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Northeastern's Pathway to Practice Course: Legal Ethics and Professionalism on Co-op and Beyond

By Luke Bierman, Northeastern University School of Law

At Northeastern University School of Law, we believe that effective teaching must be grounded in a curriculum that integrates theory and practice. At the same time, we place great emphasis on the public interest and social justice issues at the heart of our legal system and the rule of law. This year we introduced a team-designed and taught course that prepares our students for their first cooperative education experience, an essential cornerstone in our unique legal education model.

All Northeastern law students complete a traditional first year of classroom-based study. Then, in their upper-level years, they alternate academic quarters with co-ops, Northeastern's term for full-time field placements in law firms, legal services organizations, government agencies, and other legal settings throughout the US and world. Through their co-op experiences, students put into practice what they've learned in the classroom. By the time they graduate, with almost a full year of hands-on experience under their belts, the students have had the chance to explore different practice settings and areas of the law and are ready to hit the ground running as young lawyers.

While we have developed many excellent programs and processes over the years to prepare our students for their first co-op, we decided there was even more we could do to ensure their success as they headed out of the classroom and into the real legal world. This year, we introduced a mandatory course to enhance students' preparation for their co-op experience. "Pathway to Practice: Legal Ethics and Professionalism on Co-op and Beyond" is an intensive, week-long immersion course that students take just before they head into their first co-ops.

We launched this course because there was a sense among our faculty and students returning from co-ops that they hadn't received enough ethics instruction and professionalism training during the first year to fully support them in their initial foray into the world of practice.

We taught the course for the first time in May 2011, immediately after 1L exams were over. Reflecting Northeastern's commitment to collaboration, the

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Northeastern's Pathway to Practice Course

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Pathway program is taught by four faculty members, who designed and taught the curriculum. Others in the school also contributed suggestions or made presentations, including faculty in the research and writing program, clinical faculty, other faculty, the co-op staff, and librarians. All have had an essential role in making sure the course is relevant to what our students will face in practice.

The program emphasizes to students their dual roles as lawyers. As fiduciaries of their clients, lawyers owe a duty of confidentiality, loyalty, communication and competence. But lawyers are also officers of the court and members of a profession that shoulders public obligations to further justice. As we note throughout the course, these roles often coincide — but sometimes they are in tension. The Pathways program explores the parameters of these dual roles and the tensions that may arise between them, in particular examining how these issues could arise during a co-op. More broadly, the course addresses many other issues of professionalism that arise in the context of the legal profession.

We use a variety of methods to present the materials: traditional lectures; reading assignments (including excerpts from the ABA Model Rules of Professional Conduct and the Massachusetts Rules of Professional Conduct); break-out groups led by the teaching team and other members of the law school community, including graduates; simulations; case studies; and video presentations. Dean Emily Spieler offered the initial welcome to students, which emphasized how seriously we take the course. An overview and the goals of the course were provided to the class, as well as a keynote by a local leader of the bar.

Each day of the weeklong course offered something new and contributed to the curricular goals. We showed an episode of the television show "The Practice," using it as a jumping-off point for a discussion of competence, candor, loyalty, and confidentiality. Guest lecturers offered their particular perspectives on aspects of professionalism, including graduate Ralph Martin, former Suffolk County District Attorney and former managing attorney of Bingham McCutchen, who is now general counsel at Northeastern University, and Arnold Rosenfeld, former chief bar counsel at the Massachusetts Board of Bar Overseers, now of counsel at Sarrouf Law. Alumna Kathy Henry, hiring and pro bono partner at Choate, Hall & Stewart, discussed professional communication in the workplace, an important topic for the millennial generation raised on texting and social media. A panel of judges and law clerks addressed expectations of co-op students in judicial clerkships, while another panel, comprised of government agency and legal services co-op employers, shared their expectations of and recommendations for co-op students, and professionalism problems they've observed.

We've imposed some interesting rules to emphasize the importance of the course. Attendance at each session is mandatory. Perhaps even more controversial is that laptops and other electronic devices are not allowed to be used during class time. We want students focused and engaged in what's happening in class. Students are pre-assigned to break-out sections and are not allowed to switch from their assigned sections. It is a pass-fail course for two credits, which students receive only after completing their first co-op placement. The pass-fail credit is assessed based on attendance, class participation and satisfactory completion of various assignments, including short written exercises and a final written report reflecting on the applied learning experience assignments.

We don't yet have any formal evaluation of the course because we are just now reviewing the self-reflection papers that co-op students are required to write. But, in the meantime, it's been interesting to get the students' informal reactions to Pathway. Frankly, some were clearly irritated last May that they had to spend a week on a new course just after finals week ended. But the anecdotal feedback we now are getting is quite positive. Students are saying things like, "Oh, now we understand why it was important to get this training!" Before their co-op experiences, they simply couldn't understand the enormous difference between classroom study of law and the world of practice.

We are excited to continue with this course and to evaluate the student feedback in order to improve the course. We think it offers a vitally important emphasis on professionalism within the context of experiential education, and provides students an invaluable foundation for their careers as practicing lawyers. And, as educators, we think the collaborative teaching model is good for the students, as well as good for us.

While our four co-op program is unique, it is clear that the legal academy is finally recognizing the need for more hands-on experience, and thus externship opportunities for students are being offered much more widely. As law schools across the nation more fully embrace the critical importance of field placements, we hope this course may serve as a model for preparing law students to enter their careers with a richer understanding of the complexities of practicing law ethically and thoughtfully.

Luke Bierman is the Associate Dean for Experiential Education and Distinguished Professor of Law at Northeastern University School of Law, Boston, MA. He can be contacted at l.bierman@neu.edu.

Teaching Thinking and the Legal Creative Process

By Barbara Blumenfeld, University of New Mexico School of Law

How does one teach thinking? Can one do that? These are questions that I kept asking myself as even students with excellent basic writing skills were not writing solid documents – they were not fully developing the reasoning that must be completed before one actually places words on paper or computer.

It is easy to blame the "thinking void" on the millennial generation, on social media, on Google, on undergraduate education, on first grade teachers, indeed, on anyone who came before. But that does not really help when students do not go beyond completing identifiable skill sets such as briefing a case or following a predefined rubric for writing a document. So, how do I get them to think? I can lecture about it – its importance, how to do it, syllogisms and Aristotle. But how do I get them to do it? And to understand how it is done? The quick response is: require it and don't do it for them. But that begs the question of not only how to get the students to do the deep thinking necessary for law, but how to teach that thinking in the classroom.

This thinking is inextricably connected with the creative process as that process is manifested in products and results required of law students and lawyers. My focus is on the thinking and problem solving skills necessary for the real-world practice of law. Part One of this essay formulates the creative process necessary for developing good legal analysis, arguments, and documents, and suggests its encouragement by non-result oriented teaching. Part Two explains a class I designed in 2007 and taught most recently in 2011, which succeeds, at least in part, in bringing thinking to the surface for study and discussion.

Part One: The Legal Creative Process

Lawyers solve problems and communicate solutions. Those solutions often take the form of an argument as the lawyer attempts to convince a particular audience that the solution put forward is legally sound, good, and should be adopted. To develop that argument, prior to its communication, the lawyer must engage in the thinking necessary to both understand and synthesize a wide range of material and to use that information and understanding to develop logical and sound proofs supportive of the proposed conclusions. This development of a legal proof and its subsequent articulation are a creative endeavor: a process that results in a final product such as a legal memorandum, a brief to the court, a presentation to a legislative body or to a client, or a scholarly article. The following theory of the legal creative process draws heavily from general studies of the creative process as presented by Rex Jung, Ph.D., Assistant Professor, University of New Mexico Health Sciences Center, on April 11, 2011.

That the process of developing a legal proof is a creative one finds support in a common definition of creative: "the ability to combine novelty and usefulness in a particular social context." Consider that each document or argument created by a lawyer is unique (novel) because each case is unique and the document must be useful for its particular rhetorical situation (e.g. must convince a judge, persuade a colleague, etc.).

The creative journey to the final product includes both preparation and production and involves several mental processes. One must acquire and use knowledge; that knowledge can be cognitive or emotional. Cognitive knowledge will have its basis in empirical, factual information and will include both the facts of a particular case and the existing relevant law. Emotional knowledge considers social intelligence and how one copes with situational demands. It is generally interpretive. These two types of knowledge will be processed either deliberately or spontaneously. Deliberate processing occurs at a highly aware, conscious state. The processing takes a direct course from point A to point B. Spontaneous processing, on the other hand, occurs at a less aware state and rather than a direct path to a goal, its course is more meandering.

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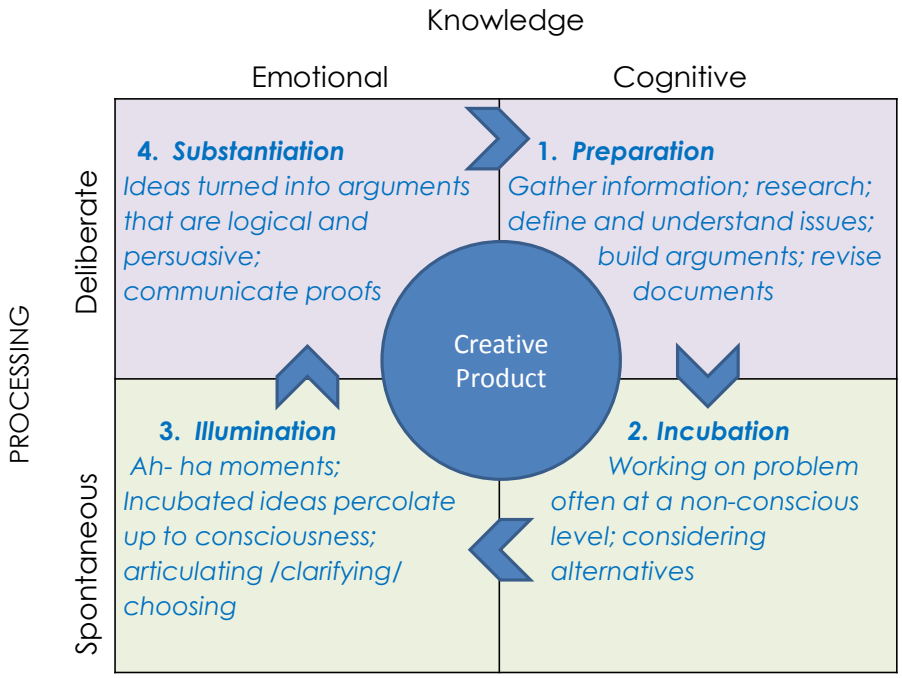
This is depicted in the following chart:



The top row of this chart, the deliberate processing, is what we typically refer to when we use the term "intelligence." It is measurable, and, being assessable, is often what we teach.

The bottom row of the chart, the spontaneous processing, includes what we typically think of as "creativity." It is less measurable and often occurs when one is not consciously working on a problem or seeking to articulate a specific goal. It is what goes on in the mind. It is not easy to teach.

In the typical class, we teach the skills on the top row. Even when using Socratic Method we do little with the bottom row. Yet, proficiency in the creative process requires effectiveness in all four of the depicted squares. Indeed, proficiency requires both practice and play. That is, it requires practice that will build proficiency in required and measurable habits and skills, but it also requires play in the sense of unstructured cognitive activity that allows for the spontaneous processing of many ideas, some that fail along with those that ultimately succeed. This mental activity, while perhaps leading to identifiable results, does not of itself have clearly assessable markers.

One can write a legal document using only the skills of the top row, but a truly effective document also requires the bottom row. That is, one can research, find arguments and organize them for presentation to a specific audience, but deeper and less formulaic thinking as represented by the bottom row can result in deeper understanding and richer arguments and documents. The cycle depicted in this chart applies to both an entire argument, as well as specific details, each of which must be developed. That is, the cycle repeats many times during the creation of one document.

Looking at each square of the chart in more detail provides additional insight into the creative process. Square one, Preparation, is both cognitive and deliberate. This is where the individual is deliberately learning. For example this is where, after receiving an assignment, one determines facts, audience, purpose, what is needed. Here the individual researches the problem, defines issues, finds arguments. When a document is drafted, this is also where one deliberately revises, formats, edits.

Square two, Incubation, is cognitive and spontaneous. This involves learning that is not deliberate and often occurs at a non-conscious level. This is the learning that goes on when one is doing something else, for example, when one goes for a walk the mind may still be working on the problem.

The third square, Illumination, is emotional and spontaneous. Here we find the "ah-ha" moments of enlightenment. This is where the incubated material percolates to the surface. This is not unlike unstructured brainstorming where a multitude of ideas, some outlandish, are produced. Here, the spontaneous mind produces many ideas for analysis and argument. Following a meandering and often unconscious process, the ideas coalesce and one may begin choosing arguments and approaches, or, with document in hand, choosing words, phrasing, etc.

The final square, Substantiation, is emotional and deliberate. Here, the ideas are deliberately turned into proofs that are persuasive. The individual is now conscious of the audience and deliberately engages the necessary emotions to be effective in the particular context in which the argument will be presented. Here one consciously considers the rhetorical triangle and other rhetorical devices.

When our teaching focuses primarily or exclusively on the top row of assessable skills, we may be unwittingly sending the message that those skills are all that are important. Perhaps more significantly, in teaching those skills the message may be that rather than several equally good results, there is a standard, right, or a best way to do something: this argument, this interpretation is best; this organization must be used; write the sentence this way, etc. These

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articulations of judgments, whether express or implied, can inhibit the free-flowing mental activity that is essential to the bottom row of the chart. There is a subtle but important distinction between finding an answer (top row) and developing an answer (requires use of top and bottom row). If a student believes that the teacher holds one "correct" answer, then there is less incentive to develop an answer on one's own; rather, it encourages the student to have as a primary goal discerning the teacher's answer rather than developing her own thinking leading to an acceptable and justifiable answer. This is not to say that we should not evaluate, but it is important in the process of evaluation not to substitute the teacher's judgment for that of the student. To do so fosters dependence on the teacher when what we must do is foster independence of thinking.

Unfortunately, assessment of student performance is easier if it assesses a measurable answer rather than assessing a student's thinking. Standardized testing trains students early to seek an answer, not to think. Outcome assessment can have the same result if it is not carefully applied. At its worst, for students it becomes something akin to learning how to fill in a form. While some professions may indeed have a correct answer in every situation, law is not such a profession. Each situation faced by a lawyer is unique and students must be encouraged to learn to develop an answer, not just to find one.

Part Two: The "Group Mind" Studies Thinking

Now, let us return to the question that began this essay: How do I teach and encourage thinking? Enter the "Group Mind" approach. The following describes my upper-level, three-credit class that has been successful in bringing the sub-conscious or spontaneous aspects of the legal creative process, discussed in Part One above, to the surface for student discussion.

1. Summary of the course

The idea behind this course is to get the thinking process out of individual heads and onto the table for examination. The basic plan involves an in-class brief that the class works on together, piece by piece, including thinking. We do one portion of the thinking or writing process each week in class as a group, discuss it, and then the students do the same on their own with a different "out-of-class" problem. The goal is to force students to articulate the thinking that is often done alone and unconsciously, discuss it with other students, and at the same time see other students' thinking processes. Working and discussing together to create one in-class product, the students become more consciously aware of the thinking process.

One "case file" is used throughout the semester along with two separate "MPTs" that require students to perform the thinking and writing about a completely new problem in one class period. The case file involves a complex fact scenario in which three pre-trial motions have been filed. The students receive the briefs of both sides for the first motion. These serve as examples for class discussion and evaluation. Writing the brief in support of the second motion is the in-class writing project carried out throughout the semester. The out-of-class writing assignment requires students to individually write the brief in support of the third motion. The two "MPTs" are in-class writing modeled after, but more complex than, the MPT portion of the bar exam. Students have three hours to complete an argument, questions presented and statement of facts for the brief requested by the problem.

To some the pacing of the class might seem slow, and indeed, a full semester to write one brief is certainly far longer than one would have in the real world. But the pacing allows for detailed examination of the thinking process. Assignments related to the briefs being written include: 1) determine presumptive positions, syllogisms, conclusions and premises; 2) build, ground and nest premises; 3) outline arguments and draft presentation of relevant law (proof of rules); 4) write application of law to facts; 5) put law and application together and revise argument; 6) write other sections of the brief; 7) write complete brief.

There are a total of 10 graded assignments, seven of which involve the out-of-class brief, one of which involves a written evaluation and comparison of briefs and two of which are the in-class "MPT" writing assignments. Each assignment counts for 10% of the final grade; I also assign 10% to class participation. Of these 11 grades, I drop the lowest, giving students a final score out of 100%. Making all assignments equally valuable places emphasis equally on the thinking process as well as the more assessable final brief.

Generally students have one week to complete assignments (this obviously excludes the two in-class writings; students have two weeks to complete the full argument draft and the final, complete brief). Because each week builds on the previous week's work, I must return their work to them with comments before the next assignment is due.

2. A typical class

The class, capped at 12 students, meets in a three-hour block once weekly. Class typically begins with the reading assigned for the day (we use two texts, one practical, the other more theoretical). This reading addresses and allows us to discuss the general concepts relevant to the in-class work we will be doing that day. I point out what I see as key concepts in the reading; we discuss those as well as other insights and questions of the students. This generally lasts between a half hour and an hour.

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The second portion of the class is devoted to using the previously discussed concepts in the context of the in-class problem. I now serve as typist as we project the group work onto a screen. Students suggest something to type; as I start, others question or make suggestions for improvement. We might have a 20-minute discussion over which word to use, or we might write several sentences with little discussion. I sometimes participate in the discussion, but never make a judgment as to which of the choices being considered I think is best. Rather, I might ask questions pushing students to ponder factors not yet considered, until they reach a decision themselves. It is a crucial aspect of this class that I not propose the resolutions; if I did, then students might be less likely to perform the deep thinking necessary to make those judgments on their own. Instead, they would rely upon me to ultimately make the judgment for them.

In the early classes we develop our thinking in the context of writing, nesting, and grounding syllogisms. In subsequent classes we project these onto the screen as we begin writing the actual proofs. Later in the semester we revise by projecting earlier work on the screen and working through it as one would one's individual documents. In all situations the students actively participate, debate, and push one another to make the best choices for the document. They expect one another to justify their reasons for viewing or expressing something a particular way. Students nearly always come to a consensus, sometimes fairly quickly, sometimes after a good half hour of discussion, and sometimes students will seem to arrive at a consensus, then after a moment of thought someone will point something out that leads to more discussion and a resulting consensus that is different from the initial one.

After class I post our in-class work on TWEN as an example for the students to use as they complete the same aspect of the writing process for the out-of-class problem. The only alterations I make are spelling corrections or filling out abbreviations I used while typing in class.

> If a student believes that the teacher holds one "correct" answer, then there is less incentive to develop an answer on one's own; rather, it encourages the student to have as a primary goal discerning the teacher's answer rather than developing her own thinking leading to an acceptable and justifiable answer.

3. What the class accomplishes, student comments, and broader perspectives

This class forces students to articulate for discussion the aspects of the creative process that normally occur within one's mind and about which one is often not conscious. Essentially what they are doing is the thinking that any author should do when writing a document. The difference is that by doing it as a group they not only encourage one another to fully think through each aspect of the process, they also actually see a concrete example of the process in action. Their scrutiny makes students more aware of the less deliberative aspects of the creative process. Students uniformly comment that they find it a luxury to be able to conduct this examination and that being more aware of their own creative process allows them to both improve it and use it to construct higher quality work products.

I believe that my most important contribution to this class, besides making it happen, is to withhold my judgments about the in-class work. There are times when I cringe at the phrasing or approach students agree upon for the in-class writing. But my overt response is only to ask them why that approach or whether everyone agrees. This generally sparks a discussion among the students, with me as facilitator, wherein they further examine their thinking. Sometimes the result is still something I personally am not happy with or would not use were I the author of the document. Nonetheless, I let it stand. Interestingly, these portions of the document are often again brought up for discussion by the students during a class in which we are revising the document. Had I imposed my judgment earlier, the later discussion would not have arisen and the students would not learn the self-evaluative thinking and judgment skills that result. Moreover, once I expressed my judgment, students would be subsequently less inclined to exercise fully their own thinking and judgment skills, presuming instead that in the end I would tell them what was best. Thus, while I do question approaches, make judgments, and suggest alternatives in

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my comments on the out-of-class work, my lack of evaluative judgment in class allows the students to reach the level of examination of thinking that occurs in class and I believe carries over to the out-of-class work.

The lesson that I take from this class is how important it is to not set ourselves up as owners and providers of what is best, of what an author/thinker must do. While, as law faculty, we likely have more knowledge or information about the law than do our students, that does not necessarily mean that we have superior thinking skills or that our way is the only valid approach to a problem. Without overtly acknowledging this, we risk, in one way or another, sending the message that there is a correct or better answer that the students simply must find. That message circumvents the creative process. Instead of completely using their own minds to fully explore a problem and arrive at a logical and defensible solution, students will deliberately go in search of the answer. Yet, as lawyers faced with new and unique situations, they will have to find their own answers. While the routine matter may not require much creativity, students must be given the opportunity to develop all the skills of a truly great lawyer, including the deep and less deliberate thinking that marks creativity. That these skills are difficult to assess should not preclude their being a key focus of our teaching.

Barbara Blumenfeld is a Lecturer and director of the legal writing program at University of New Mexico School of Law. She can be reached at blumenfeld@law.unm.edu.

Teaching Students How to Evaluate a Written Work's Quality

By Alex Ruskell, Roger Williams University School of Law

I have seen and heard a lot of completely useless feedback on written work in my life. A student suggests, "You should scrap this completely and start over." A single comment written by a partner on one of my co-worker's motions -- "NO! NO! NO!" A professor's note: "This should be better." I have seen students and practicing lawyers cry, ball up papers in frustration, and ask aloud whether business school might be a good option. I've been guilty too. At the Iowa Writers' Workshop, I told one of my fellow students that "The only thing that could make this story better was a monkey." The story eventually ended up in The New Yorker, sans monkeys.

We all need to learn the skill of constructive criticism. Giving meaningful feedback is a skill, one we often assume our students (who are bright, energetic, and motivated) will "just kind of have." But we can and should do more to provide opportunities for students to look at the work of their fellow students and practice providing comments that can actually help improve the work. In their careers, a colleague may ask them to "take a look" at a brief or contract, or to help improve office forms, and students should be able to provide more than "Looks great!" or "I caught a typo."

For the past few years, I have taught several law classes using a "writers' workshop" format (Contractual Drafting, Water Law, Law and Literature, and Art Law). As part of the class, I require students to turn in a draft of their final papers or a particular contract, and I ask the other students to read the work and provide at least one type-written page of comments (aside from anything they might write directly on the text). They also come to the next class prepared to discuss the work. As motivation, at the end of the term, I have all the students vote for the top three students who provided the most helpful comments (both on paper and in class). The top vote-getter wins a grade "bump" of one grade level on their final grade.

On their student evaluations of these classes, students have commented that they enjoyed the chance to evaluate others and thought they learned some valuable lessons on how to express their thoughts, understand the raw thoughts of others, and how to provide meaningful guidance to colleagues. They've also commented that this exercise has helped teach them to edit themselves as they work on their own papers.

While no student has ever criticized the concept, I have had a handful of students complain about the "bump." Interestingly, their fears of people voting for their friends or voting against people who they don't like haven't panned out. When they turn in their work, I evaluate it myself, and I also ask for a copy of the evaluations people have written. I also take notes when we discuss work in class. In the five classes I have tried this technique in so far, the class reached the same result I would have reached had I done the picking myself.

Ultimately, I believe it has been a successful experiment, and one that has led to work that has been better than the work students turned in for the prior versions of these courses when I didn't incorporate this technique.

Alex Ruskell is Associate Director for Academic Support and an Adjunct Professor of Law at Roger Williams University School of Law. He can be reached at aruskell@rwu.edu.

Music and the Law School Classroom

By Lindsey Webb, University of Denver Sturm College of Law

On a Monday, I was arrested (uh-huh)
On a Tuesday, they locked me in the jail (oh boy)
On a Wednesday, my trial was attested
On a Thursday they said guilty and the judge's gavel fell.
Johnny Cash, I Got Stripes

Oh lord have mercy now I am a criminal
… tell the judge please give me minimal
Rihanna, Man Down

While Johnny Cash and Rihanna may sing about the legal system, they aren't normally associated with the law school curriculum. But inviting these artists into the law school classroom through their music is a simple way to add depth and animation to discussions of the law. I play songs for my students with the intention not only of engaging them in the course material, but also in the hope that introducing music in class will help humanize their experience of legal education.

While there are many positive roles that music can play in a class - including introducing a topic or illustrating a case - I generally use portions of songs as fact patterns. Like watching a video clip, listening to part of a song in class provides a break from the written hypothetical while still relating a story to which legal concepts can be applied. Instructors considering using portions of a song or two as fact patterns in law classes should consider a few factors.

Most importantly, you must know the pedagogical purpose of introducing the song in the first place. I use songs in many ways. For example, in my trial practice course, I play Johnny Cash's "The Long Black Veil" as part of an introductory discussion on the principles of theme and theory. Students listen to the familiar tale of a murder that occurred on a "cold, dark night ... 'neath the town hall lights," in which the song's narrator recounts that "there were few at the scene but they all agreed/that the slayer who ran looked a lot like me." Unwilling to provide the court with his alibi (at the time of the murder, the narrator was "in the arms of his best friend's wife"), the narrator is convicted and executed.

I play the portion of the song that discusses the crime itself and assign my students the role of defense counsel to the protagonist. The students first must discuss what facts are useful to the defense (the darkness of the night, the small number of eyewitnesses, and so forth) and which are harmful (the illumination from the town hall light, the fact that all the witnesses concur that the perpetrator resembled the accused party, etc.). Once the class decides on a theory of defense – usually misidentification – they must brainstorm trial themes, such as "the prosecution has got the wrong man" or "this is a case about a rush to judgment." The song serves as a substitute for a case file for the purpose of this first, simple lesson on a fundamental principle of trial advocacy.

In an evidence class, on the other hand, I use segments of songs to illustrate evidentiary rules or principles, such as hearsay or the limitations on the use of character evidence. For example, in early discussions of the definition of hearsay, I play a clip from "Sonora's Death Row," sung by Robert Earl Keen. In this clip, Keen sings about what happens to the protagonist, a cowboy, after he enters a Sonoran bar:

The whiskey and mescal, peso cigars drove me outside for some air

Somebody whispered, "your life or your money"

I reached, but my gun wasn't there.

I then run through a series of scenarios based on this clip; in each scenario, I add my own facts to the basic story the students have heard. In scenario one, for example, the cowboy is charged with attempted murder of the whispering man. The cowboy testifies at trial that the whispering man said (or, rather, whispered) "your life or your money," and the cowboy, in response, stabbed him with a knife. In this scenario, I ask my students, would the cowboy's testimony about the whispering man's statement constitute hearsay? What if, instead, the whispering man is charged with premeditated murder of the cowboy, and the prosecution calls another witness to testify that the whispering man said "your life or your money" before the murder occurred? Are there hearsay concerns now? Students must think through the purpose for which the party is introducing the statement and whether the statement is being offered for its truth (and, ultimately, whether any hearsay exceptions apply) to come to the correct answer.

It is possible to spin several scenarios from a snippet of song, and to use a song for multiple purposes. For example, in evidence, I also play a portion of "Children's Story" by Slick Rick, which describes a young man as he commits a hurried series of crimes. The song serves as part of a conversation about narrative integrity and severance and joinder of counts. By adding various facts, I could also use clips from this song as a basis for a discussion of other evidentiary (or trial practice) issues – limiting instructions, motions hearings, etc. Another example: colleagues in the Criminal Defense Clinic at Denver Law have their students listen to songs such as "Man Down" by Rihanna and "Everyday Struggle" by The Notorious B.I.G. as part of a class on sentencing, with the lyrics representing the statements that the clients have made to their lawyers. Once you know what you wish to accomplish in class, song lyrics can be used in a multitude of ways.

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Music and the Law School Classroom

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A second consideration, when thinking of introducing music in class, is choosing a song that tells a complete story, with a clear beginning, middle and end. While you may not always use the entire song as a fact pattern (be careful about "fair use" issues with copyrighted material), it is nice to have a narrative that is detailed enough to be used as the basis of the classroom discussion. Because I often teach classes focused on litigation, such as evidence and trial practice, and because of my background as a public defender, I generally look for songs about a crime. The songs that I have played in class include, in addition to those discussed above, "Cocaine Blues" sung by Johnny Cash, and "The Road Goes on Forever" and "Tom Ames' Prayer" sung by Robert Earl Keen – but there are many others to choose from.

Third, be reflective when selecting your songs. In addition to looking for a song that tells a fairly linear story, I generally choose the "clean" versions of songs if an "explicit" version exists, and I will avoid playing portions of songs that I think might cause offense. This self-censorship is intended to allow students to focus on the story unfolding in the song's lyrics, rather than be distracted by profanity or other concerns. It is also useful to provide your students with lyrics of the portion of the song you plan to play.

Finally, it is important to recognize that the choice to use music in class creates new challenges (technological glitches, time spent working the song into your lecture), but also brings great rewards. Playing music in class does something more than simply set up a fact pattern. Listening to a song in a law school class is unusual, engaging, and - at risk of sounding frivolous - fun. From the professor's perspective, I enjoy finding just the right song and creating part of a lesson around it. It is rewarding to see students clap (or groan) when I introduce a particular artist, nod along with the music, or listen pensively to the more serious songs. Our subsequent legal discussion is generally engaged and enthusiastic. Students get into the spirit of the endeavor, emailing me suggestions for songs I could use in future classes, or using the lyrics as the basis for their own hypotheticals when they pose questions after class.

Songs evoke emotion and tell stories in unique ways. For a moment, while listening to a song, it is my hope that students are taken out of themselves and out of the classroom, to worlds where a man on the run from the police finds himself "in the hot joints, taking the pills" or where a young man on a crime spree robs "another and another and a sister and a brother." Students are, I hope, reminded not only that the law we are discussing applies to human beings, but that they, themselves, are human as well.

Lindsey Webb is a Lecturer and Director of Public Interest at the University of Denver Sturm College of Law. She can be reached at lwebb@law.du.edu

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

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Please e-mail manuscripts to Barb Anderson at banderson2@lawschool.gonzaga.edu. For more information contact the co-editors: Tonya Kowalski at tonya.kowalski@washburn.edu, and Michael Hunter Schwartz at michael.schwartz@washburn.edu.

On Supervising the Law Review Note …

By J. Scott Colesanti, Hofstra University School of Law

As a legal writing professor, I am often approached by students wishing to be published by journals or the Law Review. Further, many young attorneys enhance their careers by co-publishing scholarly articles with partners at their first employer, a noteworthy opportunity made possible only by prior experience in organizing ideas into meaningful commentary. Whenever I advise the student author on that first piece of legal scholarship, I urge adherence to a short checklist:

Fan the spark

If Hollywood can posit that everyone has a screenplay in him, surely each member of the vastly educated ranks of law school can summon a meritorious notion. Often, a valid contribution comes from the most instinctive and basic of everyday questions. What does the EEOC definition of employee say about migrant farm workers? Why did that newscaster say that punitive damages are never sought by the S.E.C.? Encourage students to follow their hunches rather than conclude that valid Note ideas fall only on the lucky.

Organize, organize, and organize

Once the student possesses the confidence to present a topic, encourage her to immediately draft a full outline. Here, I stress a paradigm so basic it could fit on an index card:

The Introduction requires a working title that makes the Note stand apart. Selective editors truly enjoy a departure from classic rhetoric (I started one of my own pieces with a song from the Broadway show Spamalot).

The Background section is often the easiest to chart, as it serves primarily as a recap of the current law. Indeed, the biggest obstacle to completion of this section will be knowing when to stop providing background.

Next follows the problem or the Issue, the precise wording of which may be worth postponing until other sections have crystallized. As legal writing professors, we know issues are like fireflies on an August night: easy to surround but never quite sparkling when you want them to. The most ready way to create a concrete yet novel contribution may be to focus on one of three ills: improper drafting, improper execution, or contrary policy.

For example, the Insider Trading & Securities Fraud Enforcement Act of 1988 can be said to have set penalties too low (treble damages). Conversely, various government authorities can be said to have not often enough invoked that weighty weapon (the S.E.C. brings to fruition about 30 insider trading investigations a year). Finally, regardless of who owns the misstep, present policy invites critique, for insider trading continues to plague our markets.

The Resolution is where the author earns her praise, for lawyers are expected to pose a remedy. Ask the student to amend the statute, case decision, or pronouncement she is vetting – how would she have worded it differently? This task is universally resisted by young writers, who feel that they lack the experience to cure an ill (and have grown accustomed to learning issues from journalism, which need not solve a discovered dilemma). It is worth emphasizing to the student that she already is an expert on the topic, if for no other reason that few lawyers have the time to personally research fine points at great length.

Note also that there's nothing wrong with ultimately defending a controversial statute, case decision, or pronouncement, which in and of itself may prove to be a provocative choice.

Finally, the Conclusion offers the opportunity to sum up, reiterate the theme, and leave the reader with some food for thought. It is also a great place to come back to that Broadway show lyric or novelist quote that started the piece.

Discuss the idea with others

Once having organized the piece around these discernible points, exhort the student to seek feedback from professors and other students. While I would not always endorse a budding author's advertising an idea on the Internet, each student surely has a partner or friend who can act as a sounding board. Often, merely the act of voicing the issue aloud – like a screenwriter's "pitch" – can serve to streamline a message and eliminate noise (i.e., those metaphors and anecdotes that, while enjoyable to write, do little to advance the theme).

Analyze existing coverage

Before preparing 30-40 pages, the student should undoubtedly ensure originality. Direct the student to look at texts, secondary authority, and even the editorials in the papers. Has anyone else noticed the idea? If so, how can the idea become more specific or timely? More often than not, the student will find that a practiced but particularized notion is new. More importantly, law journals are notorious paranoids, requiring students to continuously complete "preemption checks"; thus, learning to efficiently scour databases for similar Notes and declarations can only expedite the publication process that will hopefully ensue.

Complete that rough draft

Finally, impress upon the writer that full sentences, paragraphs, and sections must be written. Nothing takes the place of a full attempt at a piece — or the first, full

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Teaching Advocacy through a Real Simulation

By Almas Khan, University of La Verne College of Law

As a summer associate and law clerk at the apex of the last economic boom, I was fortunate to have senior attorneys mentor me, often spending an hour or more dissecting each document I wrote and offering candid but benevolent criticism. Their feedback complemented and vivified the lessons I learned in introductory legal writing, and I impart their wisdom to my current legal writing students. But this diligent attention from senior attorneys is a casualty of the legal sector's retrenchment during the Great Recession; although legal employers would reap long-term benefits from nurturing junior attorneys, short-term exigencies militate against my students receiving intensive guidance from legal writing experts in practice.

Recognizing the importance of self-reliance in the new legal marketplace, I have incorporated more pragmatic exercises and assignments into the first-year legal writing curriculum. While teaching persuasive legal writing, I employ a malleable "real" simulation for improving students' advocacy, especially briefs and oral arguments, in preparation for their assignments and legal careers. The simulation, essentially a master class in advocacy using an actual case, requires students to evaluate legal writing from a judicial perspective. It appeals to students with varying learning styles by including oral and written components; technology; and individual, group, and class activities; and it can be modified based on students' abilities and available class-time.

To begin, I select a case by considering its subject (such as a legal field related to the assigned brief problem, a familiar doctrinal topic, or an interesting area of law); jurisdiction (usually the jurisdiction of the brief problem); brief length; and, most importantly, disparate levels of brief quality. I try to choose a case with oral arguments students can experience in person or view online before submitting their briefs. I typically avoid selecting a decided case, as doing so would require me to reconfigure or eliminate portions of the simulation dependent on students' unawareness of the case's outcome (though students are admittedly impressed to see a direct correlation between a well-written brief and the court's decision in the case).

Next, I assign students to critique the parties' briefs by completing the rubric that will be used for the students' own briefs. The rubric considers each brief's formatting, organization, quality of factual and legal analysis (students often research the authorities cited in the parties' briefs), persuasiveness, style, and citation accuracy.

In the following class, students discuss the briefs in groups of three, describing the grade they assigned to each brief and which party they reasoned would prevail. If time permits, students draft abbreviated opinions based on the briefs, including any dissents and concurrences. I then reconvene the class and poll students on brief quality and projected case outcome, after which a representative from each group may deliver oral arguments (with or without questioning from classmates) or students may parley about the briefs as I mediate.

Afterward, I use a laptop computer to project the parties' briefs with my annotations keyed to the rubric criteria and display completed rubrics with my suggested brief grades, clarifying my rationale for the scores. This step of the exercise is crucial, as a seemingly self-explanatory rubric may be less than lucid to a first-year legal writing student tasked with applying the criteria; once, when I queried students about two memoranda that received widely ranging marks before disclosing that fact, the students thought the better one received a lower grade in light of the rubric!

The simulation culminates with a class trip to view oral arguments in the case, if feasible, or a replay of the oral arguments accompanied by my commentary. By the time this exhaustive exercise concludes, students have a keener awareness of effective litigation strategies to maximize judicial receptiveness to their legal analysis. Additionally, students become mindful self-editors, composing more compelling briefs for class and, I hope, more cogent documents in the pressure cooker of current practice.

Almas Khan is an Assistant Professor of Law at University of La Verne College of Law. She can be reached at akhan@laverne.edu.

On Supervising …

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proofread thereafter. Once the student completes both, she will become so invested in the project that there will be no turning back.

All of which should not trivialize the effort involved. Writing the scholarly article is intense, time-consuming work often jeopardized by elements outside one's control. The re-writes will be numerous, and the follow-up questions seemingly countless. But remind the student that few moments rival learning that her piece has been selected for publication. Likewise, few props shine in a job interview more than producing a bound copy of a Note, Comment, or Article in response to a request to see a writing example.

J. Scott Colesanti is an Associate Professor of Legal Writing at the Hofstra University School of Law. He can be reached at j.s.colesanti@hofstra.edu.

Doctrine and Practice and Skills, Oh My: A First Year Curricular Experiment

By Justine A. Dunlap, University of Massachusetts School of Law—Dartmouth

Introduction

As a former clinician, I look for ways to bring experiential learning into my first year classroom. The value of this pedagogy, long viewed as the province of outliers in the legal academy, has gone mainstream. Recently, two reports on legal education, Best Practices for Legal Education and Educating Lawyers: Preparation for the Profession of Law (hereinafter the Carnegie Report), have highlighted the merits of experiential learning. The following cross-classroom exercise is just one way to bring into the first year some experiential teaching practices.

Project Description

I teach Civil Procedure. With my torts and legal skills colleagues, we engage students in a pleadings-drafting project. This project is designed to connect the three first-year classes. The assignment rolls out in three components. The core problem involves an automobile accident/negligence claim hypothetical. It is distributed to first-year students in Civil Procedure early in the second semester. The class is divided into law firms; each firm is assigned a role as counsel for plaintiff or one of the two co-defendants. The plaintiff firms are charged with drafting, filing and serving a federal complaint. Defendants' counsel file defensive motions and responsive pleadings. Oral motions arguments are scheduled as requested by the students. It may be possible, in some cases, to proceed into the preliminary phase of discovery.

The hypothetical facts have already been introduced to the students in the fall semester of their Legal Skills class. There, the students use the facts to develop client letters and memoranda of law. That work is done individually. At the end of the spring semester, the same practice problem is used for a summary judgment exercise, again in the Legal Skills class. The skills class exercises thus bracket the drafting portion that occurs within Civil Procedure.

Goals

There are several goals to the project and its organizational structure. Skills classes always involve some use of legal doctrine. Intentionally using the same hypothetical and sequencing the exercises between courses breaks down the artificial divide that inevitably occurs when law is taught as discrete courses. It will also help students focus in Legal Skills on issues of Civil Procedure (i.e., diversity jurisdiction), thereby increasing their exposure to and mastery of procedure concepts. And because the Legal Skills exercises are explicitly linked to their doctrinal courses, some students who might otherwise give Legal Skills short shrift may now give it the attention it deserves. Further, coordinating the problems used in Legal Skills with those used in Civil Procedure will place each course in a context otherwise lacking.

Although the instructional component for the exercises takes place primarily in Legal Skills and Civil Procedure, the project is designed to help students increase their mastery of torts. Students are required to apply tort doctrine in drafting their pleadings and motions. They will appreciate that the complaints, answers, counterclaims, cross-claims and motions studied in Civil Procedure are not abstract forms. Rather, the forms require the identification and application of substantive tort law principles. Further, the forms, with their doctrinal law averments, can win or lose lawsuits.

Another goal of the project is student collaboration. Further, the students will experience the "work of a lawyer" during their first year, rather than merely sitting in the lecture hall under the gun of the Socratic method. Simply put, the exercise marries procedure with doctrine and practice with theory.

Best Practices

The pleading exercise reflects many concepts embedded in Best Practices and the Carnegie Report. The exercise is a problem-based approach to learning theory, analysis and skills in the first year curriculum. It also introduces students to collaborative work. By requiring journal submissions, the project engages them in reflection. Finally, by placing the students in law firms, the project places them in the role of lawyer early in their course of legal instruction. Accordingly, they will be doing, albeit through simulation, what lawyers do in law practice. Several of these are discussed in more detail below.

Collaboration

Best Practices states that legal education should encourage collaboration. This project does that. Students work with their firm colleagues and against other opposing firms. This arrangement involves two sets of legal skills: working collaboratively within a team and professionally with opponents. The students are put in the groups and work together—for better or worse—for several weeks. They are then given a questionnaire concerning the group process, along with a reading about collaboration. That reading discusses, inter alia, how work is divided and how decisions are made in a collaborative process. Then, after a brief mention during Civil Procedure class, the students were again left to their own devices—to incorporate the principles or not.

The upside of inserting the information

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about collaboration at this stage is that it arrives when it is most needed by some groups. If provided earlier, some students would ignore it, dismissing it as unnecessary. The downside is that collaborative principles are not emphasized at the project's beginning, allowing some time of potential group dysfunction. A delayed introduction may also suggest that it is of lesser value. Consequently, another option would be doing some collaborative exercises before distributing the exercise.

This project also requires effective collaboration among the faculty. Like students, faculty may have to be convinced of the merits of collaboration. Even if that case is made effectively, faculty are an independent lot and will themselves need to work on their collaboration skills.

Context-Based Learning and the Crafting of Legal Documents

Best Practices and the Carnegie Report each recommend that law students, early in their legal education, place legal doctrine and analysis in a specific legal context. Further, law students should learn how to create legal documents. This project enables first-year law students to do both in their second semester. It also decreases the silos of individual courses by combining the knowledge gained in separate classes into one instructional exercise. Learning occurs better within a context and this project provides that context.

Assessment

Initially, the students' work product is assessed by whether it satisfies the procedural requirements necessary for filing a court document. This lesson is, in and of itself, an important one. Students often think that they "get it," and they may well have mastered the theory. The exercise assesses whether they can effectively put legal theory into a usable legal document.

Second, assessment occurs when motions to dismiss are granted or denied. Finally, there is an assessment meeting at the end of the semester between the professors and the firms.

> ... the students will experience the "work of a lawyer" during their first year, rather than merely sitting in the lecture hall under the gun of the Socratic method.

There are other venues for potential assessment. For instance, students could receive written feedback on the pleadings and other papers filed, as well as on journal entries. If motions hearings are held, students could receive simultaneous oral feedback. Students could also be asked to do a self-assessment at the end of the project.

The assessment portion is significant in several ways. First, the Carnegie Report notes that first year students are "puzzled, frustrated, and anxious" about assessments in the first year. This refers largely to that law school marvel—the one-shot, end-of-semester examination. So to the extent that there is a different form of assessment during the first year, the students will benefit.

Practical Issues

This project requires significant coordination among all three classes. The assignments and transmission of substantive knowledge must be sequenced properly. Students need the appropriate doctrinal and legal skills instruction in a way that jibes with what they are being asked to do in the project. The faculty, thus, must be sensitive to the flow of the problem and to what the students need to know when in order to competently complete the assignments.

Another issue is who assesses what. There are three classes involved and, here too, the faculty need to collaborate on who assesses which portion of the assignments. Ideally, legal skills and doctrinal faculty would work together to provide feedback to the students.

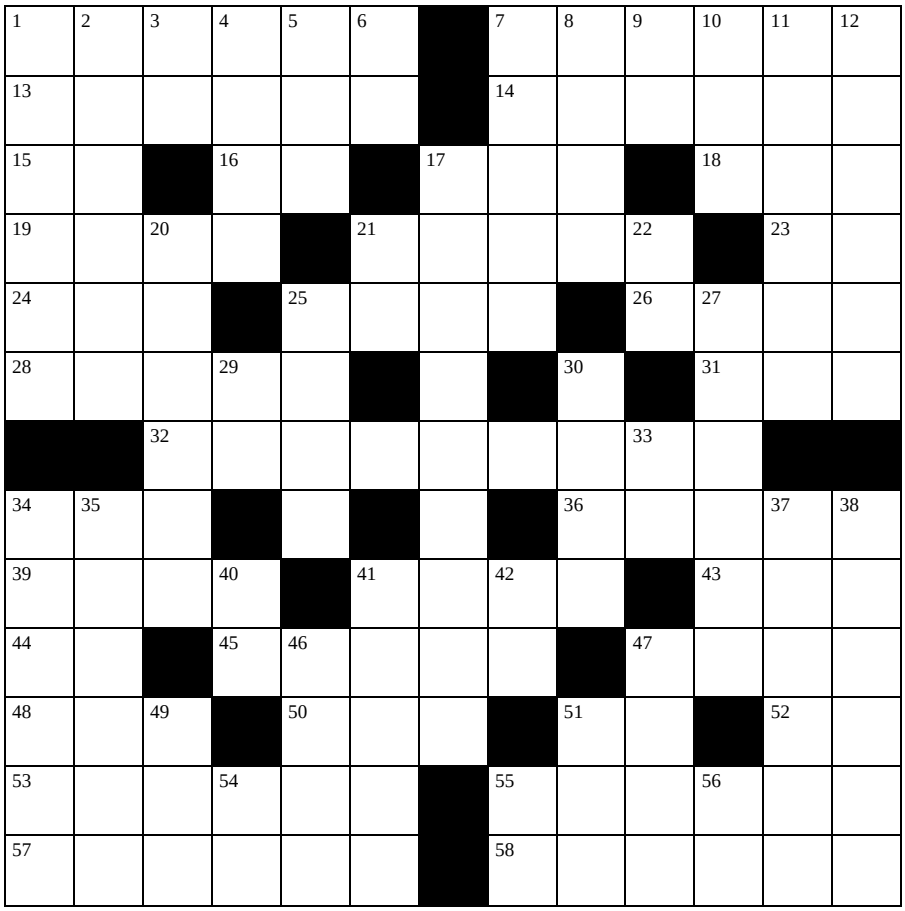
Conclusion

This exercise goes beyond typical first year Civil Procedure drafting projects by reaching across into other first-year classes. That alone is worthwhile. It also holds promise for giving students some skills in their first year, in addition to traditional legal doctrine. Finally, it can include specific feedback and assessment that is valuable to law students at this—or any—stage of their legal education.

Justine Dunlap is a Professor of Law at the University of Massachusetts School of Law—Dartmouth. She can be reached at jdunlap@umassd.edu.

A CRASH COURSE IN THE LAW OF FAIR USE

The Copyright Act of 1976 (17 U.S.C. §101) and all of its predecessors were designed to protect artists, writers, and other creators of "original" works. To use or reproduce any part of their creations, you must either have a license or permission. The exception is "Fair Use" as defined by 17 U.S.C. §107. Stay within its borders and you may use portions of copyrighted works without anyone's permission and without payment! Do you want to know more? Just work the puzzle:



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Down

1. Written by Roy Orbison and Billy Dees, 2 Live Crew's rap version of this Rock-and-Roll song prompted the United States Supreme Court to unscramble the confusion over the tests to be applied in Fair Use cases (second of three words in song's title).
2. Copyrightable sounds.
3. Remedial investigation.
4. Burden of proof.
5. Lair.
6. Three feet, no toes (abbr).
7. Number Four Wood.
8. By-product of stare decisis.
9. Third person.
10. Gold Hoarding Act.
11. Hamper.
12. Dispute resolution (plural).
17. Positive, but non-decisive user objective in determining Fair Use (per the first of four factors listed in 17 U.S.C. §107).
20. A bettor must select the first and second place finishers in exact order to win this.
21. Move.
22. Road junction.
25. More songs about this month have been written and copyrighted than any other month (abbr).
27. Alleged to be the best-protected creative person under current copyright law.
29. Rocky "Hello."
30. National Gold Bank Act.
33. House of Representatives.
34. The fourth and final factor for determining Fair Use inquires as to the effect of the subject use on the potential _____of the copyrighted work.
35. Graduates of a particular college.
37. It permits you to reach out and annoy someone regardless of where they are.
38. Its appropriation is certain to violate the third of the four factors used to test for Fair Use (17 U.S.C. §107); that factor inquires as to the "amount" and "substantiality" of the used portion as compared to the original work.
40. Negative contraction.
41. This copyrightable activity can now be performed on a computer screen.
42. Footnote.
46. As far as fights go, it was The Big One.
47. A particular variety, class, or group.
49. Doctor of Juridical Science.
51. Division of the Department of Transportation that inspects and rates civilian aircraft.
54. Obiter (abbr).
55. Nillson who sang Everybody's Talkin' (initials).
56. Indication that something smells fishy.

Across

1. In a landmark decision, Acuff-Rose Music, Inc. v. Campbell, 127 L.Ed. 2d 500 (1994), which dealt with this form of "criticism," the Supreme Court significantly clarified the law of Fair Use.
7. The Acuff-Rose case (supra) rejected the _____ Line Rule, which had erroneously suggested that a single test, as opposed to the four factors listed in 17 U.S.C. §107, should be employed to decide Fair Use cases.
13. Universal Studios once claimed, unsuccessfully, that it would be _____ if videotape recorders were sold to consumers. See 464 U.S. 417 (1984).
14. Today, this person's copyright attaches at the instant a work is created.
15. His or her job involves the legitimate alteration of the creator's work (abbr).
16. United Nations.
17. Its programs are intended solely for the enjoyment of its viewing audience; any re-broadcast without express written consent is prohibited.
18. Adjusted gross income.
19. Though awful at times, their designs are still subject to copyright protection.
21. Errand boy.
23. The first letter of the copyright form used by a book author plus the last letter of the one used by a playwright.
24. Harmful (abbr).
25. In _____ v. Universal City Studios, 464 U.S. 417 (1984), the Supreme Court focused on the first of the four factors for determining Fair Use (is the use commercial or educational?).
26. Future home to pirates and infringers.
28. Belgian violinist, composer, and conductor.
31. Legalese for thing or object.
32. Per 17 U.S.C. §101, it grants to its creator an exclusive right to copy, license, and otherwise exploit a literary, musical, or artistic work.
34. A piece of fabric made of plaited or woven rushes.
36. The Corrupt tip.
39. Pakula, who directed *Presumed Innocent*, the screen version of Scott Turow's best selling courtroom thriller.
41. Prize Fight Film Act.
43. Japanese currency.
44. Regulated unit.
45. Sam's famous pseudonym.
47. Direction on a printer's proof to retain cancelled material.
48. Kingdoms.
50. Art Buchwald asset.
51. Field officer.
52. Personal injury.
53. Judicial relief for infringement.
55. The Supreme Court cautioned against a simplistic Fair Use test in _____& Row v. Nation Enterprises, 471 U.S. 539 (1985).
57. A small portion of a copyrighted work.
58. The second item of the four factor test as contained in 17 U.S.C. §107 inquires as to the "_____" of the copyrighted work.

Let's Focus on Forms for Teaching

By Jalae Ulicki, Phoenix School of Law

Forty-two Years Ago

Forty-two years ago I graduated from high school and legal education was the furthest thing from my mind. Forty-two years ago Chief Justice Warren Burger was attending the Prayer Breakfast of the ABA Convention in Dallas, Texas. On his mind was "The Future of Legal Education," the topic of the speech he was about to give to the audience. Little did the Justice know then that the words he was about to speak would continue to resonate in the minds of legal scholars for over four decades: "The law schools of this country on their part have superbly trained students in legal principles and analysis but the question is whether that is enough. In my view that is not enough. The modern law school is not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world."[1]

Expanding Needs of Our Changing World

Conventional wisdom tells us that forms "stifle" the thought process, but I disagree. Conventional wisdom should tell us that the expanding needs of our changing world, set amidst the abundance of form pleadings and other legal forms in usage today, should stimulate the thought process. Law professors can and should use forms in law school to help students construct meaning from the forms that they will be using in practice. Research suggests that the learner constructs rather than simply receives knowledge. Using forms to build upon knowledge already within students' conceptual frameworks will allow them to construct meaning rather than merely inculcating received information. But legal education's traditions are tough to shake.

One Hundred Forty-Two Years Ago

The legal education system has endured criticisms that started long before Justice Burger pointed out that law schools were not addressing the needs of society. The early apprentice system was criticized for its lack of legal theory and inherent inconsistencies. In response, Harvard Law School developed the Socratic dialogue and the case method in the 1870s, which continues in many law schools today. The practice of law, however, has changed, and law schools can no longer rely exclusively on their archaic approach to teaching. Instead, they must accept that in the evolution of law practice, forms will continue to rapidly increase as the needs of society, courts and the profession meet the challenges of cost and expediency.

The Needs of Today

In truth, American education in general has long been criticized for not keeping up with developments in learning theory. In 2000, the National Research Council (NRC) published How People Learn: Brain, Mind, Experience, and School. The report explored the link between research on the science of learning and actual practice in the classroom. Although the report focused on elementary and secondary schools, its findings are applicable to the legal education setting as well. Indeed, applying the NRC report's guidance to law school classrooms will help address some of the common critiques of the current system. Students learn by exhibiting a true understanding of what they have learned rather than by merely reciting facts. It is not sufficient for a student to read a mathematical problem, apply a formula, and come up with an answer – akin to reading a case, applying the rule, and coming up with the conclusion. Similarly, it is utterly insufficient for them to find a form and fill in the blanks. Students instead perform better when they understand why the formula (or form) works (or does not work). Once students have developed that understanding, they are likely to be more successful at applying the knowledge in other contexts. Requiring students to question and analyze why particular content is in the form in the first instance will lead to their development of continuous questioning and challenging the content in forms rather than simply mindlessly filling them out. Take the loan application form below: Why does the lender want to know the face value of your life insurance policy? Are you required to disclose that information simply because it is a blank in the form?[2]

Looking Forward

What I propose is that we can and should teach both substantive areas of the law and practical lawyering skills through the use of pre-printed forms. A select few law professors are already doing that, at least to some degree. Some ask their students to find the standard forms available online that are relevant to particular class sessions. Still others direct their students to the wealth of existing forms on Westlaw– telling them there is no need to "reinvent the wheel." Often, these professors use the forms to supplement the cases or the lecture. I am proposing that we instead begin with the form—something that has been sitting in front of our eyes all along and that we, as legal educators, have been overlooking.

Knowledge and understanding are more than a disconnected string of

1 CLEPR Newsletter Vol. II, No.2, Nov. 1969.

2 https://www.efanniemae.com/sf/formsdocs/forms/pdf/sellingtrans/1003.pdf

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memorized facts. We also need to account for a student's pre-existing knowledge and to accommodate and incorporate that pre-existing knowledge into the learning process. We must reject the very false notion that students come to us as entirely blank slates. Individual knowledge, skills, and beliefs can significantly affect how a student remembers material, organizes data, and interprets the substance of the curriculum.

We should often begin with sample forms with which the students might already be familiar; they already have the "pre-existing" knowledge and familiarity with such forms. They have filled out a multitude of forms, such as loan or credit card applications, insurance forms, leases, and the many real estate forms associated with the buying and selling of property. Let's teach students the implications of what they have already signed. It fascinates (and sometimes alarms) them. Law professors can use forms in a multitude of ways. One possibility is to assign students the task of writing instructions for the forms. Another variation could be to have students write annotations to the form to explain the importance of the variables. A third possibility would be a simulation in which a student, playing the role of the lawyer, explains a form to a client (played by another student).

Even more importantly, students will be using a multitude of similar forms when they practice; preprinted forms abound. For one example, review the ABA websites. I conducted such a search and found 3,048 forms on just one website.[3] Efficiency in a changing world means lawyers use forms – practitioners use them, the courts use them, and nearly every industry uses them. It's time we teach them.

With the hefty plurality of real estate forms that are available, real estate is a particularly attractive subject to teach through the use of forms. According to the 2007 report published by the ABA Standing Committee on Lawyer's Professional Liability, 20% of all legal malpractice claims against lawyers were based on real estate matters. Legal malpractice claims related to real estate, moreover, are up approximately four percentage points. Certainly, lack of understanding about the widely-used real estate forms undoubtedly accounts for a number of those malpractice claims.

Finally, Rule 1.1 of the Model Rules of Professional Conduct defines "competent representation" as the legal knowledge, skill, thoroughness and preparation necessary for the representation. The commentaries point out that "[s]ome important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any specialized knowledge." Teaching law students early on to think about forms rather than simply using them without such reflection is the type of fundamental analytical skill that law professors need to incorporate in their courses. Some portion of the tremendous amount of litigation that exists in our courts today often started out with unthinking use of forms. Where was the analysis of precedent, the weighing of the complexity of the matter and the feasibility involved when the lawyer recommended using the form or filled it out?

Forty-Two Years Later

Today, legal education is at the front of my mind. We need to recognize that the practice of law is changing to meet the needs of a changing clientele who demand more efficiency, the changing needs of the courts that demand more uniformity, and the changing needs of students who need more knowledge and understanding of practice as it exists today.

To meet these needs, the use of forms will increase by necessity. Law schools can no longer afford to turn a blind eye to the use of forms, discarding them as "stifling thought." Rather, we must embrace their usage as a new tool for teaching students who will be expected to use and scrutinize forms in countless practice areas. Teaching students to think about forms rather than simply filling out forms will lead to better attorneys and happier clients.

Jalae Ulicki is Assistant Professor of Law at Phoenix School of Law. She can be reached at julicki@phoenixlaw.edu.

3 http://www.ali-aba.org/index.cfm?fuseaction=online.forms_subscription_detail&num=1&categoryid=364&current_page=3&total_pages=53&masterid=25111

Integrity Feedback

By Mark L. Perlmutter, University of Texas School of Law

A sometimes insurmountable challenge for lawyers is handling our own costly and embarrassing mistakes. And they will happen—litigation is not a game of perfect. It's like a surgeon trying to operate on a patient while another competing doctor is reaching in to jiggle the scalpel. Mistakes will be made. The heat of battle, the pressure of client loyalty, the desire to win, not to mention financial imperatives, often drive lawyers over the line of propriety. And when the line is crossed, as so many of our elected officials have learned, the cover-up is often more hazardous than the original lapse.

Another important attribute for lawyers is trustworthiness. It is the foundation for any fiduciary relationship. For law students to begin to improve their trustworthiness and to develop their mistake-handling capacities, it's first necessary that they learn to be honest with themselves and to recognize their own weaknesses. To introduce this skill, I ask each of my students to send out my standard form (see below) to seven (five will do) of their friends and acquaintances. The form asks the raters, anonymously, to assess my students' integrity on a Likert scale of 1 to 7 and to offer suggestions on what my students might do to improve their integrity, honesty, and trustworthiness. The forms come back to me directly, whereupon I have my assistant compile a sheet for each student containing that student's average trustworthiness score as well as the anonymous comments from that student's raters. Frequent comments relate to maintaining confidences, doing what they say they're going to do, telling the truth even when it's difficult, not manipulating others, and being more open and honest.

In the ensuing class, I arrange the students in a circle and pass out paper strips fortune cookie style, each strip containing a single, gender-neutralized comment about one unidentified student. I tell them this class is about looking inwardly and being honest with ourselves so that we can handle the mistakes we'll all make and be more trustworthy. I then relate one or more of my more embarrassing screw-ups to model how to acknowledge personal frailty and imperfection—a critical step. I then tell the students to see if they can guess which comments apply to them, or in any event, whether each comment contains advice they need to hear. Then, we go around the circle and each student draws two or three of the strips out of a hat and they all take turns reading those strips.

Finally, students receive a compilation of their raters' comments along with their average rating. They're often surprised by how candid their friends are, and some are relieved that their worst traits weren't identified. Most all of them acknowledge that comments they swore were about themselves were actually about someone else.

From this experience, they not only receive a roadmap to improve their trustworthiness, but also begin to learn to accept and take responsibility for their own failings. Finally, they comprehend that they share such failings with much of the rest of humanity and therefore judge others at their own peril.

Feedback Form

Instructions for class members: Assignment for the June 9th class, due June 5, midnight: Select a total of seven people, not relatives, five of whom you think know you best, and two others who are members of this class you didn't know before class began. Ask them to candidly fill out the form below and email me the results through mlp@civtrial.com. Please email this form to those from whom you seek feedback.

Name of person being rated_____

Instructions for raters: Please rate your friend's trustworthiness by placing an "X" above the appropriate number on the following scale. I will not disclose to the person being rated or anyone else the numerical results or name of any one survey participant, only my class member's average score and all of that person's comments, anonymously.

By "trustworthiness" is meant the extent you would allow yourself to be vulnerable based upon positive expectations of the intentions or behavior of this person.

1	2	3	4	5	6	7

1—wholly untrustworthy
2—pretty untrustworthy
3—slightly untrustworthy
4—average trustworthiness
5—above average trustworthiness
6—excellent trustworthiness
7—superior trustworthiness

Please identify anything you think your friend could do to improve his/her trustworthiness, honesty, and integrity. By "integrity" is meant consistency among statements, actions, and beliefs.

_____

_____

Mark L. Perlmutter is an Adjunct Professor at University of Texas School of Law. He can be reached at mlp@civtrial.com.

Why I Teach

By Paulette J. Williams, University of Tennessee College of Law

You have probably heard many teachers say that "Teaching is the best possible job for me"—at least, I hope you have. I am among those teachers who really love what they do, and I count myself as fortunate to get paid to do it.

I teach the Small Business Clinic at the University of Tennessee College of Law, where my students learn what it means to be a practicing attorney by representing real clients who are starting up businesses and non-profit organizations. I am happy to be a law school teacher for two main reasons, both of which offer benefits to me as well as to my students.

Reason No. 1: Connections

Teaching allows me to live out one of my most important values, which is connecting on a deep and real level with other human beings. As I teach I have an opportunity to get to know my students, to learn what really matters to them, and to help them explore and expand what really matters to them.

One of my most important goals for my students is to have them develop an attorney-client relationship that goes beyond simply doing a job for the client. I want my students to listen deeply to their clients and to understand what is underneath the problem that the client presents during the initial intake interview. I want the students to be fervently curious about the client's business—this enterprise that carries such importance for the client. I want the students to use the experience of representing the client as a way to make a profound connection with the client.

Reason No. 2: Playing Big

As a law teacher I get to think and write about the issues that really matter to me, and when I am at my best those issues are What part am I playing in making this a better world? How can I use the law to create positive social change?

For my students, thinking about big issues translates into learning to be creative problem solvers—learning to put the skills they have gained in law school to good use by forging consensus, acting professionally and responsibly, and serving both the client and a higher purpose.

What I want for myself and for my students is reflected in a quotation that is often attributed to Nelson Mandela but which actually comes from Marianne Williamson's A Return To Love: Reflections on the Principles of A Course in Miracles:

Our deepest fear is not that we are inadequate. Our deepest fear is that we are powerful beyond measure. It is our light, not our darkness that most frightens us. We ask ourselves, Who am I to be brilliant, gorgeous, talented, fabulous? Actually, who are you not to be? You are a child of God. Your playing small does not serve the world. There is nothing enlightened about shrinking so that other people won't feel insecure around you. We are all meant to shine, as children do. We were born to make manifest the glory of God that is within us. It's not just in some of us; it's in everyone. And as we let our own light shine, we unconsciously give other people permission to do the same. As we are liberated from our own fear, our presence automatically liberates others.

Paulette J. Williams is an Associate Professor at the University of Tennessee College of Law. She can be reached at pwillia8@utk.edu.

FAIR USE
Solution

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Seeking Balance in a Tbilisi Classroom

By Megan J. Ballard, Gonzaga University School of Law

This article is an invited submission from a board member of the Institute for Law Teaching and Learning.

During my 2010-11 sabbatical, I expected to learn about the possibilities for post-conflict property restitution in the country of Georgia. I spent nearly five months in Tbilisi with a Fulbright grant to study Georgia's efforts to prepare for an eventual restitution plan, should the secessionist struggles with Georgia's two break-away territories be peacefully resolved. Indeed, I did gather data about Georgia's property measures, as expected. But I also learned about balance. Not the kind of balance required to remain upright while lurching forward on Tbilisi's old Soviet-era subway trains, or strolling along Chavchavadze Avenue while dodging doggie detritus and cars motoring on the sidewalk in search of parking. By balance I mean the act of adapting to a different cultural environment, but still recognizing the confines and benefits of my own cultural roots.

> In Georgia, I had the impression that rigid adherence to my customary style of teaching could impose a barrier to my student's learning, as well as my own learning about different ways of teaching. Now, I question whether the same might be true at home.

While this essay is about how I searched for balance between Georgian and American academic cultures, there may be a lesson here about domestic law teaching. In some regards, our students come from a different culture than the one in which many of us were raised, inviting us to seek a similar balance in our own classrooms.

In addition to my research, I taught a class in the faculty of law at Ivane Javakhishvili Tbilisi State University. Having traveled and worked in four different continents outside of North America, I knew I had to shed a few layers of compulsiveness and adopt more flexibility than characteristic of my American law professor persona. I wanted to be open to approaching my students from territory they recognized, but also to give them a taste of American legal education. Determining the boundaries separating territory familiar to a Georgian law student, and that more closely associated with an American law course – and when to travel between the two – was a challenge.

I altered my typical practice in favor of something more familiar to my students for our first exam. My standard procedure on exam day is to have students spread out in the room to discourage wandering eyes. After asking Georgian colleagues about administering exams, I learned that most faculty took no special measures. On my appointed midterm day, students sat in their regular spots, somewhat huddled together on the benches in our scarcely-heated classroom. Not only did eyes wander, but more than a few responses were identical.

Although this was not exactly the outcome I had expected, it did facilitate a valuable conversation with my students about different views of academic honesty, professional responsibility, and the relationship between the two. During this discussion, I learned that many Georgian students help each other on exams as a way of demonstrating collegiality, and that faculty rarely intervene when students do so. I also learned that the idea of turning in a colleague for a suspected honor code violation was inconceivable for these students, many of whom had lost relatives in Stalin's purges because of denunciations by neighbors or coworkers. While I did alter the administration of the next two exams, my initial flexible approach allowed me to learn more about the natural learning environment of my students and how to explain my departure from the exam procedure to which most were accustomed.

This initial voluntary attempt to approach assessment from Georgian territory was followed by a not-so-voluntary effort to do the same toward the end of the semester. The university required students to be graded on a 100-point scale. After the final exam, a student with more than 40 points but less than 50 had to be offered the chance to retake the final exam. I initially balked at this requirement. Why should I have to work twice as hard (in crafting and administering a second exam) for a student who did not put enough work into the class to pass it in the first instance?

Setting aside my own self interest (a

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Seeking Balance in a Tbilisi Classroom

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change of heart possibly facilitated by Georgia's outstanding wines), the rule began to make sense. Maybe it is fairer to the student who had a bad day when the final exam was administered. Moreover, grading is not an exact science. An initial score in the 40-50 range, comprised largely of three exams, may have been a passing score of 51 if, for example, an exam had not been on the top of the stack to be graded, or the grader been grading with the benefit of more coffee, more sleep, more sanguinity, etc. In this instance, holding on to my assumptions about exams nearly blinded me to the benefits of this alternative way of assessing students. Indeed two students, both of whom had attended class regularly, fell into this "high fail" category. Both took a second version of the final exam and passed the course.

Another example of trying to strike a balance between adopting a Georgian approach and infusing the class with an American flavor involved my effort to foster classroom participation. Before I prepared my syllabus, a prior Fulbright scholar indicated that attendance is somewhat optional in Georgian higher education. Consequently, I allocated a percentage of the final grade to participation to encourage students to attend class. As I began a modified Socratic method of asking questions of my students, it became apparent that participation as I had initially envisioned would not be happening. Accustomed to a straightforward lecturing model of education, no one was comfortable speaking up. On the rare occasion that a student would offer a comment or observation, I nodded enthusiastically, wanting to encourage others to join in the conversation. Indeed, other students did join in, but only to repeat nearly verbatim the comment that I had so eagerly received. Others remained silent and motionless, exuding anxiety. Eventually, I explained what I meant by "participation" and promised not to ask students to speak up unwillingly. While more students became comfortable sharing their analyses, others chose to observe quietly. This latter group seemed more relaxed and attentive than they had when faced with the prospect of forced participation.

But not even a participation component to their grades was sufficient to prompt attendance from a handful of students who came to class only for exams. This presented another opportunity for me to search for balance between a flexible, more Georgian approach, and my more rigid sense that class attendance was essential. Learning some of the reasons behind this lack of attendance allowed me to work with these students much differently than I otherwise might have done. Significantly, students registered for my class without knowing when it would be offered. On a Friday two weeks into the semester, my students learned that class would begin on the following Tuesday and convene every Tuesday thereafter. Despite the fact that they were undergraduate students, many had families of their own and full-time jobs. They could not re-arrange their schedules to attend class. Consequently, I made all handouts and PowerPoint slides available to students who had never attended class and responded to their questions about the material, typically by e-mail. While my reaction to these absent students would have been unthinkable at home—indeed, such students would not have been eligible to sit for the final exam—it seemed appropriate in the Georgian context.

A final example of my balancing attempts involved a method apparently novel in Georgia, but tried and true in U.S. law schools. I had brought a copy of the movie, A Civil Action, to accompany the course segment on U.S. civil procedure. With not enough class time to view the film, I showed it on a different evening, and provided pizza. While my students had never viewed and discussed a movie for class, and certainly not one accompanied by pizza, doing so was an instant hit and made American pre-trial discovery more comprehensible.

These stories are about my blundering pursuit of cultural balance in Georgia. Learning in our own classrooms, however, might improve if professors incorporated new techniques more familiar to the different culture of "generation Y," balanced with traditional teaching methods. For example, I should make an effort to incorporate into my teaching tweeting, wikis and other technological innovations that I still find mysterious and intimidating. In Georgia, I had the impression that rigid adherence to my customary style of teaching could impose a barrier to my student's learning, as well as my own learning about different ways of teaching. Now, I question whether the same might be true at home. Consequently, my new challenge is to determine the boundaries between novel techniques that might resonate with learners raised in a more techno-centric culture and the traditional methods with which I am more comfortable—and when to travel between the two.

Megan J. Ballard is an Associate Professor of Law at Gonzaga University School of Law. She can be reached at mballard@lawschool.gonzaga.edu.

The 30% Rule

By Tim Iglesias, University of San Francisco School of Law

The Challenge of Orchestrating Meaningful Class Discussion

Eliciting and managing meaningful class discussion is consistently one of the most difficult challenges in law teaching, especially in 1L classes. In this essay I share the 30% rule—a technique I've found useful and welcomed by students.

Different teaching methods and different classes require and enable varied kinds and amounts of class participation. Most professors seek to facilitate class discussions that serve two objectives: (1) they involve a large and a diverse selection of students and (2) they are helpful for teaching the material. Sometimes, these objectives are in tension because more participation is not always conducive to covering the desired material. For example, I teach a four-unit Property law course that is loaded with complex doctrines. I explain my theory of education in the first class meeting (and in my syllabus): I believe students learn by active questioning, wondering, and puzzling over problems and issues. Accordingly, I try to create a classroom environment which invites questions, even when a student feels confused and uncertain. However, while I don't sacrifice understanding for coverage, I do need to move the class along at a reasonable pace.

Traditional Socratic-method-induced-fear might get students to "stand and deliver" when called upon, but it rarely evokes much voluntary participation. Some techniques will tend to increase participation generally. One can award participation credit or promise partial grade bumps as an incentive. But these techniques may only further encourage "gunners" and those who would participate anyway. They also can have the unfortunate consequence of increasing questions and comments with only a tangential relationship to the case or issue being discussed as students attempt to rack up participation points. Grading for both quantity and quality of participation can be burdensome. The "step back, step up" maxim encourages extroverts to exercise self-control while prompting those less likely to participate to jump in. This maxim hopes to balance and to broaden participation, but, without some awkward interventions by the professor, relies exclusively on students' self-assessment and self-control. None of these techniques effectively encourage more participation while also promoting the right kinds of participation.

What is the 30% Rule?

The 30% rule means that, before a student raises her hand to ask a question or a make a comment during class, she should briefly consider whether she thinks at least 30% of her classmates would be interested in hearing my answer to her question or response to her comment. If she thinks her question meets the threshold, she asks it. If she thinks it does not, she knows she can talk with me about it at the break, after class, or during my office hours. Assume the student asks the question. I make a quick, private judgment about whether the standard is met. If so, without any delay, I directly address the question. If not, I briefly invite the student to talk to me outside class about it, and carry on with whatever I planned to say next. Sometimes I quickly scan the class to read students' level of engagement to make my determination. However, I never let the class take the decision.

The 30% rule is geared to increasing quality participation during class while not squelching any question or comment a student might want to make. The 30% rule asks every student to assess the likely relevance that her question has for her classmates at that moment. It promotes both self-knowledge and awareness of others. Surprisingly, when challenged to reflect in this way, most students are very good judges of their classmates' interests and the appropriateness of their comments. Students whose questions or comments have triggered the application of the rule have learned and reformed their conduct to ask more relevant questions. Also, by channeling some questions away from class time, this rule has increased student traffic outside of class, including in my office hours, as otherwise shy students now have a "reason" to talk with me.

The 30% Rule in Practice

I introduce the 30% rule after the first or second class in the course, before patterns of participation have formed and solidified. I carefully explain what the rule is meant to do and how. I emphasize that I am interested in answering ANY and ALL questions and entertaining any comments or hypothetical that a student wants to pose, but I will strive to ensure that our limited class time together is useful for everyone.

Like the "step back, step up" suggestion, the 30% rule relies on students to self-assess and to exercise some self-discipline. However, the intervention can be simple, candid, and even humorous: "Sorry, Bob, your hypo about the dog eating the grant to Blackacre just doesn't meet the 30% rule. But I'd be glad to discuss it with you at the break or after class. I've got a dog myself and I need to think about that." The times I've enforced the 30% rule, we've returned to the material without skipping a beat.

It's also a flexible rule. Thirty-percent is my normal rule, but if I simply must get through some material in a particular class meeting, I will sometimes announce that it's now the 50% rule—so a student should consider whether half the class would be interested in my answer to his question before raising his hand.

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Book Review: *Choke: What the Secrets of the Brain Reveal About Getting It Right When You Have To* by Sian Beilock, Ph.D.

By Janet Fisher, Associate Professor of Academic Support, Suffolk University Law School

Have you ever reacted with silent skepticism to a student's claim that, "I just don't test well"? Most law professors tested very well as students and may conclude that a claim that one can know the material well and then bomb the test is an unlikely scenario. It is just this scenario that is explored in Choke: What the Secrets of the Brain Reveal About Getting It Right When You Have To by Sian Beilock, Ph.D., who is an associate professor in the Department of Psychology at the University of Chicago. Her field is human performance, and she focuses her research on what she describes as "the science behind the intangible: creativity, intelligence, choking under pressure." Beilock not only explores the brain science behind why people "choke" in academics, sports and business but also proposes remedies.

Before Beilock presents her research on the phenomenon of choking, she explains the interplay of several types of memory: explicit memory, procedural memory and working memory. Some activities, such as reasoning and recall, rely more on explicit memory, while physical tasks, such as executing a well-practiced golf swing or a free-throw shot, rely on procedural memory. Working memory, which Beilock calls our "cognitive horsepower," is housed in the prefrontal cortex and reflects our ability to readily access information in the short term while engaged in something else at the same time.

If a student is dealing with an "internal monologue of worries" during an exam, this preoccupation can diminish the amount of working memory available to support explicit memory, thereby impairing recall, reasoning, and problem-solving. By contrast, in sports, an internal monologue of worries acts not to diminish working memory but to cause working memory to interfere with procedural memory. Worry causes athletes to try to control aspects of their performance that should be automatic. Beilock calls this "paralysis by analysis." Choking in business performances can share some aspects of both choking in academics and in sports.

The presentation of empirical research on the brain science of choking during academic performance is extensive and persuasive. Just as a star goalkeeper can choke during a soccer shootout, choking can be a tragic reality for very able students. Faculty likely will be surprised to learn that it is not the less able students who are more likely to choke but those students with higher levels of working memory. Students with higher levels of working memory tend to employ complicated problem-solving strategies that begin to fail when worry impairs working memory. These same students often take testing experiences quite seriously and worry about their physiological symptoms of stress. In some instances choking is triggered by stereotype threat, which causes students to fear that their performance may perpetuate negative stereotypes attached to their gender, race or ethnicity.

Beilock does not leave her readers without a remedy; she also presents research on successful strategies to avoid or reduce the effects of choking. For students who choke during academic performance, engaging in simple writing exercises before an exam has been proven to diminish the effects of stress and worry.

While at first, faculty may not be as interested in those sections of the book that deal with sports and business, those sections are relevant to other aspects of the law student experience such as performance in clinics, competitions and job interviews. The book would be valuable to anyone who works with students in the high stakes environment of law school—from admissions officers to faculty to career services counselors—because it provides useful insights into how pressure can undermine human performance.

Janet Fisher is an Associate Professor of Academic Support at Suffolk University Law School. She can be reached at jfisher@suffolk.edu.

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Student Feedback

I often receive written comments in my course evaluations about the 30% rule. The most common ones are: "Great rule! Please tell the other profs about it!" or "I like the rule, but I don't think you enforced it rigorously enough." Of course, the former comment is welcome. The latter is really a matter of disagreement with my judgments about the usefulness of a particular question or comment at a given time. I can live (quite happily) with that disagreement. Students' views about the usefulness of their colleagues' questions and comments can be overly harsh.

The 30% rule is only one technique among many that a teacher needs to use to evoke and to manage class discussion, but it can be a very useful one. Any questions?

Tim Iglesias is a Professor of Law at University of San Francisco School of Law. He can be reached at iglesias@usfca.edu.

Making Students Practice-Ready Is Not About Verisimilitude

By James B. Levy, Nova Southeastern University School of Law

I am a "skills" professor; a legal writing teacher to be exact. I am also editor of the Legal Skills Prof Blog. Thus, it should be no surprise that, like a lot of people these days, I too think law schools need to do more to provide practical skills training to students. The legal job market has fundamentally changed, meaning employers are no longer willing to serve as de facto finishing schools by mentoring new grads the way they once did. Law schools have to pick up the slack.

However, I also believe that the best place to start making our students more practice-ready is to focus on their critical thinking skills. Despite the tectonic shifts occurring in the legal services sector, one thing remains constant: lawyering always has been, and will continue to be, an intellectual endeavor. The practical skills of writing, research, advising, and so on are not a set of independent competencies divorced from the intellectual ones. Rather, they are the manifestation of those intellectual skills. A student cannot competently draft a complaint or conduct a client interview, to take two examples, without first developing a solid foundation in the analytical skills that undergird those practical ones.

Fortunately, if there's one thing law schools do reasonably well, it is training students in analytical thinking. Law professors have spent a lot of collective time and effort thinking, discussing, and writing about how to do this. It's our forte and, because of that, we have developed some effective techniques for imparting to students the requisite critical thinking skills of the practicing lawyer.

Teaching critical thinking to students is not easy. Cognitive psychologists tell us that the brain was never meant to do the kind of abstract problem solving characteristic of lawyers. The work we do in the classroom must therefore be designed to facilitate in students the new schemas, or "procedural knowledge," as it is sometimes called, that will enable them to think like lawyers. On a neurological level, we are literally trying to rewire their brains to think in new ways. This requires a pedagogical approach that is informed, first and foremost, by the cognitive goals we hope to achieve for our students.

On the other hand, we also know that using teaching methods informed by realism is very important too. That means striving in our teaching to mirror as closely as possible what attorneys do in practice. While this mirroring has always been important, the recent emphasis on providing more skills training in law school now makes it an imperative. Realistic lessons not only prepare students to perform the particular tasks being taught, but, more generally, they also help motivate students to learn. Lessons are more meaningful when they relate to the skills students know they will use in practice. And meaningful lessons are better remembered and learned. Thus, we maximize student engagement, learning, and practice-readiness when we immerse them in verisimilitude.

But what happens if it isn't always possible to combine methodologies informed by our cognitive goals for students with those informed by the need for realism? What if the best method for achieving a particular learning outcome doesn't come in an especially realistic package? By the same token, what if some of the key tasks lawyers do in practice don't work very well as classroom pedagogy? When it comes to preparing students for practice, what's more important in lesson design: form or function?

In defense of function, consider the Socratic teaching method. The in-class dialogue between teacher and student characteristic of this longstanding law school pedagogy is not especially realistic. Except for the relatively small percentage of graduates who will litigate before appellate courts, there really isn't an analogue in practice. That concern was among the reasons the report on *Best Practices for Legal Education* was critical of legal educators' overreliance on the Socratic method and why it has become a lightning rod for those who claim law schools are too far removed from the realities of practice.

What the Socratic method lacks in verisimilitude, however, it makes up for in function. It is a methodology well supported by principles of cognitive psychology insofar as its ability to build intellectual discipline in students by actively engaging their minds in ways that build the new schemas necessary to think like lawyers. One could argue that the Socratic method's persistence as the most widely used teaching technique in law school attests to its stature as the best one for instilling critical thinking skills, even if its form isn't particularly "realistic."

In defense of form, consider the law school clinical experience. According to the 2010 NALP survey of recent law grads, clinics were deemed the best methodology for preparing students for practice. Indeed, those surveyed rated clinical experiences more useful by almost 2 to 1 over any other upper-level "skills" course including "trial advocacy" which relies on simulations instead of first-hand experience. This evidence suggests that clinics are so effective *because* they immerse students in realism rather than a simulation of it. In this instance, the pedagogy's power derives from its form.

As a legal writing professor, I'm acutely aware these days of the tension between form and function in lesson design—methodologies informed by the need to model what lawyers do in practice versus methodologies informed by the cognitive goals we set for our students. As a consequence of the pressure to produce more practice-ready graduates, legal writing professors, like others, are having to rethink some of our signature pedagogies. This often means considering whether a method's form

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is more important than its function and vice versa.

For instance, a recent, significant change in law practice is the prevalence of mobile devices to communicate between lawyers within an office. The use of these devices is making obsolete the traditional, long-form office memo—based on the IRAC paradigm—to transmit the results of research assignments from associate to partner. There's plenty of anecdotal evidence suggesting that short, conclusory emails summarizing the "bottom line" are now the predominant way to transmit this information. Nevertheless, the long-form memo is still the best method for teaching students the key skills that underlie the "bottom line," such as case analysis, synthesis and how to apply the law to the client's facts in order to predict an outcome.

> Cognitive psychologists tell us that the brain was never meant to do the kind of abstract problem solving characteristic of lawyers.

In practice, when an associate communicates her analysis to a partner via a conclusory email, there is an unspoken understanding that a more detailed "proof"—in the form of "IRAC"—is available if needed. Novices need to learn how to construct that proof even if it isn't always expressed in practice. If we instead immerse students in the shorthand of practice, we do so at the expense of developing in them these essential cognitive skills.

The same observation can be made about teaching students legal research skills in a world where practitioners are increasingly relying on open source tools like court websites and Google Scholar. Intense pressure to contain costs means practitioners will increasingly gravitate toward these free resources rather than commercial ones like Westlaw and Lexis. However, the way practitioners do legal research is quite different from the way novices do it. Experts already know their particular areas of law well and therefore tend to do searches that are much more surgical.

Experts don't rely as much on the indexing and editorial enhancements that distinguish the commercial search engines from the free ones and which are designed to help users issue-spot, develop analogical arguments and find alternative theories. Conversely, these tools are vitally important to novices precisely because they help them tease out the legal theories embedded in a seemingly random set of facts. Instruction based on the common habits of experienced practitioners would, in this instance, undermine key cognitive skills that are better developed through less "realistic" means.

The point is that, despite the push for a tighter connection between law school and practice, what lawyers do in practice, even if they do it routinely, doesn't always make it a suitable methodology for the classroom. Novice law students who aspire to be expert practitioners must first spend lots of time mastering the cognitive skills that underlie the practical skills of lawyering. Indeed, that's the raison d'etre for the academic-based model of lawyer training rather than one based solely on professional apprenticeship. Only after students become proficient with the basic cognitive skills of lawyering can they become proficient with the practical ones too.

None of this is to say that law schools should become even further disconnected from law practice than they already are. But neither does it make sense to tilt towards every practice trend or to always try to imitate in our classrooms what goes on in practice. Preparing students for practice is not about verisimilitude. It's a much more difficult and nuanced task than that. It requires a careful melding of methodologies informed by the intellectual goals we have for our students along with those that model the practical skills they'll need as lawyers. As conscientious educators, it requires us to maintain a dialogue with the practicing bar about what they are doing and how they do it. But it doesn't mean we should always imitate in the classroom what we find.

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James Levy is an Associate Professor at Nova Southeastern University School of Law in Ft. Lauderdale, Florida. He can be reached at levyj@nsu.law.nova.edu.

What's Past is Prologue: A Review of *Current Issues in Constitutional Litigation: A Context and Practice Casebook* By Sarah E. Ricks and Evelyn M. Tenenbaum, Carolina Academic Press, 2011

By Aderson Bellegarde François, Howard University School of Law

In the winter of 1907, Albert Martin Kales, an 1899 graduate of Harvard Law School and professor at Northwestern University Law School, published an article in the Harvard Law Review titled "The Next Step in the Evolution of the Casebook."[1] In it, Professor Kales argued that "the comparative merits of the casebook and the text-book methods of teaching law are no longer an issue in legal education," that casebooks "have driven the text-book out of existence as a means of education, " and that the time had come to ask "what is to be the next step in their evolution?"[2] In Professor Kales' view, for all of their virtues, casebooks had one fatal flaw: by focusing exclusively on important English and national cases they did not afford sufficient flexibility to the law teacher who wished to instruct students on how the law of local jurisdictions fits into the national scheme.

In the spring of 2007, Professor Matthew Bodie published an article in the Journal of Legal Education titled "The Future of the Casebook: An Argument for an Open-Source Approach."[3] In it, Professor Bodie argued that "ever since Christopher Langdell devised the first compilation to teach his students using the case method, law professors have relied on casebooks to provide the substantive basis for their courses," that "the casebook is, quite simply, the written centerpiece of legal education," but that "despite its privileged position, the casebook as we know it is probably on its way to extinction."[4] In Professor Bodie's view, for all of their virtues, the fatal flaw of most casebooks is that, by relying on a fixed set of bound cases they do not afford law teachers sufficient flexibility to customize the materials in the book to fit their teaching styles, the demands of their courses, and the needs of their students.

At the time Professor Kales published his call for the next evolutionary step in the development of the casebook, the case method had been in widespread use for barely thirty-five years,[5] there were only sixty-one published casebooks in circulation,[6] and it would be at least another year before West Publishing company established a national casebook market with the launch of the American Casebook Series.[7] In the intervening century between Professor Kales' call for its evolution and Professor Bodie's warning of its extinction, the casebook has been in a near constant state of change. Indeed, a year after he first distributed the introductory bound collection of cases to his Harvard students, Langdell himself began to edit it, not only adding and expunging cases but also eventually including commentaries that had been absent in the very first iterations of the book.[8] It sometimes seems as though the casebook has been in a constant state of flux ever since.

Perhaps the reason law teachers seem to be endlessly tinkering with the format of the casebook is that, as a teaching tool, the casebook is not terribly well suited for the case method. Strictly understood, the case method rests on the idea that the goal of law teaching is not to impart legal knowledge but to introduce legal reasoning. As Professor Peggy Cooper Davis recently showed, while it has long been the accepted view that Langdell's case method is overly rigid and formalistic in its insistence that law is a science and that legal reasoning, when subjected to scientific methods, can lead to the right answers, there is, in fact, nothing in Langdell's published works, letters and other collected papers that supports the claim that he was concerned about imparting knowledge so that students arrived at the right answers.[9] Rather, the case method and its accompanying Socratic dialogue was first and foremost an attempt at "giving students the chance to learn in the way that psychologists increasingly say that both children and adults learn best: by working collaboratively and at the growing edge of their abilities – at times sharing and applying collaborators' knowledge and methods, at times gaining new knowledge and developing new methods."[10] The problem is that a relatively short time after the case method was widely adopted, casebook authors increasingly began to organize and format their volumes to achieve maximum coverage of particular legal subjects.[11] That transformation of the casebook into a tool for coverage was based on a failure to recognize that, in Langdell's view, "science or not, law poses hard questions that can't be, or at least haven't been, resolved with certainty." As such, "the notion that the courses offered should include everything a student need know, that he need consider or will consider that is not gone over in class, is a mistaken one."[12]

Of all the non-core upper-level law school courses, perhaps none is as prone to the mistaken notion that "courses should include everything students need to know," and none is as ill equipped to keep that dubious promise, than the typical civil rights course. I speak from personal experience, being both the supervising attorney for the Civil Rights Clinic at Howard University School of Law and a professor of several upper level civil rights and constitutional law seminars. So, it is particularly heartening to now have a casebook from Professor

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Sarah Ricks and her collaborator Professor Evelyn Tenenbaum that offers a vision of civil rights litigation teaching, not as a survey of the body of constitutional provisions, judicial decisions, legislative enactments, and regulatory regimes that make up federal civil rights law, but as a meditation on whether and how Congress, the courts, and American society have kept or broken faith with the constitutional ideal of respect for human rights and equality. Using mostly– though not exclusively – prison litigation, focusing on selected legislation, cases, briefs, and social developments, and relying on a set of interlocking questions and problems for discussion, Professor Ricks demonstrates that, particularly when it comes to civil rights litigation, "law professors should worry less about details and ramifications, and should concentrate more on method, technique, vocabulary, approach, arts, and the other things that go to make up a lawyer who will be adequately qualified to dig into problems, – for the most part, problems the details of which we could not possibly teach him now no matter how hard we tried."[13]

Professor Ricks' decision to use civil rights law to teach the fundamental indeterminacy of legal reasoning and the intellectual versatility of legal practice is perhaps best demonstrated not just by the relatively small number of cases she has culled from the vast body of civil rights precedent, but by her decision to place federal district and circuit court rather than Supreme Court opinions at the center of her book. Indeed, it is no exaggeration to suggest that Supreme Court precedent is the least important feature of the book. This choice is made abundantly clear in the introductory chapter on §1983, more than two-thirds of which Ricks devotes to a discussion of the social milieu of the reconstruction Era, the rise of the Ku Klux Klan, and first-hand testimony of victims of Klan violence. Only after providing this background does Ricks make any mention of the Supreme Court's decision of Monroe v. Pape,[14] which is credited with reviving §1983 as a viable civil rights tool after it had fallen into disuse following the Supreme Court's evisceration of the Reconstruction civil rights statues of 1866, 1870, 1871 and 1875. Where one would normally expect a recapitulation of Supreme Court precedent, Professor Ricks offers attorneys' interviews and briefs as a way of making evident the indispensible role advocates play in the development of civil rights law. The relegation of the Supreme Court as a distant overseer is, like so many decisions in this beautifully written book, an attempt to take back the casebook to its true origins: as a tool to teach not knowledge but reasoning, not details but techniques, not doctrine but method.

> Of all the non-core upper-level law school courses, perhaps none is as prone to the mistaken notion that "courses should include everything students need to know," and none is as ill equipped to keep that dubious promise, than the typical civil rights course.

Of course, Professor Ricks' casebook is not the first or the only one to supplement cases with historical materials, scholarly discussions, workbook problems, or even practice documents. Many, if not most, casebooks nowadays do the same thing in one fashion or another. However, in many casebooks, these supplemental materials are yet another means of increasing coverage of the substantive doctrinal law students need to know – the idea being that, to fully cover, say, federal employment discrimination law, it is necessary for students to know the historical circumstances of the passage of Title VII of Civil Rights Act of 1964. What makes Professor Ricks' casebook different in an important respect is that the historical and practice materials are not there to supplement coverage of doctrine but to provide a structure for students to address "the complex and contradictory interplay of a formalistic deference to authority and an indeterminacy that allows the law to respond to notions of justice and efficiency."[15]

My years of serving both as a civil rights clinician and a doctrinal professor of constitutional law have taught me that the most difficult issues students encounter are almost never about doctrine. Rather, far more challenging are questions such as: How do you choose between advancing a new theory of a claim, knowing you will likely face a skeptical, if not hostile, judicial audience, or rehearsing the more conventional argument that does nothing to advance the law? How do you rhetorically frame your case in a way that the court is predisposed to understand, accept and respect, while at the same time telling a story that rings true to a client who spent years trying to just get someone to listen? Why, if we are being honest, do so many pro bono civil rights litigants seem at first (or even second) blush a little mentally disturbed? Did the psychological pressure of spending years fighting a

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losing battle against social forces bent on destroying them eventually extract a psychic cost now made manifest through their unshakable conviction that their pro bono attorney is secretly conspiring against them? Or is the fact that they took on the fight in the first place itself evidence of a less than fully developed sense of self-preservation because most of us supposedly rational folks would not be so quick to tilt at the windmills of the system by, say, trying, as did James Meredith, to singlehandedly racially integrate the University of Mississippi? Or is it really us advocates, ever the products of the legal status quo even while challenging it, who are afflicted with a skewed perspective for being too quick to reduce every question of justice and fairness into a legal issue?

No Supreme Court case I am aware of holds the answer to these questions. But, without explicitly framing her book as a historical and cultural critique of American civil rights law, Professor Ricks has, in fact, offered a trenchant account of how civil rights law is a catalogue of public morality and a registry of social consciousness; how any civil rights doctrine, whether significant or minor, whether honored or abused, reveals something about the people who adopted it and the ideas they profess to hold dear; and how civil rights litigation is not merely (or indeed mainly) a contest over the technical requirements of judicial, legislative and administrative rules but a reflection of American society's ideas of justice, fairness, power, equality and democracy. But above all this: Professor Ricks has managed to accomplish in this textbook, with prose at once clearheaded and lyrical, in a format at once straightforward and complex, and with materials at once conventional and unexpected, the difficult and seemingly contradictory task of pointing the way to the future of the casebook while at the same time proving herself a true intellectual heir to Langdell's original vision of the case method.

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Aderson Bellegarde François is an associate Professor of Law and Supervising Attorney at Howard University School of Law and a Visiting Professor of Law at New York Law School Fall 2011-Spring 2012.

Board Member Column

Small Scale Curriculum Mapping©

By Dennis R. Honabach, Northern Kentucky University Chase College of Law

This article is an invited submission from a board member of the Institute for Law Teaching and Learning.

Okay. You've just finished reengineering your course. You've thrown away those old notes. You've let go – well almost let go – of those favorite cases you've loved to dwell on. Instead, you've finally formulated your learning objectives for your course. You're particularly proud that you have been able to build a number of group projects that will require your students to overcome their reluctance to work with one another. You realize that the students are going to be reticent at first to abandon that security cocoon that comes with working alone, but you know that in the end they will become more successful lawyers when they learn to share their knowledge and skills. You know that they'll overcome their initial skepticism about working as a member of a group and will be the better for having done so. Finally, you've built in a series of graded and non-graded exercises that will require your students to focus throughout the course on the knowledge and skills you want them to acquire in your course. You're feeling pretty good. Job done! Right?

I'm afraid not, at least not as I see it. First, though, let me congratulate you for having actually sat down and redesigned your course. As a dean, I can assure you that legal education would be a far more effective endeavor if every faculty member would undertake the effort you've just competed. It would be terrific if all the members of your law school faculty had redesigned their courses as well. But remember that lecture you've prepared to explain the value of group effort to your students? It applies equally to you and your colleagues.

To understand the value of cooperation

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Small Scale Curriculum Mapping©

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among faculty members, consider a typical first-year curriculum. In this typical first year curriculum, students take five required courses. In assigning students to their sections, the associate dean probably tried to balance out LSAT's, UGPA's, gender, and ethnicity in an attempt to make the individual sections as alike as possible. She also tried to balance the gender and ethnicity of the faculty members teaching each section as well. And of course, she made sure each section had one contracts teacher, one torts professor and so on.

What the associate dean probably did not do is try to make sure that the learning goals of the faculty members teaching each section complemented each other. She probably did not try to make certain that students in each section got the benefit of group work and a full spectrum of skills training. As a consequence, it is entirely possible that one section is taught by a group of faculty members who emphasize developing only one set of skills while another section is taught by faculty members who spend their time teaching other skills. In the end, one section of students might spend the bulk of their time, perhaps even more time than necessary, developing case reading skills while the other group spends little time developing case reading skills but develops high-level problem solving skills.

In an ideal world, you could remedy this problem by insuring that your course fits within the parameter of your law school's curriculum map. A well-constructed curriculum map sets out in detail the learning goals of an educational program as well as the sequence in which students will achieve those goals. Before you redesign your individual course, you can refer to the law school's curriculum map to see what the learning goals (both knowledge and skills) your course is intended to cover. And, by reviewing your course plan and the plans of your colleagues, your associate dean can make appropriate adjustments in putting together the team of faculty who teach a particular section.

Unfortunately, it's the rare law school that has a curriculum map. And creating one is not something you can realistically take on without strong support from your dean and your fellow colleagues. What you can do, however, is work together with a handful of colleagues who will be teaching the same students. Consider again the hypothetical first-year section imagined above. You and the faculty members teaching a particular section could prepare what I refer to as a "small scale curriculum map" to guide you as a team in working with the students in your section. While the subject matter of your course is set by the title on the spine of your text, e.g. Torts, Contracts, Civil Procedure, Criminal Law, etc., you will find there are overlaps. Examples range from comparing definitions of intent in criminal law and torts to discussing the underlying policies explaining the rise and subsequent demise of the plaintiff-in-fault rule in contracts and the comparative negligence doctrine in torts. By working as a group, moreover, the group can identify and parcel out the skills training you hope to accomplish in the first year. You can determine who will take the lead in teaching case reading skills.[1]

If you choose to implement this idea, you will have to understand that you and every other member of the teaching group may have to be flexible in dividing up the learning goals. It simply won't do to have each of you insist on teaching problem solving and promoting (or debunking) the economic basis of all legal rules! Finally, it would be ideal if the group could agree to continue to meet on a regular basis to assess the progress the students are making in their studies. That way you and your colleagues could continue to emphasize an allocation of tasks in ways that would best achieve the results you desire.

Remember, as well, that, while undertaking this kind of small-scale curriculum mapping can easily be understood in the context of a section of first-year students, it can be done in any situation where a group of students are taking the same series of courses, whether required in the second or third year or as part of a certificate program.

Of course, actually developing and then following even a small-scale curriculum map will not be easy. Your colleagues are as likely you to believe they have identified the appropriate mix of doctrine and skills for the students and to have developed the best methods for teaching that doctrine and skills. Each of you likely believes she or he has perfected the best case briefing format. Agreement will not come easily. Compromise will be difficult. Working with some of your stubborn colleagues will be frustrating, if not seemingly impossible. But when the time comes that you've reached the point of throwing up your hands and deciding to go it alone, it's time to turn back to that wonderful course redesign you completed a short time ago and reread the materials on why it is important for your students to learn to work together cooperatively!

[1] And, I hope, the entire group can agree to use that faculty member's case briefing format in all of the section's courses. Nothing seems sillier to me than to have four or five faculty members agree that there is no single best format for briefing cases but then have each of them insist that students use a particular format. It seems to me that the faculty members, as the experts in the learning process, can more easily adapt to a new briefing format than first-year students can learn four or five different formats.

Dennis Honabach is the Dean of Northern Kentucky University Chase College of Law. He can be reached at honabach1@nku.edu.

Google It: Responding to Tough Economic Times by Integrating Free Electronic Research in the Classroom

By Amanda M. Foster, Nova Southeastern University Shepard Broad Law Center

In a world where jobs are scarce and job security is an oxymoron, it is our responsibility as professors to teach our students in a way that allows them to be both competent and competitive when they enter practice. Preparation for practice today means addressing the evolution of formats from the traditional office memorandum to contemporary e-mail memorandums, as well as providing our students with knowledge of and experience with free legal research websites such as Google Scholar.

From the evolution of formats to the evolution of research, students need to be aware of the free legal research that exists in the marketplace. The emergence of Google Scholar and a law firm's ability to gain access to case law for free has changed how legal research is conducted in a law firm setting. The widespread use of Google by individuals, and now specifically by lawyers, has been captured in the book Google for Lawyers, which provides insight into how and why Google can assist lawyers in their daily work. Carole A. Levitt and Mark E. Rosch, *Google for Lawyers: Essential Search Tips and Productivity Tools* (2010).

As a practitioner, I monitored Google Scholar for partners who hoped that statutes would someday become available and the cost of subscriptions to sites such as Westlaw and LexisNexis could be diminished. With the reduction of costs on the minds of many partners and clients today, free legal research databases are more important than ever.

Teaching free legal research in the classroom can be accomplished in a variety of ways. In my classroom, I have had success with the following: (1) provide a demonstration of how to use Google Scholar and (2) ask students to search for cases in both Google Scholar and Westlaw or Lexis related to a particular writing assignment. After students perform their searches, the next step is for them to compare the results from each site. This assignment incorporates working with the products and comparing the results, which will open students' minds to the idea that there is more to research than Westlaw and Lexis. This comparison may challenge students to go further in their future research to look at mid-priced sites such as Loislaw or Fastcase, which are available to most law students for free through their law libraries.

If you are not yet comfortable with using these free to mid-priced research sites, you could ask a librarian to do a demonstration for your class. Many students who enter private practice and work in small law offices find that they may only have access to books and free or mid-priced sites. As educators, it is our responsibility to make our students aware of the fact that not everyone will have the luxury to perform endless searches online. Equally as important, we must tell our students about the risks of doing legal research on non-legal websites. Specifically, we must stress to them the importance of Shepardizing cases on Lexis that are found on sites such as Google Scholar, and verifying information from unknown sources or from many students' favorite site—Wikipedia.

Just as we had to adapt from teaching research in the books to teaching research through the use of computers, it is clear that a generation of students raised on Google are pushing legal research to the next level. We do not want our students to enter practice without a clear understanding of the expectations that partners and clients will place on them. Our goal should always be to produce knowledgeable students who are well prepared for what lies ahead of them. As law practice advances with the incorporation of new technology, our teaching must grow to address these advancements.

Amanda M. Foster is an Assistant Professor of Law at Nova Southeastern University Shepard Broad Law Center. She can be reached at fostera@nsu.law.nova.edu.

INSTITUTE FOR LAW TEACHING AND LEARNING

Spring 2012 Conference:

Technology in and Beyond the Classroom

Hosted by

NORTH CAROLINA CENTRAL UNIVERSITY
SCHOOL OF LAW

March 3, 2012

This conference will focus on the use of technology to enhance teaching and learning in and out of the classroom. When legal educators talk about technology in law school, the discussion often addresses issues such as law students' use of laptop computers in the classroom, the use of Internet-based course management tools (such as TWEN or Blackboard), and the use of technology to display classroom materials (such as PowerPoint presentations and video clips). This conference will take the discussion beyond these traditional topics. Conference presenters and participants will explore how advanced use of technology can:

- Enhance student learning in the traditional law school classroom,
- Maximize distance learning opportunities consistent with ABA rules, and
- Expand the ability of clinical and pro bono programs to deliver legal services.

By the end of the conference, participants will leave with concrete ideas to bring back to their students, colleagues, and institutions.

Benefits to Participants

This conference is for anyone interested in technological innovation in legal education, including

- Faculty
  - Academic Support
  - Adjuncts
  - Clinical
  - Doctrinal
  - Practice Skills
  - Writing
- Law school administrators and staff
  - Clinical program directors
  - Deans
  - Directors and Coordinators of Graduate Programs
  - Externship Directors
  - Interdisciplinary Center Directors/Coordinators
  - IT professionals
  - Pro Bono and Social Justice Directors/ Coordinators
  - Study Abroad Program Coordinators

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Conference: Technology In and Beyond the Classroom

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During the conference, participants will
- Encounter new ideas about selecting and using technology to improve teaching and learning in and out of the classroom;
- Experience a variety of types of educational technology; and
- Have opportunities to meet and work with other creative legal educators who want to enhance their effective use of educational technology.

Conference Structure

The conference is a one-day event with an optional evening reception on Friday, March 2.

- **Opening Plenary** – "Choosing Wisely: Beyond Using Technology for its Own Sake." The opening plenary will explore the learning benefits of technology and engage participants in a replicable process for evaluating the technological possibilities as part of their course and class session designs (Presenters: Michael Hunter Schwartz and Gerry Hess)

- **Concurrent sessions**. There will be three time blocks for concurrent sessions. Concurrent sessions will fit in one of the following three areas, and each concurrent session will include at least one such session:
    - o Technology to enhance teaching and learning in the classroom
    - o Technology to maximize distance learning opportunities
    - o Technology to expand the ability of clinical and pro bono programs to deliver legal services.

- **Showcase Session**(s). These 20-minute sessions will allow participants to do a "show and tell" of their use of technology.

- **Technology Workshops**. Participants may sign up to participate in a brainstorming session, either in the morning or in the afternoon, where they can "workshop" their technology questions.

- **Closing Plenary** – Take Aways

All sessions will have a significant interactive piece (except Showcase sessions.)

Tentative Schedule

Friday, March 2

5:00 – 7:30 pm Registration and Reception

Saturday, March 3

8:00 – 9:00 am	Registration and Breakfast
9:00 – 9:45 am	Opening Plenary
9:45 – 10:00 am	Break
10:00 – 11:00 am	Concurrent Sessions: Participants may choose from among 3-4 interactive concurrent sessions
11:00 – 11:15 am	Break
11:15 – Noon	Show and Tell Sessions or Technology Workshop Sessions: Participants may choose to attend two 20-minute sessions demonstrating interesting uses of teaching technology or participate in a facilitated workshop of their technology ideas/concerns

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Conference: Technology In and Beyond the Classroom

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Noon – 1:30 pm	Lunch
1:30 – 2:30 pm	Concurrent Sessions
2:30 – 2:45 pm	Break
2:45 – 3:45 pm	Concurrent Sessions or Technology Workshop Sessions
3:45 – 4:00 pm	Break
4:00 – 4:30 pm	Closing Plenary

Registration Form - Technology in and Beyond the Classroom— March 2-3, 2012

Name: _____

Phone: _____ Fax: _____

School: _____

Address: _____

City/State/Zip: _____

Email: _____

Conference price includes an optional wine and cheese event on Friday evening, March 2 and breakfast and lunch on Saturday, March 3.

$_____ Attending as non-presenter ($250)
$_____ Attending as presenter ($200)

__ Enclosed is a check payable to North Carolina Central University
__ Please charge to my __ Visa __ MasterCard

Card No: _____ Expiration Date: _____/_____

Print name (as it appears on card): _____

Return this form with your check or credit card information to:

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Attn. Tamara L. Talmadge
640 Nelson St.
Durham, NC 27707

For information, contact either:

Professor Michael Hunter Schwartz
Washburn University School of Law
michael.schwartz@washburn.edu

Professor Charles E. Smith
NCCU School of Law
csmith@nccu.edu

Teaching On-Line Has Been a Great Experience for Me (Hopefully for my Students As Well)

By Barry Kozak

I had the unique opportunity to teach the same class live and on-line, simultaneously, and I truly learned how to become a better instructor in both formats. At The John Marshall Law School, I had taught employee benefits law numerous times in a live-lecture format. I was asked to develop the course into an on-line version for delivery in fall 2010; however, as my institution was still putting together the personnel who would be responsible for perfecting the technology and establishing best practices, my experience of teaching an on-line class that first time was more on the overwhelming and glad it's over side of the spectrum, than it was on the wow, I touched students' lives and I am proud of myself side.

The turning point in my appreciation of the online version of the course came in Spring 2011, when I taught the on-line class a second time through John Marshall's eCourses initiative, while I also taught an employee benefits law class live at DePaul University College of Law. That unique experience not only moved my on-line teaching experience to the more desired and more expected "wow" side of the spectrum – especially because I was able to self-assess the similarities and differences between my teaching styles and the students' general learning experiences in both formats.

So, having had a great personal and professional experience teaching the same exact class on-line and live, I started discussing the similarities and differences with colleagues and students alike. I am now teaching the on-line class for a third time, and I have been able to incorporate some suggestions on assessment and formative feedback that Sophie Sparrow (of the University of New Hampshire School of Law, and consultant to ILTL) has offered in various presentations I have attended. Below, I summarize how I have implemented those ideas and articulate some advantages and some challenges of teaching an on-line class.

Template for my on-line class

My on-line class runs coincident with the institution's regular 14-week semester. The class is asynchronous, and the virtual week begins on a Saturday at 12pm and ends the following Saturday at 12pm. Anytime during the week, students can read the textbook chapter assigned, view my prerecorded lectures voiced over a set of Powerpoint slides, and complete a self-assessment true/false or multiple choice quiz. Students also must complete three group projects throughout the semester, each of which involves collaboratively drafting client letters through a wiki, and the students take a midterm and a final exam. That's the static part of my on-line class – populated on the class site ahead of time, and requiring very little attention from me during the week. The active part of the course revolves around the discussion boards.

The weekly discussion boards allow the students to post their comments and questions to the entire group and allow me to provide current event updates and to pose public policy prompts. The students need to actively contribute to the boards (which, again crediting Prof. Sparrow, I will henceforth describe in the syllabus as "professional engagement" rather than as "class participation)". I have two discussion boards in each week - one titled "YOUR comments on the current week's materials" and the second titled "MY comments on last week's materials."

I give instructions that in the "YOUR comments" discussion each week, they are expected to communicate with each other, and they know I am merely a monitor, and will only inject myself into a discussion if someone says something incorrect or inappropriate (although I frequently add simple supports like "great point" or "this is a great discussion, but a bit beyond the scope of what you need to know for this class"). These discussions provide the signals I need to assess which specific issues they don't understand which they actually do understand.

I take a much more active role in the discussion board titled "MY comments about last week's materials," and it is in that context that I add my current event updates, policy questions, and other "live" teaching, which can include additional materials on the prior week's issues which seemed to be elusive based upon the "YOUR comments" discussion of the prior week's materials. I always have included a class participation (a.k.a., professional engagement) component to grading, but, in a live-lecture class, it is very subjective at the end of the semester. In an on-line class, I can definitely be more objective and consistent, because I can clearly demonstrate to an on-line student how I graded the sum of his or her postings over the semester.

The advantages of teaching an on-line class

I am absolutely delighted at the level of critical thinking I see in the on-line discussion boards. The students have the opportunity to think about and edit their questions or comments before posting them for the world to see, and they seem to take the same amount of care when they respond to a fellow student's posting. They also will

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Teaching On-Line Has Been a Great Experience

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occasionally attach newspaper articles or court cases to their posts. Granted, not every student participates as much as I want, but "live" students never do either. In my limited experience, there just seems to be a higher level of commitment from the on-line students. Now that John Marshall has upgraded its technology for all courses, I plan on integrating a requirement for discussion board participation and engagement in all live-lecture classes I teach in the future.

Of the active students on the discussion boards this semester, one was in the taxation of corporations class I taught live last spring. She was a good student, but very shy, and she never participated in the live class at the level I hoped for. Here, under the cover of cyber-anonymity (even though students' pictures accompany their posts), she definitely has blossomed into a very "vocal" and passionate advocate, albeit through the written word. So, perhaps, on-line classes might have the advantage of providing some self-confidence to some of the shyer students. The opposite seems true as well. One of my active on-line students had some ERISA experience as an attorney before returning for his LLM, and several of his posts start with "I have a client who …" When I have a student like that in a live class, I often need to exert a lot of time and energy to balance my desire for any student to ask any question at any time with my need to prevent any one student from kidnapping the class discussion. The postings on a discussion board by such a student seem to have much less of a negative impact on other students' educational experiences than they do in a live class. I am not a behavioral psychologist, but I sincerely encourage others to perform empirical studies on these two phenomena.

The other aspect of teaching an on-line class is my active involvement throughout the week. Generally, in a live class, especially one which is the specialty area of my private practice experience and one in which we are using the textbook I authored, I will prep for two to three hours immediately preceding the class session and then teach for three hours. I admittedly do not think about my teaching until the following week, again just a few hours before it's Show Time. With the on-line class, while I might not immediately respond to every posting, I am actively monitoring their discussions, and as the pre-recorded lectures are already complete, I get to think about the class and collect information continuously throughout the week (again, the formative assessments Prof. Sparrow encourages). Remember, the time it takes to develop the class for on-line delivery is a one-time commitment and is totally separate from the time it takes to actively teach the on-line class in any semester. Even if the aggregation of time I spend throughout the week on discussion boards in my on-line teaching exceeds the six hours of time I need per week to prep and teach my live class, I certainly do not mind it, and, actually, I find I am much more engaged and much more reactive to my students' needs. And I can devote my quality time to my on-line students during my office hours, from home if I am up at 2 a.m., or even while eating breakfast while typing on my iPad and talking about Greece with Dennis, the owner of Chicago's own Archview Diner.

Conclusion

I have grown to really appreciate the attributes of teaching classes on-line, and I believe I have actually become a better in-class instructor by seeing the component parts of how individual students learn when they look at the same material at different points in time, and under different environments, throughout the week. As I continue to improve my skills as an on-line instructor, I look forward to sharing any future insights with my colleagues, especially those of you who value ILTL and its Law Teacher as a resource for best practices in teaching, and I look forward to learning from your experiences as well.

Barry Kozak is the Director of Elder Law Studies and the Associate Director of the graduate Employee Benefits programs at The John Marshall Law School, Chicago, and teaches as an adjunct at The John Marshall Law School and at DePaul University College of Law.

Student Column

Aligning Instructional Priorities with the Realities of Legal

By Julie Covel, Washburn University School of Law

This article is the first in a new Law Teacher *series offering insights from selected students regarding their legal education experiences and ideas. The editors believe this series will offer our readers a perspective that the* Law Teacher *and other resources have not previously fully explored. We hope you enjoy this new feature.*

After one year of law school, I started my summer internship with some trepidation. It was certainly not a fear of having read too few cases that nagged at me. Legal writing kept me awake at night – more specifically my concerns about the effectiveness of my legal writing. And I received excellent grades in my legal writing courses. As I began a job that would require regular written analysis, the one memo and one brief I had written during my first year seemed strikingly insufficient preparation. While I did survive my summer internship and gain more writing experience, I contend that law schools need to revise legal writing instruction so as to adequately prepare law students for the reality of a profession that relies so heavily on written communication.

Among a variety of factors that complicate legal writing instruction is the unavoidable inclusion of legal analysis and legal research. Not only do legal writing classes co-mingle the instruction of these three important skills, but, also, the assessment of all three skills occurs through one written product. Condensing instruction for these three skills into a year or less poses two significant problems. First, professors must cover a larger number of topics; therefore, the depth of instruction suffers. Time constraints prevent repeated opportunities to practice and receive quality feedback. Second, trying to cover too much ground often means something gets omitted. What often get left behind are the actual substantive skills of legal writing – analysis and argumentation.

Making improvements in writing requires repeated practice, feedback, and opportunities to revise. As a result, law schools should revamp their legal writing curricula to be spread across two years. Legal writing professors should vertically align the curriculum between the two years and scaffold the skills that students will be expected to master. I do not see this change as an opportunity to teach more skills, but, rather, as an opportunity to clearly define these critical writing skills and provide repeated opportunities over the course of two years for students to practice and refine the skills for actual law practice. Consequently, legal writing professors should also implement techniques to improve the quality of feedback offered. A re-visioning of the curriculum should consider not only the types of writing students will be expected to produce in the workplace, but the length and frequency with which the work must be produced. A new curriculum should consider shorter pieces with more frequency, which would allow opportunities for practice, feedback, and revision.

Law students spend a considerable amount of time both in and out of class spotting issues, learning and applying rules of law, and deciphering the mystery of legal citation. However, courts and employers, cognizant that most legal issues are not resolved in oral arguments before a judge, are looking for lawyers who can effectively write. Consequently, this time in law school accumulating knowledge and skills is ultimately misspent if, upon leaving law school, students cannot effectively structure and communicate their legal reasoning and arguments in writing.

Julie Covel is a second-year law student at Washburn University School of Law. Before coming to law school, Julie taught high school English and served as a mentor teacher for new and experienced teachers seeking to improve their instructional practices. She can be reached at julie.covel@washburn.edu.

TEACHING AND LEARNING NUGGET

Law students often struggle to recognize that previously acquired skills and knowledge also apply in new situations, for example, the need to use first year legal writing skills in a memo assignment for clinic. One simple method for aiding the transfer of learning between contexts is to cue students verbally or in writing to recall and use their past training, or to anticipate applications for its use in the future.

INSTITUTE FOR LAW TEACHING AND LEARNING

Save the Date

Value of Variety and Reflecting on Our Teaching

Summer Conference of the Institute for Law Teaching and Learning

June 25-26, 2012 | Gonzaga University Spokane, Washington

These conferences are one-day each and will take place at Gonzaga University in Spokane, Washington on June 25 and 26, 2012. Participants can attend either or both.

Value of Variety will explore the benefits of variety in all aspects of teaching and learning, including variety in terms of learning objectives, materials, teaching methods, and assessment. This conference will feature plenary and concurrent workshops related to the conference theme.

Reflecting on Our Teaching, a one day teaching retreat, will offer participants an opportunity to step back and reflect on their lives as teachers. How does who we are affect how we teach, and how does teaching affect who we are? What does it mean to lead a professional life as a teacher of law? What aspects of ourselves are the most supported and engaged by the work we do? This conference will be held at Gonzaga's Bozarth Retreat Center, a historic building located in the pines above the Little Spokane River.

Conference fees

•Value of Variety. $250 for participants, which includes materials, breakfast and lunch. $125 for presenters.

•Reflecting on Our Teaching. $250 for all.

•Both conferences. $450 for participants and $350 for presenters.

Call for Presentations: Summer Conference of the Institute for Law Teaching and Learning

Value of Variety

The Institute for Law Teaching and Learning invites proposals for conference workshops on the benefits of variety in all aspects of teaching and learning. The Institute's summer conference provides a forum for dedicated teachers to share innovative ideas and effective methods for cutting edge legal education. The Institute invites proposals for 60-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 roles. The workshops can deal with variety and innovation in learning objectives, materials, teaching methods, and assessment. Each workshop should include materials that participants can use during the workshop as well as when they return to their campuses. Workshops should be lively seminar sessions in which presenters model effective teaching methods by actively engaging the participants. Proposals with strong interactive components will be given preference.

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 1, 2012.

Submit proposals via email to Barb Anderson, Program Coordinator, Institute for Law Teaching and Learning at Banderson2@lawschool.gonzaga.edu.

For more information, please contact:

Gerry Hess
Conference Organizer
ghess@lawschool.gonzaga.edu
(509) 313-3779

Sandra Simpson
Conference Organizer
slsimpson@lawschool.gonzaga.edu
(509) 313-3809