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GENERAL ARTICLES

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SEVEN PRINCIPLES FOR GOOD PRACTICE IN LEGAL EDUCATION

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Principle 3: Good Practice Encourages Active Learning

Gerald F. Hess

Learning is not a spectator sport. Students do not learn much just by sitting in classes listening to teachers, memorizing pre-packaged assignments, and spitting out answers. They must talk about what they are learning, write about it, relate it to past experiences, apply it to their daily lives. They must make what they learn part of themselves.¹

What Is Active Learning?

Students learn both actively and passively. They learn passively when their primary role is to listen to an authority who organizes and presents information and concepts. Active learning occurs when students do more than listen.

Students' learning in and out of the classroom can be thought of as a continuum of increasing levels of activity. At one end of the spectrum, students listen to teachers or guest speakers. Their activity increases as they take notes, monitor their own level of understanding, write questions in their notes, ask questions in class, and organize and synthesize concepts. They are even more active when they discuss concepts or skills, write about them, and apply them in a simulation or in real life.²

Two leaders of the active learning movement in higher education, Charles C. Bonwell and James A. Eison, describe general characteristics associated with active learning:

- Students are involved in more than listening.
- Less emphasis is placed on transmitting information and more on developing students' skills.
- Students are involved in higher-order thinking (analysis, synthesis, evaluation).
- Students are engaged in activities (e.g., reading, discussing, writing).
- [Teachers place] greater emphasis . . . on students' exploration of their own attitudes and values.³

1. Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, AAHE Bull., Mar. 1987, at 3, 5.
2. *Active Learning: Creating Excitement in the Classroom 1-2* (Washington, 1991), citing Michael P. Ryan & Gretchen G. Martens, *Planning a College Course: A Guidebook for the Graduate Teaching Assistant* (Ann Arbor, 1989).
3. Bonwell & Eison, *supra* note 2, at 2.

Law schools commonly use a wide variety of active learning techniques: Socratic dialog, discussion, writing exercises, simulation, computer exercises, real-life experiences (clinics, externships, field trips), and teacher-student collaboration in course design. But active learning is more than a set of techniques. It is also an orientation on the part of students and teachers. It includes a belief that legal education should help students understand legal concepts and theory, improve critical thinking, and develop professional skills and values. It seeks to focus students not only on what they are learning but *how* they are learning as well. Finally, an active learning orientation proceeds from the assumption that students learn best when they take responsibility for their own education.⁴

Why Is Active Learning Important?

Active learning is important for one fundamental reason: active involvement enhances learning. Researchers and leaders in postsecondary pedagogy agree that students learn better when they are actively involved in the learning process.⁵ In particular, active learning is effective in achieving many of the goals of legal education.

Thinking skills. Active learning methods are effective and efficient ways to teach critical thinking and higher-level cognitive skills. In this context, critical thinking is the ability to interpret and make informed judgments about facts, arguments, and conclusions.⁶ Higher-level cognitive skills include analysis (breaking a concept into its elemental parts, explaining the interrelationships between the parts, and distinguishing relevant from irrelevant material), synthesis (putting concepts together to form a scheme and solve problems creatively), and evaluation (using a set of criteria to come to a reasoned judgment).⁷

Content mastery. Active learning helps students grasp, retain, and apply content. Active learning situations give students the chance to articulate and test their understanding of new concepts. The more frequently students work with content and ideas in new situations, the more likely they will retain their understanding and be able to apply it on exams and in real life.⁸ By “discovering” ideas and knowledge through active learning, rather than learning passively, students often reach a deeper level of understanding.⁹

4. See David G. Brown & Curtis W. Ellison, *What Is Active Learning?* in *The Seven Principles in Action: Improving Undergraduate Education*, ed. Susan R. Hatfield, 39, 40 (Bolton, Mass., 1995) [hereinafter *Seven Principles in Action*].
5. See Zelda F. Gamson, *Introduction: The Seven Principles for Good Practice in Undergraduate Education: A Historical Perspective*, in *Seven Principles in Action*, *supra* note 4, at 3–4; Ernest T. Pascarella & Patrick T. Terenzini, *How College Affects Students: Findings and Insights from Twenty Years of Research* 98 (San Francisco, 1991).
6. See Pascarella & Terenzini, *supra* note 5, at 118.
7. Barbara Gross Davis, *Tools for Teaching* 84–85 (San Francisco, 1993) (derived from Bloom’s system of ordering thinking skills; see generally *1 Taxonomy of Educational Objectives: Cognitive Domain*, ed. Benjamin S. Bloom (New York, 1956)).
8. See Davis, *supra* note 7, at 181.
9. William M. Timpson & Paul Bendel-Simso, *Concepts and Choices for Teachers: Meeting Challenges in Higher Education* 101–02, 110 (Madison, 1996).

Professional skills. Few students effectively learn professional skills such as interviewing and negotiating through passive means. Instead, they acquire and enhance these skills best through experiential learning.¹⁰ Active learning allows students to have concrete experiences, receive feedback, reflect, integrate the experience, and experiment with further experiences.¹¹

Attitudes. Active learning helps achieve several important affective objectives. First, since many students prefer active learning methods, using those methods inclines students favorably toward the course and the subject matter. Further, active involvement in their education improves most students' motivation to learn.¹² And active learning enhances students' appreciation and tolerance of diverse perspectives.¹³

Barriers to Active Learning

The barriers discussed below are among those identified by Bonwell and Eison in their excellent monograph, *Active Learning: Creating Excitement in the Classroom*.¹⁴ These barriers, and ways to overcome them, apply directly to legal education.

Institutional Priorities

Most higher-education institutions, including law schools, define the faculty role by three components: scholarship, teaching, and service. Although many law schools assert that they expect excellence in both teaching and scholarship, the primary criterion for tenure and promotion is usually scholarship, and many faculty make the perfectly rational decision to commit more time to scholarship than teaching. Faced with the choice between writing an article and improving their teaching, many will choose to write, and the institution will reward that choice.

Deans and tenured faculty need to exert leadership to readjust institutional priorities so that teaching and scholarship have equal value not only in the faculty handbook but in reality as well. If we are convinced that active learning is the most effective way for students to achieve the major goals of legal education, we should encourage and reward teachers who make the commitment to active learning.

Students' Expectations

Some students resist active learning methods. For many of them, the educational experience before law school has been largely passive; listening

10. Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 *Clinical L. Rev.* 93, 97 (1994); Report of the [AALS] Committee on the Future of the In-House Clinic, 42 *J. Legal Educ.* 508, 512-13 (1992) [hereinafter Report].
11. See Marilla D. Svinicki & Nancy M. Dixon, *The Kolb Model Modified for Classroom Activities, in Teaching and Learning in the College Classroom*, eds. Kenneth A. Feldman & Michael B. Paulsen, 307-15 (Needham Heights, 1994) [hereinafter *Teaching and Learning*]; James R. Davis, *Better Teaching, More Learning: Strategies for Success in Postsecondary Settings* 299-341 (Phoenix, 1993).
12. Davis, *supra* note 7, at 194-96.
13. Pascarella & Terenzini, *supra* note 5, at 651.
14. Bonwell & Eison, *supra* note 2, at 53-64.

and taking notes is the comfortable and familiar way of learning.¹⁵ And students have different learning styles: some prefer passive methods and others active.¹⁶ Finally, some students are at a stage of intellectual development where they expect teachers to present The Law for them to memorize. These students often view discussion, simulation, and other active methods as a waste of time.¹⁷

Your response to students who resist active learning can be quite straightforward. You can explain that because students learn best in different ways, you will employ a variety of teaching and learning methods to help all students succeed. You can add that it would be difficult to teach certain skills effectively without using active learning methods. As for the students who believe that legal education consists of memorizing The Law, you can extend their horizons through active learning methods that expose them to complexity and ambiguity.¹⁸

The Need to Cover Content

Most teachers feel pressure to cover a certain amount of content. Since many believe they can barely do justice to their subject matter in the time allotted, they are reluctant to employ methods that they believe will sacrifice coverage.

Such a reluctance to try active learning methods might be countered in two ways. First, most courses expose students to only a small fraction of a subject area. One key to successful teaching is to identify and explore the content that is essential to achieve the course goals; clear, detailed objectives can help teachers make tough choices about content and avoid the trap of coverage for the sake of coverage. Second, active learning methods are effective for teaching content; they not only help students acquire knowledge, but help them retain and apply it as well.¹⁹

Preparation Time

One reason for faculty resistance to innovation in teaching is the time and energy required to learn new techniques. It is certainly true that significant change in instructional methods requires an initial investment of time. Teachers, like their students, cannot learn new skills without commitment and effort. But the investment to develop active learning methods is not unreason-

15. For a description of types of students and their approaches to learning, see Joseph Lowman, *Mastering the Techniques of Teaching*, 2d ed., 77-86 (San Francisco, 1995).
16. For definitions of six learning styles and the instructional preferences of students with those styles, see Charles S. Claxton & Patricia H. Murrell, *Learning Styles: Implications for Improving Educational Practices* 40-41 (Washington, 1987) (based on the Grasha-Reichmann Student Learning Style Scales).
17. For a discussion of stages of intellectual development and the attitudes of students toward teaching and learning at each stage, see Joanne Kurfiss, *Intellectual, Psychosocial, and Moral Development in College: Four Major Theories*, in *Teaching and Learning*, *supra* note 11, at 165, 173-79.
18. See Davis, *supra* note 7, at 177-92.
19. *Id.* at 181.

able. It is easiest to implement active learning methods gradually in a course you have taught before. The aim is not to replace all existing methods with active learning but instead to achieve a good mix of methods to help all students achieve the course goals.²⁰

Large Classes

Many teachers are especially reluctant to try innovative methods in large classes. Without question, some active learning methods are more difficult to implement in a large class. For example, it is probably not an efficient use of class time for 100 students to make presentations, and field trips are difficult to arrange for large numbers.

Other active learning methods, however, work quite well in large classes. Socratic dialog and interactive computer exercises lend themselves to any size class. Discussion, writing, cooperative learning, and simulations are readily adaptable to large classes.

Teachers' Self-Definition

The way teachers see themselves may reduce their incentive to explore active learning methods. Many see their primary role as transmitting knowledge of the subject matter to students; perhaps their models are powerful, knowledgeable teachers who influenced them. And most teachers believe they are already quite good at what they do. In a study of teachers on twenty-four campuses, the vast majority rated their own teaching as above average.²¹

Of course the transmission of knowledge is an appropriate part of the legal educator's teaching role. But only a part. And even assuming that most teachers are adept at transmitting knowledge, they must also teach skills and values, and for those purposes active learning methods are most effective. By adopting such methods, even good teachers can improve their teaching and can help their students learn more effectively.

Risk

Perhaps the greatest barrier to implementing active learning is teachers' unwillingness to take risks in the classroom. Several types of risk are inherent in pedagogical innovation. First there is the fear that students will not participate in a meaningful way and will not learn. Then there is the risk to the teacher in giving up control over the classroom. Finally, there is the risk that the teacher's colleagues or deans will not value innovation.

To minimize the risk that students will not participate and will not benefit from active learning methods, you should be explicit with your students about your purpose in using those methods. Then make clear what you expect of your students. Most students will respond positively to active learning if they understand what they are expected to do and why they are expected to do it.

20. See Lowman, *supra* note 15, at 195–202, for a discussion of how to articulate objectives and choose methods to achieve objectives.

21. Bonwell & Eison, *supra* note 2, at 58 (20 to 30 percent rated their own teaching as "superior"; 58 to 72 percent rated their own teaching as "above average").

It is true that many active learning methods require you to give up some control to students in the classroom. But you retain significant control by choosing the methods to employ, designing them to achieve clear goals, and shaping the technique as it unfolds in the classroom. And many students will be motivated to do better precisely because you trust them enough to share control.²²

As to skeptical colleagues and deans, you should explain your rationale for using active learning methods. Then, your students' satisfaction and achievement can speak loudly and eloquently about the benefits of active learning. And you will have the assurance that you are doing the right thing to help your students learn.

Active Learning Methods in Legal Education

The use of active learning methods is common in legal education. Active learning takes place both in and out of the classroom, in large and small classes, with students working individually and in groups.

Socratic Dialog

Broadly conceived, Socratic dialog is the exploration of concepts through questions posed by the teacher and responses from students. Questioning of students by teachers is ubiquitous in legal education, from case dissection in large first-year courses to problem-based upper-level courses and reviews of student work in clinics or externship settings. Socratic dialog involves active thinking for the teacher and for the student responding. In theory, the other students have engaged in active learning before class as they briefed cases or analyzed problems, and they remain actively engaged in class when they respond silently to the teacher's inquiries and evaluate the responses of other students. To help turn that theory into reality, you can employ several simple techniques to maximize the active learning aspects of Socratic dialog for all students.

Teach students how to be active learners. Many students come to law school after undergraduate experiences in which the norm was passive learning during class and recall of content on exams. They need to learn how to be active readers, organizers, and synthesizers. When reading material for class, active learners not only extract the key information, they monitor their own understanding, note their questions, and attempt to apply the reading to the larger context of the course or real life. Active learners organize the course through outlines or flowcharts. And active learners synthesize concepts and use them to solve problems or to work on sample exams.

Help students prepare for class. Students will get more from Socratic dialog if you alert them to the key questions, hypotheticals, or problems that you will explore in upcoming classes. The most effective way to inform students is in writing—on the board or in the syllabus. For example, if one of your goals in covering a set of cases is to help students wrestle with the underlying themes of

22. Timpson & Bendel-Simso, *supra* note 9, at 7.

the opinions, you can put questions in the syllabus that will start students thinking about those themes. As they read the material, they will be able to begin to identify and explain the themes. In class, more students will be willing to participate, and their contribution will be more sophisticated.

Involve all students in the dialog in class. After posing a question, hypothetical, or problem, ask the entire class to silently formulate a response in thirty seconds, or to write a brief response in one minute, or to turn to the next person and discuss the question for two minutes. For example, after presenting a hypothetical, you can ask each student to identify the issues it raises and write the issues on a piece of paper. Then have the students trade papers with one another and ask them to raise a hand if they are reading what they believe to be a cogent statement of the issues. In less than three minutes, each student will have engaged in three types of active learning: thinking about issues, clarifying and articulating the issues in writing, and evaluating another student's statement of the issues.

Discussion

Discussion has a number of benefits for students and teachers. Discussion allows students to "discover" ideas, which leads to deeper learning. Good discussions prompt students to use higher-level thinking skills: to apply rules in new contexts, analyze issues, synthesize doctrines, and evaluate ideas. Through effective discussions that expose them to diverse points of view, students develop values and change attitudes. Discussions can provide teachers with valuable insights about their students' learning and their creative approaches to problems. Some suggestions to generate effective discussions follow.²³

Create a classroom atmosphere conducive to discussion. To encourage student participation, you need to establish rapport with students and an atmosphere of mutual respect. (Perhaps the single most important way to demonstrate respect is to learn the names of all the students in the class.²⁴) Explain the purposes and benefits of discussions and the need for students to respect one another in the classroom. Since the first few classes set the tone for the course, they should include discussion in which each student participates.²⁵ Show enthusiasm for discussion; students take their cues from the teacher.²⁶

Plan the discussion. Identify goals, materials, format, and questions. Discussion is a valuable technique to accomplish goals related to problem-solving and critical thinking, but it is not the most effective method of conveying

23. See Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law* 64–79 (Durham, 1999) for a dozen specific ideas from experienced legal educators to improve questioning and discussion; see also William E. Cashin & Philip C. McKnight, *Improving Discussions*, in *Classroom Communication, Collected Readings for Effective Discussion and Questioning*, eds. Rose Ann Neff & Maryellen Weimer, 33 (Madison, 1989) [hereinafter *Classroom Communication*].

24. Bonwell & Eison, *supra* note 2, at 21–23.

25. Davis, *supra* note 7, at 63–65, 76.

26. See generally William Ewens, *Teaching Using Discussion*, in *Classroom Communication*, *supra* note 23, at 27.

content.²⁷ The basis for the discussion—case, article, video, etc.—should be interesting and complex enough to engender different points of view.²⁸ The discussion can be in a large group, small groups, or pairs.²⁹ Finally, the questions to start the discussion are critical. The best questions are clear (so the students understand what they are being asked to discuss), open-ended (because questions with yes/no answers usually do not spark discussion), and interesting to the students (arising out of their backgrounds and experiences).³⁰

Pose the question. First, be sure the students know what the question is. One effective way is to let the students see as well as hear the question. So put the question on the board, an overhead, or a handout. Then, after posing the question, be quiet and wait for students to process the question and formulate responses. Resist the urge to quickly rephrase the question, call on a student, or—worst of all—answer the question yourself. The longer you wait after posing the question, the more likely that many students will respond and that their responses will be sophisticated.³¹

Guide the discussion. While a student responds, maintain eye contact with that student to signal the rest of the class to pay attention. Listen carefully to what students say; listen not only for the points you think are important but for new perspectives from students as well. Give positive reinforcement for appropriate responses by smiling, nodding, writing the response on the board, or verbally acknowledging the value of the response. Handle a bad answer tactfully; correct errors, but do it kindly because other students will identify with the one who gave the answer. Ask students to respond to other students' questions or to summarize other students' comments before making their own. Limit your own comments. Answer student questions directly; when students do not get direct answers, they stop asking questions. Provide closure to the discussion by summarizing key points, reminding students of the goal to which the discussion was addressed, or referring students to material that explores the ideas discussed.³²

Writing

Writing exercises—in or out of class, graded or ungraded, formal or informal—have significant benefits for students and teachers. Writing helps to develop thinking skills. As students explore an idea in writing, their understanding and misunderstanding of concepts become clearer.³³ For example,

27. Lowman, *supra* note 15, at 161–63.

28. Bonwell & Eison, *supra* note 2, at 23–24.

29. For a description of 13 formats for classroom discussion, see William H. Bergquist & Steven R. Phillips, *Classroom Structures Which Encourage Student Participation*, in *Classroom Communication*, *supra* note 23, at 19.

30. Davis, *supra* note 7, at 85–86.

31. *Id.*

32. These recommendations and many other helpful ideas for guiding discussion are in Davis, *supra* note 7, at 87–93; Lowman, *supra* note 15, at 171–91; Cashin & McKnight, *supra* note 23, at 33–40.

33. Maryellen Weimer, *Improving Your Classroom Teaching* 109 (San Francisco, 1993).

when students draft a legal document like a will or a complaint, they discover the limits of their knowledge and they develop a deeper understanding as they apply abstract principles to a lifelike situation. Writing not only helps students learn content and skills, it is an excellent vehicle for students to explore values. Through exercises such as journal entries or reflective essays, students take abstract principles and give them personal meaning.³⁴ In addition, students' writing during the course provides a teacher with insight into their level of understanding, so that subsequent instruction can be responsive to their needs.

Writing In and Out of Class

Writing in class gets students actively involved in learning the subject matter and skills of a course. It can focus their attention. For example, at the beginning of class, have students write for several minutes to try to articulate the essence of a major topic to be covered that day. Such writing helps generate thoughtful class discussion. By writing on a topic for several minutes, students organize and develop their thoughts much more thoroughly than when responding immediately to your questions in class. In addition, writing briefly at the end of class can help students solidify the major points from that day's class.³⁵

Writing out of class can take many different forms.

Term papers, seminar papers, and law review articles, comments, and notes. These are formal, lengthy, extensively researched, carefully revised. They usually represent a significant portion of the course grade.

Legal memoranda, briefs, letters, and documents. Examples include the office memo, trial and appellate arguments, settlement and demand letters, motions, discovery papers, wills, and pleadings.

Responses and questions. These are short pieces of writing that students turn in at the beginning of class. Examples include responses to problems, answers to questions raised at the end of class, and questions about the material covered during the previous class.

Outlines, time lines, and flowcharts. These devices can help students organize concepts and explore the connections between ideas.

Journals. These can include reflections on course material, class discussion, clinical experiences, or field trips.

Book reviews. These projects can require students to evaluate strengths and weaknesses of texts.

Planning Writing Exercises

Focus the writing exercise sufficiently so that students know what you expect of them.³⁶ To provide that focus, articulate for yourself the objectives

34. Bonwell & Eison, *supra* note 2, at 35–36.

35. Davis, *supra* note 7, at 209–10. For 14 ideas for writing in and out of class in law school, see Hess & Friedland, *supra* note 23, at 229–59.

36. Lowman, *supra* note 15, at 240–42.

you hope to achieve with the writing exercise, and inform the students of those objectives. For example: "Students will use the elements of statutory analysis (list the elements here) to make an argument in favor of the plaintiff in problem ___."

Determine the size and number of the writing assignments. Several short papers provide more opportunities for students to develop their skills if they receive useful feedback; short papers are often appropriate for first-year students. Longer papers work well in upper-level courses; they allow students to develop more sophisticated thinking skills such as synthesis and evaluation.

Decide whether and how the writing assignment will be graded. Grading schemes run the gamut from formal (A,B,C) to informal (plus, OK, minus) to ungraded. Students exert more effort (and feel more stress) on writing assignments that are graded formally and constitute a significant percentage of their course grade. Such assignments put similar pressure on the teacher, who must evaluate the student performance very carefully. Ungraded writing assignments, on the other hand, can help students understand content, practice skills, and prepare for later formal evaluation.

Whether the assignment is graded or ungraded, students need specific feedback on the strengths and weaknesses of their written work. The burden of providing individualized feedback to each student deters many teachers from using writing exercises in their courses, but individualized comments are not always necessary. You can provide feedback to the class as a whole by working through average and excellent answers in class. Students can critique one another's writing; peer critiques are most effective if students are applying a clear set of criteria to the written work. And students can gather useful feedback themselves by reviewing model answers, score sheets, and sample responses from other students.³⁷

Simulation

Jay M. Feinman characterizes simulations as methods in which students play a role and respond to situations typical of those that face practicing lawyers. Simulations can be powerful methods to help students develop (1) thinking skills (such as application of legal doctrine in new circumstances, problem solving, legal analysis); (2) performance skills (for example, interviewing, counseling, investigation, negotiation, advocacy); and (3) emotions and values (including professional responsibility, personal values, dealing with uncertainty, conflict with clients). Much of what follows is drawn from Feinman's fine essay, "Simulations: An Introduction."³⁸

37. See Kathleen Magone, Peer Editing, in Hess & Friedland, *supra* note 23, at 245; Wilbert James McKeachie, McKeachie's Teaching Tips: Strategies, Research, and Theory for College and University Teachers, 10th ed., 137-41 (Boston, 1999).

38. 45 J. Legal Educ. 469 (1995).

Types of Simulations

Simulations can range from short role-play experiences that take ten minutes in class to entire courses.³⁹ Examples include

- problems that are more complex than traditional classroom hypotheticals. A problem can address the analysis, synthesis, and application of legal doctrine. For example, a problem could contain complex facts and ask the student to prepare a short written argument for one of the parties.
- single-experience exercises that add an element of performance. Students could draft a complaint, give an oral argument, or write a demand letter.
- extended exercises involving different types of performances. For instance, students could interview a client, negotiate an agreement, and draft a contract based on the settlement.
- continuing exercises from one complex set of facts throughout the course. In Civil Procedure, students could draft a complaint, conduct a deposition, write a brief, and argue a motion.
- simulation courses. The entire course is built around lawyering activities, such as alternative dispute resolution or trial advocacy.

Designing Simulations

Goals. Articulate the goals the simulation is designed to achieve. The more specific the goals, the better. Then clearly communicate the goals to the students so they know what they are supposed to be learning.

Materials. The simulation needs a set of facts and roles. Ideally, the facts will have enough complexity to provoke student engagement and sufficient ambiguity to reflect real life. The definition of roles will depend on the goals of the simulation; a simulation designed to teach mediation skills will define roles differently from one designed to teach trial advocacy.

Product. The product of the simulation could be a performance (interview, argument) or something in writing (contract, letter, document memorializing an interview, journal).

Feedback. Students should get feedback on the product whether or not it is graded. Comments could come from the teacher or from peers, or students might review videos of their own performance.⁴⁰

Reflection. Students will get more out of the simulation if they reflect on what they learned and how they learned it—for example, in class discussion, a reflective essay, or a journal entry.

Grading. If the product is to be graded, students need to know the grading criteria in advance. It is best if they get the criteria in writing. The more

39. For 16 simulation and role-play exercises that law teachers have used in their courses, see Hess & Friedland, *supra* note 23, at 199–222.

40. For detailed guidelines for faculty and peer evaluators of student performances of lawyering skills, see Ralph Cagle, Critiques of Students' Lawyering Skills, in Hess & Friedland, *supra* note 23, at 310.

specific the criteria, the more likely students will know what is expected of them and the more likely they will perform well.

Computer Exercises and Electronic Discussions

In their excellent article, "Teaching Law with Computers," Richard Warner, Stephen Sowle, and Will Sadler establish a baseline for successful use of computers in law teaching and learning: "easy-to-use technology that serves clearly articulated pedagogical goals."⁴¹ This discussion of the use of computers in law school assumes that the teacher and students are comfortable with basic computer technology and that the teacher has clearly identified the goals for the computer-assisted methods.

Benefits of Computers for Teaching and Learning

A significant body of literature identifies the beneficial effects of computers on teaching and learning in higher education generally and in law school specifically. First, students in courses taught in part through computer-assisted instruction learn content faster and retain it longer than students in the same course taught without CAI. Second, teachers in courses taught in part through CAI are able to devote less class time to teaching basic legal rules and more time to, for example, the underlying rationale for the law or analysis skills. Third, many students are more likely to participate actively in a course if it includes an electronic forum (for example, an e-mail or Internet discussion list). Fourth, computer-assisted methods such as tutorials and electronic forums help teachers respond to students' different learning styles; some students learn more comfortably and effectively in the electronic environment than in the classroom.

Two Effective Uses of Computers in Law School

During the 1980s and 1990s, innovative law teachers developed many uses for computers in legal education. Currently, two of the effective applications of computers that employ active learning are computer tutorial exercises and electronic discussions.

Computer tutorial exercises. Computer-based interactive lessons are designed to provide individualized instruction to students outside the classroom, helping them learn both content and skills. Students respond to a series of questions or problems and receive instant feedback. Two types of prepackaged electronic lessons are common in law school: text-based lessons and video-based lessons.

A number of text-based lessons are produced by commercial publishers. The largest vendor of electronic lessons for law school is the Center for Computer-Assisted Legal Instruction, which sells CDs with over 100 lessons in more than twenty-five subject areas. Many electronic lessons are designed to teach content—legal rules, the structure of the rules, the rationale behind the rules, and application of the rules. For example, electronic lessons include

41. 24 Rutgers Computer & Tech. L.J., 107, 170 (1998). Much of this section is drawn from that article.

tutorials on personal jurisdiction, hearsay, perfecting security interests, Title VII of the Civil Rights Act of 1964, and the Code of Professional Responsibility. Other lessons aim to teach skills such as contract drafting, legal analysis, and fact investigation.⁴²

A good series of video-based lessons is *The Interactive Courtroom*, produced by the Practising Law Institute. Available on laserdisc or CD, it focuses primarily on skills, such as client interviewing, direct examination, cross-examination, and taking and defending depositions. The lessons give students instructions from experts, allow students to play a role as a trial attorney, and provide immediate feedback on the student's performance.⁴³

Electronic discussions. You can extend the physical classroom by using e-mail to create an electronic discussion forum to which both you and the students can contribute. An electronic discussion forum allows you to continue a discussion begun in class; sometimes the most profound comments occur after everyone has had a chance to reflect on the issues raised. You can also pose questions, problems, and hypotheticals for students to consider for the next class meeting or for students to discuss online outside of class. Likewise, students can pose questions to you or their fellow students. Some students who are not comfortable asking questions or making comments in class are eager to do so online.

Real-Life Experiences

Experiential learning integrates theory and practice; it combines academic inquiry with real-life experiences. Students can have real-life experience with law in courts, agencies, clinics, and law offices. Or you can arrange for students to encounter real life in the classroom through actual legal documents, videos, and speakers.⁴⁴ But for effective learning students must do more than have experiences: they must engage in a reflective process in which they glean meaning and lessons from the experiences.

Types of Experiential Learning in Law School

Clinics. Many law schools have in-house clinics in which students represent clients under the supervision of faculty. Most clinics include a classroom component designed in part to provide for student reflection.⁴⁵

Externships. In a typical externship program, a faculty member places students in legal positions with agencies, courts, prosecutors, public defenders, law firms, and citizens' groups. Direct supervision of the students is provided by personnel at the placement. Often the faculty member conducts a series of seminars or reviews student journals to facilitate student reflection.⁴⁶

42. See the CALI web site: <<http://www.cali.org>>.

43. See the Practising Law Institute's web site: <<http://www.pli.edu>>.

44. See Hess & Friedland, *supra* note 23, at 110–30, for 13 examples, contributed by various law teachers, of experiential learning activities in legal education.

45. See Report, *supra* note 10, at 518, 569.

46. See Janet Motley, *Self-Directed Learning and Out-of-House Placement*, 19 N.M. L. Rev. 211, 212–13, 220–21 (1989); Liz Ryan Cole, *Clinical Essay: Lessons from a Semester in Practice*, 1 Clinical L. Rev. 173, 174–75 (1994).

Service learning. Service learning combines public service and academics. It often occurs in conjunction with a course. For example, a teacher of Environmental Law or Women and the Law might require that each student volunteer at a service agency or community group. The teacher then integrates student reflection on the connection between public service and the content and skills of the course.⁴⁷

Field trips. Field trips are extremely flexible. They can be for an hour or two: students can go on their own to view a hearing in a court or administrative setting. At the other extreme students may travel with a teacher to a distant location. Either way, the teacher incorporates student reflection on the field trip into the course.⁴⁸

Real life in class. Many law teachers bring real life into their classrooms via newspapers, examples of legal documents, videos of events, and guest speakers. Student reflection on these experiences becomes part of the course.⁴⁹

Goals and Benefits of Experiential Learning

The various forms of experiential learning common in law school share the following goals: to broaden, extend, and deepen students' understanding; to help students integrate theory and practice; to increase students' motivation through experience; and to help students develop the knowledge, skills, and values they need as professionals.⁵⁰

Experiential learning has a number of significant benefits for teachers and students. Students experience law as it is—complicated and imperfect—rather than the organized, packaged version in a casebook or hornbook. They have a real-life context in which they give meaning to the ideas, skills, and values explored in the classroom. In addition, experiential learning often has positive effects on students' motivation and attitudes toward law school. Finally, the students' relationships with their teachers and peers often are enhanced when they share the experience of law and the legal profession in real life.⁵¹

Experiential Learning Practice

Although experiential learning takes many different forms, several general principles apply.⁵²

47. See Peter Wendel, *Service Learning—Housing for Single Mothers and Their Children*, in Hess & Friedland, *supra* note 23, at 112; Mary Pat Treuthart, 'Service Learning' Brings Real World into Class, *Law Tchr.*, Spring 1996 (Gonzaga University Institute for Law School Teaching), at 12.

48. See generally Michael F. Follo, *Field Trips as a Teaching Method*, in *Handbook of College Teaching: Theory and Applications*, eds. Keith W. Prichard & R. McLaran Sawyer, 189 (Westport, 1994).

49. See Michelle Jacobs, *Newspaper Stories in Criminal Law*, in Hess & Friedland, *supra* note 23, at 114–15; Robert E. Rains, *Boring*, in Hess & Friedland, *supra* note 23, at 115–16; Bonnie Mitchell, *Examples of Drafting Problems from Real Documents*, in Hess & Friedland, *supra* note 23, at 117.

50. See Davis, *supra* note 7, at 166.

51. Report, *supra* note 10, at 512–16.

52. See Davis, *supra* note 7, at 166–72, for many helpful suggestions for effective experiential learning activities.

Make learning the primary objective of the experience. Not all experience leads to educational growth. Student experiences are most likely to promote significant learning if they are carefully structured and monitored to achieve specific learning goals.

Clarify the student's role. The teacher, student, and field personnel (if applicable) should have a clear understanding of the student's role in the experience. Written guidelines could include the learning objectives, the student's responsibilities, how the experience is integrated with the rest of the course, the opportunities for the student to receive feedback, and the evaluation scheme.

Give students explicit assignments. Most students perform best when they understand what is expected of them. For example, an assignment that asks students working for an agency to "reflect on their experience" will leave many students unsure of what the teacher expects. More specific directions would help clarify the assignment: "Explain how your values conflict or are in harmony with the values of the agency employees," or "Explain how the Freedom of Information Act as we studied it in the classroom differs from or is consistent with the FOIA as applied at the agency."

Make critical reflection part of the experience. An important element of the learning process is that students think about their experiences; articulate their concerns, insights, and opinions; and share their thoughts with their teachers and their peers. Student reflection can take place in various formats, including journals, essays, and small-group discussions.

Teacher-Student Collaboration in Course Design

The six active learning methods described thus far are methods you can use to help students achieve specific course goals. Collaboration between teacher and students in course design has a different focus: it addresses the broader issues of the teacher-student relationship and the teaching and learning environment.

The process of teachers and students working together to make significant decisions is firmly rooted in several principles of adult learning. First, most adults pursue education voluntarily because they want to acquire knowledge and develop skills. Second, mutual respect among teachers and students underlies an effective teaching and learning environment. Third, teachers and students are engaged in a cooperative effort: their collaboration is appropriate in course and class design.⁵³ All three principles support the notion that both learners and instructors should have a voice in deciding significant issues, including classroom policies, course objectives, teaching/learning methods, evaluation criteria, and the roles and responsibilities of teacher and students. Students' involvement in those decisions enhances their learning,

53. See Stephen D. Brookfield, *Adult Learners: Motives for Learning and Implications for Practice*, in *Teaching and Learning*, *supra* note 11, at 137, 142-44; Gerald F. Hess, *Listening to Our Students: Obstructing and Enhancing Learning in Law School*, 31 U.S.F. L. Rev. 941, 947-55 (1997).

motivation, and relationship with the teacher.⁵⁴ You can involve students in such decisions in several ways.

Give students choice in their assignments. This is one way to involve students in the course and to allow them to build on their strengths and interests. For example, students appreciate the opportunity to have some say about the due dates for assignments. More substantively, students might choose their topics for writing assignments. You might even allow students some choice in the evaluation scheme. You can establish ranges of weights attributable to various graded assignments (paper 25 to 50 percent, project 20 to 40 percent, exam 25 to 50 percent) but allow each student to allocate the exact percentages.

Ask for periodic student assessment of teaching/learning methods. Design a simple form to gather feedback from students and use it periodically.⁵⁵ It can be as plain as three questions on one page: What teaching/learning activities are most effective for you? What teaching/learning activities are least effective for you? What new teaching/learning activities should we try? You can use the feedback to modify your instruction to help students learn more effectively. Most students will respond enthusiastically.

Have students participate in design decisions at the beginning of the course. You can work with students in the first class or two to make basic decisions about course design. This technique is probably most appropriate for upper-level courses. You can allow students to help decide a few issues, or you can work with students on all of the significant aspects of course planning. For example, you could distribute a survey to students before the first class asking them to respond to all or some of the following questions.

What are your goals for the course? (What content do you hope to learn? What skills do you hope to develop? Other?)

What teaching/learning methods should we use to achieve the goals of the course? (Class discussion, teacher presentation, small-group work, student presentations, field trips, videotapes, simulation, writing exercises, other?)

What role and responsibilities do students have to help achieve the goals of this course?

What role and responsibilities does the teacher have to help achieve the goals of this course?

What evaluation methods should we use to assess student performance? (Tests, papers, problems, presentations, class participation, other?)

Then during the first class you gather student input before you make decisions on these design issues. Or you and your students could make these decisions by consensus.

54. Gerald F. Hess, *Student Involvement in Improving Law Teaching and Learning*, 67 *UMKC L. Rev.* 343, 355-61 (1998).

55. See, e.g., Thomas A. Angelo & K. Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* 330-33 (San Francisco, 1993).

Use a student advisory team. As I've written elsewhere,

A [student advisory team] is a group of students who meet periodically with the teacher to help the teacher improve the course. The students have two primary roles. First, the students provide feedback to the teacher about the students' learning (what they "get" and what they don't) and the effectiveness of the teacher's instructional methods. Second, the students offer suggestions to improve the course and their learning. The teacher's role is to listen to the students' feedback and to implement reasonable suggestions when appropriate.⁵⁶

The use of student advisory teams in law classes has greatly improved students' attitudes about the teacher and the course, and about themselves as learners.⁵⁷

* * * * *

Active learning encompasses both a methodology and an orientation. Its orientation proceeds from two assumptions: that students should take responsibility for their own education, and that important goals for legal education include legal concepts and theory, critical thinking, and professional skills and values. Perhaps the greatest barrier to the implementation of active learning is teachers' reluctance to take risks in their classrooms. But since active learning methods are essential tools to achieve many of the critical goals of legal education, that risk is well worth taking.

56. Hess, *supra* note 38, at 343.

57. *Id.* at 355-61.