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Inside...

INSTITUTE FOR LAW TEACHING AND LEARNING

Taking a Small Step toward More Assessments

By Sophie Sparrow, Franklin Pierce Law Center

Professor Sparrow is the featured author in this issue of The Law Teacher. This article is the first of a series by Professor Sparrow addressing a crucial, current issue in legal education—assessment. For more information about Professor Sparrow, please see the sidebar feature on page 2.

Experts on learning tell us that the most effective learning environments are "assessment centered." In those environments, students know what they are expected to learn, understand the criteria used to evaluate their performance, have multiple and varied opportunities to practice meeting performance criteria, and receive feedback on meeting those criteria. They also learn how to use the feedback to improve their learning. While writing and providing feedback on problems, quizzes, essays, and presentations can take time, you can take some small manageable steps towards making your classes more "assessment- and learner-centered" Here's one suggestion.

Reuse a question from last year's final exam as a writing exercise.

1. Modify the question so that it is limited to the topics students have been studying to date.

2. Assign students to write the answer as homework. Have them bring in the assignment in electronic or paper form that they can show to classmates. You might want to suggest a time limit for completing the answer, simulating exam conditions.

3. During class, have them pair up or form groups of 3 or 4 and first read through each other's answers. Notice similarities and differences. They are often surprised at how differently they respond to the same material.

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Call for Presentations for the Institute's
June 2010 Summer Conference:
"Teaching Law Practice Across the Curriculum"
See page 20 for more information.

About the Guest Columnist

Professor Sophie Sparrow has been teaching law since 1998. This fall, the Institute proudly announced her appointment as the Institute's Consultant. She is a Professor of Law at Franklin Pierce Law Center and teaches Torts, Remedies, and Legal Skills. As one of the co-authors of Teaching Law by Design: Engaging Students from Syllabus to Final Exam (2009), she is particularly interested in active teaching strategies which help students develop the skills they need for a balanced life practicing law: working with others; writing well; navigating complex legal doctrine and facts; engaging in self-assessment; and practicing professionalism.

Professor Sparrow also has authored several influential law review articles addressing a wide variety of teaching and learning topics, including: *Describing the Ball: Improve Teaching by Using Rubrics - Explicit Grading Criteria*, 2004 Mich. St. L. Rev. 1; *What Helps Law Professors Develop as Teachers? — An Empirical Study*, 14 Widener L. Rev. 149 (with Gerald F. Hess, 2008); and *Uncovering the Student Perspective - Six Questions to Ask Before Class*, 1 Amer. Just. L. Rev. 901 (2008).

Professor Sparrow has conducted more than 50 workshops and presentations on teaching, professionalism, writing, and assessment to professors, judges and lawyers, including conferences hosted by the Institute for Law Teaching and Learning, the American Association of Law Schools, the Legal Writing Institute, and the New Hampshire Judicial College. In January 2004, she won the Inaugural Award for Innovation and Excellence in Teaching Professionalism, sponsored by the American Bar Association and Conference of Chief Justices. In September 2008, she became an approved candidate on the Fulbright Specialists Roster.

Taking a Small Step toward More Assessments

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4. Give students a checklist - your scoring sheet or list of material you were expecting to see in last year's exams. Have them use the checklist to review another person's answer in greater depth.

5. Walk them through the checklist, e.g. "Find the issue of duty in your neighbor's essay. Identify the standard of care. Compare it to the checklist. Here's what I was looking for and why it is important…"

6. As you do this, you can use the students' writing to give you feedback on their learning - how many of you read essays that included…? A show of hands (or using "clickers") can give you feedback on areas students are struggling with and areas most seem to grasp.

7. Continue through the essay, taking questions.

8. If you have one available, provide one or more examples of a good answer (if you get permission from your former students, you can use their exam answers).

9. At the end of the session, ask students to complete the prompt at the bottom of the checklist: "What advice would you give yourself to improve your performance?" Give them up to 5 minutes to take the time to reflect on their learning. Invite them to use their advice to improve their learning.

10. Invite students who want to go over the essay to bring their essay to your office during your office hours. Ask them to review the checklist and sample answer and bring those with them when they meet with you.

Time needed: In class: 30-55 minutes, depending on the question and depth of detail. Outside of class: 1-2 hours to prepare the question and checklist, less if you have some from last year you can use. Office hours: 1-2 hours. My experience, and that of colleagues who use this approach, is that around 10% will actually come to meet with you. And those conversations last about 10 minutes, since the students already have the checklist, feedback from the class discussion, a sample answer, and observing someone else's work. By the time they meet with you, they have pretty focused questions about the assignment.

Sophie Sparrow

Value: By preparing the exam answer in advance, students gain practice applying the material in writing. Committing words to the page is very different from "knowing it in your head" or being able to talk through an answer, which tends to be significantly less precise. Reviewing their classmates' work, applying a checklist, and reviewing a sample answer provides students with immediate feedback on how well they are performing in the course. By doing the exercise in class and providing class-wide feedback, you do not need to read and comment upon each student's work —and a lot of learning still happens.

Sophie Sparrow is a Professor at Franklin Pierce Law Center and a Consultant for the Institute for Law Teaching and Learning. She can be reached at ssparrow@piercelaw.edu.

Note: A previous version of this article inadvertently included text from an article by Professor Barbara Glesner Fines in the Spring 2009 issue of *The Law Teacher*. The editors apologize to Professors Sparrow and Glesner Fines and to our readers for the error.

Book Review:

Contracts: A Context and Practice Casebook

Book Authors: Michael Hunter Schwartz and Denise Riebe

By Roy Stuckey, South Carolina University School of Law

I don't think my fingers touched a Contracts textbook between May, 1974, and now. I enjoyed my first year Contracts course in 1973-74, but not because of the casebook. In fact, I don't remember any casebook that I cared very much for during law school, or since for that matter. My enjoyment of Contracts was entirely due to my good fortune in being assigned to the section taught by Coleman Karesh, a great teacher, humorist, and gentleman of the old school.

When I started looking through the Schwartz and Riebe book, therefore, I was skeptical that I would find very much to like about it. I was wrong. It is the first law school textbook I've seen where it is obvious that the authors really want to help students understand what they are supposed to be learning in the course. Right up front, the authors tell students the learning objectives of the course. They also explain the governing principles of contract law, generally at the beginning of the book, and more specifically at the beginning of each chapter. They even use graphics to give students a visual sense of the concepts of contract law and their relation to each other. There is no hiding the ball in this book. Students will know where they are and where they are going -- and why.

There is no spoonfeeding. Schwartz and Riebe do not make it easy to learn contract law. Students will find the book as intellectually challenging as any textbook they will encounter. But students who diligently work their way through the book should emerge with a solid understanding of contract law, and much more.

Much more? Yes. The book is not only designed to help students develop their traditional case reading and analytical skills; it will also help students study and practice their problem-solving skills in contexts that lawyers might encounter in practice. Each chapter starts with a description of a legal problem that the students should be able to answer by the time they reach the end of the chapter. Hundreds of problems, large and small, are scattered throughout the text, and the final section of the book is "Contract Law Problems: How Do Contract Lawyers Use Contract Law to Analyze and Solve Client Problems?"

This is also a casebook, of course, but with some significant differences from other casebooks. At the beginning, for example, there are margin notes and other guidance to help students learn how to read cases. There are even "sample" analyses of cases. Students are given key words to look up in a legal dictionary before they read certain cases.

In addition to cases, the book takes a developmental approach to statute reading. On the first page of Chapter One, the authors explain that contract law comes from common law and the UCC, then they explain how students can determine which source of law would govern a given contract. The interplay between case law and statutory law is explored throughout the book.

The book has many other attractive features. Each chapter includes "Professional Development Reflection Questions" to give students a broader awareness of practice-related issues such as legal ethics, professional roles, self-development, and more. There are actual contracts for students to read, and there are numerous opportunities for students to draft contract provisions. The materials are designed to help teachers provide formative assessments, including designed group activities involving problems with evaluation guides to facilitate peer assessments. Students are given a clear picture of what exam questions will be like and how to approach answering them.

Yes, there is a teacher's manual. It is on a DVD and includes syllabi, detailed teaching notes with best teaching practices, PowerPoint slides with integrated clicker questions, learning objectives on a topic-by-topic basis, a 300+ question multiple-choice question bank, note-taking guides, and handouts.

I think it is a remarkably good textbook. As much as I enjoyed my first year Contracts course with Coleman Karesh, I am certain that I would have enjoyed it more, and learned more about the law of contracts, if Professor Karesh had used the Schwartz and Riebe book.

Roy Stuckey is the Webster Professor Emeritus of Clinical Legal Education and Distinguished Professor Emeritus of Law at South Carolina University School of Law. He is the principal author of Roy Stuckey and Others, Best Practices for Legal Education *(2007). He can be reached at stuckeyroy@gmail.com.*

Teaching Issue Spotting Explicitly

By David Nadvorney and Deborah Zalesne, City University of New York School of Law

Common knowledge has it that the bar exam is, at heart, an exercise in issue spotting. Probably the same could be said of law school exams, especially those in the first-year. Of course, both exams are based on more than just issue spotting — they require students to have memorized significant amounts of doctrine, understand the process of application, be able to organize an analysis quickly and cogently (usually in IRAC format) and maintain some level of standard writing form, all in a very tight timeframe. But missed issues receive no points on an exam, and analysis of issues that the author thinks are not triggered gets no points. At the same time, issue spotting is possibly the least-taught aspect of the law school curriculum. Indeed, law school course syllabi, casebook tables of contents, and commercial bar reviews, by organizing doctrine and opinions by issue, all take issue spotting off the table. And even if a particular issue is not explicitly mentioned in the table of contents in a casebook, it is more than likely identified in a paragraph or note before the opinion appears.

The key to issue spotting is the ability to see connections between authority (including policy) and facts in complex settings. In other words, issues live in the interaction among law, policy, and facts. For many students, those connections are not readily apparent. We believe the teacher has the responsibility — or at least an opportunity — to teach the skill of issue spotting explicitly. We have identified several aspects of issue spotting that teachers can help students with, including the baseline ability to recognize instances of facts triggering issues, dealing with complicated sub-rules, spotting hidden issues, and seeing connections among Contracts doctrines and among different disciplines.

Facts Triggering Issues

Students need to hear explicitly that facts trigger issues. It gives them a way to begin to develop a technique of issue spotting. For many students, the very notion that facts trigger issues is revelatory. This is due to a number of factors. First, students tend to view the assigned opinions as monolithic narratives, without realizing that the facts as found (and subsequently reproduced in the casebook) were really the product of vigorous argument.

> [I]ssue spotting is possibly the least-taught aspect of the law school curriculum.

Second, the case itself is likely to identify or set out the issue in some way that ostensibly relieves students of the need to do so themselves. Finally, the casebook itself, by labeling chapters and sections so clearly, makes it unnecessary for students to grapple with what the issue is. Students therefore are likely to miss the organic connection between facts and rules that create the issues. Consider a simple exercise about working with facts: Assign a case that has a rule with elements. In class, break the students into small groups. Assign each group one element or sub-rule. Have the groups identify the facts from the case that implicate the element they have been assigned (whether highlighted by the court or not). Does the court focus on any particular element(s), and if so, which one(s) and why? Have the class add or modify facts that trigger their assigned element or sub-rule in a way that might change the analysis. You may do something like this already – but the key here is pointing out that this will help with issue spotting. It teaches students to pay attention to the role of facts in triggering issues and satisfying or not satisfying elements. What this means for their outlines is that they should include facts of the cases, pay attention to hypotheticals and include them (often there is just one changed fact in a hypothetical that changes the outcome); and under each doctrine they should make a special note of the kinds of facts that trigger the doctrine.

Connections Among Doctrines

Another tricky aspect of issue spotting is the ability to recognize some of the less obvious connections among doctrines and use those connections to surface issues on an exam. After studying various doctrines in discrete units, it is important to remind students to step back and look at the big picture, at how these different doctrines might fit together in analyzing a hypothetical. After all the doctrine has been covered, you can point out issues that are likely to arise from the same set of facts. For example, in contract law, whenever there is a question about contract interpretation, i.e., the meaning of a disputed term in a contract, there is likely to also be a question about the admissibility of evidence, requiring consideration of the parol evidence rule. Other times, claims will naturally be raised in the alternative. For example, again from contract law, whenever there is a question about whether the requirement of consideration has been satisfied, students should also consider whether the plaintiff could bring a claim under promissory estoppel, an alternate theory of recovery. Making these connections explicit will help with issue spotting — if you remember to *consider the possibility*, you will be more likely to recognize the presence or absence of facts that trigger the alternate doctrine.

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Teaching Issue Spotting Explicitly

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Linking these doctrines can be done in review sessions, but should be done at various junctures through the course as well.

Relationships Among Sub-Issues

Students also have trouble when the question tests the articulation and application of "sub-rules." Although the relationship between rules and sub-rules may be clear to teachers intimately familiar with the structure and organization of the doctrine they've been teaching for many years, first year students often do not make the connections as clearly as they need to in order to be able to spot issues involving a sub-rule. Some doctrines are taught over the course of several class periods, if not longer, and students can miss the connection between the rules learned at the end of that time with what came before. Those connections may be essential for issue spotting. Have the class take a minute to answer a question about the link between a sub-rule and the overarching rule. For example: "What is the relationship between option contract and acceptance?" The connection between these two concepts can be obscured by the many layers of rules regarding acceptance, including the objective test (whether a reasonable person would consider the offeree's words or conduct to constitute assent), revocation (whether the offeree even has the right to accept), the mirror image rule, 2-207 and battle of the forms (whether the attempted acceptance was valid), the mode of acceptance (whether the manner of acceptance was proper), and the mailbox rule (whether the timing of the attempted acceptance was sufficient), among other things. Within each of those issues is a complex web of sub-rules, not the least of which is whether the UCC applies. Taking one of those rules to the next level, the rule for revocation includes sub-rules relating to the process of revoking, as well as option contracts and whether the offeror has the right to revoke. Then there are a variety of ways to make an offeror irrevocable, each of which has its own set of rules. By the time students learn about an offeree's reliance on an offer creating an option contract, they may lose sight completely of the relevance of that rule in the bigger picture of contract formation. So, to answer the question posed in the exercise, the relationship between option contract and acceptance is: in some cases, whether or not there's a valid option contract will determine whether an offer is revocable, which may determine whether an attempted acceptance is valid, and ultimately whether a contract has been formed. Although doing this exercise as a minute paper, which the teacher would collect and read through quickly, might provide some feedback about where the students are, the major value of the exercise is to set up a discussion of the issue spotting aspects of the relationship between what may appear to some students to be unconnected doctrines. It also provides an opportunity to talk with students about how they outline. Their outlines, which on a good day contain accurate doctrine, should in addition, alert them to the kinds of facts that trigger issues. This approach is especially useful with sub-rules like irrevocable offers.

Spotting "Hidden" Issues

Another aspect of effective issue spotting is that certain issues are likely to be hidden, with no obvious clues in the fact pattern that the issue is triggered. An example of a hidden issue in contracts involves the statute of frauds. The fact pattern might never mention whether there was a writing, so there may be nothing in the fact pattern to remind the student to consider whether a writing was necessary (of course there will always be some fact to trigger an issue, such as, in the case of the statute of frauds, the contract being for a sale of goods over $500 or for the sale of real property, but these facts may be too indirect to trigger the issue for a student who is not paying close attention). Similarly, parol evidence rule issues can be hidden where the call of the question does not refer to a fact as "evidence" or use the word "admissible." Further, any time damages are being calculated, there is always the possibility that the calculation will be limited either by foreseeability, certainty or mitigation. These issues are embedded in any damage calculation — the fact pattern will not necessarily have specific facts geared to those limitations and the call of the question might not ask whether the court could or should limit the damages in any way. A cohesive collapsed outline (i.e., an outline reduced to a checklist) can be critical for spotting hidden issues, reminding the students of all the issues they should consider on the exam. Teachers might suggest to students that they annotate their outlines and checklists with a note to themselves reminding them to consider where the exam might include hidden issues triggered by the absence of facts.

Of course, issue spotting is not the only skill that students need to succeed in law school and as lawyers. We believe students in the first year should learn key academic skills (such as case reading and briefing, note taking, outlining, and study skills) and legal reasoning skills (such as fact identification and analysis, rule identification and synthesis, and application of rules to facts, as well as issue spotting) throughout the curriculum explicitly, rather than by intuition, so that they are better prepared in their second and third years to focus on the denser doctrines and more practice-oriented skills. The idea to make the role of academic and legal reasoning skills explicit in the study of doctrine is based on the idea that students do better when they are aware of their own thinking and learning processes,

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Advocating for Teaching Students about the Role of Lawyer as Counselor — Winning Isn't Always Everything

By Susan M. Chesler, Sandra Day O'Connor College of Law at Arizona State University

When I first started teaching a course on contract drafting, I was taken aback by my students' attitudes towards client representation: they believed that a lawyer's role was to "win" and thus they saw a benefit in encouraging lawsuits. "Why draft a contract to avoid the need for litigation when you can represent your client in the lawsuit?" and "why not make yourself look good to your client by winning the lawsuit based on a favorable contract interpretation?" were some of the sentiments that I heard. Having practiced law for over ten years before entering the teaching profession, I knew that such attitudes were impractical, improbable, and bordering on unethical.

But should I really have been surprised by my students' reactions? From the very first day of law school, in all of their first year required courses, students learn about the law through the lens of litigated cases and through the eyes of a lawyer in the role of advocate - a lawyer that is supposed to argue for a particular position or a cause. For example, in their Contracts class, my students had learned about the principles of contract law by reading the courts' opinions in litigated cases. The classroom discussion most likely centered on the types of arguments that can be made for or against any particular issue. Their exams probably asked them to play the role of a judge evaluating arguments or a lawyer arguing for or against a particular outcome. In other words, law school classes generally portray lawyers as advocates and teach students "to think like a lawyer" by teaching them to argue. In my own first year legal writing courses, I too, teach my students to be an advocate on behalf of their client. Even for their "objective" writing assignments, I teach them to communicate the strengths and weaknesses of the case so as to be better prepared for the arguments in court.

While I have often heard the criticism that law schools focus too much on teaching students to become litigators and ignore our future transactional lawyers, my concern is even broader than that. Even for those of our students who will be future litigators, I believe that we have a duty to teach them about the role of the lawyer as counselor, and not only devote our time and efforts on the lawyer's role as advocate. A lawyer fills the role of counselor when she gives advice and represents her client without arguing for a particular position or cause. Lawyers serve crucial roles that do not focus on making arguments or "winning," but on planning, advising, and counseling their clients on a wide variety of matters, such as risk assessment, avoidance of potential legal problems, and the resolution of disputes without resorting to litigation.

> I believe that we have a duty to teach them about the role of the lawyer as counselor, and not only devote our time and efforts on the lawyer's role as advocate.

To a client, the lawyer's role certainly is not always about winning a case; it is generally in a client's best interests to avoid litigation. As stated by President Lincoln in his Notes for Law Lecture in 1850 (and quoted by Chief Justice Warren E. Burger in his Forward to the American Law Institute's Study on Paths to a "Better Way"): "Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses and waste of time." Since clients do not want to spend time and money to litigate matters unnecessarily, a better client relationship (and thus an enhanced lawyer's reputation) is often based on the ability to avoid, not necessarily win, litigation. This is true for many different types of lawyer, but especially for the transactional lawyer who negotiates and drafts contracts. The goal of the transactional lawyer is to effectuate the client's needs and desires; namely, to draft a contract that protects his client's rights, but that will likely be performed by both parties to the transaction and thus not end up in litigation.

While practicing lawyers know that they often represent their clients without ever arguing or advocating on their behalf, many law students do not. When I developed my contract drafting course, I consciously decided to focus on introducing my students to the role of lawyer as counselor. We extensively discuss how a lawyer can best represent her client in the various stages of contract drafting and negotiating, by planning, advising, and counseling clients. I structure the course using the case file method so that my students represent a particular client throughout the semester. The contract drafting assignments require them to draft contracts that protect their client's interests, but are fair and not so one-sided that they will be rejected by the other party. We also discuss ways to protect a client's interests by drafting a contract that is easily understood by the lay parties to the

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Winning Isn't Always Everything

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contract, in an effort to avoid the need for court intervention and interpretation. Certainly, there are other law school courses dedicated to teaching students about the role of lawyers apart from being an advocate, such as Interviewing and Counseling, Alternate Dispute Resolution, and Negotiation, but not all students take advantage of those courses. And even those students who do take them do not necessarily understand that the skill of counseling applies in the broader context of what it means to be a lawyer.

Thus, while most traditional law school courses will continue to teach students through the use of litigated cases and to emphasize the lawyering skills of argument and advocacy, I think that we should at least also aim to teach them about the role of lawyer as counselor. After all, as law teachers we are charged with sending out effective young lawyers. So what can be done? For starters, we need to expose law students to the role of lawyer as counselor in many of their courses, side by side with teaching them about the role of lawyer as advocate. After reviewing cases in class, professors can ask their students not only about the arguments that each side could have made, but about *whether* the lawyers should have advised their clients to take this case to trial in the first place. The resulting discussion is likely to be the same, but with a slightly different focus to the question, law students can begin to realize the importance of the role of the lawyer as counselor. Law professors should also consider asking their students to think about *why* a particular case ended up in litigation; was it the result of any misconception or error on the part of the lawyer that might have been resolved without resorting to litigation? For example, many, if not most, breach of contract cases result from poor drafting of the contract's language, which could have been rectified by the lawyers in the planning and drafting phases. Similarly, risk assessment and risk reduction advice from lawyers could limit the number of tort cases that are litigated. Lawyers have a duty to counsel their clients on ways to avoid potential legal disputes as much as they have a duty to strongly advocate on behalf of their clients if those disputes arise.

Therefore, I advocate for professors to start teaching students about the role of the lawyer as counselor throughout their law school experience, since winning isn't always everything.

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Teaching Issue Spotting Explicitly

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and develop the ability to control them and adjust them to meet the specific demands of different learning tasks. We believe that the process of learning is too often left to intuition and happenstance and that many more students can succeed at greater levels of competence if the process of learning itself becomes the subject under discussion.

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TEACHING AND LEARNING NUGGET

Do you want to give your students insights into law practice that they cannot get from your casebook or from a secondary source? Ask the lawyers who actually handled the cases you teach. They are thrilled to share their legal ideas and strategic choices, and your students will love hearing such "inside information."

Integrating a Workshop on Negotiation and Drafting into a Contracts Course

By Stephen A. Gerst, Phoenix School of Law

In my second semester contracts course, I included a "negotiation and drafting workshop" for the last four class periods. The purpose of the workshop was to provide an opportunity for students to learn how to apply their substantive knowledge to the skills of negotiation, collaboration, and drafting. Each of the four class periods was scheduled for one hour and twenty-five minutes. Fifty-eight students were enrolled in the course.

First Class Period

Prior to the first workshop class, the students researched an article, treatise, book, or on-line resource on the subject of negotiation. I asked each student to prepare to share with the class five things of importance to the negotiating process.

The first workshop class began with a brief discussion on contract drafting and how it differs from other types of legal writing. One of the key concepts was that the drafting of the contract begins during the negotiation process. The discussion then shifted to the "negotiated contract" as distinguished from the "adhesion contract." During this phase, students shared their findings on the principles of negotiation from their research assignment. These principles, which included negotiation strategies, were listed on the board for discussion.

Second Class Period

Before the second workshop class, the class was divided in half. One-half of the class was to represent a property owner who wanted to build a cabin in the mountains. The remaining half of the class was to represent the building contractor. Each student was randomly paired with another student to form a lawyer team to represent one of the clients. Each lawyer team was sent a "confidential memorandum" from the client authorizing the team to negotiate a contract for the building of the cabin, within the parameters of the client's desires. The property owner and building contractor memoranda differed regarding each client's desires with respect to construction cost, payment terms, the remedy for a delay in completion, dispute resolution, change orders, and indemnification in the event of injury to third persons. Students were to formulate their strategies and proposals before class and be fully prepared to negotiate toward reaching a resolution on the legal and factual issues.

> "I took an entire year of Contracts and never saw an actual contract."

The second class period was devoted entirely to the negotiation process. Student lawyer teams representing the contractor were paired with student lawyer teams representing the property owner. Two employees of the law school were enlisted to play the role of the general contractor and the property owner. The employee-role players attended class and were available to student lawyers who needed to "consult with their client" regarding any issue that was beyond the authority granted in the memoranda.

Third Class Period

Before the third class, each student team drafted a proposed agreement based on the results of the negotiations. Resources available to the students included a monograph written by Joseph Kimble of the Thomas Cooley Law School entitled, "A Brief Introduction to Drafting Contracts"and on-line resources on contracts drafting, such as the AdamsDrafting web site, www.adamsdrafting.com.

The first part of the third class period we reviewed types of contracts that are in common use, including (1) a real estate sales agreement, (2) a landlord-tenant rental agreement, (3) an employment agreement, (4) a publication agreement, and, (5) a construction loan agreement. Students noted the differences in length, style, and contents of the contracts.

During the remainder of the class period the student teams collaborated in the drafting process and worked on wording, clarity, and style. By the end of class, students were close to having a final draft to present to their client for approval and signature.

Fourth Class Period

The homework assignment for the fourth class was to complete the final draft of the contract in collaboration with the other team. The final agreements were then sent to me electronically before class.

In the fourth class period, we reviewed each of the contracts on the overhead

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Workshop on Negotiation and Drafting into a Contracts Course

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projector. Students compared the results of their negotiations and the wording, clarity, and completeness of each team's contract. During the remainder of the period, students provided feedback on the workshop experience. At the conclusion of the workshop, the students completed a brief anonymous questionnaire.

Assessment

The workshop is a valuable and worthwhile learning experience for students. It allows the students to learn and practice the skills that are a necessary adjunct to the learning of contract principles and analysis. Most importantly, it provides the students with the confidence that comes with knowing that what they learn in their substantive course has real and useful application in the practice of law. This confidence is reflected in the following student comments:

"I really enjoyed this group assignment because it showed us the practical application of what we learned throughout the semester."

"I believe the practical experience provided in this exercise is important to my becoming practice ready."

"I enjoyed the experience of working with fellow students I didn't know very well."

"It made me feel like a real lawyer."

Stephen A Gerst is an associate professor at the Phoenix School of Law. He can be reached at sgerst@phoenixlaw.edu.

Teaching with (light-hearted and well-intentioned) Sarcasm

By Harriet N. Katz, Rutgers Camden School of Law

If you have teenage children, you may know that sarcasm can teach. At least, I think it was helpful when our kids were learning to drive. "Driver's ed" courses can teach specific rules. I wanted to point out bad attitude, which is really what kills teen drivers, and show how to respond safely. The Schuylkill Expressway was my classroom. (In Philadelphia that road's name is pronounced officially "skoo'-kl" and unofficially "sure-kill".) Another driver swerves around me without signaling, or passes at a reckless speed? I would say, as if speaking directly to the bad example "Sorry, buddy, I'll just get out of your way, I forgot this is your road."

I suspect I'm not the only professor who compares our adult students to our kids. So here is something I put together recently.

Tips for lowering your grades on negotiation reflection papers:

1. Defend yourself. Don't think critically about anything you or your negotiating partner did wrong, you wouldn't want the professor to think you don't already know everything. Your prof's talk in class about being aware of need for self-improvement is just blah-blah, she doesn't really mean it.

2. (a) Describe what you did but don't bother with theoretical terms from the text. Your prof already knows those, she can figure out what you mean. "The seller has a lot of other possible customers, but the buyer can't find comparable goods anywhere where they can afford them" is good enough. Don't get into the whole "this illustrates the additional bargaining POWER of a negotiator who has a better BATNA" line of thinking.

OR

(b) Just name the theoretical concepts, and don't waste time with application to the facts of your problem. After all, you're just writing to show that you can recite back the theory terms from the textbook. "The TV producers seem to have more power in this negotiation than the writers right now because of their BATNA but the writers have some power, too, eventually" is all you need to say. It would take too long to add that "the producers' power during the Writers' Guild strike is created by their vast array of immediately available alternatives to fill the airwaves (reality shows, sports, old movies) while the writers' edge in the long run may be the reluctance of advertisers to buy airtime with no promise of huge audiences attracted by new material for popular shows — in negotiation theory terms, the producers' power comes from better alternatives now, and the writers' power comes from their ability to reduce the value of the producers' alternatives eventually."

3. Write poorly. Use words carelessly, don't even try to organize the paper logically. Clear organization, well crafted sentences, words used precisely -- these are ways to impress an English Comp instructor, you can forget them after undergrad, or possibly even after high school. Don't fall for the idea that clarity always matters.

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Political History of Law

By Sabah Carrim, KDU College in Malaysia

The Oppressive Classroom

(Written for those students who, like me, wasted at least twenty years of their lives in oppressive and frustrating environments.)

I have heard a lot about him. They say he is a genius. I am waiting for him to mesmerize me through the well of knowledge that he will hurl me into with all its force and fervour. I have yearned for true knowledge that would instill a sense of harmony between what I learn and the environment I live in. These two have been separated by a deep ravine in my life far too long. I am finally promised mind blowing lectures and insights into the ways of the world. I am thirsty for inspiration. Through knowledge, I seek the Greek "Apeirokalia"- appreciation of things beautiful. My eyes flicker with hope, my heart wells up with a warm feeling of excitement. Today, after a long time, I will probably bump into this sage who will teach me those things I am truly interested in.

The lecturer strides in boldly. He has presence. Heads turn around and eye balls follow his movements closely. He has the allure of a super star. But he also looks like a nerd- the typical nerd I have affixed a particular image to; somewhat weird in demeanour, somewhat awkward in gestures, clearly lost in thoughts in a faraway, mysterious land. Deep down I suspect that his mind is perpetually involved in an activity of deconstructing and assembling thoughts and ideas of all kinds. He is not derogatively "crazy", just charmingly "cute".

I brace myself as he approaches the podium and adjusts the microphone accordingly. There is eagerness in my eyes, but more importantly eagerness in my mind.

He opens his mouth to speak. I can't focus because I am so thrilled. I am trying to fit all that he is saying into something decipherable. I am scared of missing out on what promises to be a message, a sermon that will be my compass and forever clear up that hazy view of the horizon.

I wait for a few more minutes. My excitement has died down and I am able to follow the train of thought. Surely there is more to this. Shall I wait for a few minutes before passing a judgment?

> Did I expect too much and fill up that void of first impressions with an over embellished image like the bashful teenager does for her first crush?

I must confess: what a disappointment. His words carry the stench of mediocrity. They are disjointed, incoherent, vague and their message is hackneyed. Can I overtly pinpoint something new that I have learnt? No. Not a single thought. My attention wavers. I am already yawning. The respect I originally had for him has plunged below sea level.

Am I being too harsh in my judgment? Did I expect too much and fill up that void of first impressions with an over embellished image like the bashful teenager does for her first crush?

He is teaching and I want to learn. Perhaps I must give him the benefit of the doubt. I don't want to accept defeat so quickly. I suddenly turn superstitious- I start believing that all this excitement could not have been pointless and that maybe there is a cistern of wisdom in him which I must perforate and unleash. I want to interrupt so that I can ask him questions. After all, he might just be pretending and lowering his teaching standards to suit everyone's needs. Maybe I just need to be the gadfly to this Greek horse and prompt those thoughts out of him. I raise my hand, ask a mind boggling question and look at him searchingly. He battles his way through my question but the answer is all over the place. I want to continue and ask him further questions, dig out everything that I possibly can. This is no longer a question of respecting him but of nursing my hurt ego because I feel stupid for having nurtured such high expectations, once again.

I seek more clarifications but he is getting impatient and my classmates just want the lecture to be over and done with. Questions are just interrupting the flow.

This is what people usually tell me when I show impatience during a conversation:

"You have a problem: you don't listen when I talk. You always interrupt."

And this is what I usually reply.

"Sorry. I will try to be more attentive next time."

But I am a liar. Because the truth is that I would rather reply:

"Maybe it's just because you don't have anything interesting to tell me."

He had nothing interesting to tell me.

You probably think that the definition of torture is limited to the cruelty of the scaffold or the humiliation of the inmates of Al Ghraib prison. For me torture is in being confined within those walls of the classroom, compelled to listen to a frivolous lecture that evokes skeptical remarks on my part- of course silently. Torture for me is in having no choice but to be present for lectures just to fulfill the attendance requirement so that I am presented with a certificate at the end of the course. Torture is in having to listen to something I consider beneath me

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because I truly am not learning anything new. Torture is in being forced to remain in that enclosed environment for protracted hours when I could definitely have used my time more constructively. Torture is in having to pretend that the Emperor's Clothes are the most beautiful I have ever seen although I see nothing-all because I have to keep up the pretense of being honest for fear of being castigated and excoriated by society.

In other words, torture is in being deprived of my freedom and dignity.

And the classroom has blatantly robbed me of both.

The Classroom

(Written for those lecturers, who like me, would like to emulate those lectures we so yearned for when we were students.)

Learning should only be incidental to the process of enjoying classes and fitting different facts and thoughts into our mind's immense puzzle.

Students are interested if they can relate to the subject being taught to them.

Now this is insuperable considering that our education system pens students in specific areas of specialization at a very early stage of their lives.

That is why I decided to incorporate "Political History of Law" in the curriculum- a term I coined for a two hour long course at the beginning of each semester. The main objective being that the students would gain a holistic, as opposed to a reductionist, understanding of what they were being taught.

This course incorporates philosophy, history, arts, music and politics. "How are these relevant?" one would ask. In certain schools, these subjects are taught as a foundation to the law degree. However my observation is that the inter-connection between law and these subjects is not adequately established. This defeats the original intention. In my classes in Administrative law for example, I retrace history over a period of 2500 years and talk about the variety of forces that have governed our world at different times. I make sure that they understand that democracy and equality are relatively new terms that have been inserted in our vocabulary. I quote books such as Lewis Carol's "Alice in Wonderland" and Thomas Moore's "Utopia" which contain political innuendos. I also highlight the importance of mythologies for earlier generations as a means to explaining what was still mysterious and undiscovered. I show them famous paintings of Dadaist and Cubist artists, whilst comparing them with those of the Classical and Renaissance periods to demonstrate the close connection between Art and the revolt of Hitler... I also go through the philosophies of Nietzsche and Hegel to reveal their influences over Hitler and Mussolini respectively. Alexander the Great once related the merits of learning history and said that it taught the student that reaching heroic heights was not impossible.

One common observation as a student and now a teacher is how students experience disillusionment with the law when they read judgments that are obviously tainted with everything but sound legal reasoning. To keep them optimistic and interested, it is important that they realize the variety of influences over the workings of law. To leave them in the dark with an answer such as: "This is how it works anyway", is unsatisfactory. Marx's and Foucault's philosophies can be used to explain how the use of law can be a mechanism of control for power.

Plato's conception of good and evil based on his aesthetic notion of morality paves the way to understanding the evolving nature of terms used today. It is also important to give them an insight into the various forms of governments (elitist, monarchical, dictatorial and democratic) for them to understand that there indeed was a different way to govern the world than the common democratic form we are so familiar with today. The sudden change that occurred through the philosophy of Thomas Aquinas gives them an insight into the why our religious governments replaced their constitutions with secularism and created a new God: the State.

The main message of my class is: there is more than what you learn within the box. The immense possibilities that one is exposed to through this class in philosophy and history enables students to dare to think, which is more important in my opinion, than merely to overwhelm them with knowledge. I think classes such as these transform users of knowledge into producers of knowledge.

Below are a few extracts from the Selective Reflective Journals (SRJs) that were submitted by students at the end of the course in Administrative law. The SRJs are a novel method of tracing students' progress of what and how they have learned during the course.

"…when I got acquainted with Administrative Law, I realized that I had not been thinking hard enough. It is possible that I may have only used my brains to pontificate on things that are trivial and insignificant (what a waste of mental energy). In our first class, Miss Sabah discussed everything from A to Z which included Greek philosophy and history, Sigmund Freud's theories and everything else in between. I was amazed at how little I knew about the world. Yet, with every new piece of information, I became increasingly confused. How does all this relate to the subject of Administrative Law? …Eventually, it dawned upon me that Administrative Law is about how a modern and increasingly complex society administers itself. Miss Sabah was right to give us a broad spectrum of opinions from other subjects like history, philosophy, psychology etc. Of course, right after I came

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An Experiment in Participation

By Leigh Goodmark, University of Baltimore School of Law

Several months ago, I ran into a student in my Family Law class at a law school event. "Professor Goodmark," she said, "I love your class. I just wish I felt more comfortable speaking up." We discussed her reticence about participating, which she attributed to general discomfort with public speaking. The more we talked, though, the more it seemed that the real issue was with the quick processing required to answer the hypotheticals and policy questions I frequently threw out in class. By the time she had thought through what she wanted to say and felt comfortable with what her answer would be, I had already moved on to another topic.

Together, we brainstormed ways to help her feel more comfortable speaking in class, and finally came upon a proposed solution. What if, prior to each class, I sent her a question that I knew I would be asking in class the next day? The question would call for opinion, rather than a demonstrably "right" answer, so that there would be no pressure around being "wrong." And giving her the question ahead of time would provide her with an opportunity well before class began to think through her answer, so that she would feel comfortable raising her hand at the moment the question was asked. I told her that I would look to her first to answer the question I sent her. If she raised her hand, I would call on her; if not, I would move on, without calling attention to her in any way. She agreed that this might help, and our experiment began.

During the next class meeting, as arranged, I asked the question that I had provided the student with the previous evening—"Should fault be considered in the distribution of marital property?" To my delight, her hand immediately went up, and this student who previously had never volunteered an answer in class gave her perspective on the issue at hand—a perspective, incidentally, that was different than the views expressed by many of her classmates. After class, I e-mailed her to see how she had felt about our experiment. Her reply was very positive, ending with "Expect to hear a lot more from me." I asked her whether she thought it would be beneficial to provide the same opportunity to other students who were hesitant, for whatever reason, about participating in class. Again, the student was extremely enthusiastic, particularly because she believed that it might encourage the expression of a diversity of views in class discussions and allow the class to move away from hearing from the same individuals with no reservations about participating in any of their classes.

> "[G]iving her the question ahead of time would provide her with an opportunity well before class began to think through her answer, so that she would feel comfortable raising her hand at the moment the question was asked."

I sent an e-mail to the entire class that read, "If you are hesitant about speaking in class and would like to work on feeling more comfortable doing so, please e-mail me privately — I have an experiment that we could try." A few students, believing that the e-mail had targeted them specifically, replied with confusion or sarcasm. But about a half dozen students (in a class of 51) affirmed that they were hesitant about participating in class and would very much appreciate trying something new. As students expressed interest, I sent them the following e-mail:

During each class, I tend to ask a couple of opinion questions. Because those questions ask for your opinion, there aren't "right" and "wrong" answers—just what you think, and why. If you choose to participate in our experiment, I will send you one or more opinion questions for the next class the night before. Having the question(s) ahead of time will allow you to think about what you think and why you think it and to formulate your answer. Then, when I ask the question during class, I will look to those of you participating in this experiment first for an answer, before I call on anyone else. If you raise your hands, I'll call on you; if not, not a problem. But I'm hoping this will lessen the pressure around participation somewhat and give you the ability to practice participating in class a little more. Let me know what you think, and if you'd like to try it out."

The night before each class session, I came up with a thought question for my group. The questions included, "Should a court be able to consider race in an adoption proceeding?" and "Should a court be able to order a parent to find more lucrative work?" I sent the question out to the group under a blind

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An Experiment in Participation

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cc, so that their identities would not be disclosed. Frequently, one of my participating students kicked off the discussion of the question. Most, but not all, of them answered at least one question over the course of the rest of the semester, and some of them began to volunteer to answer questions not previously provided to them.

At the end of the semester, I asked the participating students what they thought of the experiment, and how they might improve the process. All who responded agreed that for them, the experiment had been a success—even those who had not volunteered answers. One student wrote that although he remained silent, the experiment had given him the opportunity to think more deeply about the issues and feel better prepared for class. Others suggested changes that I plan to implement the next time I teach the class: asking the question toward the beginning of class, which might encourage students to participate more frequently throughout class that day, and waiting longer for an answer after the question is asked, to allow participating students to process for a moment before volunteering.

The student who originally kicked off the experiment later enrolled in our Family Law Clinic, which required her to perform regularly before other students—and she did a wonderful job. For me, that's proof enough that our experiment was a success.

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Political History of Law

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up with this conclusion, I despaired because human beings are such complex creatures in general. Complex human beings often lead to complex societies. Abraham Lincoln stated in his Gettysburg Address that an ideal government is a 'government of the people, by the people, for the people.' I do not think that such preferred idealisms can be applied in a modern society. It is difficult. Balance between organs of government is not easily achievable because societies in general are not balanced. Societies can be easily persuaded and manipulated. History is filled with examples. Noam Chomsky in one of his lectures mentions the danger of an increasingly globalized world where information is more or less filtered to control the opinions of the general population. The line 'Some of us want to rule you, some of us want to be ruled by you,' from Annie Lennox's song 'Sweet Dreams' in my view accurately describes human society." (Apsara Muraldharan- Semester 4- University of Tasmania)

"…On it (the board) she named the key figures involved in Administrative law which included Plato, Socrates, Aristotle, Immanuel Kant, Descartes and John Locke. Initially I was like, "philosophy…c'mon", but as the pieces fitted together I could see that its implications extended within and beyond any law subject. Moreover, having added these names to my wealth of knowledge, I felt more confident to insert them in assignments to reflect wider reading…" (Joshua Rishi Andran- Semester 4- University of Tasmania)

"What caught my attention to the discussions in this class is the link between religion and law. I learned that is was closely connected. For instance, the very common law today stems from the roots of Christianity. God was put as the head, an icon of worship and refrain from all wrong doings, for god. Bibles became the constitution and in turn, we could go as far to describe the Constitution as the new god. Something that is does not just existing in the minds of believers.

I was very pleased with the lesson. It was like learning the history of law in a philosophical sense. I felt that I learned how law slowly encroached into the human society. I learned the power behind it. The pieces of the puzzle started to connect. It was a very good introduction to administrative law. I wonder what lies ahead. When we get down to the very substance of the subject matter we were told that it would be dry. Nevertheless, I left the lesson with much satisfaction on how much I was able to grasp and absorb in the discussion." (Phathu Kesonsukhon- Semester 4- University of Tasmania)

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Conference: Teaching Law for Engaged Learning

Institute for Law Teaching and Learning and Center for Engaged Learning in the Law

"Teaching Law for Engaged Learning," is a one-day conference for new and experienced legal educators interested in developing as teachers. The conference will take place on April 10, 2010 at the Elon University School of Law in Greensborough, North Carolina. The conference co-sponsors are the Institute for Law Teaching and Learning (Gonzaga and Washburn) and the Center for Engaged Learning in the Law (Elon).

Structure of the Conference

The conference will consist of four sessions: (1) course and class planning, (2) teaching methods, (3) assessment and exams, and (4) developing as a teacher.

Course and class planning. What are the most important things you want your students to learn and how will you get your students there? In this session, participants will construct learning objectives, plan how they will know whether their students have attained those objectives, discuss what to include in a syllabus and what makes for an effective syllabus, reconsider how they start and end their courses and class sessions, and plan a single class session from start to finish.

Teaching methods. Participants will consider a wide variety of techniques and perspectives, from the more traditional techniques, such as lecture and questioning, to other commonly-used techniques, such as free writing, collaborative learning, PowerPoint slides, simulations, clickers, and course webpages, to a few cutting-edge techniques, such as discovery sequence instruction, cognitive think-alouds, and in-class instant messaging. Participants will both experience and discuss how best practices can be applied to these techniques. Participants will also consider keys to effective teaching beyond techniques, including attitudes, habits of mind, conceptualizations of students, and personal qualities and characteristics.

Assessment and exams. As a result of taking our course, what should students be able to do? Design effective ways to solve clients' problems using a range of authorities and complicated facts? Would they show their learning by writing opinion letters, drafting agreements, or interviewing a witness? During this workshop, participants will work from their own assessments, samples, and guidelines to design and evaluate a variety of assessments. Participants will also practice using and developing effective and sustainable ways to provide feedback, including rubrics, classroom assessment techniques, and peer review, and they will consider how to use assessment results as feedback for improving their course and class design and teaching.

Developing as a teacher. Following an introduction to the research on faculty development, participants in this session will engage in a variety of teaching development instruments. For example, participants will complete a teaching inventory, engage in reflective writing, view a teaching video, practice giving feedback, and brainstorm ways to develop a sustainable teaching development practice.

Conference Schedule

Friday, April 9

5:00-7:00 – Pre-registration

Saturday, April 10

8:00	Registration and Breakfast
8:30	Welcome and Opening
9:00	Course and Class Planning
10:15	Break
10:45	Teaching Methods
12:00	Lunch
1:30	Assessment and Exams
2:45	Break
3:15	Developing as a Teacher
4:30	Closing
5:00	Adjourn

Presenters

The program will be designed and co-taught by five law professors:

- Roberto Corrada of Denver University School of Law
- Steven Friedland of Elon University School of Law
- Gerry Hess of Gonzaga University School of Law
- Michael Hunter Schwartz of Washburn University School of Law
- Sophie Sparrow of the Franklin Pierce Law Center.

The five conference planners/presenters have authored or contributed to 11 books (including six casebooks) and more than 25 law review articles addressing law teaching, learning, assessment, and curriculum design. They have delivered more than 200 presentations about these topics at national and international conferences and as invited speakers at law schools around the country.

Benefits to Participants

During the conference, participants can expect to encounter many new ideas about teaching and learning in law school. Participants will experience a variety of active teaching/learning methods. Participants should leave the

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Conference: Teaching Law for Engaged Learning

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conference with the inspiration and information to apply the new ideas in their courses. In short, the ultimate goal of the conference is to help the participants improve their teaching and their students' learning.

Each participant will receive a copy of Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam.

Registration

Attendance will be limited to 50 participants. The roster will be filled in the order that Elon receives the registration form and conference fee of $195. Registration information is available on the websites of the Institute for Law Teaching and Learning, http://lawteaching.org and the Center for Engaged Learning in the Law, http://www.elon.edu/e-web/law/cell/.

Transportation, Meals and Lodging

Participants are responsible for their own travel arrangements. Breakfast and lunch on Saturday, April 10 are included in the registration fee. A limited block of rooms have been booked at the Greensboro Mariott Downtown, 304 N. Greene St., Greensboro, NC 27401. Phone: 336-379-8000. The special rate is $110. The law school is at 201 Greene Street, two blocks away.

Pre-Conference Event (Optional)

We invite participants to pre-register and begin getting acquainted at the Law School during a meet and greet from 5:00 to 7:00 on Friday, April 9. Hors d'oeuvres will be served.

Association of American Law Schools Annual Meeting 2010

Sessions Related to Teaching and Learning

A number of sessions at the AALS Annual Meeting directly address teaching and learning. Here's a sampling of relevant programs.

Thursday, January 7, 2010

9:00-12:00	Section on Academic Support
	Transforming Learning in the Classroom: the 21st Century Law Professor
2:00-3:30	AALS Workshop on Pro Bono and Public Service
	Engaging Faculty: Using Pro Bono to Teach Doctrine and Skills
2:00-5:00	Joint Program of Sections on Legal Writing, Reasoning and Research and Teaching Methods
	Teaching Law to Students from Other Countries

Friday, January 8, 2010

10:30-12:15	Section on Contracts
	New Approaches to Teaching Contracts: A Teach-In
2:15-4:00	Presidential Program II
	Transformative Teaching and Institution-Building
4:00-5:45	Section on Balance in Legal Education
	Who Am I? The Role of Legal Education in Shaping Professional Identities
4:00-5:45	AALS Executive Committee Forum with the ABA Section on Legal Education and Admissions to the Bar
	Requiring Law Schools to Measure Student Learning: A Forum on ABA Accreditation Standards
4:00-5:45	Section on Alternative Dispute Resolution, Co-Sponsored by Section on Professional Responsibility
	Overcoming the Difficulties of Teaching Negotiation Ethics

Saturday, January 9, 2010

8:30-10:15	Section on Continuing Legal Education, Co-Sponsored by Section for the Law School Dean
	Exploring the Options for the Future of Legal Education
8:30-10:15	Section on Part-Time Division Programs
	Out of the Box Alternatives for Teaching Part-Time Students
1:30-3:15	AALS Committee on Curriculum Issues Program
	Teaching Beyond the Appellate Opinion

The Activity-Based Seminar

By Stacy Caplow, Brooklyn Law School

Seminars are challenging to design. As advanced level courses that deeply explore doctrine, policy, theory, or interdisciplinary approaches, they are more participatory and interactive than other classes, relying on a high degree of student engagement. Several models prevail: the end-of-semester presentation that culminates in a long paper; the colloquium where students read essays and interact with guest scholars; the reaction paper that asks students to write regular short responses to assigned readings; student-led discussions where students both select readings and facilitate the class; small group projects that culminate in papers, class presentations, or both; or the workshop that blends doctrine and skills. After choosing goals and the general format to achieve them, the instructor has to carefully select materials, determine the best method for assuring student participation, and decide how to assess performance. Assuming that enrollment in a seminar is open to all students, or at least all students who have completed prerequisites, the instructor has to expect a range of commitment to the course. Some students will be stars; others will be along for the ride. Thus, a plan to raise the level of student commitment is critical.

In spring 2009, I designed a seminar with an enrollment of twenty students called Advanced Topics in Immigration Law, focusing on issues "ripped from the headlines." For the 14-week semester of 2-hour class sessions, I chose three broad issues: detention, adjudication, and enforcement. For each 4-week unit, I added an experiential learning project to complement a wide range of types of readings: statutes, regulations, cases, law review and newspaper articles, government and non-governmental reports, litigation documents, and opinion pieces.

My goal was to provide opportunities to understand the law and its impact in context so that the students would become well-informed investigators, observers, commentators and participants in the immigration system at a time in history when reform is imminent.

> My goal was to provide opportunities to understand the law and its impact in context...

Immigration Detention: A Client Letter

After a blitz orientation reading relevant statutes and several Supreme Court cases, articles about the conditions of confinement, and published government standards, students participated in the New York Legal Aid Society-sponsored local detention center project. They received roughly the same level of training as the law firm pro bono lawyers in this project – not that much! Armed with a comprehensive questionnaire, some materials about possible immigration remedies, but no particular skills training, the students paired up to interview two clients. I debriefed them twice, once at the detention center and once at back at school. The assignment was for each student to draft a client letter. Since our class would not be representing the clients, we actually did not send the letters, but many of the students performed some follow-up tasks for the detainees such as contacting relatives or arranging for medical attention. In one instance, the students referred a detainee to the Immigrant Rights Clinic at NYU Law School, whose students were able to secure his release. At the last class on this topic, students presented the circumstances of their particular interviews, describing how the individual came to be in custody, which allowed them to see in action the detention statutes and cases they had read, what possible relief existed, and to witness some of the extraordinary hardships imposed by detention. The detention center activity provided a summative writing exercise, "client" contact, and an eye-opening exposure to the effects of harsh detention and deportation laws.

Immigration Adjudication: Visits to Immigration Court and a Second Circuit Opinion

Over the past two years, the quality of decision making by immigration judges has been excoriated by circuit court judges in highly publicized opinions. This unit began with an in-depth, in-class exploration of the immigration adjudication system. Then students went on a research-based treasure hunt for circuit court cases critical of immigration judges, observed a hearing

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The Activity-Based Seminar

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at the New York Immigration Court about which they had to submit a short essay describing their impressions, and attended one of five possible oral arguments of an immigration case at the Second Circuit Court of Appeals for which they had been given the briefs and record on appeal. Their assignment was to write the decision (no more than 10 pages) and a reaction essay about the oral argument. This activity involved a substantial writing exercise, exposure to an appellate record, observation of the potential impact of oral argument, and a chance to evaluate for themselves the quality of immigration court judging on the ground and from appellate heights.

Immigration Enforcement: Op-ed

Efforts to address the effect of immigration on communities have produced a raft of state statutes and city ordinances. Immigration raids on factories and homes supply high-publicity examples of round-ups, swift deportation and sometimes tragic community impact. Much criticism has been leveled at federal enforcement priorities and the increasing criminalization of immigration. In another research hunt, students located examples of local laws, and then read cases involving legal challenges to them. They also read court documents relating to prosecutions including plea agreements, watched news accounts of raids, and read GAO and NGO reports. By the end of the semester, immigration reform was in the air as President Obama's new administration had begun to pay attention to raids and detention, and as his appointees began to unravel some of the initiatives of the prior administration. Students were ready to join this policy conversation. The last writing project of the semester was an op-ed. With some how-to-write-an-op-ed guidance gleaned from on-line sources, students picked a topic, researched it and wrote an op-ed that they delivered in class. A selection of their titles reveals the variety of issues addressed: DREAM Act Makes Cents; Failing Haiti; Immigration Reform-More Assimilation, Less Deportation; Family Matters: Why US Immigration Detention Centers Need to Change How They Treat Women and Children; The Changing Face of America, Bank Bailouts, Undocumented Immigrants and the Economics of Culpability. This exercise required factual and legal research and learning a new advocacy voice.

> Assuming that enrollment in a seminar is open to all students, or at least all students who have completed prerequisites, the instructor has to expect a range of commitment to the course. Some students will be stars; others will be along for the ride. Thus, a plan to raise the level of student commitment is critical.

Last Class: Book Critique

By the fourth class, students picked from four recent books that presented historical, theoretical and topical perspectives, spent the rest of the semester reading, and then collaborated on a class presentation. (Kevin R. Johnson, *Opening the Floodgates: Why America Needs to Rethink Its Borders and Immigration Laws*; Dan Kanstroom, *Deportation Nation: Outsiders in American History*; Mark Krikorian, *The New Case Against Immigration: Both Legal and Illegal*; and Hiroshi Motomura, *Americans in Waiting: The Lost Story of Immigration and Citizenship in the United States*.) They met in small groups of four to six to prepare a class presentation. Although they all seemed to enjoy reading a book that provided a more extended analysis of the past, present and future of immigration law, they struggled with how to make an effective presentation. For the most part, they were purely descriptive; they recapitulated the themes of the book and identified some of its highlights. Probably the rush at the end of the semester accounted for their disorganization. Nevertheless, the ability to read at this level throughout the semester was valuable, as was the opportunity to collaborate.

Stacy Caplow is the Director of the Clinical Law Program at Brooklyn Law School. She can be reached at stacy.caplow@brooklaw.edu.

Sometimes, We Really Do Suck

By Stewart Harris, Appalachian School of Law in Virginia

While I don't try to influence my written student evaluations — other than by teaching well — I have occasionally told my classes that cryptically negative comments, such as, "You suck," while perhaps true, are not particularly helpful. I have then clarified that it's perfectly all right for them to write that I suck, but that if they want me to stop sucking, they had better tell me, with some degree of specificity, just how I suck.

This is the starting point of my primary method of pedagogical self-improvement. I begin with the sobering recognition that, sometimes, my performance is less than perfect. I further recognize that my colleagues will not be available, most days, to sit through my classes and gently guide me along the path to enlightenment. That leaves my students. They are the only other people in my classroom, day in and day out. Accordingly, I must look to them to tell me when, and how, I have gone off the rails.

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But this is only the starting point. Once my students have penned their love-epistles, I must decide how best to use them. I describe my methodology below, for whatever its value to others.

(1) Set aside adequate time for review. The time needed will depend, of course, on the number of evaluation forms, but, whatever the total number, I try to set aside enough time to examine each evaluation carefully, looking for important trends and tidbits. A quick flip-through won't do it.

(2) Remember the three percent rule. I teach mostly large classes, of approximately one hundred students, so percentages are easy to calculate. Over the past decade, I've noticed a trend: no matter what I'm teaching, no matter how I do it, between one and three percent of my students hate me. I'm not talking constructive criticism here, but abject hatred – of my personality, the pitch of my voice, even my choice of neckties. It took me a year or two to figure out that such visceral antipathy had nothing at all to do with my teaching. It is rather, I believe, a reflection of whatever personal demons the students in question happen to be fighting on the day they are asked to fill out their evaluation forms. I give such evaluations the credence they deserve: I disregard them.

(3) Separate the evaluation forms into three physical piles. One pile is the aforementioned "haters" pile. The second, comprising (blessedly) most of the remaining 97%, is the "generally positive" pile.

The third is the most troubling: the "legitimate criticism" pile. You know what I mean. Legitimate criticisms are the ones that keep cropping up, over and over. The complaints that give me pause. The specific comments that make me ask myself, "Did I really keep the class over the allotted time that often?" or "Did I really waste too much time at the beginning of the semester and make up for it by rushing during the final weeks?" Ouch.

(4) Evaluate the legitimate criticisms and develop strategies to address them. Sometimes this is straightforward. I might simply resolve that, "I'll get a new watch and keep better track of class time," or, "I'll make sure to stick to the schedule in the syllabus." Other times, it's not so easy. When my students once complained – legitimately – that I assigned too much "background" and "historical" reading in Constitutional Law, I had to redesign my syllabus to assign only what was truly relevant to a general, introductory course. It was a painful process — I will miss the lively class discussions of mid-19th-Century Commerce Clause analysis — and it took time, but it was ultimately worthwhile.

(5) Do it all over again the following semester. One good thing about frequent evaluations is that I can assess, pretty quickly, whether I've actually corrected legitimate problems, or whether new strategies are in order. I can also nip any new problems in the bud. I try to take a page from Henry Ford and strive for continuous improvement. Henry sold a lot of cars.

That's it. Conceptually, it's all rather simple. The difficulty, of course, is implementation. I know some colleagues who never read their student evaluations, unless forced to by an impending promotion or tenure decision. Others

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Sometimes, We Really Do Suck

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do it as perfunctorily as possible, disregarding (or, worse, obsessing over) anything that is remotely negative. Few, if any, of the colleagues with whom I have spoken go through a methodical process similar to the one that I have described.

But it's worth the pain and the effort. I am pleased to report that, over the years, as I have worked my way through my share of rookie mistakes (and quite a few others) my pile of "legitimate criticisms" has gradually shrunk. Now, I receive perhaps one or two a semester. I've yet to achieve classroom nirvana, but I have a process in place that keeps me moving, at least incrementally, in that direction. Perhaps, on some fine spring morning, decades hence, I'll face only two piles of student evaluation forms on my desk: "generally positive" and "haters." Then I'll revel in the former, disregard the latter, and take the summer off.

Stewart Harris teaches Constitutional Law and Civil Procedure at the Appalachian School of Law (ASL) in Virginia. He has been selected by ASL's first-year or second-year students as "Professor of the Year" in 2003, 2005, 2006 and 2008. He can be reached at sharris@asl.edu.

Book Review:

Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam

Book Authors: Michael Hunter Schwartz, Sophie Sparrow, and Gerald F. Hess

By Robin A. Boyle, St. John's University School of Law

Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam should be mandatory reading for new law professors, regardless of their subject matter and whether they teach casebook or skills courses. The book provides suggestions that will be helpful even to the more experienced professor. Thoughtfully constructed, Professors Michael Hunter Schwartz, Sophie Sparrow, and Gerald Hess have synthesized years of experience and their collective expertise to present the fundamentals of how to be an effective teacher, design courses, and assess student learning. With a national focus on assessment of student learning, this book is timely with its step-by-step suggestions of how professors can assess whether their students are absorbing course content throughout the course.

Divided into eight chapters with ample appendices, *Teaching Law by Design* includes useful subtopics such as learning theory, active learning, creating a positive classroom environment, visual aids, and collaborating with colleagues, to name a few among many. For the new teacher, the book provides teaching exercises, such as think-pair-share, that one would otherwise need to attend a teaching conference to learn about. For the experienced teacher, the book provides not only some fresh teaching tips, but also helpful reminders of sage advice, such as the value of including real life experiences (videos, field trips) into law courses.

In the 19th century, Christopher Columbus Langdell, dean of Harvard Law School, desired to turn the law classroom into a laboratory when he introduced the case method. *Teaching Law by Design* expands the walls of the laboratory by suggesting creative ways to engage our 21st century law students. Deans would be wise to distribute *Teaching Law by Design* to assist their faculty in honing their law teaching skills.

Robin A. Boyle is a Professor of Legal Writing and Director of Academic Support at St. John's University School of Law. She can be reached at boyler@stjohns.edu.

Submit articles to *The Law Teacher*

The Law Teacher encourages readers to submit brief articles explaining interesting and practical ideas to help law professors become more effective teachers.

Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. We encourage you to include pictures and other graphics with your submission. The deadline for articles to be considered for the next issue is February 26, 2010. Send your article via e-mail, preferably as a Word file.

After review, all accepted manuscripts will become property of the Institute for Law Teaching and Learning.

Please e-mail manuscripts to Robbie McMillian at rmcmillian@lawschool.gonzaga.edu. For more information contact the co-editors: Michael Hunter Schwartz (michael.schwartz@washburn.edu) and Gerald Hess (ghess@lawschool.gonzaga.edu).

Call for Presentations:

"Teaching Law Practice Across the Curriculum"

Summer Conference of the Institute for Law Teaching and Learning
June 16-18, 2010, Topeka, Kansas

The Institute for Law Teaching and Learning invites proposals for conference workshops on techniques for teaching law practice across the law school curriculum. The Institute's summer conference provides a forum for dedicated teachers to share with colleagues innovative ideas and effective methods for modern legal education.

The Institute invites proposals for 75-minute workshops consistent with a broad interpretation of the conference theme.

The workshops can address teaching and learning in first-year courses, upper-level courses, clinical courses, writing courses, and academic support. The workshops can deal with innovative materials, alternative teaching methods, ways to enhance student learning, formative feedback to students, evaluation of student performance, etc. Each workshop should include materials that participants can use during the workshop and when they return to their campuses. Presenters should not read papers, but should model effective teaching methods by actively engaging the participants. The co-directors would be glad to work with anyone who would like advice in designing their presentations to be interactive.

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

- The title of the workshop;
- The name, address, phone number, and email address of the presenter(s); and
- A summary of the contents of the workshop, including its goals and methods.

The Institute must receive proposals by February 12, 2010.

Submit proposals via e-mail to Professor Michael Hunter Schwartz, Co-Director, Institute for Law Teaching and Learning at michael.schwartz@washburn.edu.

The conference is self-supporting. The conference fee for participants is $450, which includes materials and meals during the conference (two breakfasts, two lunches, and one dinner). The conference fee for presenters is $200. Pleasant and reasonable accommodations are available near Washburn University School of Law, the site of the conference. Presenters and participants must cover their own travel and accommodation expenses.

The conference workshops will take place on June 17 and 18, 2010.

Interested participants can take part in an optional Teaching Lab on June 16, in which they work on an aspect of their teaching, working in small teams with a teacher-coach. Depending on participant interest, possible teaching topics for the lab may include reviewing and discussing video recordings of participants' teaching, designing one or more class session(s) to achieve particular goals, creating simulations, planning a course, creating opportunities for practice and feedback without killing yourself, or finding ways to bring real life into law teaching.

For more information, please contact:

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TEACHING AND LEARNING NUGGET

On good days we are respectful, engaged, insightful, and eloquent.

On great days our students are respectful, engaged, insightful, and eloquent.