professor now working as a curriculum and implementation consultant for Academic Systems, an educational media company in Redwood City, Calif. This is an edited version of an article that first appeared in JURIST's Lessons From The Web (December 2002, <http://jurist.law.pitt.edu/lessons/lesdec02.php>). Kathy Marcel can be reached at [kwmarcel@ix.netcom.com](mailto:kwmarcel@ix.netcom.com).*

# Buffalo Creek prevents legal writing class disaster

By Susan Hanley Kosse

Nothing can replace real-life experiences. Yet as a legal writing professor it is difficult to make a writing assignment realistic and still accomplish all your pedagogical goals. I found using the book *The Buffalo Creek Disaster*, by Gerald Stern, helped me replicate real life without sacrificing any of my course objectives. In fact, using the book actually had unexpected benefits for the students and myself.

*The Buffalo Creek Disaster* is attorney Gerald Stern's easy-to-read narrative detailing his representation of the survivors of a horrible coal mining accident in West Virginia in the 1970s. The plaintiffs sued a major coal company after one of the company's slurry dams broke, destroyed entire towns, and killed more than 120 people.

## How I Used the Book

I used *The Buffalo Creek Disaster* as the basis for my graded assignments during the fall of 2000 and for the first persuasive writing assignment in the spring of 2001. During the first week of class, I asked the students to read the book. It is straightforward and written for a broader audience than law students, so it is both easy to understand and a nice variation from the traditional casebook reading. I then showed the class an Appalshop documentary of the disaster. This video gave vivid detail to the images in the book. The students also were able to see and hear their "clients."

## Closed Memo

Piercing the corporate veil was the topic for the closed memo. In the real case, the plaintiffs' attorney wanted to show there were enough ties between the Buffalo Creek Mining Company and the parent company, Pittston Inc., to sue Pittston directly. Since the assignment was given fairly early in the fall semester, I provided the applicable case law that resolved the issue. Students needed to analyze several factors as part of a balancing test, making it a perfect exercise for first-year students. Students used the book to find the facts that were relevant to this issue. I liked this better than my providing the facts because facts are never presented to a practicing lawyer in such a neat package.

## Open Memo

The open memo addressed whether bystander plaintiffs with no physical injuries could recover damages for their psychological trauma under the tort of intentional infliction

of emotional distress (IIED). The students went outside West Virginia to find authority that would support such a claim since there was no case directly on point. I drafted several deposition transcripts, reports of federal agencies, and affidavits from which the students could find the necessary facts.

## Persuasive Writing Assignment

To introduce the students to persuasive writing, I developed a problem based on the open memo. Instead of representing the plaintiffs, the students had to switch sides and represent the company. Using the research from

the objective predictive open memo, the students drafted Pittston's argument challenging one of the elements of the IIED claim. This greatly challenged many students because they had become emotionally attached to the plaintiffs.

## Gerald Stern's Visit

A grant enabled me to invite Gerald Stern to meet with my class. Prior to his visit he agreed to read four or five of the best papers. He critiqued these papers and told the class how he would have responded to these arguments as the plaintiffs' attorney. He also met with the entire student body and faculty to discuss his career as a public interest attorney.

## Why Use a Piece of Literature?

Unfortunately, legal writing classes are perceived as dry and not as stimulating as the doctrinal classes. Students find learning about criminal law much more exciting than dissecting a paragraph. Although they realize research and writing skills are essential to the practice of law, it is difficult to provide them with a writing problem that seems realistic. Problems can be designed that highlight particular legal issues, but usually they lack the necessary context to be anywhere close to real life. Legal writing professors have the constant challenge of narrowing the gap between the study of law and the practice of law. Using *The Buffalo Creek Disaster* or a similar work is an excellent way to address this challenge.

In addition, law school in general has a goal of making students think like a lawyer. However, this process often makes students detached and too analytical. The academy excels at teaching students the rules of law. Yet it has been

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# Buffalo Creek prevents disaster

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criticized in recent years for failing in its obligation to teach professionalism, ethics, and compassion. These concepts have been virtually ignored in most classes, including Legal Writing. The only discussion of the human side of lawyering and the life of a lawyer has been left to the Professional Responsibility classes. Most law schools are now encouraging all professors to incorporate these concepts in their curriculum. By using *The Buffalo Creek Disaster*, I was able to achieve those goals in addition to teaching the students all the necessary writing and analytical skills.

Specific course objectives and goals that were accomplished by using *The Buffalo Creek Disaster*:

- It addressed the gap between the profession and the academy by integrating legal doctrine with practical, realistic situations.
- It broadened the law students' reference base to include situations that they had yet to experience.
- It gave the social and historical context the students often miss when they read a judicial opinion.
- It humanized clients in a way no created legal writing problem can.

- It showed law students the complexities of a lawyer's work and a lawyer's life.
- It engaged the students more than traditional legal writing material.

## Conclusion

Stories about lawyers, whether fiction or nonfiction, are plentiful. Although stories will never replace course textbooks, nor should they, these narratives have a place in virtually every course. They can provide students with needed contexts relevant to their academic studies, and they have the added benefit of engaging students' interest and attention better than most materials.

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## Midwest Conference for Adjuncts and Others

The Institute for Law School Teaching will hold a conference for adjunct law professors and other legal educators in the Midwest on June 7, 2003. This conference is a collaboration between the Institute and The John Marshall Law School. We anticipate that many participants will be adjunct faculty members who teach upper-level courses. Other participants will be academic deans and full-time legal educators who work with adjunct professors. Some space will be available for other interested law teachers.

This conference will deal with the "how" of law teaching. It will provide opportunities for participants to (1) develop effective methods of engaging today's law students; (2) increase their comfort level in the classroom; (3) experience a variety of teaching methods and learning activities (e.g., large-

group discussion, Socratic, small-group discussion, writing, simulation); (4) become aware of needs and resources to help them succeed as teachers; and (5) enhance the support law schools can provide to their adjuncts.

The plenary (led by the Institute's Gerry Hess and Gail Hammer) will explore and demonstrate fundamental principles of teaching and learning that contribute to student success in law school. Workshops will be: Asking the Right Questions (Barbara Glesner Fines, UMKC); Keeping It "Live" (Cynthia Nance, Arkansas-Fayetteville); Real-Life Learning (a/k/a Bringing the World of Practice into the Classroom) (Celeste Hammond & Virginia Harding, John Marshall); and Using Visual Tools (Charles Calleros, Arizona State).

*To learn more about the conference, go to <http://law.gonzaga.edu/ilst/adjconf.htm>.*

# Why do you teach?

**W**e 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](mailto:ilst@lawschool.gonzaga.edu).

## *Why I Teach*

*By Sophie Sparrow*

**I** teach because I am awed and fascinated by the power in learning. Witnessing this is a true joy. This gift – seeing students grow – is why I teach. On the days when work presents its toughest challenges, I gather strength by envisioning students gaining confidence. Like fledglings, some students soar farther and higher than others. But almost all fly. It is such a pleasure to witness them going from tumbling around in dazed confusion to owning the strength of their wings.

This happens each semester. Science majors who studiously avoided every college writing course begin law school convinced that the ability to write fluidly is reserved for the chosen few. Later I see these students apply for clerkships, seek positions on journals, and sign up for advanced writing classes. I know they now believe in the power of their words.

Other students infectiously rejoice in their new strengths. Students who never thought they could speak in public emerge from oral arguments exclaiming, “I want to be a litigator!” Standing tall in their suits, shoulders back, faces beaming, they look like professionals. More important, they see this in themselves. They are going to be lawyers.

Regardless of how ready students are to study law, my goal is to coach each of them to a new level. Some progress from having little understanding of the law to actually being able to apply a rule to a set of facts. Others move from seeing discrete doctrinal details to understanding the broader principles that weave them together. The joy is in seeing this growth.

Sometimes learning comes with sadness. It hurts to receive low grades and to go from believing that law school isn’t too hard to painfully realizing that something crucial is missing. But when, upon reviewing their work, students can start to diagnose the problems and suggest ways to address them, I know that they are developing skills that can last them a lifetime.

Ultimately, this is the best gift of all. It is when students know that they can fly without me. Then they own the power in their own learning.

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## *The Law Teacher*

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