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‘Hey, Law Professors, You Get This One Wrong But You Can (and Should) Change Your Answers’

By Ronald Dees, Washburn University School of Law

“If I go back and review my multiple choice answers and I think one is wrong, should I change it or is it best to just go with my first instinct?”

Every teacher has probably been asked this question at one time or another. In my experience, the question comes up with every new group of students at least once per semester. I used to pass on the same advice to the students that most of my teachers and professors had always given me: “Don’t go back and change your answer; you should stick with your first instinct.” However, after thinking about my own experience and speaking with several successful students and colleagues about this issue, I began to question the accuracy of that advice. I decided that, rather than follow the conventional wisdom, I would do some research to find out whether I was giving my students good advice. What I found out may surprise you and may change the way you answer this question in the future.

Research shows that the belief in sticking with your first instinct is widely held among students and undergraduate professors. One study at Texas A&M University showed that 55 percent of faculty members polled believed that changing answers usually results in lower test scores. About two-thirds of those professors warned their students against changing answers, which could explain why most students also believe that changing answers is a bad practice. Interestingly, the majority of the professors polled for the A&M study were professors from the College of Education. Given that the education experts believe students should not change their answers, it is hardly surprising that some of the largest commercial test preparation businesses in the United States often give the same advice.

Everyone is wrong. Telling students to stick with their first instinct instead of changing an answer is bad advice. In fact, a 1984 meta-study, “Teaching of Psychology, Staying with initial answers on objective tests: Is it a myth?” looked at the results of 33 studies and found that most test takers change answers, and the majority of changed answers are changed from wrong to right. Research indicates that, if the student has an articulable reason for changing the answer, the student should change it.

Call for presentations for the Institute’s June 2013 Summer Conference: “Hybrid Law Teaching” See page 35 for more information.

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The Unfortunate Story Exercise: Recognizing a Diversity of Student Experience

By Deborah L. Borman, Northwestern University School of Law

Our students bring to the classroom not only a diversity of culture but also a diversity of experience. American law is a profession pursued by a wide variety of students from fresh college graduates, professionals with years of experience in other fields, to legal professionals and practitioners from other countries. One of the ways I get to know and appreciate the diverse experience of my students, and that also serves as an initial assessment of their written and verbal communication, is through my “Unfortunate Story” assignment. The Unfortunate Story is the first assignment my students complete in every writing class I teach, whether I am teaching a first-year legal writing and research class or an advanced elective. The assignment is as follows:

Write a story about something unfortunate that happened to you, explain how you handled it at the time

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Hey, Law Professors, You Get This One Wrong But You Can (and Should) Change Your Answers’

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of students were helped by changing their answers while only 19 percent were hurt by doing so. Other studies have shown varied results percentage-wise, but the important thing to note is that the majority of answer changes in nearly every study over the last 80 years or so has showed an overall improvement in scores when students change answers.

You may be wondering why, if changing answers is a good idea, do most people believe otherwise. Researchers believe they have an answer to that question as well. According to “Counterfactual Thinking and The First Instinct Fallacy,” published in 2005 by Justin Kruger, Derrick Wirtz, and Dale T. Miller in the Journal of Personality and Social Psychology, this mistaken belief has to do with people’s own self-perception. The hypothesis behind their research was that “counterfactual thinking” is responsible for the attitude people have about changing answers. Their research shows that, when students are given the chance to change answers and then asked to predict the efficacy of those changes, the students vastly underestimate the improvement in scores that typically result from the changes made. The researchers posit that the reason for the underestimation is that students tend to have a particularly emotional response, based in regret, to the times when they have changed an answer from right to wrong, and students are less likely to have a similar response to successful changes. Because the emotional response is more powerful, the experience produces a more powerful memory, and this heightened recollection of the negative outcomes of grade changes creates the perception that changing is a bad idea. The research indicates that this effect is ultimately responsible for the ongoing belief in the fallacy that changing answers is a bad practice even though the opposite has been proven true time and again.

So, the next time a student asks you whether he should change his answer, perhaps you should change yours.

Ronald Dees is the Institute for Law Teaching and Learning fellow and the director of Bar Services at Washburn University School of Law.

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The Unfortunate Story Exercise: Recognizing a Diversity of Student Experience

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and what, if anything, you would do differently were this event to occur today. This assignment is limited to 250 words. Please be prepared to read your story aloud on the first day of class.

The assignment is wide open, not limited to law or law school in any way, and the student may tell any story that he or she finds comfortable to read aloud to a room full of strangers.

Over the few years since I developed the Unfortunate Story assignment, I have discovered that the assignment is useful to discover the diverse backgrounds of the students as well as for assessment purposes. The Unfortunate Story is a great icebreaker on the first day of class, as everyone must stand up in front of the class and tell his or her story. We all learn something about a classmate that may not arise out of the traditional introduction that generally includes the student’s hometown, where he or she went to college, or where she or he worked. Through the Unfortunate Story, I learn unique information about each student that is interesting, provides details about each student’s diversity of experience, and makes it easier for me to remember his or her name. I enjoy getting to know students through their personal stories. The students also learn to appreciate their classmates’ diversity of experiences through the Unfortunate Story.

As an initial assessment tool, the Unfortunate Story allows me to evaluate: (1) whether the student can follow directions, i.e., did he or she follow the word count limit and the details of the assignment? Did he or she read the written story to the class or just recount an event out of his or her head; (2) the student’s writing skills, i.e., basic grammar, punctuation and sentence formation; (3) the student’s oral communication skills, i.e., whether the student is comfortable speaking aloud, any foreign language diversity issues that may require ESL coaching or other educational attention; and (4) whether the student may require attention for personal or psychological issues, i.e., to identify possible academic performance accommodations and make referrals to the appropriate professionals.

Through the Unfortunate Story, I can also gauge students’ diversity of life experience and possible learning styles. Stories range from straightforward to humorous to very sad and upsetting. For example, new college graduates’ Unfortunate Stories tend to revolve around events that occurred in cars (about one-third of student stories are car stories), getting stuck on the highway, getting lost, getting a car towed, getting tickets. Younger students are accustomed to a college classroom environment. More seasoned students may relay stories about work, children or other significant life issues, and may have an adjustment period in returning to the classroom setting after years away from school. Sometimes, Unfortunate Stories provide great insight as to potential personal difficulties that students may bring to school regarding family or other relationships. We all know that law school is a delicate balancing act and that maintaining a professional-personal life balance is difficult during the rigors of a law school education.

Some of the Unfortunate Stories students share are highly unusual and dramatic, and include the following:

- Being kidnapped by Bedouins on a camel in Turkey
- Becoming blind in one eye in a sports accident
- Losing a job on a television reality show after a producer committed murder and suicide
- Being separated from a parent and later reuniting with that parent
- Discovering that an absent parent has stolen the student’s identity
- Being mugged and fighting for life

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often, the diverse Unfortunate Stories will spur a legal discussion or define an interest in the classroom. This semester I heard a series of pet stories that prompted the class to discuss animal law and animal rights. The Unfortunate Story also often prompts a discussion of potential personal injury lawsuits and the requirements to prove an injury (a good lead-in for a torts problem assignment). The Unfortunate Story can open up diverse discussion topics in class on the day that the stories are relayed, for an entire semester, or sometimes even for an entire year.

At the beginning of the semester, I promise the students that I will read to them my own Unfortunate Story. I tell the students that I understand how difficult it is to be restricted to a word limit, but that many courts (and publications!) have a word limit for filings/articles so it is good practice in legal writing to be subject to a word limit requirement. When I read my story to the class at the end of the semester, I follow my own instructions. I write my own Unfortunate Stories constantly to challenge myself, and I read different stories to my classes each semester.

The Unfortunate Story assignment is a useful introductory information and assessment tool for both an introductory legal writing and an advanced elective class. If you are looking for a new method to break the ice in class or to gain initial assessment information regarding your students’ diversity of experiences and communication skills, try assigning the Unfortunate Story. And please drop me a line and let me know how it goes for your class.

Deborah L. Borman is a clinical assistant professor of law at Northwestern University School of Law. Contact her at deborah.borman@law.northwestern.edu.
Teaching Legal Research and Writing

For many years, I have applied for research grants to employ and train students to assist with various legal research projects. Not only do I find these grant applications and the recruitment, interview and payroll processes time consuming, the assistance outcomes were invariably disappointing from my perspective. Training needs and salaries and benefits seemed disproportionately high for the outputs generated at the end of the summer employment period. Perhaps because my academic home was a business school, some law students evinced an attitude that little remained for them to learn (at least little of value that I could teach them) in academic legal research and writing. I spent most of the summer working to improve their academic skills and technique, paid them handsomely for the privilege, and obtained little benefit at the end of the summer. I would still put their names on my papers, as this was another expectation to be managed. My summers and research accounts were depleted for the sole benefit of maybe some skill development with only modest intrinsic return for me.

I wondered whether that model could be improved. Was there a way to better align the students’ interests with mine? I sought to reduce the administrative load of writing grant applications, hiring student applicants, and selecting the most teachable students for whom a co-authored legal publication was a more significant motivation than employment entitlements. The internship model came to mind.

Inviting Volunteer Student Researchers

In the spring of 2011, I sent out an email notice to the last two years of students who had taken law courses with me in the business school. This group numbered around 300 students. Most were still in their last year or two of their first degree; a few had already graduated or were graduating when I circulated the notice.

In the mass email, I said some legal research projects would benefit from volunteer “research assistants” (they could have alternatively been conferred the title of “legal research interns” or something similar) over the summer. I communicated that I would not be able to pay the student but would offer co-authorship if earned. Thus, the net was cast broadly. The students’ contribution would be part time and flexible. There was a wide range of research topics. Yet, it was also a narrow opening as there was no stipend, no guarantees of a co-authored publication, and the window was only open for the four summer months. I did not present the opportunity as a developmental program but more as a way to achieve a distinction few students can claim, a co-authored academic publication.

I did not know what to expect from this invitation. I thought a few students might “kick the tires” and, upon further, informed reflection, decide it was not for them. I predicted a few academically-inclined students who were not otherwise employed might sign on.

The Response

Some 35 students responded to this invitation. I discreetly screened out five of them after checking on their academic performance in my course(s). My threshold was low, but there was a bar nevertheless. I reckoned that if a student attained lower than a C grade in my course, the research internship would probably not succeed on good intentions alone. The initial response included four students to whom friends had passed along the invitation. While we did not know each other, they remained in the pool because it was gutsy to make contact.

I sent all who contacted me a description of the three formats of articles on offer: (1.) professional article or book review; (2.) case comment or note; and (3.) full law review article. I listed many topics under each format. The chances of publication were best with the easiest formats. I author and edit two regular, featured categories of a professional journal so I knew that professional outlet offered strong prospects. Moreover, because the professional journal format was the easiest introduction to academic writing, I expected most students to start with the first format. All did.

I reiterated that this opportunity was an unpaid internship, and I would work with each student in the same measure as they were able or willing to work on a project. Email exchanges occurred between me and the remaining 30 students over the next few weeks to discuss and negotiate the degree to which the student would volunteer and what project each student would work on.
Outcomes
The table below shows what happened to these 30 volunteer student research assistants. The range of performance outcomes are described below.

<table>
<thead>
<tr>
<th>Performance Agreement</th>
<th>Internship Model (n = 30)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Outcome</td>
<td></td>
</tr>
<tr>
<td>Student fully unresponsive after first contact</td>
<td>3</td>
</tr>
<tr>
<td>High initial engagement but no final commitment</td>
<td>10</td>
</tr>
<tr>
<td>Commitment made but no performance at all</td>
<td>6</td>
</tr>
<tr>
<td>Delivery below expectations</td>
<td>4</td>
</tr>
<tr>
<td>Delivery met expectations</td>
<td>5</td>
</tr>
<tr>
<td>Delivery exceeded expectations</td>
<td>2</td>
</tr>
</tbody>
</table>

**Fleeting Interest**
Notwithstanding their first voluntary expression of interest, I was unable to reach, at all, three of the students.

**High Maintenance**
Ten students went further and engaged me, some at considerable length and depth, about topics or other aspects of the experience. Several of them declared an excitement to do legal research and looked forward to possibly getting a co-authored publication. Many were clearly buying time, had lost interest in legal research as the spring progressed and/or as they saw the list of topics and the effort they would need to apply. They expressed an abundance of hope and promises. They engaged me but took no action.

Three of these nine were particularly memorable. One made a point to volunteer that he was “very detailed oriented.” That caught my attention. He did not continue.

Another engaged with me for six weeks and suggested that the list of issues and topics was not robust enough for him. Ultimately, he could not find any of the 25 or so topics to his taste.

The third student delayed while he was choosing between two topics. we communicated many times and even met to discuss the topics twice. Eventually, he wrote to say he was withdrawing: “I apologize I’ve taken so long to respond—this has been a difficult decision for me. I’m concerned about my ability to excel in [other activities] and produce high-quality legal research on the side. I have no interest in committing to work I can’t complete, and I have no interest in submitting work that doesn’t meet my highest standards. For these reasons, I must opt-out of our legal research. I must stress that this doesn’t represent a lack of interest on my part. I very much look forward to keeping in touch and I hope that, as conditions permit, we can build one hell of an article sometime.”

**Commitment Made But No Performance**
These last four categories all covered students who agreed with me to produce some specific work. Six of these students produced nothing. Most of them never contacted me again. A few of them contacted me to say they withdrew.

**Under-Delivery**
Four students did some work but not close to what they promised.

**Met Expectations**
Five students performed what was negotiated. All of them got their name on a professional journal publication and, I believe, a reasonable practical education in legal research and academic writing.

**Exceeded Expectations**
Two of the 30 students stood out. They assisted (and will be co-authors) on two articles each. Their work was strong and on time. They were highly motivated, teachable and reliable. Both have asked to continue in this volunteer work and moved up to more challenging formats. They would be an asset to any law professor.

What about the four students who were referred by other students? One made no further contact, another engaged and dropped away. The other two met expectations.

**Conclusion**
This internship model of inviting students to volunteer as research interns was attempted as an alternative to the salaried employee model. My experience was that formal employment had complicated the relationship by setting up researcher and assistant with a chimera of elevated expectations and
Each time we teach a particular course, or a specific topic within a course, we get better at it. Each time we present the same paper at a workshop or conference, we get better at presenting that paper. (Or at least, these are our hopes.)

Why do we get better? Because on our own, or with the help of others, we identify what went wrong, what was successful, and then we make adjustments going forward. True, we may sometimes improperly evaluate what went well and what went poorly, but on balance we are always heading—or trying to head—in the direction of improvement.

What of our students? How many opportunities do we give them to get very good at something by doing that very same thing over and over? In some respects, it may be that we do a superb job on this front, as students receive multiple opportunities to test their ability to decipher appellate cases, structure an argument, interview clients, and so on. With proper self-reflection and feedback, students should improve each time they perform a skill—just like their professors.

But let me also suggest that students might especially benefit if we gave them more opportunities to do what their professors do: to engage in a particular kind of repetition, what I will call a “repeat performance.” Allow me to explain by way of an example.

I was working with a second-year student who was assigned to represent a client in an appeal hearing regarding the client’s eligibility for unemployment insurance benefits. It was the student’s first hearing of any kind.

The student prepared for the hearing in a number of different ways. For the present purposes, let me focus on the final stages of certain trial skills preparation. After drafting and editing his direct examination, the student practiced his direct examination with the client. The student then participated in a simulated hearing during which he practiced his direct examination again, as well as his cross examination and closing argument. He then practiced his cross examination and closing argument additional times.

With each successive performance, the student improved. Along the way, the student had engaged in self-critiques and had also received feedback from his supervising attorney and student colleagues. He made adjustments, kept the good, threw out the bad, and incorporated new ideas as necessary. One could say that the student learned from repetition.

At the hearing itself, the student performed reasonably well. But, as is true for many law students at their first hearings, there were a few bumps in the road. In particular, the student’s closing argument was not as strong as would be ideal. Afterwards, the student reflected on what had worked in the closing argument and what had not, and I provided feedback as well.

Ideally, the student was now poised to take what he had learned in his first case and apply it to the next case to which he was assigned. Specifically, because it was the area most in need of attention, the student was presumably poised to put to the test in his next case the important lessons he had learned about closing argument.

None of this should sound strange. This is what clinical professors—and, in a different context, all law professors—strive to do every day. This is known as teaching for transfer, which is intended to produce learning by transfer. Psychologists tell us that transfer occurs when a student learns a particular skill, applies that skill in a given context, and then, later, applies that skill in a different context. By applying the skill in the new context, the student will be more likely to internalize and master the fundamental elements of the skill. Clinical law scholars and others have developed a rich literature about the importance of learning by transfer for legal education.

In my student’s case, a funny thing happened on the way to transfer—that is, something happened before I assigned my student a new case and gave him an opportunity to test his skills in a new case. Even though the hearing in the first case was over, we revisited the case again. I tried something I had not done before. I asked the student to prepare his closing argument for the case yet again, this time in light of his experience at the hearing and the feedback we had generated afterwards. And I asked him to deliver this revised closing argument.

“With proper self-reflection and feedback, students should improve each time they perform a skill—just like their professors.”
Repeat Performances  
— continued from page 6

during our next supervision session. When he did so, the student’s performance was markedly improved; he beamed with confidence afterwards. I cannot be certain, but I do not think the student improved merely because he was more relaxed performing for me in a law school meeting room than he was performing for the judge in an agency courtroom. Nor do I think he improved merely because he had the opportunity to learn from repetition.

Rather, from our discussions, I think he improved so significantly because he received the chance to do the exact same thing again after he had already completed the “real” performance—that is, after the hearing itself. In his follow-up closing argument, the student had drawn on his experience in the crucible of the hearing, much more so than on the practice sessions before the hearing, to shape his understanding of closing argument skills.

This is a step before transfer. And despite the fact that I stumbled upon it, it may be a useful tool to consider adding to our teaching toolbox. For clinics in particular, how many times do we ask students to perform anew parts of the case event after the real event is over? At least for this student, it proved an immensely valuable experience to undertake before he was asked to engage in learning by transfer. It reaffirmed key lessons, revealed new insights, and solidified confidence. Indeed, it made the subsequent learning by transfer even more successful. Perhaps we ought to consider “repeat performances” more often.

Daniel L. Nagin is associate professor of law and the director of the Family Resource Clinic at the University of Virginia School of Law. He can be reached at dnagin@virginia.edu.

The Internship Model to Teach Legal Research and Writing  
— continued from page 5

rights that were not optimally aligned. In this internship model, I expected little. If the student volunteer did not produce work—and most of them did not—they expected nothing in return. All these students already knew me as a former instructor, so we began with familiarity of each other, which is rarely the case in competitive hiring.

The compensation I offered was wholly intrinsic. A title (such as “Research Assistant with Professor X”), association with a professor (several asked for letters of reference), research and writing skill development, and co-authorship of a published article can be powerful inducements. This opportunity is not a course or experience for which the student receives credit on the transcript, or money in the bank, but it is of inestimable value in burnishing one’s curriculum vitae and distinguishing the student from one’s peers.

This small experience yielded a normal curve of outcomes. If my experience is predictive of anything, professors adopting this internship model might expect something close to half the students who initially step forward to not ultimately commit to assist. The key will be to identify these students as early as possible as non-committers. The others will assist and work toward their promise in some way, and a few of them will soar.

In the end, seven students out of 30 went the distance for themselves and for legal research. Five articles were produced and co-authored, and several more are in progress.

Peter Bowal is professor of law at Haskayne School of Business at the University of Calgary. Contact him at peter.bowal@haskayne.ucalgary.ca.

Consider giving your students a say in the construction of your syllabus. Students who have contributed to decisions regarding coverage and grading are more likely to invest themselves in the course.
Partnering for the Benefit of All Students: Simple Ways to Incorporate ASP Techniques Across the Curriculum

By Rebecca Flanagan, University of Connecticut School of Law, and Louis N. Schulze Jr., New England School of Law

There is much in common between Academic Success Programs (ASP) and the community of doctrinal or casebook law teachers committed to improving the pedagogy in law schools. However, at most law schools, doctrinal faculty underuse a valuable resource, their ASP colleagues. There are many reasons for the lack of teamwork between doctrinal faculty and ASPs, starting with a misunderstanding about the resources available through ASPs. The techniques that ASP professionals use to help students succeed academically can be employed in most courses, with minimal structural changes to course content. Doctrinal faculty will find ASPs are thrilled to work with them, because, when ASP professionals partner with the professors who will grade students’ exams, it is easier for the ASP professionals to reach students.

1) Use Academic Success professionals to introduce new teaching methods

Many ASP professionals come to the field with a teaching background; an informal study found almost a fifth of ASP professionals hold teaching degrees or certifications, and an additional portion research teaching techniques that can improve student learning. But most doctrinal professors don’t know they have a colleague who has the training and expertise to help them incorporate teaching methods that can enhance their students’ learning in the classroom. Updating teaching methods can help alleviate common complaints from students that they are bored, they don’t understand what is important, and they tune-out in class. Because ASP focuses on helping students understand what they should be learning, faculty can use techniques embraced by ASP professionals to keep students engaged. Simple changes, like using clickers in class, incorporating active learning techniques, and using multiple methods of instruction (Socratic Method, supplemented by PowerPoints or podcasts) can encourage greater learning in the classroom and help students feel less disconnected to their professors, peers, and material. And these changes can be made without a significant sacrifice in coverage or wholesale changes to the curriculum.

2) Partner with ASP during orientation

The tone of law school is set early, beginning at orientation, which is an opportunities for faculty to work with ASPs to make the acclimatizing process less intimidating and confusing. Professors can ask questions about expectations in small group settings where new students participate in orientation, especially in undergraduate-style teaching by professors who effectively convey what is expected. ASPs will grade students’ exams, it is easier for the ASP professionals to reach students. ASPs. The techniques that ASP professionals use to help students succeed academically can be employed in most courses, with minimal structural changes to course content. Doctrinal faculty will find ASPs are thrilled to work with them, because, when ASP professionals partner with the professors who will grade students’ exams, it is easier for the ASP professionals to reach students.

3) Partner with ASP to Facilitate Formative Assessment

Many recent scholarly works have sung the praises of formative assessment. Even more scholars have decried the relative absence of formative assessment in legal education as downright scandalous. But, for the well-meaning professor who would honestly welcome the opportunity to give students feedback on their learning progress, a number of hurdles exist: limited class time for mid-semesters exercises, devote their ASP workshop time to co-administering an assessment, and help facilitate effective and efficient methods of giving feedback.

4) Partner with ASP to Change the Nature of Summative Assessment

The same commentators decreeing the lack of formative assessment in law school also criticize legal education’s approach to summative assessment. Specifically, summative assessment measures in law school are purely summative; once an exam is graded, generally speaking, its function is fully served. Summative assessment can also easily become formative, though. At many schools, ASP professionals spend time with students reviewing their midterm and final exams and teaching them how to assess their own performance. That way, students will be...
able to gauge their own strengths and weaknesses to achieve better success in the future. In this way, ASP involvement in facilitating feedback from summative assessments helps create “self-regulated learners”—the type of learners who will go into the practice of law ready to forge their own success.

In these few, short paragraphs, we have attempted to provide brief ideas for ways that law schools can leverage the resources of ASPs in a way that helps doctrinal faculty achieve their goals, supports students’ success, and assists in creating a more balanced law school environment. Instead of viewing ASPs as a distinct entity with a focus on only some students, doctrinal faculty can partner with ASP to benefit everyone in the law school community. These ideas and others are articulated in greater detail in:


We invite you to review these pieces and engage us in a dialogue about how ASPs can continue to support law schools.

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Rebecca Flanagan is the director of Pre-Law Planning and the programming coordinator for Academic Success Programming at the University of Connecticut School of Law. Contact her at rebecca.flanagan@uconn.edu.

Louis N. Schulze Jr. is professor of law and director of the Academic Excellence Program at New England School of Law|Boston. Contact him at lschulze@nesl.edu.
At some point, most students become skeptical about whether their research and writing professors are “really” teaching them skills used in the world outside law school walls. My students were beginning their second semester, when I teach persuasive writing. I continued my mantras to write clearly, simply, and concisely, just as the students wrote for objective writing. Hard-fought summer opportunities were quickly approaching and my honeymoon period of sheepish agreement from the students was over. I sensed my students were wondering how the “Reilly way” of writing would translate in the real world. How would their acceptance of my writing requirements help them succeed in their jobs they fought so hard to secure? Sure enough, students would write to me throughout the summer after the year they had research and writing that yes, indeed, they were incorporating what they learned in my class into their jobs. Many students expressed genuine shock that their bosses praised their work when they followed my advice, handouts, and templates. I decided to solicit expert advice to assure my students that what I was teaching was what practicing attorneys and judges in the real world expect. Over a period of five years, I wrote to United States Supreme Court justices, judges on the Second Circuit Court of Appeals, New York Court of Appeals judges, and New York Appellate Division judges. Over the years, response from the judiciary has been overwhelming. Among others, I received responses simply; recognize and focus only on the strongest points; and be scrupulously honest with her audience. These responses successfully supported my teaching.

My personal favorite piece of advice came from Judge Richard Wesley of the Second Circuit. Judge Wesley’s advice was that lawyers should always try to be good teachers. “Strive to teach and success will be yours.” Judge Wesley eloquently, authoritatively, and expertly explained a judge’s perspective of a brief—something I can only strive to do in my classroom. Every year, I distribute the judges’ responses to my classes during the first week of second semester. After having some fun looking at how the judges write personal correspondence (so much easier to read than their opinions!) and analyzing their signatures, the students are genuinely thrilled to discover that their burgeoning writing habits will, indeed, be appreciated—even expected—in the real world. There are a few takeaways from providing the judge responses to students—some that I had not expected. First, students crave reassurance the skills they learn in research and writing are the same skills they will need to use outside of law school. By bringing in expert opinions to concretely show “my” rules are the same as those used by practitioners, I am able to sway my skeptics into believers. Second, once I can show the students my core rules are the same as those expected and appreciated in the outside world, the students more readily accept the new rules I introduce. Third, my correspondence with the judiciary has allowed me to teach my students to never be afraid to ask anyone about anything. Many of my students come to law school straight from college and would never think to ask an authority figure a question. The bonus of talking through the judges’ responses with students has been the opportunity to discuss the idea of “nothing to lose, everything to gain” by going straight to the top of any organization to ask questions and obtain information.

(See letters from the judiciary on page 11.)

Laura Reilly is a member of the Legal Analysis, Writing, and Research faculty at SUNY Buffalo.
Laura Reilly

From: <Richard_Wesley@ca2.uscourts.gov>
To: <reilly@buffalo.edu>
Sent: Wednesday, May 27, 2009 11:28 AM
Subject: One Piece of Advice

Dear Professor Reilly,

I apologize for the lateness of my reply to your letter of May 5th. My one piece of advice is that attorneys should always try to be good teachers. A good brief teaches the reader about the controversy—it has an easy to follow description of the facts—and then gives the reader a blueprint of how the case should be resolved in the context of the particular facts at hand and the overarching legal principles for the area of the law that is in play. Too often attorneys develop myopia with regard to their case—they want to show they understand each and every minute aspect of the matter. They forget that the judges who will read the briefs have not lived with the cases as long as the lawyers. In addition the judges may not be as familiar with the legal issues involved—Cardozo once said that the New York Court of Appeals was a bunch of "wretched generalists." Strive to teach and success will follow. Hope this helps.

Richard C. Wesley

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Supreme Court of the United States
Washington, D.C. 20543

September 29, 2004

Dear Ms. Reilly:

I’m not sure that I could isolate one “most important characteristic” of good appellate argument. There are a number of very important characteristics, but if you force me to choose one, this is it: the lawyer has to know what point he’s trying to make.

Yours sincerely,

[Signature]

Ms. Laura Reilly
University of Buffalo Law School
John Lord O’Brian Hall
Buffalo, New York 14260

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Supreme Court of the United States
Washington, D.C. 20543

May 29, 2009

Dear Ms. Reilly:

Thank you for your letter dated May 5, 2009 requesting one piece of advice to give your students regarding the most important characteristics of an appellant argument. I can answer your question in four words: be clear and concise. Of course, it goes without saying, that the issues must be well researched and that the attorney must understand the facts and law supporting his or her case, as well as that of the opposing party. However, if the facts and law are not presented in a clear and concise manner in order for the Court to understand the attorney’s written and oral arguments, the client is not well served.

Very truly yours,

[Signature]

Henry J. Souter

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Supreme Court of the United States
Washington, D.C. 20543

October 4, 2004

Laura Reilly
University at Buffalo Law School
John Lord O’Brian Hall
Buffalo, New York 14260-1100

Dear Ms. Reilly,

I can think of no better advice to give to your students in the course on writing appellate briefs and argument to an appellate court than that given long ago by Justice Story of our Court: “In the law, the power of clear statement is everything.”

[Signature]
Helping First-Year Law Students–A Plan for Better Retroactive Review

By Carol Andrews, University of Alabama School of Law

Law students struggle to adapt to law school, particularly in the first semester. Many new law students know that they must change their study approach but do not know how or what to change. Many focus too immediately and narrowly on class preparation or worry too distantly and vaguely about law school exams. In this article, I suggest a plan to help new law students bridge the gap by integrating retroactive review in their study of doctrinal courses throughout the semester.

The “plan” is that students engage in incremental forms of retroactive review on a daily, weekly, biweekly and semester basis. When I instruct my students on this plan, I write it on a whiteboard in two stages. I start with what most students already know that they must do:

- Class Preparation
- Finals Review

Then, I insert between these two headings the following italicized portions:

- Daily Review
- Weekly Review
- Biweekly Review
- Finals Review

These intermediate stages of retroactive review are the missing pieces in most law students’ approach to study. The daily review focuses on the classes that the students attended earlier in the day, before the students read the next day’s assignment for the course. Students should reflect upon what the professor did in class. Students may not understand all of the content of each day’s class, but they should strive to understand what the professor was asking and the professor’s purpose in asking the questions.

This should not be a lengthy exercise, only 15 to 30 minutes for each class. The daily review may consist solely of general reflection and thought. At times, the students will need to read the primary case again. The key is to do this review after the class and before reading the next assignment in that class. Eventually, this effort should make the next day’s reading easier, faster and more meaningful.

The weekly review reflects on the entire week’s study from a “big picture” perspective. Students should consider each of their doctrinal courses and what they did that week in each. They should ask where the class study is in terms of the current major topic and where the class will go next week. This is not merely an exercise to locate the progress of the course. It also should be meaningful reflection on the substance of the course.

Students should begin this weekly exercise without reference to written materials. If the students cannot recall the big picture, they should look at the course material in increasing levels of detail. The professors’ syllabi and the casebook tables of contents can give valuable clues. Take, for example, the struggle of my Civil Procedure students in their study of International Shoe and Worldwide Volkswagen. From my syllabus, students can see that both cases concern a “minimum contacts” test, which is relevant to due process limitations on personal jurisdiction, which in turn is part of overall forum choice. My syllabus also reveals that International Shoe created the minimum contacts test and that Worldwide Volkswagen refined it. These are simple insights, but they are ones that often escape beginning law students.

This weekly review should not be an outlining exercise. Students should do very little writing in this review. If they gain key insights, they should record them. If they discover significant errors in their notes, they should correct them. But, the primary point of this exercise is thinking and reflection.

I recommend that students do their weekly review on Friday afternoon when law students tend to be too tired to do other study. This big picture review can be a welcome break. Students might try to do the initial reflection while doing something else, such as walking or household chores. They might go to dinner with classmates to share their insights from the week.

The biweekly review is a more intense study at two- (or three-) week intervals. It primarily consists of outlining. This review is “biweekly” only with regard to a particular course. Students must outline every weekend. The difference will be the course(s) that the students outline. They should alternate weekends and outline only one or two courses each weekend.

Most law students know that they must outline, but they mistakenly believe that outlining is all that they must do. Or, they wait until the finals study week to outline. The outline is only an intermediate step, albeit an essential step, in mastering the material. Students should outline throughout the semester and complete the outlines on the last day of class for each subject.

Outlining is most effective when the students have enough material for meaningful synthesis. Usually, two or three-week increments are best. At the beginning, the students may alternate weekends, mechanically switching courses for outlining, but, as the semester progresses, students should be more selective and outline major topics as they complete them in class (a question considered during Friday’s weekly review).

On most weekends, the bi-weekly review

— continued on page 13
will require further study with an aim of mastering a major topic in a course. Students must strive to master each major topic as they complete it. They will not have time to learn the topic later in the semester.

Mastery requires that the students first complete the outline of that topic and then test themselves through hypothetical questions. Hypotheticals not only test the students’ knowledge of the law, but they also mimic what students must do on exams—apply the law to a new fact pattern. The students should not rush through the hypotheticals. They need not write a formal essay answer, but they should write enough to commit their logic to paper. Students should check their analysis by going back to the original source material—the case, the rule or the statute at issue.

Law students have relatively easy access to good hypothetical questions. Every time a professor in class varies a fact pattern of a case, it is a hypothetical. I recommend that students mark these fact variations in their class notes and, in their daily or weekly review, copy them into a separate “hypothetical” file for each course. Students also can get hypotheticals from their classmates and commercial study aids. Students, however, should not take the answers from any source without critical thinking. The point of a hypothetical is that the question prompts the student to consider the law in a new way.

Semester review is the last stage of retroactive review—final exam preparation. Students must master the course, by synthesizing all of the topics together. Law students know that exam study is crucial, but many do not know how to best use this valuable time. Students should not use the exam study period to learn a topic for the first time. They should not spend the exam period working on or reading their outlines. Students should spend most of their exam period on higher intensity learning—“hyper-learning.”

Hyper-learning is very active learning. It involves manipulation of legal principles through creation of single-page charts, decision-trees, flowcharts, checklists and summaries. Effective hyper-learning also requires work on hypothetical problems. The best hyper-learning layers the different forms of study. Students should start with some form of summary charts. Students next should test their knowledge through hypothetical questions. They then should go back to check the charts’ accuracy and consider new ideas and charts. They should return to the hypotheticals, and so on.

Summary charts should not be merely shrunken versions of the students’ outlines. A good form of final summary chart is one that compares related concepts across multiple topics. For example, I encourage my Civil Procedure students to make a single chart of the different circumstances in which a court must decide whether to permit a party to rectify a procedural mistake. These decisions occur throughout litigation, but they have common themes and elements. Composition of a chart that collects and compares these decisions, along with the applicable legal factors, gives students valuable insights. It forces students to look at the law of procedure in ways that are not apparent from reading the material in the linear pattern of the semester.

Hyper-learning during the final exam period also includes broad hypotheticals that cover many topics. The ultimate hypothetical is an old actual exam from the professor. Students should write the full answer in essay format under the time limits of an actual exam. This provides an opportunity for the crucial self-assessment: Are they ready for the actual exam? Some students take practice exams too early or too late. Practice exams are best used during the exam period, after the student has done sufficient hyper-learning to approach the mastery level, but early enough to give them sufficient time to go back and re-study as necessary.

In sum, this plan should help most students. In another article, I identified four key needs of beginning law students. This plan meets all four. It gives specific advice but is flexible enough for students to adapt to their own needs. The plan explains the concept of mastery and gives concrete suggestions for achieving the mastery level. It incorporates methods for critical self-assessment. Most importantly, the plan focuses on the key missing ingredient of most study advice—effective retroactive review and synthesis.

Carol Andrews is the Douglas Arant Professor of Law at The University of Alabama School of Law. She can be reached at candrews@law.ua.edu.
Law professors sometimes express discomfort working with underperforming students. Although expert in legal doctrine and the Socratic Method, some professors believe they lack the pedagogical tools to help students who claim they “just don’t get it.” There is no denying that, on the face of it, the vagueness of this complaint can be frustrating.

By deconstructing our academic support rubric at New England School of Law, I have identified areas where doctrinal professors might consider adapting academic support strategies to help address the needs of underperforming students. During the spring semester, the academic support professors meet regularly with our 1L students, who underperformed on their fall exams, to provide individualized assistance. This article outlines the strategies I employ in my one-on-one academic counseling sessions and provides suggestions (in italics) for how these strategies can be adopted by doctrinal professors.

**Building Trust**

My initial task is to work with each student to create an individual study plan that addresses the student’s unique needs. I use our first meeting as an opportunity to start building trust with my student as I begin the important work of getting to know her as a “person,” not just a struggling student. I have the student tell me something interesting about herself (“something that I would never know unless you told me”) to which I can then refer back over the course of the semester. This effort infuses my work with the humanistic component that is deemed so essential in the Academic Support community.

What students choose to share about themselves is often quite revealing. Whether the student tells me she is the first person in her family to attend college, let alone graduate school, or that her grandfather invented the Twinkie (true story), it gives me crucial context and a conversation starter for subsequent meetings. I keep detailed notes on each student, not only on the progress she is making academically but on our discussion points, ranging from summer plans to career aspirations. It means a great deal to struggling students that I make the effort to remember the seemingly little details they have shared with me. I find building this trust helps students to believe in me. Once they believe in me, they are able to believe me when I assure them that if they put in the tremendous amount of effort required, they will succeed.

Clearly, many doctrinal professors already excel at building rapport with students—and the “tell me something interesting about yourself” question was not invented at New England School of Law. But the effectiveness of capturing and recalling these personal points cannot be overstated. When students feel that their professors are real people who care and support their learning, it reduces the “intimidation factor” which, in turn, helps underperforming students succeed. Doctrinal professors need not keep the copious notes about students that I do, but they should not underestimate the value to students of making the effort to get to know them.

**Establishing Routine**

Each time we meet, the student fills out a Study Plan, with action steps and notes, which we use to guide our next meeting. Once students realize that they are accountable to me to an extensive degree, they are more likely to complete the work and put in the effort required. In addition, requiring students to be organized in this way helps them in all of their classes. For many of them, basic organizational skills are the root of their larger problems and spending time tweaking their overall “system” goes a long way toward improvement. I find that students like knowing what to expect, and having a predictable routine in my office also makes us efficient. As the semester progresses, the students often become the “enforcers,” running the meetings, and taking the initiative to suggest what they would like to work on for subsequent meetings.

Although doctrinal professors are not likely to meet as regularly with students and will not (and need not) play such an extensive role in helping students to organize their lives, I believe that taking the time to see how students are...
organizing the legal doctrine will help professors identify exactly why students might be falling short of the necessary comprehension. A doctrinal professor could credibly require students seeking a meeting to come prepared with a written study schedule so the first few minutes could be spent assessing whether enough time is being spent on the right tasks. Further, doctrinal professors could require students to write out a list of issues they hope to cover in their time together to make sure that both parties’ time is being well spent.

**Self-Regulating Learning**

Although the formal substance of what I do with each student depends on that particular student’s needs, there are certain preliminary strategies I employ with all of my students. For example, we always begin by reviewing completed exams in depth together. I ask my students to obtain and review their exams prior to our meeting, self-assess their strengths and weaknesses using a self-assessment form I provide, and come prepared with questions. Spending the time engaging in this analysis gives the students an opportunity to self-reflect and become engaged in the important process of monitoring their learning and building self-regulation skills. During our meeting, I go through the exam with the student, diagnosing mistakes and connecting strategies back to what I have taught in Academic Excellence class. The students that I work with one-on-one are required to submit their essays to me in advance of our meetings so that I can provide detailed comments and feedback when we meet.

The common thread running through all of these strategies is that I require my students to evaluate their own work critically, comparing their answers to the model essays and evaluating whether their difficulties are substantive or structural. The more they self-regulate, the more they build the tools crucial to success and are able to take what we are doing together and do it on their own effectively.

Doctrinal professors might consider having students complete these types of exercises as a precondition for meeting to ensure that students come prepared. Bringing specific questions from practice problems provides natural launching points for substantive discussions on doctrine. Time together will be focused on actual legal issues and the number of times a professor is faced with “I just don’t get it” will be significantly reduced. Instead, the student can articulate what it is she is not “getting” using concrete legal examples, and the professor can help clear up doctrinal confusion within the specific context of those examples.

**Putting it All Together**

The factor that I believe contributes most significantly to the success of my students is the feeling that someone at the law school is on their team and rooting for them. While this role is one that is often played by academic support professors, there is no reason that doctrinal professors cannot play a similar role.

Students can continue to benefit from participating in academic support programs as they transition from their prior learning experiences to the unique rigors of law school. That said, it is my hope that some of the bumps they experience on their journey can be smoothed out by interactions with doctrinal professors who have incorporated a few of our tricks of the trade into their student interactions and likely ended up with some academic support “swagger” to go along with their innate lecturing abilities and subject matter expertise.

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Elizabeth Bloom is assistant director, Academic Excellence Program at the New England School of Law | Boston. Contact her at ebloom@nesl.edu.
All in the Family

Across continued from page 16

36. Buck's wife.
40. Divorce from bed and board.
44. Marital domicile of Davy Crockett (Abbr).
45. Increasingly popular method for resolving domestic disputes (Abbr).
47. Mythical king believed to have been the first man to cultivate grapes.
48. President and signer of the Declaration of Independence (Abbr).
49. Could be a key parental trait for determining child custody.

Down

1. Lawfully wedded entity.
2. Eliminator.
3. The husband or the wife, but not both (Computerese).
4. Immoral (Abbr).
5. Romantic time of day when the moon starts to disappear below the horizon.
7. Confronted.
8. Cease and desist.
9. Discrimination against persons, based on age.
18. Home (Abbr) of the landmark Williams cases, which required every state, in divorce actions, to give presumptive validity to every other states' jurisdictional rulings.
22. Youth Hostels Association (Abbr).
28. Office of Research and Development (Environmental law acronym).
30. Uruguay (Abbr).
32. Children of marriage.
33. Ex-husbands (Slang).
34. Irksomeness.
37. Capital of Canada.
38. Prohibit spousal abuse during a pending action.
41. Organ of smell (Plural).
42. Female name.
43. Estimated income tax schedule.
46. DNA testing method - Restriction fragment length polymorphism (Abbr).
50. Elevation (Abbr).
51. Male name.
53. Knock out (Abbr).

Crossword solution is on page 21.
Law Students Lie and Other Practical Information for First-Year Students

By Meredith A.G. Stange, Northern Illinois University College of Law

Since I left private practice and began teaching first-year legal writing students, I have been in a prolonged “Groundhog Day,” reliving my own first year of law school over and over again. As we begin the school year, I am lucky enough to be teaching another group of eager 1Ls and again reflecting on my own first year. When I first started teaching, one of my colleagues gave me this advice on teaching first-year students, “You can’t make it too easy.” She was right. It is all too easy to forget how tough the first year of law school is and how little first-year students know, especially when you are in the comfortable position of teaching. I have found that, in addition to all the practical skills we teach our students, there is a certain credibility to be gained by acknowledging the trials and pitfalls of the first year.

The first thing I tell students, and the piece of information they most often remember, is something that took me nearly my entire first year of law school to figure out: Law students lie.

I do not mean that all law students are duplicitous, manipulative individuals. Not at all. Law students lie about things that only law students care about, like how many pages their outlines are, when they started outlining, and how far ahead they are in their readings for class. These may sound like dumb things to lie about but, as I am sure we all recall only too well, when 1Ls are knee-deep in first-year stress, such things become vitally important to them. Because of this, it is important to remind our students that law students lie so that they do not make themselves crazy worrying about how much time they are in comparison to their classmates.

Perhaps it was my Midwestern upbringing, but, when I was in law school, it never occurred to me that people would be lying about how much work they were doing. In my first year, I assumed that everyone else was just “getting it” faster or more easily than I was. Since I felt lost in my classes most of the time, this merely fed into my fears of inadequacy. However, in one of those “light bulb moments” law professors often mention in class, one day it dawned on me that my friends had not been entirely truthful about their law school performance. I seem to recall this realization came to me when a friend, who had earlier claimed to be done with an outline, mentioned that she had yet to start it. However, how I reached this realization is not what matters. The key was that once I realized that people around me were bending the truth, I felt less alone. I relaxed a bit and stopped worrying about how I was doing in relation to my classmates.

But with our students’ recognition that lying is happening around them, it is also important for them to accept that they will eventually do the same thing. It’s true. Even the most well-intentioned among us has bent the truth in the face of a relentlessly smug classmate describing how much time he’s spent preparing for finals that are months away. I certainly did it. It felt like self-preservation, as if I didn’t pretend I was doing the same amount of work, I didn’t belong in law school. So I invite my students to accept the fact that not only will other people be lying to them, they will be lying right back. The Contracts assignment that was ignored in favor of a Lost marathon will become “I read 40 pages of Contracts last night” and the Word document that is blank but for the heading Torts Outline will become “about 20 pages” of an outline.

The second piece of advice I give my 1L students is that learning the law is like learning a foreign language. The law is tricky in that it looks like English but it is not. It is a complicated language called Legalese and law school is a three-year-long immersion course. Because it looks like English, students often feel like they should be “getting it” from the beginning even though they would not have the same expectation if they were trying to learn Italian, for example. The perception that they should be “getting it,” or that their skills from the non-legal world will automatically translate into what I refer to as the country of Law, often makes students resistant to feedback. To be successful, students must get past their desire to impress the professors and recognize that they are in law school to learn. A partner once told me that part of how lawyers learn is through the mistakes we make, and the key is to treat those mistakes as opportunities to learn instead of failures.

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The way we teach in law school, in this immersion course manner, recognizes this concept. The Socratic method is designed for students to make their mistakes not only out loud but publicly, in the presence of all their classmates, so everyone can learn from them.

On the topic of making mistakes, each year I encourage students not to make the same mistake I did in Legal Writing and instead come to see me early and often. As an English major who defined herself by her writing skills, I was extremely resistant to criticism from my Legal Writing professor. I spent most of my first year doubting her ability to recognize my outstanding writing, given the comment-festooned assignments I received from her. Imagine my surprise when, while editing one of my memos, I absently reminded myself to make sure my reader did not “fall into a hole,” one of her common admonitions. Despite myself, I had learned all along. However, I cannot help but wonder how much better a writer I would have been had I chosen to listen instead of close off. Because of this, every year I tell my students about my Legal Writing experience and encourage them to be smarter than I was. I explain that, although I know it is difficult to meet with a professor, and even more so when the professor is going to be criticizing your work, these meetings are how professors make their students better writers. I close with the simple advice that, “You may think I’m an idiot, but I’m the idiot in charge of your grade. So if you aren’t happy with the scores you’re receiving, you’d better figure out how this idiot thinks.”

Ultimately, however, I know that although my advice can make it easier, I cannot and should not make the first year easy for my students. Part of what the first year teaches students is that they can do this. They can learn analytical skills and master their fears. Thus my final piece of advice is to tell my students that although it is common practice to decry “hiding the ball,” or withholding information from students, I openly admit I am doing this. I hide the ball because part of what I am teaching students is how to find it. Knowing that I could and did survive my first year made me a more confident writer, a more confident student and, ultimately, a more confident lawyer. I do not want to take that away from my students. I could spoon feed them and bury them with examples, which I admit I have done in the past, and I could darn near write assignments for them. However, that will not help them become good writers, good students or good lawyers. My job is to give them a flashlight, send them off into the deep, dark jungle that is legal prose and hope they make it through with as few scrapes and bruises as possible.

Of course, being good law students, they’ll tell their colleagues it didn’t hurt a bit.

Meredith A.G. Stange is a legal writing instructor at Northern Illinois University College of Law. She can be reached at mstange@niu.edu.
Like many young law students, I enjoyed the intellectual challenges I encountered learning legal theory and case law. However, I was frustrated as a young lawyer in practice when I realized that, while I knew a lot about legal theory, I knew very little about legal practice. While I could recite to you the many theories of contract law with great confidence, I could not draft a thorough reps and warranties clause without using a template.

There are many arguments, reports, and pleas for legal education reform to help our students graduate with better preparation for practice. And, to a certain extent, the legal academy has responded. Many, if not most, law schools now offer clinical education, externships, and other experiential learning opportunities for their students. And, as a clinician, I support these efforts. However, for a variety of reasons, not all students have, or take advantage of, these opportunities. In addition, experiential learning opportunities are generally available primarily to second- and third-year students. As such, students’ initial learning of the law as first-year students is couched in case analysis and theory with little integration of legal practice, client counseling needs, or practical implementation of what they are learning.

Students, as is the case with many of us, learn well when given the opportunity to implement what they learn. This is the case in elementary school, high school, and college where students learn by watching and reading during the day and then are given homework to reinforce what they learned at night. However, students often are not given the same opportunity to implement the theory of what they have learned in their first-year law classes. During first-year classes, students are asked to brief a case and then discuss the case analysis during class. Throughout the semester and toward the end of the semester, students then are asked to produce an outline and use other study guides to help them learn the material. However, students rarely are asked to submit any written assignments to reinforce what they’ve learned or engage in other exercises allowing them to implement the theories they have learned.

While I have heard, and give some credence to, the argument that law school is a professional school and not a vocational school, I find that argument somewhat disingenuous. We are, in fact, or at least we should be, teaching our law students how to practice. Whether students are practicing transactional, litigation, administration, or advocacy law, understanding how to utilize the legal theories we learn as students to become effective advocates for clients is an integral part of the work that many of our students are expected to perform upon graduation. Teaching students how to practice, despite the arguments of some, is not the purpose of employers. And, employers are increasingly making it clear that they will not accept that as their role either. Training law students is a responsibility with which law schools are endowed and which, for the most part, we perform quite well. This essay suggests additional teaching practices as ways to further improve the legal training we provide our first-year law students.

I suggest that first-year law professors consider amending their curricula to not only give students more of an opportunity to implement what they have learned, but also to incorporate more practice skills early in students’ legal learning. This will accomplish some important goals. First, it will reinforce the legal theory that students learn in case law analysis. In addition, it will help students learn how to convert legal theory into effective counsel for their clients. These changes will, in turn, ease the transition from being a law student to being a practicing attorney. Lastly, it can help make young lawyers even more effective counselors to their clients as it can help produce more graduates who are “practice ready.”

While many law professors are open to these ideas, one of the challenges is determining how to incorporate this additional information given the time constraints inherent in first-year classes. Clinicians, who tend to teach second- and third-year students, and professors, who teach first-year classes, should consider working together to incorporate into first-year law classes, more of the practical skills inherent in legal practice. In a first-year contracts class, for example, the clinician of a transactional clinic could use half of one
class session to lead a short simulation exercise or small group exercise that includes negotiating, drafting, reviewing, and analyzing a contract. I have used a very simple contract drafting exercise in my clinic seminar requiring students to negotiate and draft a short contract. We then review the drafted provisions as a class and discuss what is missing in the drafting. This exercise can be done in about 45 minutes. It is a quick exercise, but sufficient to give the students a brief introduction to a contract as a living document that is a negotiated agreement between parties designed to accomplish a common goal; my students learn that contract law is not just a theoretical array of rules and constructs.

Alternatively, the clinician can lead the students in a small group exercise negotiating a simple business deal. It is not unusual for parties in a business deal to make subsequent agreements and amendments after a contract is executed. Leading the students in an exercise to draft short amendments can help them understand the importance of a well-drafted contract, the importance of strategy in deal planning, and the importance of client counseling.

Many clinics often have student presentations on a topic or student led classes. This approach loosely follows a ‘Learn one, do one, teach one’ approach built on the idea that students may learn more effectively when their study material is reinforced by having to do more than read. There is a fundamental difference in learning and retention between reading a math proof and having to write one. Clinicians and first-year professors could work together to craft similar student-led exercises for first-year law students.

There is value in having a clinician conduct these exercises in the class. Clinicians often direct these types of exercises and simulations regularly and thus, have the exercises ready for implementation. In addition, clinicians might bring a more practical approach to learning that can be a useful contrast to the case-law analysis frequently used in first-year courses. Non-clinical professors frequently guest lecture in clinical seminars on specific topics and we, as clinicians, could do the same. Clinical and non-clinical professors can make an effort to work together to find at least one or two classes, even if the classes are review classes at the end of the semester, to help our students bridge the gap between the theory, which is the substance of the work we do, and the practical implementation of it for our clients. Such an approach could also be very helpful in bridging the gap between clinicians and non-clinicians in creating a more cohesive learning and working environment.

Julie D. Lawton is assistant clinical professor at DePaul College of Law. Contact her at jlawton1@depaul.edu.

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Collaboration Between Clinical and Doctrinal Professors for Teaching First Year Law Students

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**ALL IN THE FAMILY**

Solution

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Julie D. Lawton is assistant clinical professor at DePaul College of Law. Contact her at jlawton1@depaul.edu.
About twice a week, I’ll post a limerick involving some case we’ve studied. In addition to whatever value they may have as humor—law school can always use more of that!—the limericks also present a learning opportunity.

To be to (1) identify the case, and (2) state the rule of law illustrated by the case. Try to state the rule as completely and accurately as possible, in terms that a reasonably intelligent client could understand.

Post your answer and feel free to comment on the answers posted by others, and maybe contribute your own case-related limerick. Some of the ones I’ll be posting are from former students.

So visit this forum often and get turned on to the poetic side of Contracts!

Here is the first limerick (posted before the first class), together with my exchange with students after the class session:

Land contracts are serious stuff,
So Lucy’s attorney got tough.
“We don’t know the truth.
Was it due to vermouth?”
Well, the court quickly called Zehmer’s bluff!

Steven: The case is Lucy v Zehmer. The case involves an offer to sell 471.6 acres of land [. . .] On December 20, 1952, P met D and P made the statement [. . .] P relying on the contract took immediate action to secure funding for the transaction. When D later refused to sell the property, P sued. D tried to maintain two arguments [. . .] The trial court ruled in favor of D; however the appellate court reversed and remanded for entry judgment in favor of P [. . .]

Prof. Stockmeyer: You have provided a very good summary of the opinion, Steven. As you know now, from the class discussion, we aren’t too concerned with the intoxication issue at this point. As to the other issue, can you state “the rule of Lucy v Zehmer”? Give us a one- or two-sentence “take-away” from the case.

Yes: For mutual assent in contracts, we must look at the outward expressions of a person’s manifestation and not consider his inward or secret intentions.

Steven: Yes, I think you nailed it.

Prof. Stockmeyer: I agree.

That first exchange is typical, in that often I have to emphasize at the outset that I want students to articulate the rule of the case, not post a summary of the opinion. And it also illustrates how students, from the outset, are not reluctant to chime in to help a fellow student or comment on another’s response.

— continued on page 23
Here’s another exchange. I only drew one response, so I closed with a reply that I hoped was a memorable “hook.” Although the exchange was with only one student, all members of the class had access to it.

There once was a plaintiff named Day Whose attempt to collect money went astray. Though he built a fine wall, He got nothing at all Till a judge said that Caton must pay.

**Elias:** Day v. Canton. The rule of law in this case falls under the premise of acceptance by silence, most notably from Restatement 69(a). Where an offeree takes the benefit of offered services with reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation. Caton knew that he would benefit from the building of the wall, and he also knew that Day would want to be paid for his services of putting up the wall. Caton observed the wall going up and said nothing, and, therefore, a promise to pay Day can be inferred by Caton’s silence since he never rejected the work that Day was doing.

**Prof. Stockmeyer:** Right on. Day v Caton is an example of how Restatement sec. 69(1)(a) works. So if someone sees you leaving the building and asks “Are you a law student?” and you proudly answer “Yes, I am,” and that someone then says, “I’m not so sure. Give me an example of sec. 69(1) (a),” you can tell her the parable of Day sweating in the hot sun building a party wall while Caton silently watches from his lounge chair, sipping a pina colada.

This final example gave me an opportunity to make a point about a topic (damages for delay) that I did not have time for in class:

There once was a young man named Hadley Whose contract of transport went badly. “My mill shaft is gone, All my goods are in pawn And my business is closed,” he said sadly.

**Phillip:** The case is Hadley v Baxendale. If a party is made aware that a breach of the contract will result in damages to the other party and those damages are reasonably foreseeable at the time the contract is entered into, the party in breach will be responsible for the damages. Unfortunately for Hadley, this law did not help him out because at the time of the creation of the contract he did not adequately communicate the fact that the sawmill was idled and/or what the potential damages may be.

**Prof. Stockmeyer:** Thank you, Phillip. If lost profits are “special damages” which must meet Hadley’s foreseeability test, what would the “general damages” be for the several-day delay in shipping the mill-shaft? In other words, how do you measure the loss that ordinarily results from delay in the delivery of a chattel? Anyone?

**DaShonna:** Wouldn’t you measure general damages for the delay in the delivery of a chattel by the reliance interest. So, Hadley could have recovered any expenses incurred or any damages based on the worsening of their circumstances during the several day delay of the shaft delivery.

**Schivan:** I don’t have my book with me; however, I would say that general damages would include reliance and restitution. Cost of shipping, cost of man-hours to deliver the item to the shipper etc. Basically, they would be the out of pocket expenses that you would normally have paid (and been happy to do so) if the contract was completed.

**Prof. Stockmeyer:** Yes, reliance damages or restitution of the price paid are certainly alternatives. I was thinking of an alternative expectation measure. Here it is: general damages for delay in delivery of a chattel are measured by the rental value of the chattel for the period of delay. Think of someone who promised to return your automobile on a particular day and is a week late. Your general damages are measured by the rental value of a comparable automobile for that week (easily computed by calling Hertz or Rent-A-Wreck, depending on the age of your vehicle). If you used your automobile in your business, you might be able to recover lost business profits instead, but those lost profits would be classified as special damages and would have to satisfy Hadley’s foreseeability test.

**Conclusion**

“Legal limericks are a handy tool,” Professor Telman concludes, “that a professor can have in her tool kit as a means of enhancing the case-law approach to legal education.” As these exchanges attest, I agree wholeheartedly. And they are fun!


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**Norman Otto Stockmeyer** is an emeritus professor at Thomas M. Cooley Law School. He can be reached at stockmen@cooley.edu.
On the Appropriate Breadth of Coverage

By Jay Sterling Silver, St. Thomas University School of Law

As the ABA Section on Legal Education presses legal educators to produce practice-ready graduates, the question of the appropriate coverage of bar-tested topics in the courses we teach arose during a recent faculty debate on curricular reform. One view favored broad coverage; the broader, the better. I respectfully disagree.

In fulfilling the need to train practice-ready law school graduates, and largely through the skillful use of the Socratic method, the topics taught in a law class can be covered in a manner that promotes critical thinking skills, i.e., “thinking like a lawyer.” Critical thinking is, after all, the ultimate lawyering skill. A graduate’s fulfillment of her or his professional responsibility to the client, and the graduate’s own success, ultimately rest upon the ability to think clearly and communicate persuasively.

Instruction in some important analytical and advocacy skills, however, requires additional classroom attention. In just one example from my classes, I teach the important lesson that Stanford law professor Mark Kelman refers to as “time shifting” in his insightful article on interpretive construction, i.e., a technique by which the analysis of a legally significant issue changes radically through a change in temporal perspective.1 In torts, for example, I show how an expanded view of the period of time over which the engineer drove a speeding train can change the analysis as to whether his excessive speed was a cause-in-fact of the train’s collision with the plaintiff’s car.2 Extending the notion to other perspectives, including those of distance and specificity, I consider other examples of “frame-shifting” in the context of different cases throughout the first and second semesters in torts, the dependence of “fact” finding on perspective arises in other contexts throughout the fall and spring semesters, as well, as with the drastic effect on foreseeability in proximate cause based on the specificity or generality with which counsel presents her or his account of the facts.3 My point here is not about frame-shifting, or even about instruction on the many other critical-thinking skills, class exercises in lawyering skills, considerations of professional responsibility, and conversations about the nature of justice itself that we also choose to weave into our courses. Instead, my point is that, particularly with first-year initiates to the study of law, it is useful to devote some amount of time outside of our coverage of black-letter law to shoring up the critical thinking and other skills central to practice readiness.

Perhaps the determination of whether a little or a lot of time is devoted to these pursuits is best made by the instructor according to the abilities and needs of students at the various schools at which we teach, and after he or she gauges the progress of the students in this regard as the semester unfolds. Such delicate judgments may well fall into the realm of academic freedom. At any rate, a careful balance must be struck by each of us between the breadth of coverage of topics tested on the bar exam and encountered frequently in practice on the one hand, and the promotion of analytical skills on the other. Covering the entire casebook, in other words, may produce diminishing returns, and should probably fall generally within the judgment of the experienced faculty member.

Perhaps, in the spirit of interpretive construction, we should reframe the issue this way: is our principle objective to teach to a two-day test, or to prepare our charges for an effective and fulfilling career at the bar?


2See PROSSER, WADE AND SCHWARTZ’S TORTS: CASES AND MATERIALS 268-70 (2010) (in Perkins v. Texas and N. O. R. Co., 243 La. 829, 147 So.2d 646 (La. 1962) in which a train’s speed of 37 miles per hour through a town in which the limit was 25 miles an hour was deemed not to have been a “but, for” cause of the collision with plaintiff’s car, although, viewed from an expanded temporal perspective, the accident probably would not have occurred had the train observed the speed limit since it would have arrived at the railroad crossing only after the automobile had safely crossed the tracks).

3See id. at 336 (in Derdiarian v. Felix Contracting Corporation, 51 N.Y.2d 308, 414 N.E.2d 666, 434 N.Y.S.2d 166 (1980), the plaintiff was injured through a confluence of freakish circumstances which, if described in an equally truthful but more general manner by plaintiff’s attorney, would sound quite predictable).

Jay Sterling Silver is a professor of law at St. Thomas University School of Law. Contact him at jsilver@stu.edu.
“Law Teaching for Adjunct Faculty” is a one-day conference for new and experienced educators and administrators interested in developing and supporting adjunct teaching. The conference will take place on Saturday, April 13, 2013, at the Western State College of Law, Fullerton, California, and is co-sponsored by the Institute for Law Teaching and Learning and Western State College of Law.

Conference Content: Because adjunct professors provide experience from practice and a strong commitment to teaching, this conference will focus on ways to help them. Sessions may address topics such as:

- Designing course objectives
- Selecting appropriate teaching methods
- Giving students feedback
- Implementing assessments
- Relating to students
- Connecting with faculty
- Working with administrators
- Balancing teaching and law practice
- Continuing to develop as teachers

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

Who Should Attend: This conference is for all law school adjunct faculty, full-time teachers, and administrators who are committed to supporting and developing adjunct teaching.

Conference Structure: The conference opens with an optional informal gathering on Friday evening, April 12. The conference will officially start with an opening plenary on Saturday, April 13, followed by a series of workshops. Breaks are scheduled with adequate time to provide participants with opportunities to discuss ideas from the conference. The conference ends at 5 p.m. on Saturday. Details about the conference are available at http://lawteaching.org/conferences/2013adjunctfaculty/.

Conference Faculty: Conference plenaries and workshops will be taught by experienced faculty, including Gerry Hess, Gonzaga; Michael Hunter Schwartz, Washburn; Susan Keller, Western State; Tonya Kowalski, Washburn; Rory Bahadur, Washburn; Paula Manning, Western State; Sandra Simpson, Gonzaga; Sophie Sparrow, University of New Hampshire; Lori Roberts, Western State College of Law; and others.

For more information, visit the conference website at: http://lawteaching.org/conferences/2013adjunctfaculty/
Some time ago, Alan Tyree of Sydney University developed a mechanism to analyze multiple issues with complex answers that the instructor need not grade, but that gave the student feedback on their progress and tools to improve their analysis in the future. He called it the Critical Review Examination System [CRES]. Tyree wrote about the theory and the analysis, and he implemented the test at the University of Sydney across a variety of law school courses for several years.

After the student answer has been “submitted,” the computer asks the student a number of simple yes/no questions about the submitted answer. The practical effect of these “critical review” questions is that the student marks his or her own answer. The “critical review” questions may be arranged in a tree structure so that a variety of possible student answers will result in a pass, thus facilitating the use of questions which have no “right” answer. (Alan Tyree, The CRES Tutorial Method at http://austlii.edu.au/~alan/teaching.htm)

Using Professor Tyree’s idea and the spine of his operating system, my research assistants constructed a set of essay questions covering the major areas of contract. The University of Maryland School of Law technical staff put them on the web. My research assistants are currently working on CRES exercises in other areas. All are available at http://www.law.umaryland.edu/faculty/dbogen/menu.html

Go to the site and play with the contracts program. Despite its flaws, the current model provides the basics and should enable the reader to understand what it is and how it can be helpful. The more faculty that are aware of its potential, the more likely it is that it could become a part of the law school experience more generally.

The construction of a question for the program is simple. The instructor needs to construct an essay question with a model answer, although the answer may simply involve discussion of a variety of opposing arguments. For example, a damages question may be posed with an essay question that has arguments for both sides. (Damages #6)

Our client, a semi-professional clown who appears at birthday parties, has entered into a two-year agreement with the National Tobacco company to play the role of “H.R. Snuff-n-Puff” in a series of print ads and personal appearances. Three months into the agreement, National scraps the campaign, and offers your client a settlement that she considers to be too small. National says “O.K., you can sue, but don’t expect us to pay for you to sit around for 21 months when there are plenty of birthday parties to do.” She’s tired of birthday parties, and is actively seeking another hard-to-find position as a corporate mascot. Once you have made it clear that you will not accept “play money” for your fee, how would you advise your client?

The student then writes an essay answer in the box that should discuss whether damages will be reduced by the amount she could have earned as a birthday clown. At the conclusion of the answer, the student will hit a button labeled “submit.” This produces a prompt that asks “Have you advised that being a clown at birthday parties is not substantially similar work with which your client can mitigate damages?” There are “yes” and “no” buttons to click. If the student clicks on “no”, she will be taken to a box that asks whether she advised that being a clown at birthday parties is not substantially similar work. If she still clicks on “no”, the program tells her “you were asked to advise!” Then it says to click “yes” to proceed so that the program will have an answer to deal with.

If the student had clicked on “yes” to the original question, she would be taken to a box that discusses reasons for making that argument, e.g., “You will argue that your client has no duty to mitigate, and that recovery may be reduced by the amount that a
party could have reasonably avoided. Birthday parties are not similar to being a corporate spokesperson, and your client was reasonable in not seeking such work. Have you explained this in your answer?"

Whether the student says “yes” or “no” to this question, she will still be taken to a box that discusses the counter-arguments to the proposition that being a clown is not substantially similar work, e.g.

“National will argue that your client is a first and foremost a clown, in the business of dressing funny and cavorting around. It is reasonable for her to accept birthday parties rather than attempt a low probability job search. Have you explained why this does not apply to the present fact situation?

If the student had said “no” to the original question, and “yes” to whether she advised that working at a birthday party is substantially similar work, she would be taken to a box that raised the argument that should be made in favor of similarity and asked whether the student addressed why she thought the argument did not work. Whether the student said “yes” or “no” to this question, she would still be taken to a box that discussed the argument that being a clown is not similar work.

At this point, the student has been able to determine whether she addressed the crucial issue in her essay answer and made arguments on both sides to support her conclusion. However she responds to the last question, she will be taken to a box that discusses the question, e.g.

This is an issue of mitigation of damages. While your client has no duty to find other work to replace her National engagement, she cannot recover for a loss that she could have avoided without undue risk, burden, or humiliation. Restatement of Contracts §350. The argument will involve defining your client’s profession. National will attempt to portray your client as a clown who, by turning down birthdays, does not make reasonable attempts to avoid the loss. You will portray her as a performance artist seeking work similar to what she had with National, and thus birthday parties were not “substantially similar” work. For §350 purposes, reasonableness is a measure of the injured party’s attempts to avoid the loss -- not a measure of her decisions regarding the available alternatives. Parker v. Twentieth Century-Fox Film Corp., 474 P.2d 689 (Ca. 1970).

Of course, you could have produced a much better question and answer, but this gives the idea – showing how the essay question format can produce an answer that requires analysis of opposing arguments, and illustrating to the student what kinds of arguments she should have made.

Some questions offer hypotheticals that change the facts in the middle of the answer to illustrate the significance of facts to the answer without having to write another essay. (e.g. Formation 4). Longer questions may have multiple issues. (e.g. Formation 6, Damages 5). At the conclusion of analysis of one issue, the response takes the student to questions about the second issue rather than to a single final response. The instructor chooses whether answers should involve straightforward information, application of principles, or even complex and controversial arguments.

Basically, if you were to tell someone else how they should mark your exam, you can build in those instructions to the Critical Review system. The student then sees what is important to put in an examination by responding to questions about whether they have included it or how they distinguished or applied it. Students may think of points that the instructor failed to consider – and they should be encouraged to ask the instructor directly (by email or other discussion mode) about those points. The instructor can then use this feedback to revise the answer, make the question clearer or more complicated, or simply add steps to the critical review process that encompasses the additional responses.

With CRES, students are actively engaged in the learning process. The timing of the response is up to the student. A well-constructed CRES question can show the student how to think about the legal problem. Students can in turn get back to the instructor with out of the box thoughts that can be reincorporated into the discussion section of CRES.

In my last semester of teaching contracts, over half of the students in my two classes chose to do some of the exercises. They enjoyed the exercises, and, on average, had a higher test result than those who chose not to do so. For obvious reasons, the better results are not evidence that the CRES system itself improves student performance. Nevertheless, I think that it is worth further use and experiment by others and hope others will agree.

David S. Bogen is professor emeritus of law at the University of Maryland Francis King Carey School of Law. Contact him at dbogen@law.umd.edu.
Law School Transition – A Look Back

Like many first-year law students, I entered law school unaware of what truly lay ahead of me. I did not know many of my fellow classmates, and I did not have a true understanding and appreciation of the law school experience. Law school orientation may have been informative, and I may have performed relatively well as an undergraduate student. But, I still carried a level of anxiety and uncertainty as I walked inside that large lecture hall during the first few weeks of school. I had briefed my cases. I felt prepared for class. Yet, I was still amazed at how freely and willingly some of the other students interacted in the Socratic lecture. I questioned whether I was right for law school.

Despite my initial reservations as to whether I was going to excel in this new academic setting, I was able to adjust to the rigors of being a first-year law student. I made an appropriate transition from college to law school. However, there were several other students who were not as fortunate. For one reason or another, some students were unable to adapt to the law school learning process and feel like they truly “belonged” in law school. They may have struggled in adjusting their learning styles to the teaching preferences of their law school professors. They may have lacked confidence in their written and oral communication skills, which may have lead to additional feelings of inferiority in the law school lecture class. They may have needed additional time in a less intimidating atmosphere to critically think about and organize their course material. They may have needed a learning community.

What are Learning Communities?

Although fairly new to law schools, Learning Communities (“LCs”) are quite popular in the undergraduate setting and have a variety of definitions and formats. Some universities utilize LCs to foster a safe learning environment for at-risk students, while other universities stress the importance of LCs for academic success and retention for all types of students. Universities may structure their LCs based on a number of factors, including the students’ majors and career choices, residential quarters, and undergraduate records.

Prior to teaching at Carolina Law, I taught a variety of for-credit academic success Freshman Seminar LCs courses at the University of Texas at San Antonio. Some of my courses focused on at-risk students who may have had some deficiency in their academic records. Some of my other courses were designed for students whom the university admitted unconditionally to the university, yet who also needed some additional assistance in their transition to college. One of my courses included students who were all living in the same college dorm.

Goal = Transition

Although the student population for my LCs courses differed in age and maturity from law school students, the mission of the LCs program and the skills the students learn in the classroom transfer to law school academic support. Generally, the goal of the LCs program in the undergraduate setting is to provide students with the necessary tools and support to help freshman students make an appropriate transition from high school to college. LCs emphasize the development of a “community of learners” for the benefit of all learners. They often include a cohort group of students (about 25) who take smaller, seminar classes that focus on cooperative and collaborative learning, academic skills, and self-reflection. The cohort is also all enrolled in the same larger substantive class, such as History, Political Science, or Geology. Faculty for the LCs courses utilize a variety of active learning techniques to motivate the students to participate and be proactive in the learning process, including problem-based questions, role-playing, pair and share learning, and group work.

Like many law school academic support courses or workshops, students in the smaller LCs seminar classes may learn about their learning styles, time and stress management, and how to outline, take notes, and prepare for exams. Students are encouraged to utilize the

— continued on page 29
cooperative and collaborative learning techniques and academic support skills that are taught in the smaller seminar classes in their linked larger substantive class. Students can accomplish this goal in a variety of ways, including helping each other organize study groups, comparing class notes, and helping each other with exam preparation.

Legal Research and Writing LCs

Law schools interested in enhancing the learning environment for their students beyond academic support courses and workshops may consider utilizing their Legal Research and Writing (LRW) courses as law school LCs. Whether it is simply getting to know each other’s names and backgrounds or having the students work collaboratively to answer a substantive question, providing an academic atmosphere where students feel respected and safe may be the pedagogical deviation that some law schools need to help students more successfully transition to law school.

Similar to the LCs cohort format, LRW students are usually in the same first-year section. They see each other multiple times throughout the entire week in their larger doctrinal classes. Similar to the LCs seminar courses, LRW classes are smaller, so the students are able to develop relationships with one another that are difficult to establish in the larger Socratic-style classes. By giving the students an opportunity to get to know and work with one another in their LRW courses, students can begin to identify and appreciate the benefits of shared learning, including diversity of opinions and values, as well as increased confidence and self-esteem. Students can build trust in one another and develop relationships that will help them learn to learn from one another in the current semester and beyond.

Despite the traditional competitive nature of law school, students should feel comfortable and motivated to collaborate with one another to promote each other’s academic success. Faculty teaching LRW LCs courses can be more proactive in encouraging students to utilize each other for assistance in their larger doctrinal classes. On their own or through partnership with the academic support office, LRW faculty can help eliminate the negative connotation that sometimes follows academic assistance by promoting and highlighting the benefits of learning from peers. Moreover, because of the smaller class size and interactive nature of the course, LRW faculty may even be able to help identify those at-risk students who may need more one-on-one academic counseling. In these circumstances, LRW faculty can help pave the way for an earlier intervention from academic support personnel and, potentially, reduce the number of students who drop out because of poor grades or feelings of inadequacy and despair.

Learning Styles and LRW LCs

Law school academic support and other law teachers have long advocated for law school teaching that reaches a variety of learning styles. LRW LCs may help establish an environment where a variety of learning styles can thrive. Collaborative LRW LCs may be most beneficial for those interpersonal learners who prefer to process information in a more social setting. However, LRW LCs should also benefit students who lack the extroverted or “out-spoken” personality traits that often seem to dominate the Socratic lectures. Allowing non-verbal learners an opportunity to more critically think about the topics they are learning while working in a less intimidating classroom setting may be the encouraging and motivating factors that will enable the students to gain more confidence in their oral communication skills. Likewise, providing the skills-based instruction that many LRW professors already implement in their curriculum (such as case management, mediation, and interviewing and counseling) should enhance the learning experience for kinesthetic and visual/spatial learners, who prefer hands-on work or additional time to visually create a mental image of what they are trying to learn.

Conclusion

Law schools interested in assisting students in their transition to law school should look to the success and popularity of undergraduate LCs. By identifying ways to enhance confidence and relationship building, and by encouraging cooperative and collaborative learning, LRW LCs may help students feel as if they “belong” and can excel in law school. This approach may lead students to perform better academically, have better bar passage rates, and, generally, have a better transition to law school.

Oscar J. Salinas is clinical assistant professor of law at the University of North Carolina School of Law at Chapel Hill. He can be reached at osalinas@email.unc.edu.
‘Who Wants To Be A Millionaire?’

By Steven John Mulroy, University of Memphis Cecil C. Humphreys School of Law

When I first started teaching, I attended the AALS Conference For New Law Teachers. The speakers emphasized the need for review, and encouraged us to come up with creative ways to present material and to make learning interactive. At that session, I came up with a fun teaching method combining these virtues, one I have used consistently in non-seminar courses. It’s a review exercise based on the TV game show “Who Wants To Be A Millionaire?” and it has worked well for over a decade. Below I describe how it works, student reaction, and why I think it has educational value.

**How It Works.** The exercise takes place midway through the semester. Students are asked to go through their notes for the semester so far and write three multiple choice review questions, one Easy, one Medium, and one Difficult, each on a separate index card. I then select a few dozen questions for each difficulty level for use in the review exercise. About five or six students volunteer to be contestants, and three volunteer to be judges.

The students sit in the front row of the classroom, and the judges sit or stand nearby to observe. I sit at the front of the class next to an empty “hot seat” chair. To set the mood, I dress in muted black and silver, a la former “Millionaire” host Regis Philbin, and attempt a passable Regis Philbin impression. (Alas, a Meredith Viera impression is beyond my thespian ability.)

Just as in the “Millionaire” show, play begins with the “Fastest Finger” round. Contestants must be the first to correctly answer “Fastest Finger” questions, which ask them to put various items in order. A sample question from the first-year Criminal Law course:

Place the following in order from lesser included offense to “greater included offense”:

A. Larceny
B. Attempted Larceny
C. Robbery
D. Robbery Of A Federal Official

[Answer: B-A-C-D]

The judges are responsible for identifying who raises a hand first, second, and third. The first one who answers correctly gets to come up to the “hot seat” and begins to answer questions, identified by student author to enhance a sense of participation.

As in the “Millionaire” show, each contestant has three lifelines: “Phone-A-Friend,” which allows them to ask a classmate (other than a judge, fellow contestant, or author of the question); “Poll The Audience,” which allows the class to vote on the best answer; and “Fifty-Fifty,” in which the “computer” (I) “randomly” reduce the answers to two. (In other words, I use discretion to make it not too hard and not too easy.) If the contestant gets three Easy questions correct, she moves on to the Intermediate level. If she answers three of those Intermediate questions, she graduates to the Difficult level. If she gets any answer incorrect, she resumes her seat, and a new “Fastest Finger” round begins with the remaining contestants.

If the contestant gets up to the Difficult level and then answers three of those questions, she is declared a “Criminal Law Millionaire,” or a “Constitutional Law Millionaire,” etc. With much fanfare, I then present the contestant with a certificate entitling her to a Semester Pass from any future “cold-call” questions. Along the way, students earn various prizes. I usually have some small prizes, like some combination of University-logo pens, notepads, etc., for all contestants and all judges “just for being a good sport and participating.” Contestants who get knocked out at the Easy level get a certificate for a One-Time Pass from being cold-called, plus “the home version of the game,” which are all the question notecards they encountered.

Contestants who get knocked out at the Intermediate level get the same, plus a choice of a variety of donated “swag” items on display at the Prize Table—a Westlaw mug, an AALS tote bag, etc. Finally, those who get knocked out at the Difficult level get all of the above plus a Starbucks gift certificate. A bona fide “Millionaire” gets all of the above, plus the Semester Pass mentioned earlier.

**Student Reaction.** Student reaction to all this is very positive. Students look forward each semester to the “Millionaire Game.” Many of them vie to have their submitted questions read aloud during the competition. One method for doing this is to mimic the professor by bringing up examples from Star Trek, HBO’s The Wire, or other favorite TV shows. Other methods are to indulge their own pop culture fixations, or to compose humorous fact patterns involving thinly fictionalized versions of themselves, their colleagues, and their professor.

The students also enjoy the competition itself, cheering on the contestants and applauding each correct answer. Some years, a student will call up from his laptop “Who Wants To Be A Millionaire?” music or sound effects to heighten the mood. Sometimes a student judge will ask permission to control the lights in the room, to mimic the lighting effects used on the TV game show.

It is surprising to see how seriously the student judges end up taking their roles. In addition to keeping track of Fastest Fingers, Lifelines, questions remaining, and the like, they are also charged with settling any disputes. This being law school, such disputes are not unheard of. A contestant will claim that a question was unfairly worded, or challenge the accuracy of the answer in the context of

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Whether it’s based on ‘Who Wants To Be A Millionaire?’ or some other game, there is value in using these types of creative, challenging, and participatory activities to help reinforce information and achieve the educational goals of a review session.

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Freeze! Using Theatre Improvisation Techniques to Practice Oral Argument

By Deborah L. Borman and Dana Hill, Northwestern University School of Law

I. Introduction

Some law students are absolutely petrified of the concept of oral argument. While many law students might have prior public speaking experience, moot court is generally the first time students speak extemporaneously on legal issues before a panel of questioners who are inclined to interrupt them with potentially difficult and rapid-fire questions.

We prepare students for moot court not only to meet the challenge of a strong, clear, and well-reasoned argument, but also to alleviate the fear of making an oral argument, increasing students’ comfort level to achieve a good moot court experience, and, especially in a tight legal market, expand their legal career options.

II. Background

Prior to becoming co-presenters and co-authors, we separately considered the same inquiry: how can we improve the comfort level of students during their oral arguments through the use of theatre improvisation (improv) techniques? Our answer emerged out of differing life experiences:

Deborah Explains:
I am an extrovert. I have a theatre and music background, having written and performed my own plays in elementary school, and played roles ranging from a spider in a third-grade production of Charlotte’s Web to Maria in a high school production of the Sound of Music. I studied theatre and the oral interpretation of literature in college, and, as an adult, studied improv techniques at the Second City, Etc. Training Center in Chicago. I also sang in several chorale groups and a rock band. I arrived at the idea of improv as practice for oral argument one morning at 5 a.m. during my first semester of teaching. Oral argument exercises were fast approaching, and one student, who did not speak in class, fearfully mentioned to me that she was not interested in participating and asked if she could sit out the argument exercise. I wanted to think of something that would help this student to open up, to ease her fears and to realize that she had something important to say.

Always thinking of fresh ideas and seeking a new way of expressing or explaining a technique in writing and oral advocacy, I adapted the improv game “Improv Olympic” or “iO,”2 for practicing oral argument and called it aO or Appellate Olympic.

Dana Explains:
I generally need to thoroughly prepare and practice a speech to be in my “comfort zone.” I am less comfortable with extemporaneous speaking, even though I have videotaped myself in both extemporaneous and prepared speaking situations and my actual performance is the same in both. My experiences in broadcast journalism prior to law school and as a litigator in practice evidenced my abilities to perform in an extemporaneous setting. However, I felt more comfortable when I memorized my speech or had complete written notes. My perspective changed while I was a mid-level associate at a large law firm when I participated in a training workshop with a professional speech coach. When the coach provided feedback on my presentation, I expressed to her my discomfort with extemporaneous speaking, and she suggested that I take an improv class. I enrolled in a six-week class at a local adult learning center and the exercises helped to build my confidence and allowed me to trust that I could speak coherently and with authority without knowing exactly what I would say ahead of time.

Sharing the Stage

Together we formulated a two-step approach to answer our inquiry. First, we decided on several improv exercises as the “experiment.” Second, we surveyed our two classrooms of law students, measuring their comfort level with oral argument both before and after practicing oral argument using our games.

III. Our Theory

Based on our personal and professional experiences, we formed a hypothesis that some law students experience anxiety in anticipating oral argument. Before using the improvisational theatre games in class, we conducted a survey3 to gauge the accuracy of our hypothesis. Student responses reflected three common concerns about extemporaneous speaking:

• Answering a judge’s question “on the spot;”
• Losing their place in their prepared argument; and

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At the beginning of the scene, the first actor begins by establishing setting and plot:

Actor #1: What a cold and treacherous day to wait for the bus in Chicago!

Following the “Yes and . . .” method, actor #2 will accept the premise and add onto the situation:

Actor #2: Yes and I don’t have any snow boots!

Actor #1: Yes and there’s no sign of any bus!

Actor #2: Yes and I’m thinking it’s time to move to Florida.

The scene could continue on indefinitely with the actors simply agreeing with one another, or can move forward with the addition of a little conflict. Even when the actors affirm each response by adding something to the prior actor’s statement, the actors can still disagree:

Actor #2: Yes and I’m thinking of moving to Florida.

Actor #1: Yes and you’d be fried by the sun in Florida!

Actor #2: Yes and I suppose you’d rather stay here and freeze?

Actor #1: Yes and after I make a fortune selling Ugg boots, I can retire to Florida in style!

“Yes and . . .” exercises teach actors to embrace the ideas and concepts offered by fellow performers and to build the scene simply by affirming the statement of the prior actor.

By contrast, if actor #2 blocks his fellow performer, the scene is halted:

Actor #1: What a cold and miserable day to wait for a bus in Chicago!

Actor #2: It’s not that cold. You’re just a wimp.

By blocking actor #1, actor #2 stopped the action and killed the scene.

Freeze!

“Freeze!” is a basic improv game that helps to build improvisational skills and entertain simultaneously. At the beginning of the game, all the actors stand in a line at the back of the stage. One actor then comes forward to ask the audience to name a simple, everyday action. The actor takes the first suggestion that appeals to him and immediately begins to pantomime the action.

The Freeze occurs when the upstage actors watch for an interesting position and one actor shouts: “freeze.” The downstage actor immediately freezes in whatever position in which he finds himself at the time “freeze” is called out. The actor who called “freeze” then comes downstage to join the first actor and then immediately launches into a new scene. The actor joining the scene has the responsibility for the first line in the scene.

The two actors then continue their scene until another of the upstage actors calls “freeze.” Both onstage actors immediately freeze and the new actor makes her way downstage. Studying both frozen actors, the new actor chooses one, taps that person out of position as the prior actor. The new actor then launches into a new, completely unrelated scene.

The process of the “freeze and add” is repeated until the actors onstage begin to feel the game has run its course.

V. Theatre in the Classroom-Courtroom

Many of the rules for successful theatre improvisation correspond to successful teamwork and oral argument in moot court and classroom practice.

Oral advocates must listen to judges, co-counsel and opposing counsel’s arguments in order to respond properly.
to questions. Oral advocates must accept the facts and law presented by the cases, collaborate with co-counsel, and move forward, expanding on the facts and legal argument in order to make their case.

The legal equivalent of steamrolling is to over-talk or argue with the judge (or co-counsel) and thereby risk the chance of offending the judge at least or losing the argument completely.

VI. Classroom Exercises
We adapted the two exercises described above for use during class in addition to assigned readings, lecture, and practice rounds.

Warm-Up Exercise: “Yes and…”
We use “Yes and...” as a “warm-up” exercise to relax the students and loosen them up for speaking in front of an audience on a familiar topic. In our version, the students take turns telling parts of their client’s version of the facts of their assigned case.

Procedure: Divide the students into groups based on their assigned parties. Students representing one side form a line at the front of the classroom. The first student from one side steps up to the podium and begins telling his client’s version of the facts. After 30 seconds to one minute, the next student will “tap in” to pick up the client’s story. The professor can use a buzzer to “tap in” the next student or the students may choose to tap in on their own. Students continue to tap in until the story is completed.

In our experience, students appreciated the chance to stand up and deliver a presentation on a familiar subject without having to do any preparation, and reported in our survey that they performed better than they expected.

Argument Exercise: “Appellate Olympic” or “aO” based on “Freeze!”
The second exercise is called “Appellate Olympic,” which Deborah adapted from “Freeze.” The goals of Appellate Olympic are to provide students with the opportunity to demonstrate knowledge of the case, anticipate arguments for both sides of their appeal, and learn how their arguments play out in an appellate setting, without the obligation of preparing to speak for an extended period. In this exercise, students are limited to speaking for one to two minutes before another student has his or her turn.

Procedure: Divide students into groups by the party they will be representing at oral argument. Two students volunteer to sit as “judges” at the front of the room, one judge from each side. One student approaches the bench and begins argument. The judges ask questions. After one to two minutes, a student from the other side steps up and “taps in” to relieve the initial advocate. At any time after that, any student from either side can “tap in” to replace an advocate or a judge to move the argument along, giving each student in the class the opportunity to rotate through each position. The professor can direct students to tap in and can cut off students who are steamrolling.

VII. Conclusion
Theatre Improvisational exercises help to imbue confidence in students who are comfortable in the stillness of the printed page but fearful in the cacophony of the courtroom. Our practice exercises revealed that the fear of oral argument might be overcome through use of improv techniques that provide an opportunity to speak for a short time in a more relaxed setting. Students enjoy the games and are pleased that they are able to demonstrate their knowledge of the facts and legal issues of their case in a mock courtroom setting prior to oral arguments.

1 Professors Borman and Hill presented a version of this article at the Rocky Mountain Legal Writing Conference in March 2011 and at The Legal Writing Institute Biennial Conference in May 2012.

2 “iO,” formerly known as “Improv Olympic,” is an improvisational comedy method and training center developed in Chicago and founded in 1981 by the late Charna Halpern and Del Close. iO alumni include: Tina Fey, Amy Poehler, Seth Meyers, Jack McBrayer, Angela Kinsey, Mike Myers, Andy Richter and Chris Farley.

3 Survey conducted during the spring semester, 2011 via Survey Monkey.

Deborah L. Borman is clinical assistant professor of law at Northwestern University School of Law. She can be reached at deborah.borman@law.northwestern.edu.

Dana Hill is clinical assistant professor of law at Northwestern University School of Law. She can be contacted at dana-hill@northwestern.edu.
The Institute for Law Teaching and Learning invites proposals for conference workshops addressing the many ways law teachers engage in hybrid law teaching, including:

- Courses that bridge
  - Doctrine and practice skills
  - Legal writing and doctrine
  - Legal writing and academic support
  - Doctrine and academic support
  - Doctrine and bar pass
  - Clinic and doctrine
  - Clinic and legal writing
- Courses that integrate two or all three of the Carnegie Apprenticeships
- Courses co-taught by a full-time faculty member and a practitioner
- Courses that integrate both classroom and online teaching
- Courses offered jointly to non-law and law students with a goal of informing the learning of both groups (e.g., joint intellectual property classes offered to law students and engineering students, joint business law courses offered to law students and business students)

Presenters should not read papers, but should model effective teaching methods by actively engaging the participants. The co-directors would be glad to work with anyone who would like advice in designing their presentations to be interactive.

To be considered for the conference, please submit a one- to two-page, single-spaced proposal that includes the following:
- The title of the workshop;
- The name, address, phone number, and email address of the presenter(s);
- A summary of the contents of the workshop, including its goals and methods.


The Institute must receive proposals by February 1, 2013.

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

The conference is self-supporting. The conference fee for participants is $450, which includes materials and meals during the conference (two breakfasts, two lunches, and a welcome reception). The conference fee for presenters is $200. Pleasant and reasonable accommodations are available near Washburn University School of Law, the site of the conference. Hotel information will be available at [http://lawteaching.org](http://lawteaching.org), the Institute website, soon. Presenters and participants must cover their own travel and accommodation expenses.
James Bradley Thayer, 
ca. 1874 when he began to teach.*

*Courtesy of Historical & Special Collections
Harvard Law School Library
(photomechanical reproduction, 1917?)
Project Runway at LSU Law

By Paul R. Baier, Paul M. Hebert Law Center at Louisiana State University

Editor’s Note: LSU’s playwright Paul R. Baier (“Father Chief Justice”: Edward Douglass White and the Constitution) has brought James Bradley Thayer’s monumental Cases on Constitutional Law, with Notes (1895) to Heidi Klum’s runway by way of his Aspen Custom Publishing Series casebook, cut from Thayer’s successors. Project Runway has come to LSU Law. His preface explains why he designed a garb of his own. Other law teachers may want to join him on the catwalk.

Casebook construction in constitutional law traces itself back to James Bradley Thayer’s monumental Cases on Constitutional Law, with Notes, published in 1895. Professor Thayer was Dean Langdell’s colleague on the Harvard Law School faculty. Langdell taught Contracts. Thayer taught Constitutional Law. Both used a newfangled teaching tool that was all the rage at the time—Christopher Columbus Langdell’s “case method” of instruction. It has ruled law school pedagogy for a long, long time. C. C. Langdell was a discoverer, heroic to my mind. Innovation always irritates the crowd. He had courage. He had the right namesake. He started out as a librarian in a New York law firm. Harvard’s President Charles Eliot later brought Langdell to Harvard Law School as its first dean. According to Christopher Columbus Langdell, “The law is a science. All the available materials of that science are contained in printed books.” (I quote him exactly.) Dean Langdell was a bookworm’s bookworm.

But what kind of printed book is best for teaching Constitutional Law? Answering this question has been an adventure for me and my students over the course of a generation of teaching law at LSU Law School. Professor Gerald Gunther’s Constitutional Law, now in its 17th Kathleen Sullivan Edition, is a favorite of mine. It has deep roots. Gerry Gunther, whom I came to know and love (he played classical music in his office, while constructing each new edition of his casebook), was my James Bradley Thayer. Both were giants. They shared a common pedagogical faith. Here is Thayer’s, from his Preface—the first casebook in American Constitutional Law:

“IN preparing this book I have had chiefly in mind the wants of my own classes at the Harvard Law School; of these and students elsewhere who follow similar methods of study. I am led to hope that the completed work may help to promote a deeper, more systematic, and exacter study of this most interesting and important subject, too neglected by the profession. It appears to me that what scientific men call the genetic method of study, which allows one to see the topic grow and develop under his eye,—a thing always grateful and stimulating to the human faculties, as if they were called home to some native and congenial field,—is one peculiarly suited to the subject of Constitutional Law. The study of Constitutional Law is allied not merely with history, but with statecraft, and with the political problems of our great and complex national life.”

I share this Old School faith. Joseph Story’s teaching appeals to me. He was John Marshall’s great friend on the Supreme Court at the dawn of Constitutional Law. He taught the subject at Harvard Law School while serving at the same time as an associate justice of the Supreme Court of the United States. I lack Story’s credentials. But I like his aims: “What we propose is no more than plain, direct, familiar instruction; something to assist the student in the first steps of his studies; something to cheer him in his progress; something to disencumber him of difficulties by the wayside; something to awaken a sincere ambition for professional excellence.”

I have uttered a few public doubts about the capacity of the casebook to incubate great constitutional lawyers in our classes. Incubating such lawyers is one of my aims, although preparing students to argue constitutional cases in court is not one of the goals mentioned by constitutional law teachers when they sit down to discuss their work. To me, this omission is distressing. I like to ratiocinate over the Commerce Clause with the best of them, but what really rouses my students is hearing great lawyers arguing challenging cases in class. Take Ted Olson’s argument in Bush v. Gore for example. After his opening statement, Justice Kennedy comes to class to ask, “Can you begin by telling us about our federal jurisdiction. Where’s the federal question here?”

At this point, I click the mouse, whatever, and pause the argument. I put a student in Theodore Olson’s shoes to answer the question. Nobody is sleeping. Nobody is hiding behind the laptop. Everybody is engaged. Why? This is the real thing. I use my friend Jerry Goldman’s Oyez Project in orchestrating a pedagogical symphony that brings my students into the crucible of the Court, the Socratic dialogue that is the life of the mind. We get inside the Justices’s heads. They come to class as academic support. Potter Stewart’s cross-examination of Special Prosecutor Leon Jaworski in the Nixon Tapes Case is a favorite cut of mine, off our Post-Langdellian Sound Machine. I once told Justice Stewart how he comes to my classes at LSU each spring via the Supreme Court tapes. I liked him. We were both from Cincinnati. I reminded him of his interrogation of Mr. Jaworski. I told him I put a student in Jaworski’s shoes and hear her answer first. What was his reaction? I had better quote him exactly. Here is what Justice Stewart said to me in the Great Hall of the Supreme

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Great teaching, I am convinced, requires a much thinner paperback, a new design that allows us to escape the small world of the classroom and enter the large world of Court and Counsel.

Project Runway at LSU Law

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Court. We were at some reception or other, I forget which. “That’s a damn good idea.” I have always admired Justice Stewart’s sound judgment. This is law in the making, not law merely lying dead before you on the printed page. The Supreme Court tapes, viva voce,—the sounds of the Supreme Court in action—proffer a deeper understanding of the Court’s published opinions and, beneath them, of the Court’s judicial process in constitutional adjudication. Thayer found it necessary in his two thick volumes, “almost always, to omit the arguments of counsel.” Why? Because our casebooks can contain only so much. A hardcover book binds us down. Great teaching, I am convinced, requires a much thinner paperback, a new design that allows us to escape the small world of the classroom and enter the large world of Court and Counsel. The Supreme Court of the United States is fascinatingly human. I want my students to enjoy the intellectual personalities that compose the Court over time.

The Justices compose the law, do they not? We should study them. Every other day it seems Justice Scalia or Justice Breyer is on television. They are both favorites of my teaching. I teach them in tandem. They are constitutional Gladiators—the Supreme Court their Coliseum. Photographs, molded bronze, sculpted stone, cinema, radio, audio, television, the Internet, and now the marvel of You-Tube,—all add life to our learning. Law comes alive.

Oh, yes, let me add that my friend Tom Goldstein’s SCOTUS Blog keeps us up to the minute. James Bradley Thayer would marvel at it. And I congratulate the Supreme Court for deciding of late, October Term 2010, to post on the Court’s website the oral arguments of counsel on Fridays each week of argument. Thus, the Court has come around to a view I voiced some 25 years ago. I mean my Phoenix recording:— “What Is the Use of a Law Book Without Pictures or Conversations?” 34 J. Legal Educ. 619 (1984). It carries the first photograph of a human being in the history of the Journal of Legal Education. Justice Holmes is seated in his favorite horsehair armchair, a book in his lap, looking, not at the book, mind you, but at the camera, gazing immortally at untold future generations of law students.

Aspen Custom Publishing Series, long wanting, now allows us to trim our casebooks as we see fit, to reduce the bulk of Thayer’s Cases on Constitutional Law and all of its successors. This innovation saves class time, student money, and mutual energy. The Internet is our e-Langdell casebook. The Supreme Court’s website puts the latest slip opinions at our fingertips. Our job is to connect them to the past. We are obliged to spot molecular differences—sometimes even molar movements. Commerce Clause cases, Ed Levi knew, teach legal reasoning. This skill is a vital one, never out of fashion. Alphonso Lopez Jr.’s case is about as exciting as it gets. Chief Justice Rehnquist visited LSU Law Center a while back. He ate lunch with us. I had to leave early. I explained I was off to teach Constitutional Law to first-year students. On my way out, I thanked him very much for his opinion in United States v. Lopez. He laughed uproariously. He could do that. He knew exactly what I meant.

My students tell me that my teaching is a symphony. If not Stravinsky conducting the New Philharmonia Orchestra, Royal Festival Hall, London, his Firebird (You must see this on You-Tube), then I imagine myself as Tim Gunn urging my aspiring professionals to “Make it work.” Stitching casebooks together is of a piece with Project Runway. Aspen’s Mood awaits us. Here then is my first Aspen Custom Publishing casebook, a garb specially cut for my first-year Constitutional Law course at LSU Law Center. The class is a great joy to me. With my students we will make it work.

Paul R. Baier is the George M. Armstrong Jr. Professor of Law at the Paul M. Hebert Law Center at Louisiana State University. He can be contacted at paul.baier@law.lsu.edu.
Step Away From the PowerPoint: Using Mirror Neurons to Enhance Student Learning in the Classroom

By Mary Ann Becker, DePaul University College of Law

PowerPoint can be an amazing tool in the classroom: it can show a complex concept using multiple colors, diagrams, texts, and fonts and, if done well, it allows students to both hear and see the lecture in vivid detail. However, new research on mirror neurons indicates that PowerPoint lectures might be damaging to the in-class dynamic and hinder student learning if instructors rely on them to disseminate the material, instead of on their voices, gestures, and facial expressions.

Think about the following example illustrating what students often experience during a PowerPoint lecture. A professor rushes to class, carrying all of his materials and dashes into the room, heading directly to the computer. He hardly looks at the students before he beelines to the in-room computer and inserts his USB drive. While students are settling themselves, turning in papers, talking about classes, the instructor is searching through his files on the computer, alternating his attention between the computer screen and the overhead screen where the PowerPoint will be displayed. Once he finds the appropriate file, he opens it, greets the class, looks back at the PowerPoint, and starts discussing the day’s topic. The day’s topic is neatly outlined and referenced for the students, who are squinting at the screen and madly typing away trying to retain all the information.

In this example, the professor’s and the students’ attention is always on the screen where the PowerPoint lecture is displayed. Here, the interface between the students and the professor is the PowerPoint, not the professor teaching the material. The students cannot identify from the professor’s stance, facial expression, gesture or posture how these concepts relate in a physical sense because everyone’s attention is focused on the PowerPoint screen. So, even though students can see a well-done PowerPoint and they can hear the professor explaining the concepts in reference to the slides, they have no connection to how this professor understands the material and how it relates to the professor’s base of knowledge. This professor lacks “immediacy.”

Immediacy is the eye contact, smiles, gestures, and signals that we use to connect to one another while speaking. These signals, unlike the PowerPoint screen, create a bond between the teacher and the student and enhance communication. Research shows that professors who cultivate immediacy in the classroom increase a student’s interest, enthusiasm, and motivation in the material, which may result in improved learning. When showing the connection between mirror neurons and a teacher’s stance, Nancy Houfek, the head of Voice and Speech at the American Repertory Theatre explained that “the content is critical, but how we get there is even more critical.”

The concept of immediacy is related to the relatively recent scientific discovery of mirror neurons. In the 1990’s, a group of Italian scientists discovered mirror neurons while monitoring a single neuron in the premotor cortex of monkeys. This neuron “fired” when a monkey grabbed a peanut or broke a shell. The researcher’s breakthrough occurred when they found out that that neuron also fired when the monkey saw one of the researchers open a peanut. Essentially, the monkey’s neuron “mirrored” what it saw the researcher doing; these neurons mimicked the researcher’s actions.

Mirror neurons do not eradicate the idea of voluntary movement or a person’s free will, instead, they show that humans’ neurons will respond–or mirror–another human’s actions. For instance, when you are having a conversation with a person, you may find yourself mimicking some of the same gestures or actions: perhaps you are both leaning against the same wall or you both have your arms folded. Or in a race, when one of the runners false starts, then typically another runner will also involuntarily start.

These mirror neurons are essential to the learning process because they are what allow students to build off of a professor’s explanation of material. If a student does not have the opportunity to see a professor’s gestures and facial features as she explains a concept, but only sees the professor looking at the PowerPoint screen, then that student misses the opportunity to mirror the professor’s understanding. It’s as if the teacher tasted a lemon, but she never showed her facial expression to the class; then the students have no concept for how the lemon tasted. However, if after eating the lemon, the students saw her reaction, then it’s as if they had also eaten the fruit. Likewise, when a student sees your reactions to the material complete with effective gestures, eye contact, and movement, then his or her brain shares the connotations with that concept and has a basic framework of understanding.

It is the difference between telling a student that an analogy compares two similar facts to showing that student what an analogy does. When you stand in front of the classroom, make eye contact with the students, keep your arms open, and use your right hand to represent one fact and your left hand to represent the other similar fact, students begin seeing how you embody the concept and understand it. As you are explaining how the facts compare, you could use your hands for emphasis to illustrate the concept and how a student would write an analogy. The students will be paying attention to you, watching

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Interactive Ways to Teach Cost-Effective Research Using Google Scholar and LexisNexis

By Eric P. Voigt, Faulkner University, Jones School of Law

With a push in the legal market to minimize research costs, law schools should teach students about free and low-cost alternatives to LexisNexis and Westlaw. This article discusses an interactive way to teach students about the content and features of Google Scholar and about its benefits and limitations. This article also describes an innovative way to teach students about the cost of researching on Lexis.com outside of the law school bubble and addresses how to integrate Google Scholar and Lexis.com while researching.

In my first-year legal research and writing course, I begin my presentation by explaining to students the different pricing options that LexisNexis and Westlaw offer to private firms and governmental agencies. I then show students how clients are generally charged for research costs. For instance, students learn that a cost is incurred on Lexis.com under many contracts each time an attorney searches a case law database, clicks “Get a Document,” or clicks “Shepard’s.”

After discouraging students with the pricing of LexisNexis and Westlaw, I offer them a free alternative—Google Scholar. I introduce Google Scholar by having my students visit its home page (www.scholar.google.com), click on “Legal documents,” and type some search terms in the search box. I then explain its content and features. The legal documents database contains reported cases from the United States Supreme Court (since 1791), the United States Courts of Appeals and United States District Courts (since 1923),

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your facial features and hands, and their mirror neurons will imitate that process because with mirror neurons, the students feel the same thing by watching your gestures as they would if they were executing the same action. By engaging the students and using visual cues that they can mirror, they will experience the first layer of the learning process for analogies and begin to embody what you did during that explanation.

Whereas, with the PowerPoint example from the rushed professor, he most likely had the analogy written out on the PowerPoint and proceeded to take the students through the steps while looking at the screen. Both he and the students referenced what was written on the screen, and the students did not have the benefit of seeing his interaction with the material. The students have received all of the necessary information, but they have not had the benefit of building off of the instructor’s knowledge base through a mirroring effect. So, they must now understand that material through their own mechanisms. Using the fruit example, the PowerPoint professor showed them what a good apple looks like and how to identify it, but they did not have the sensory perception of seeing him eat a good apple and have a positive reaction. So, they must now taste the apple themselves and figure it out on their own. If they had seen the professor eat the apple, then they would have had the benefit of their neurons “firing”; instead, they will have to create the initial steps of the learning process on their own now.

Mirror neurons do not indicate that PowerPoint needs to be totally thrown by the wayside, but they do show that professors need to monitor their presentation of material when using a PowerPoint to ensure that they are still creating that connection with their students. To incorporate this new research in a classroom, professors should also think about how they will physically present the information: what hand gestures, facial gestures, and appropriate breaks will help students to mirror their knowledge base and develop a better understanding of the material through immediacy.


Mary Ann Becker is an instructor and interim assistant director of the Legal Analysis, Research, and Writing Program at DePaul University College of Law in Chicago, Ill.
and supreme court and intermediate appellate courts from all states (since 1950). It also has unreported federal and state cases (some are available within one week of being issued), but the breadth is unclear. Although Google Scholar does not maintain a database of legal articles, it provides links to articles hosted on other websites, such as the Social Science Research Network and HeinOnline.

After Google Scholar received a face-lift in May 2012, the “advanced scholar search” at the home page is now found as a drop-down menu by clicking the arrow embedded in the search box. The best way to search within particular courts, however, is to search the legal documents database at the home page and wait until the next page to limit the results, which can be narrowed to all federal or state cases or to a specific court (e.g., the Seventh Circuit or the Supreme Court of Texas).

Google Scholar has a citation service, but a significant limitation of this service, like other alternatives to LexisNexis and Westlaw, is that it does not indicate the validity of a case. I teach this citation service by having students type “motions to dismiss” in the search box at the home page.

To show students how to limit citing results, I have them click “Cited by” under Twombly. Using the options on the far-left column on the next page, the subsequent authority citing Twombly can be limited to specific courts (e.g., only Ohio courts citing Twombly) and limited by date (e.g., only cases citing Twombly since 2011). Last, I show students how to keyword search within the authority citing Twombly (similar to a FOCUS on a Shepard’s report). If students want cases citing Twombly and involving products liability claims, after clicking “cited by” under Twombly, they would check the box “search within citing articles” (articles includes cases) and type “products liability” in the search box.

(These steps are best understood by following along on Google Scholar.)

The leading Supreme Court cases of Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal should be the first and second results. The “Cited by” feature at the bottom of each result will return subsequent authority that has cited the original authority (similar to Shepard’s or KeyCite), and the subsequent authority is now organized based on the depth of discussion (instead of prominence) in that the first listed result has discussed the original authority in more detail than a later result. The depth of discussion is represented by horizontal bars next to each case name: the more bars, the greater the discussion of the original authority. In the example below, Webb has discussed Twombly in detail.

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After demonstrating Google Scholar, I assign to students a short research problem where the client wants to bring a lawsuit against her neighbor for the death of her beloved dog. (The full assignment is set forth at the end of this article.) The client’s initial question is whether under Florida law she can recover damages for the emotional distress resulting from her dog’s death. To promote friendly competition, I offer an award to the first student who correctly answers the question with the proper authority. Students should conclude that emotional distress damages are not recoverable for simple negligence (Kennedy v. Byas) but are recoverable for intentional conduct (La Porte v. Associated Independents, Inc.). About 15 minutes later, I ask students to research only on Lexis.com and answer the same two questions under Washington law so that students can compare the two services. My assignment is unique in that students must record each research cost incurred, which helps them grasp—and remember—the cost of using Lexis.com. (Of course, you could use a similar exercise for teaching Lexis Advance or WestlawNext.) I provide them with the estimated costs to use several features. For example, a student who searches all Washington state cases would record a charge of $35 but would record no charge for clicking on any case returned by that search. Students should conclude that emotional distress damages are not recoverable for negligence (Pickford v. Mason) but are recoverable for intentional conduct (Womack v. Von Rardon).

At the end of class, my students answer a few self-assessing questions: (1) What are two or three benefits of using Google Scholar in comparison to Lexis.com?; (2) What are two or three limitations of using Google Scholar in comparison to Lexis.com?; (3) When researching with only Google Scholar, were you confident that you found the correct
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of course, does not equate to being right. You should inform students that Google Scholar is a good tool when the researcher understands the area of law and knows the specific authority that is needed. But a law student should not use it to start researching a new area of law. For example, Florida courts allow the recovery of emotional distress damages for gross but not simple negligence. My students did not catch this important distinction—likely because the first several cases returned on Google Scholar using my suggested search terms do not address gross negligence.

The fourth question springboards into a good class discussion on how students should integrate Google Scholar with Lexis.com to minimize research costs at their jobs. I explain that students can find cases on Google Scholar and then Shepardize them on Lexis.com. In addition, after Shepardizing a case, they could save the “Get a Document” cost by retrieving the returned cases on Google Scholar. Students can also reduce research costs on Lexis.com by searching a database with broad terms and then narrowing the results through the free FOCUS feature. Of course, this list is not exhaustive.

Before entering the real legal world, students should learn how to use Google Scholar effectively and efficiently. It is a great tool to reduce research costs—resulting in satisfied clients and partners. Once we teach students about the limitations of Google Scholar, they should be able to use it appropriately.

Eric P. Voigt teaches Legal Research and Writing at Faulkner University, Jones School of Law.

Hypothetical for Researching on Google Scholar and Lexis.com

Your client wants to bring an action in state court because her neighbor hit and killed her dog; the neighbor was typing a text message while driving and claims that he did not see the dog enter the road. Assume that the driver would be liable for negligence. Can your client recover damages for her emotional distress resulting from the death of her dog? Now assume that you can prove that the driver intentionally killed your client’s dog. Are emotional damages recoverable? A few suggested search terms are “pets,” “damages,” and “emotional distress.”

Google Scholar Group: You may use only Google Scholar. You should start your search by going to the home page of Google Scholar and clicking “Legal documents” under the search box. The first person in this group to answer the two questions correctly will win. You need at least one binding case for each question. Florida law governs.

Lexis.com Group: You may use only Lexis.com. As you research, you must record each research step and each “charge” incurred so that you can estimate the total cost to complete the assignment using Lexis.com. You should use the following amounts: “Get a Document” ($12.00), “Shepard's” ($7.00), retrieve a document from a Shepard’s report ($12.00), search the case law database for one state ($35), search the U.S. law review and journal database ($40), search American Jurisprudence ($40), use the FOCUS feature (free), retrieve a document from a search result (free), and retrieve a document from history (free). The first person in this group to answer the two questions correctly with the lowest research cost will win. You need at least one binding case for each question. Washington law governs.
In “Harry Potter and the Sorcerer’s Stone” (J.K. Rowling 1997), Harry, Ron and Hermoine confront a large and odiferous mountain troll. As a team, they manage to save each other and knock the troll unconscious. The chapter ends by simply stating that after such an encounter they were friends because the experience was inherently bonding. International and E.S.L. students (J.D. as well as LL.M.) tend to shy away from classroom participation. Perhaps they feel that the American-educated law students share a community of American legal culture that they do not. They particularly fear being called on in class because it requires quick talking as well as quick thinking. While I cannot offer a dramatic bonding experience to my students as a community building type of exercise (they don’t even allow pets in the building, so I imagine trolls are also forbidden) I do try, in my classroom at least, to provide a safe haven, perhaps even an incubator, for International students to feel capable of raising their hand to speak in class or be successful when called on. In particular, I hope that they will feel comfortable participating in class not just with me but the other doctrinal professors they encounter as part of their LL.M. experience. In essence, I am trying to balance this with helping prepare them for U.S. law school exams, teaching legal analysis and writing and including enough content to confer credit and a grade each semester. I have taught the required Introduction to U.S. Law class to our foreign LL.M. students for approximately six years. During that time, the course had evolved into a miniature version of the first year legal writing class with a sprinkling of first year topics included. While this was (hopefully) a good solid foundation for my non-American LL.M. students in an American law school, I wasn’t certain it was meeting my goals because beyond attendance, handing in the written assignments was the only kind of participation that was actually required. This approach was not successful in encouraging participation in class or fostering community within the class, and it did not help students with these issues outside of class.

This year, I decided to try encouraging participation by changing some of the subject matter in class to more debate worthy topics. I determined that my LL.M. students did not need to learn just a little bit of every first year class out of the context of the first year, but rather would be much more interested in one time lectures about uniquely American legal quandaries-like Fourth Amendment search and seizure analysis, Constitutional ideas about privacy and the Separation of Church and State. Yet, scintillating topics alone would not necessarily energize students to engage in exciting classroom discussions. I hypothesized that an exercise in community bonding would be necessary to further my goals.

Instead of a troll, I invited the white elephant in the room-oral participation-to join my class. To help students feel more comfortable about speaking up in class, I had students read a case related to our long term writing assignment for the first class. We discussed it at length in the first class and then I asked the students to prepare a two to three minute oral presentation based on that case for the next class. Specifically, the assignment asked them to explain their country’s court system and how a court in their country would determine the fate of the parties in the case assigned. This was a graded assignment so participation was mandatory.

It was the most interesting class I have ever “taught.” I learned about the concept of “Jurisprudence” in Mexico whereby judicial opinions gain precedential authority if they are followed five consecutive times. I learned that most western European countries have much more generous (and regulated) insurance rules. I learned that the European Union laws would add another layer to the analysis in member countries. I learned that following the rule of law is a luxury we take for granted in the United States and other “first world” countries.

My students learned that their experiences outside this country are important. My students also learned that they can stand up in a classroom and address other students (and professors) and that their remarks will be met with respectful curiosity. My students learned that they are not alone in feeling that law school in the United States can be overwhelming for people who are not acclimated to the U.S. legal culture. We all learned from each other that day and, most importantly, we learned that we all have things to learn from one another. We left class that day, having vanquished the troll, as a community of learners and educators alike.

Using this assignment as the second class of the semester was also a good practice. We got to know each other better and we had, luckily, completed the assignment before any of the students had actually been called on in other classes. I plan to keep this oral presentation in my syllabus at the same time in the semester for at least the next few semesters to test if these results will hold true over time. If not, perhaps I can try the rear loading dock to bring in the troll.

Elizabeth Stillman is associate professor of academic support at Suffolk University Law School. Contact her at estillman@suffolk.edu.