New Institute Sponsor, Co-Director, and Consultant

It is with great excitement that we share three pieces of news relating to the Institute for Law Teaching and Learning.

First, the University of Arkansas at Little Rock William H. Bowen School of Law has agreed to serve as a third co-sponsor of the Institute for Law Teaching and Learning. Bowen joins Gonzaga University School of Law, which has sponsored the Institute since its founding in 1991, and Washburn University School of Law, which has co-sponsored the Institute since 2008.

Second, Michael Hunter Schwartz stepped down as a co-director of the Institute effective June 30, 2013, and became the dean at Bowen the next day. Dean Schwartz will continue to work on Institute projects as an Institute Consultant, along with Sophie Sparrow of the University of New Hampshire School of Law, who has served as a consultant since 2010.

Third, Kelly Terry of Bowen has assumed the role of a co-director of the Institute. Professor Terry is the director of the Public Service Externship Program and Pro Bono Opportunities at Bowen. She is an accomplished teaching and learning scholar and a great teacher. We are excited about the expertise Professor Terry brings to the Institute.

The Institute’s programs and resources have continued to
Promoting the science and art of teaching

The Law Teacher, Volume XX, Number 1

The Law Teacher is published twice a year by the Institute for Law Teaching and Learning. It provides a forum for ideas to improve teaching and learning in law schools and informs law teachers of the activities of the Institute.

Opinions expressed in The Law Teacher are those of the individual authors. They are not necessarily the opinions of the editors or of the Institute.

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grow since its inception, and currently include:

- Two annual teaching and learning conferences
- Twice-annual issues of The Law Teacher, which publishes short articles and book reviews on teaching and learning authored by a wide variety of law teachers representing dozens of law schools around the country
- An elaborate set of web resources, available at http://lawteaching.org, including books, articles, and videos on teaching methods, assessment, and team-based learning
- An Alert Service offering an article of the month, an idea of the month, and other announcements about law teaching (see the ILTL website at lawteaching.org to register for this service)
- Law teacher training workshops to United States and foreign law teachers (Institute faculty have conducted more than 200 such workshops at more than 75 United States law schools and for law teachers from Canada, Chile, Germany, Iran, Japan, Georgia, and Turkey.)

We look forward to continuing to serve legal educators in the United States and around the globe.

We are delighted to feature in this issue papers from our Hybrid Law Teaching conference, held this past June at Washburn University. We are grateful to the following authors for sharing their conference presentations and experiences with The Law Teacher: Deborah L. Borman, Hillary Burgess, Bradley Charles, Heather Garretson, Steve Gerst, Cynthia M. Ho, Sarah Morath, Sarah E. Ricks, Elizabeth A. Shaver, Richard Strong, Jalae Ulicki, Angela Upchurch, Michael Vitiello, and Keith E. Wilder.
Teaching Professional Identity

By Deborah L. Borman

The Concept of Professional Identity and the Three Apprenticeships

In Educating Lawyers: Preparation for the Profession of Law (The Carnegie Report), The Carnegie Foundation authors identified the three apprenticeships of professional education: to think, which we teach as legal analysis; to perform, which we teach as practical skills both in legal research and writing classes and in clinics, internships, and alternative dispute resolution courses; and to conduct oneself professionally as an attorney, or professional identity. My essay describes how we can contribute to students’ development and improvement of the concept of professional identity necessary both in law school and in the practice of law.

Professional Identity Defined

I define professional identity as an ability to assess legal issues from a human or non-legal perspective.

Professional identity development contemplates the existential attitudes of individual authenticity and vulnerability, along with the holistic integration of intellectual tools, such as social scientific thought, into the social context. Incorporating professional identity as an attorney necessarily involves the integration of bodies of knowledge outside of the law and making and keeping personal priorities such as work-life balance.

In teaching, ask your students the following questions:

- Who else are you?
- What else do you know?
- What did you study in college?
- What people and activities are important to you?

Law doesn’t exist in a vacuum; law is integrated into society.

Traditional Purpose of Legal Profession vs. Public Perception

Traditionally, the legal profession has been concerned with contributing to society in the form of public service and promoting justice and the public good.
As an extension of social responsibility, attorneys have a professional responsibility as officially sanctioned participants in the legal system, who are permitted to act both as officers of the court using specialized knowledge and privileges, and as client advocates.

The ideals of the legal profession and the concomitant sense of social responsibility are easily removed from the reality of law practice, however. Our rapidly changing economic and social concerns create tensions in the traditional ethical-social values of the profession of law. Traditionally valued “ideals” about being a lawyer are becoming impossible to meet; confusion and uncertainty exist about defining goals and values.

This confusion over values plays out initially during summer clerkships and later when law graduates become associates in a law firm setting.

The Carnegie Report noted undeniable problems with both the public perception of the legal profession and dissatisfaction from within the profession. Deborah Rhode reviewed survey data showing that the public perceives lawyers as “greedy and arrogant.” In addition, her research concluded that one-third of all attorneys suffer from depression or alcohol and drug addiction.²

Although attorneys working in large firms reported higher “power track” satisfaction, Rhode’s survey revealed a high level of career dissatisfaction in the large firm job setting due to lack of a sense of meaningful work. By contrast, attorneys working in smaller firms or serving in government or public interest organizations reported higher career satisfaction.

Legal education emphasizes procedural justice and teaching focuses on the adversarial system. The emphasis on procedural justice outside of the realm of a moral construct creates distorted notions in students.³

The Task of Law Education: Balancing Morals and Ethics vis-à-vis Law Practice

As educators, we are uniquely situated to provide a coherent method to develop students’ identities as legal professionals. Through our activities and assignments we can help students achieve personal and professional satisfaction, which will, of course, improve both job performance and the public perception of attorneys. Teaching or really, encouraging, a professional identity involves raising both ethical and moral issues in legal scenarios. Law students are exposed to ethical considerations in professional responsibility classes. But the morality aspect of the practice of law, the concept of ethical engagement, is often overlooked in other contexts and can be encouraged within all of the law school the curriculum.

Teaching Professional Identity

The morality and character aspects of the practice of law—the personal-ethical engagement—are often omitted from a law school curriculum. The omission of an integrated morality eventually drives student dissatisfaction during law school and employer complaints later in the workplace. In fact, matters of everyday morals or conduct, broadly discussed in the legal education context under the heading “professionalism,” are so often reduced to a never-ending discussion about how to dress in court or for job interviews, sidestepping the more important internal inquiry.

We can begin with the concept of self-reflection and peacemaking in our own assignments.
As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.

- Abraham Lincoln, Notes for a Law lecture, July 1, 1850

It is neither necessary to add an entire course called Professional Identity, however, nor to completely overhaul our current curricula or teaching methods. We can integrate professional identity concepts into our assignments, as I have done.

The Unfortunate Story

My first assignment is to write what I call The Unfortunate Story. I ask students to write a story about something unfortunate that happened to them, what they did about it at the time, and whether they would do anything differently today. Students then read the story aloud to the class. Originally developed as an ice-breaker exercise, my short introductory assignment can be used to examine problem-solving abilities and involves the student’s reflection on her personal role in solving problems. As I tweak this method, I intend to have students revisit the Unfortunate Story assignment at the end of the year with the benefit of a full year of law school behind them.

Students submit a wide variety of unfortunate stories containing important self-reflection. Here are some examples of my students’ Unfortunate Stories:

- 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 commits murder and suicide
- Being separated from a parent and later reuniting
- Discovering that an absent parent has stolen a student’s identity
- Being mugged and fighting for life (and gloves) on the bitterly cold Moscow streets

Through their stories, students articulate a problem or issue and reflect upon their role in both the problem and the resolution.

Professional Identity Reflection in Traditional Writing Assignments

I use my memo assignment at the end of the first semester to alleviate confusion about moral and legal obligations and to provide moral and ethical relevance to legal analysis. After the students write their final memos on, for example, negligent infliction of emotional distress, where they provide a prediction for a fictional client based on precedent, I ask them to write a reflection paper articulating their personal opinion about the outcome of the case instead, taking into consideration concerns for society as well as the client. I ask students to look at the big picture, to describe how they really feel about their mock client’s case, and to share what resolution they might recommend outside of the considerations of case law.
Examples of Life in the Law

Another way to prompt students to examine their own development as legal professionals is by bringing in guest speakers to tell of their own struggles in the practice of law and their resulting career decisions. I brought in a guest speaker who described working both as a U.S. Attorney and as a white collar criminal defense attorney, and who articulated the risks of being tied to rigid, dogmatic ideals, either as a prosecutor or as defense counsel. I also frequently bring in a corporate attorney who takes pro bono criminal cases, including murder cases, on appeal. Without fail he is always asked: “How can you represent a murderer?” Exposure to seasoned professionals in the law who have developed their own professional identities assists in the development of the students’ professional identities by example.

Create Your Own Lessons to Incorporate Professional Identity

Incorporating teaching professional identity into your curriculum is not challenging. Law students should expect to enhance and develop their professional identity, and to regularly contemplate their important role as future attorneys. As educators, we can readily pave the way.

I would like to hear how you incorporate professional identity into your curriculum. Please drop me a line.

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1 Presented at the Institute for Law Teaching and Learning Summer Conference, June 9, 2013, Washburn University School of Law
2 Deborah L. Rhode, In the Interests of Justice: Reforming the Legal Profession (Oxford University Press, USA 2003).
3 Students surveyed in Rhode’s study stated: “It seems like legal thinking can justify anything”; “When I took Criminal law, I started to think of it in technical terms and stopped looking at the human side”; “Most teachers don’t bring in ethical issues. You are supposed to divorce yourself from those concerns.”
4 The Law Teacher, Fall 2012.

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Using Multiple Choice to Teach Students to Write: Identifying Discreet Steps Experts Take

By Hillary Burgess

Jump Math: Preventing Inaccurate Attrition

Dismissing law students takes a huge emotional and financial toll on students, faculty, and law schools. Thus, it is important that we don’t dismiss law students who could become ethical, professional, competent attorneys. Unfortunately, many of us have had hard-working, motivated students who were plenty smart enough to succeed in law, but who failed out because they just couldn’t get it. Sometimes, we want to write them off as ‘not as smart as they
appear” or “just not ‘law smart.’” Conversely, we say that the students who succeed are naturals.

There is a company called Jump Math that refutes the myth of “natural math ability” (and, conversely, inability). The founder, Dr. Mighton, believes that while some people might have natural math intuition, all people have the ability to learn math. With his program, Dr. Mighton has identified the assumptions and inferences that experts and students with “innate ability” make. The teaching materials guide students through those assumptions and inferences explicitly. One of the program’s many success stories recounts an entire class of third graders each earning over 90% on a sixth grade math standardized test. The class included many so-called “slow” learners.

When I first heard of this program, I asked myself, “if it is possible to teach ‘slow’ third graders sixth grade math, what could we be doing in legal education to teach the law students who struggle?”

Borrowing Dr. Mighton’s philosophy, I started identifying the assumptions that law professors and “naturally successful” law students make with analyzing, synthesizing, and learning how to learn law. My goal was to provide teaching materials that make each of these assumptions (or steps) explicit. So much of thinking like a lawyer is about identifying assumptions and inferences. Thus, I thought the task would be easy. Alas, it was not.

Finding the Time: From Both a Student and Professor Standpoint

Of course, we never have enough class time to teach everything we want students to know about our subject. So, I had to get creative to maintain content coverage. Luckily, there are many out-of-class educational activities that explicitly guide students through learning law.

At first, I worried that I would be asking students to spend even more time studying. However, these “additional” activities save students time because they help students identify the objectives of learning, teach them how to attain those objectives, and help avoid common pitfalls novice learners face. Thus, students who use the materials tend to spend less time studying with better results. Importantly, they rarely engage in activities that waste their time by not helping them attain the learning objectives.

Primarily, I utilize online multiple choice quizzes because they are self-grading, provide instant feedback to students, and are a resource I can reuse every semester.

These quizzes help students explicitly learn how to identify relevant issues, synthesize and break down rules, spot relevant facts, analyze facts, and organize legal arguments. The quizzes walk students through discreet, incremental steps that we, as experts, often don’t even realize we are taking.

To earn credit, students must take the quiz repeatedly until they get all of the answers correct. Each answer choice provides feedback to students. The difficulty level progresses both from question to question within a quiz and from quiz to quiz. Of the 5-8 quizzes I provide each semester, students need only complete 3-4 quizzes to earn full credit.

Most students complete all of the quizzes. Many students retake the quiz multiple times, purposefully choosing wrong answers, to ensure that they eliminated the wrong answer choice for the right reason.
Sample Quiz Questions

The following is a sampling of questions that I provide across various quizzes. Actual quizzes might have 3-10 questions dedicated to a similar level of learning, depending on how difficult and/or nuanced the incremental step is to learn.

When learning skills or doctrine, novices tend to progress from dualistic thinking (one right answer) to multiplistic thinking (multiple right answer possibilities) to relativistic thinking (multiple right answer possibilities where the best answer varies with the context) as they learn a new topic. Thus, with early quizzes, I often use a fairly straightforward fact pattern that lends to one right conclusion. This way, the doctrine underpinning the skill will not distract students even if they are in the dualistic mode of learning doctrine. For example, many of the questions below are based on this fact pattern:

A has been chasing a wild bear all day long. The bear walks onto B’s property. C, who is unknown to both A and B, runs onto B’s property and shoots the bear on B’s property and takes the bear home. Who has greatest rights to the bear?

Later in the semester, I use more nuanced fact patterns that allow for grey-area analysis.

Questions that Help Students Identify the Components of Good Legal Discourse

When students first learn how to structure legal analysis, it is important that they understand the components (IRAC). Additionally, it is important that students understand that every analysis generally has three components: a Fact, an Understanding of that fact (inferences, assumptions, etc.), and a Link to the Language of the Element or Rule. I call these three components FULLER analysis, modeled after Michael Hunter Schwartz’ FIL analysis, described in Expert Learning for Law Students.

Unfortunately, while many novice students can define these components, they don’t understand their meaning in practice. To guide students through this level of learning, I have them identify the purpose of each sentence in a model answer.

The following question asks students to example multiple sentences and pick one with a specific purpose. The feedback on the correct answer gives students guidelines about rhetorical devices common to that sentence’s purpose. Which of these sentences is a rule statement?

a. Here, A was merely pursuing the wild bear when A chased the animal because the wild bear still had freedom to determine where to go without restriction to its liberty.
b. Thus, A’s actions do not constitute exercising dominion over the bear.
c. A person does not exercise dominion over an animal when the person merely pursues a wild animal.
d. Furthermore, nothing in the facts suggests that A exerted any control over the wild bear.
This next question guides students through the purpose of each sentence in a paragraph. The question itself provides a model analysis, so students get used to seeing good legal analysis.

Dominion:
(1) A person does not exercise dominion over an animal when the person merely pursues a wild animal.

(2) Here, (2a) A was merely pursuing the wild bear (2b) when A chased the animal (2c) because the wild bear still had freedom to determine where to go without restriction to its liberty.

(3) Furthermore, nothing in the facts suggests that A exerted any control over the wild bear.

(4) Thus, A’s actions do not constitute exercising dominion over the bear.

1. Identify the purpose of the sentence labeled (1).
   a. Issue
   b. Rule
   c. Analysis
   d. Conclusion

2. Identify the purpose of the sentence labeled (3).
   a. Issue
   b. Rule
   c. Analysis
   d. Conclusion

3. Identify the purpose of the sentence labeled (4).
   a. Issue
   b. Rule
   c. Analysis
   d. Conclusion

4) Identify the purpose of the sentence labeled (2a).
   a. Analysis: Fact
   b. Analysis: Understanding of the Fact
   c. Analysis: Link to the language of the Rule

5) Identify the purpose of the sentence labeled (2b).
   a. Analysis: Fact
   b. Analysis: Understanding of the Fact
   c. Analysis: Link to the language of the Rule

6) Identify the purpose of the sentence labeled (2c).
   a. Analysis: Fact
   b. Analysis: Understanding of the Fact
   c. Analysis: Link to the language of the Rule
This next question increases the difficulty by requiring students to look at the whole instead of individual parts.

(1) A person does not exercise dominion over an animal when the person merely pursues a wild animal. (2) Here, A was merely pursuing the wild bear (3) when A chased the animal (4) because the wild bear still had freedom to determine where to go without restriction to its liberty. (5) Furthermore, nothing in the facts suggests that (6) A exerted any control over the wild bear. (7) Thus, A’s actions do not constitute exercising dominion over the bear.

Match the number of the sentence or clause to the purpose of the sentence on the right:

(1) Rule
(2) Analysis: Fact
(3) Analysis: Fact
(4) Analysis: Understanding
(5) Analysis: Link to the Language of the Element
(6) Analysis: Link to the Language of the Element
(7) Conclusion

An even more difficult question might have more answer choices than sentences, so that students cannot use process of elimination. Finally, students can identify the purpose of each sentence in a model without guidance. Once students reach this level, I introduce multiple-paragraph analyses, then analyses with multiple legal issues.

Questions that Help Students Identify Incomplete Analysis

Once students can identify the components of a complete analysis, I challenge them to fix incomplete analyses. Again, the questions walk them through the type of questions experts ask implicitly in analyzing legal rhetoric.

Many of the following questions rely on this simple, straightforward fact pattern.

A places A’s bike next to A’s trash can. A places a sign on the bike that reads, “free to a good home.” Later that day, B saw the bike next to the trash can with the sign on it and put the bike in B’s car. The next day, A changed A’s mind and wanted the bike back. A sues B. Who wins?
This first question simply asks students to identify what component of IRAC is missing.

To abandon property, the true owner must intend to relinquish her rights and manifest that intent through actions. The placement of the bike next to the trash with a sign that read, “free to a good home,” suggests that the A intended to relinquish A’s rights to the bike. Therefore, A abandoned A’s rights to the bike.

What aspect of the analysis is missing from the sentence about intent to relinquish the bike, above?

a. Facts
b. An Understanding or Explanation of the Facts
c. Language Linking to the Element or Rule

What element did the above sample fail to analyze:

a. Whether the bike was abandoned.
b. Whether A intended to relinquish rights to the bike.
c. Whether A manifested A’s intent through actions.

The next two questions ask students to complete incomplete analysis using answer choices provided. The wrong answer choices represent common student errors.

Choose the phrase that would make this analysis most complete: “The placement of the bike next to the trash suggests that the A intended to relinquish A’s rights to the bike…”

a. ... because A put the bike next to the trash can with a sign that said “free to a good home.”
b. ... because “free to a good home” serves as an offer in a unilateral contract where the offeree merely has to take the bike away.
c. ... because owners who want to keep their property do not tend to put it where a trashman is likely to mistake it for trash.
d. ... because those actions would be inconsistent with any other purpose.

Choose the sentence best completes this paragraph:

Property owners have constructive dominion over wild animals that are on their property. Here, the fox was in B’s trash can behind B’s house. It is likely that the fox was on B’s property because the area behind someone’s house is usually still their property. Additionally, people generally store their trash cans on their own property.

a. Therefore, A did not assert dominion over the fox.
b. As such, B would have had constructive dominion over the fox while it was in B’s trash can.
Fill-in-the-Blank Questions that Teach Written Analysis

Once students can complete analysis using multiple choice, I move them to fill-in-the-blank questions. First, I walk them through questions that tell them which component of IRAC with FULLER analysis is missing.

Finish the sentence in a way that explains how the reader should understand the fact cited:

When A put his bike by the trash can with a sign that said, “free to a good home,” the sign indicated that A wanted to relinquish A’s rights to the bike because

Then, I ask them to complete analysis without telling them which component is missing. The instructions guide students through steps that could help them analyze their own writing.

This analysis is incomplete. Identify the purpose of each sentence. Identify what purpose is missing from the analysis. Then, rewrite the paragraph in the space provided, adding a sentence or phrase that meets the missing purpose.

Implied Warranty of Habitability requires that landlord provide premises that are free from material health and safety problems. Here, the facts indicate that there was mold growing in the insulation. Thus, the mold created a material health and safety problem.

Other Skills Taught With Online Multiple Choice Quizzes

I use similar principles of working from easy to hard and identifying the assumptions experts make when practicing law to teach spotting legal issues, identifying relevant facts, organizing analysis, organizing complex issues, and synthesizing rules.

Benefits

Many of these activities and questions mimic the types of questions we ask in class. However, the quizzes pose a number of additional benefits.

First, and foremost, every student in the class answers every quiz question. Second, students to work at their own pace instead of the pace of the average of the class or the student on call. Third, students can answer much more discreet, incremental questions than is possible in class. Fourth, the quiz allows me to provide targeted feedback to every student in the class.
Lessons Moving Forward

Like any academic endeavor, I continue to learn a lot from the mistakes I’ve made in implementing these quizzes.

Here are some lessons I’ve learned from using these quizzes:

- I never worry about doctrine being too easy or steps being too small. They never are too easy for struggling 1Ls.
- I add detailed feedback to each correct and incorrect answer choice so students can learn independently.
- I format feedback by stating a rule of learning law and analyzing the answer choice against the rule to further model legal analysis.
- When I use a fill-in-the-blank format, I ask students to transfer their responses to a single page that I (or my TA) can grade quickly. I also have students compare a peer’s work against a master.
- Early on, I limit the scope of the doctrinal knowledge to help focus on the skill.
- I often use student’s past exam answers (with permission) as the basis of my model answers.
- I use samples that rigidly adhere to the principles that I am trying to teach.
- Early on, I avoid samples that require judgement calls for the skill.
- I progress from asking students to recognize a correct answer to recognizing a correct conclusion (Yes/No, Who wins, etc.) to recognizing a right answer (adding analysis to an incomplete model, for example) to recognizing a right answer for the right reason (explaining why a fact is relevant, for example).
- I retest skills in a variety of doctrinal topics to promote transfer.
- I repeat easier questions for each new unit, gradually reducing the number of easier questions.
- I build students toward tasks that require them to produce answers. There is a huge learning gap between each of these steps: identifying good/bad examples of skills, explaining why they are bad, being able to produce good samples with guidance, and being able to produce good samples without guidance.

Moving forward, I’ve learned a lot of lessons that I have not yet implemented. Here are my next two improvements:

I had previously set up the quizzes to walk students through skills in the logical order experts would approach writing an essay: Identify Legal Issues, Synthesize Rules, Identify Relevant Facts, Write Legal Analysis, Organize Complex Analysis. However, I recently mapped law school learning objectives onto Bloom’s Taxonomy to create the Taxonomy of Legal Learning Objectives and Outcome Measurements (manuscript in progress). The taxonomy sorts cognitive tasks into the
order in which novices need to master them. Unfortunately, the order in which we approach an essay differs significantly from the order which novices need to learn. Thus, I intend to reorder my quiz questions to follow the Taxonomy of Legal Learning Objectives.

Like many professors, I have sometimes been frustrated with student preparation for class, especially when students spent plenty of time attempting to prepare, but focused on the wrong objectives. To ameliorate this, I have previously provided reading objectives with a list of questions students can answer to ensure they are prepared. However, the list represents “ends” questions and contains no feedback. In the future, I plan to teach students how to prepare for class by walking them through the questions I would ask about the material (“means” questions). The questions will help them focus on the information I deem important. The feedback for the answers will guide them to correct their study habits if they are off-target. I anticipate that this step will free up classroom time and increase engagement.

If I’ve learned anything from this process, it’s that I will never be done prepping this class. There is always another quiz question that could help a struggling student. There are always more assumptions to identify. There are always more ways to make law study more efficient for law students while increasing my expectations of what students can master. It’s just a matter of providing continuously improved learning materials for students.

Note: This essay builds on an essay I published previously in the Second Draft, Volume 24, Number 1.

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Lessons from Teaching Overseas

By Bernard Chao

Although professors don’t get paid much, most of us don’t complain. There are quite a few perks associated with an academic job. This past summer I got to enjoy one such plum. I taught overseas in China. I was not at one of the many summer abroad programs run by American Universities. Instead, I taught American patent law to Chinese graduate students at Zhejiang University in Hangzhou, China. Unfortunately, my Chinese is about at a first grade level. I can tell the waiter that my wife doesn’t eat meat, but discussing infringement issues for a gyroscopic balanced motorcycle is beyond me. Fortunately, I was able to give my lectures in English. Nonetheless, teaching students in their second (or third) language presents some obvious challenges. In this article, I discuss three techniques I used to address the language barrier. Although these techniques will resonate best with law professors, the basic principles can be modified to work for those teaching other subjects as well.

1. Straightforward Reading

I was teaching half of an international intellectual property course. My portion consisted of four weeks of American patent law. Before I landed in China, I had to send my host, Professor He, my
Thus, my first task was to figure out what type of reading material my students could reasonably digest. Like most law professors, I typically use a case book. Students are expected to ascertain legal principles by reading different cases (i.e. appellate decisions written by judges).

Although the case method can be quite effective, it didn’t suit the needs of my class in China. First, reading cases requires a high degree of legal English proficiency. Even foreign students who are comfortable with English are unlikely to know what a “summary judgment” is, or understand the difference between a “legal” and an “equitable” issue. I did not have the time to teach these concepts, nor was it the point of the class. Second, the case method is an indirect way of learning. The students have to read a lot to learn about a relatively small part of the law (e.g. the elements of the affirmative defense of laches). I was only lecturing four times in blocks of three and half hours. So I had to get to the point quickly.

Consequently, I assigned three primary types of reading: 1) statutes; 2) related articles directed at practitioners; and 3) hypothetical problems. The statutes were the shortest and most direct statements of the law I could give my students. The articles were easy to read and addressed common real world issues. Finally, the hypothetical problems I gave my students were modeled after my own exam problems. They were factually detailed and more challenging than any problems I could convey verbally. The problems also contained diagrams or pictures, making it easier for the students to visualize the technology at issue. By working through these problems together in class, I hoped to give my students a more nuanced understanding of American patent law.

Now I cannot prove that my reasoning was correct, but I do have two data points that suggest that I made sound choices. First, I did ask the students to read one case, eBay v. MercExchange, a Supreme Court decision that explains when to issue a permanent injunction as a remedy for patent infringement. The class discussion of that case was disappointing. In the end, I simply had to spoon feed the students the basic principles from the decision. I interpreted this experience to mean that having my students read cases was not very effective. Second, both the students and my host professor told me that they enjoyed the problem-based method I used. Of course my hosts could have simply been very gracious. You will have to take my word that the compliments appeared to be sincere.

2. Team Discussions

I don’t want to pretend that it was all smooth sailing. Far from it; my first class was a flop. Like many law professors, I rely on the Socratic method. In other words, I typically try to engage my students by asking a series of questions. Often, those questions involve a hypothetical set of facts. Later questions are tailored to challenge the assumptions and theories that the earlier answers revealed. The Socratic method doesn’t work very well when students respond to questions with blank stares or terse answers. That’s precisely what happened in my first class. There was relatively little interaction, and I had to fill the void with my own voice. The class was deadly boring, and what’s worse I couldn’t tell what the students were actually learning.

I had a chance to socialize with my students soon after I bombed. I asked them if my questions were too hard. I quickly learned that it was a language problem. Even though my students’ English was clearly superior to my Chinese, they were struggling. After all, it’s not unusual for American students to look like a deer in the headlights when put on the spot. That problem is only magnified when a student has to answer a series of questions in a foreign language. My students simply could
not apply new legal principles to complex technologies and discuss them in English on the fly.

I had to change my approach. I decided that my students needed more time to respond to questions. Instead of asking questions serially in real time, I gave the class a group of questions together. I also divided the class into small teams of two or three students. The teams would meet for about five to ten minutes and then give their answers. The results were quite gratifying. My questions were no longer met with silence. Instead, several lively and intense discussions ensued, all in Chinese. Those students who spoke English better were quickly able to bring their fellow students up to speed. Moreover, the teams had time to prepare their answers in English. The quality of the answers improved immediately. What’s more, the students were also better able to articulate the reasoning behind their answers.

3. Reference Points

Another problem I faced was determining what the students did and did not understand. Back home, I could ask my class a series of questions aimed at finding this information. This technique was not always successful in China. Again, the students often had a difficult time being peppered with English questions in real time. One technique I used to address this problem was to take advantage of what my students already knew. They were already familiar with Chinese patent law. Even though I knew almost nothing about the Chinese patent system, asking the class to answer my questions using Chinese law proved to be quite helpful. By eliminating one area of uncertainty (American patent law), it was far easier to determine if the class understood the facts of my hypothetical.

This technique had two other unexpected benefits. First, Chinese patent law proved to be a good reference point for learning American patent law. By comparing and contrasting the two systems, it was easier to explain the details of American law. Second, I also learned some basic Chinese patent law.

I don’t pretend to be an expert in teaching foreign students. But hopefully these three techniques might help others avoid a bad lecture or two when they teach abroad. I know that I will be better prepared on my next trip.

\[1\] I would like to thank my host Huaiwen He and my students at Zhejiang University Guanghua Law School. Thanks also to Ved Nanda and the Center for International & Comparative Law for helping sponsor my trip.

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Assessment Across The Curriculum
Institute for Law Teaching and Learning
Spring Conference 2014 - Saturday, April 5, 2014

“Assessment Across the Curriculum” is a one-day conference for new and experienced law teachers who are interested in designing and implementing effective techniques for assessing student learning. The conference will take place on Saturday, April 5, 2014, at the University of Arkansas at Little Rock William H. Bowen School of Law in Little Rock, Arkansas.

Conference Content: Sessions will address topics such as

- Formative Assessment in Large Classes
- Classroom Assessment Techniques
- Using Rubrics for Formative and Summative Assessment
- Assessing the Ineffable: Professionalism, Judgment, and Teamwork
- Assessment Techniques for a Legislation or Statutory Interpretation Course

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

Who Should Attend: This conference is for all law faculty (full-time and adjunct) who want to learn about best practices for course-level assessment of student learning.

Conference Structure: The conference opens with an optional informal gathering on Friday evening, April 4. The conference will officially start with an opening session on Saturday, April 5, 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 4:30 p.m. on Saturday. Details about the conference will be available on the websites of the Institute for Law Teaching and Learning and the University of Arkansas at Little Rock William H. Bowen School of Law.

Conference Faculty: Conference workshops will be taught by experienced faculty, including Michael Hunter Schwartz (UALR Bowen), Rory Bahadur (Washburn), Sandra Simpson (Gonzaga), Sophie Sparrow (University of New Hampshire), and Lyn Entrikin (UALR Bowen).

Accommodations: A block of hotel rooms for conference participants has been reserved at The DoubleTree Little Rock, 424 West Markham Street, Little Rock, AR 72201. Reservations may be made by calling the hotel directly at 501-372-4371, calling the DoubleTree Central Reservations System at 800-222-TREE, or booking online at www.doubletreelr.com. The group code to use when making reservations for the conference is “LAW.”
Assessment Across The Curriculum
Conference Schedule

April 4-5, 2014
University of Arkansas at Little Rock- William H. Bowen School of Law

Friday, April 4, 2014
4:30—7:00 p.m. Registration (Dean’s Gallery, 2nd Floor)
5:00—7:00 p.m. Welcome Reception (Dean’s Gallery, 2nd Floor)

Saturday, April 5, 2014
8:00—8:30 a.m. Registration and Breakfast (Student Lounge, 2nd Floor)
8:30—8:50 a.m. Opening: Emily Grant, Sandra Simpson, and Kelly Terry
8:50—9:00 a.m. Break
9:00—10:00 a.m. Rory Bahadur: Formative Assessment in Large Classes
10:00—10:15 a.m. Break
10:15—11:15 a.m. Sandra Simpson: Using Rubrics for Formative and Summative Assessment
11:15—11:30 a.m. Break
11:30—12:30 p.m. Lyn Entrikin: Assessment Techniques in a Legislation or Statutory Interpretation Class
12:30—1:30 p.m. Lunch Break (Student Lounge, 2nd Floor)
1:30—2:30 p.m. Michael Hunter Schwartz: Classroom Assessment Techniques
2:30—2:45 p.m. Break
2:45—3:45 p.m. Sophie Sparrow: Assessing the Ineffable—Professionalism, Judgment, and Teamwork
3:45—4:00 p.m. Break
4:00—4:30 p.m. Closing: Emily Grant, Sandra Simpson, and Kelly Terry

lawteaching.org/conferences/2014assessment
REGISTRATION FORM
2014 ASSESSMENT ACROSS THE CURRICULUM CONFERENCE

Registration Information:
Name ____________________________________________________________
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Street Address ______________________________________________________
City ____________________________ State ___________ Zip Code ___________
Institution _________________________________________________________

Registration Fee: 

☐ General Attendance $225.00 Quantity ___________ I have a dietary restriction:

Registration fee includes an optional reception on Friday evening, April 4, and
breakfast and lunch on Saturday, April 5.

Meals:

☐ I have a dietary restriction: ____________________________________________

Form of Payment:

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Cardholder’s Name: ________________________________
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Return this form with check or credit card information to:

Terry Harrison
UALR Bowen School of Law
1201 McMath Ave., Room 105
Little Rock, AR  72202-5142

For Information or Help with Registration: T: 501.324.9441 / F: 501.324.9911 / taharrison@ualr.edu
“Because I Said So” Is a Reason — But Not a Reasoning Technique

By Associate Professor Heather Garretson and Assistant Professor Bradley Charles

Law students often give an answer — but not a reason for it. This gap in our students’ reasoning usually comes in the form of “because I said so” conclusions. Even though we teach two totally different types of courses — one contracts, the other legal writing — we both see the same reasoning gap. Students have the law, and they have the facts, but they don’t always bridge the two.

So we decided to work together to bridge the gap between the law and the facts so students can come to reasoned conclusions. The bridge we give students is built of the nine reasoning techniques most used by the United States Supreme Court: apply the rule’s plain language, analogize, hypothesize, quantify, infer, imply, clarify fact and law, evaluate arguments, and characterize law. The bridge gives structure. It helps students see and use reasoning.

A. Reasoning Bridge

To help Professor Garretson’s Contracts students understand the art of reasoning, she decided to incorporate these reasoning techniques into her Contracts class. Professor Charles attended the first Contracts class and summarized the nine reasoning techniques for the Contracts students. He gave them an overview of the techniques, a handout explaining the techniques, and an example of each. Then, throughout the term, the Contracts students both identified others’ reasoning and created their own reasoning through weekly writing assignments.

To practice identifying reasoning techniques, students were asked not just to read the assigned cases, but to identify in cases where the court used a certain type of reasoning technique. For example, the Contracts Week-3 syllabus looks like this:

<table>
<thead>
<tr>
<th>Week 3</th>
<th>Termination of the Power of Acceptance</th>
<th>77-89; 92-99; 102-03</th>
</tr>
</thead>
</table>

A page from the student’s reading assignment of the *Dickinson v. Dodds* case, where the student has to identify where the court is inferring, may look like this (see next page):
Each week when discussing the cases in Contracts, the students also discussed the specific reasoning technique assigned. Class discussion on identifying the reasoning techniques is engaging, and often students are eager to share the sections of the case where they identified a certain type of reasoning. Students also began to see where there is weak, or little, reasoning behind a decision. They also see that courts occasionally use “because I said so” reasoning, and they are outraged.

Contracts students are also assigned writing assignments and their answers must use a reasoning technique. The class discussion included how the court reasoned, and in writing assignments, students are asked to use the same reasoning techniques to bridge the gap between the law and the facts to reach a conclusion.

For example, the first writing assignment in Contracts I is this:

Type one paragraph telling me what law governs Problem 10 in the book, and why. Apply the rule’s plain language.

This assignment is mandatory and students have to turn it in at the next class. Writing out the answer to a problem in the book helps students apply the Contracts concept that was covered in class. And intentionally having students apply a reasoning technique — here applying the rule’s plain language — makes abstract reasoning concrete.
B. A Summary of the Nine Reasoning Techniques

When teaching students about reasoning, we found that the best approach is to first help them recognize that the type of reasoning lawyers do is very similar to what they do in everyday life. So each summary of reasoning begins with a real-life, nonlegal example of reasoning.

What follows is just a summary. To get a more complete explanation of the nine reasoning techniques, see Applying Law, Bradley Charles (Carolina Academic Press 2011).

**Apply the Rule’s Plain Language**

- Apply the rule’s language by repeating a word or phrase, using a synonym or antonym, and characterizing facts.

The U.S. Supreme Court applies the rule’s plain language, which it does more than any other reasoning technique, by (a) repeating a word or phrase from the rule, (b) using a synonym or antonym of the rule, or (c) comparing a factual characterization to the rule. Graphically, the rule of law is the bull’s-eye. When the Court repeats the rule within the same sentence as relevant facts, the law and facts are a perfect match, a bull’s-eye. If the Court uses a synonym of the rule, it is saying that the facts are close enough, like the arrow landing within one or two rings of the bull’s-eye. And an antonym of the rule used with relevant facts is saying that the arrow completely misses the target. A characterization of the facts could be anywhere on the target. If that characterization is equal to or close to the rule, then it is a bull’s-eye, and we would say that the rule has been satisfied.

**Imply**

- Apply law by comparing factual causes and effects to the rule.
- Apply law by comparing implications of a rule’s interpretation to the rule.

Cause-and-effect relationships are the essence of reasoning by implying. The cause, effect, or both, depending on the situation, must be consistent with the rule for the rule to be satisfied. In everyday life, we imply constantly by evaluating the consequences of our actions. For instance, have you ever driven into a roundabout? Before you go in, you need to know what outcome you want. If you want to continue straight, for example, you must be in the left lane. So you must analyze the cause, being in the right lane, to get the right effect, continuing straight.

Legal reasoners do the same thing but to prove or disprove a rule. To give you an idea of how often this occurs, consider that about two of every ten arguments the U.S. Supreme Court makes are implications.

The Court looks at two different kinds of causes and effects: (1) causes and effects within the facts and (2) effects of interpreting the law in a given way. In the former, the focus is on a case’s facts. The question there is whether some force in the facts causes a result that is consistent with the rule. If the cause or effect is consistent with the rule, then the rule is satisfied and vice versa. In the second type of implying, the focus is much broader: the Court evaluates the implications of
different interpretations of the law. The question is whether the proposed interpretation will yield results that are consistent with the rule or the policy behind the rule.

**Infer**

- Infer from facts to satisfy the rule.
- Infer to interpret codified law.

This is the classic “wet umbrella in a windowless room” reasoning technique. If you were in a windowless room and saw a wet umbrella, the reasonable conclusion would be that it must be raining. There is no direct empirical evidence that it is raining, but the facts suggest the conclusion.

Some time ago, I walked into the master suite to my two-year-old daughter racing from the bathroom (the kind of racing that suggests criminal activity). I then saw her doll sitting soaked on the bathroom counter. I looked on the floor and saw water drops that spanned from the toilet to the counter. What was I to gather? In other words, what do these facts infer? Well, I’ll tell you one thing: They infer guilt!

To infer is to reach a new conclusion based on known facts. “The key to a logical inference,” one veteran jurist wrote, “is the reasonable probability that the conclusion flows from the [evidence] because of past experiences in human affairs.” I knew that my daughter dunked her doll in the toilet because she is curious — a fact learned from my experience with her — and because I know that a trail of water drops from the toilet to the counter signals that something wet had passed one way or the other. Because the wet doll was on the counter, I knew the action started in the toilet and ended on the counter. The inference that my daughter was dunking her doll in the toilet was a reasonable probability because it directly flowed from all of the evidence.

An inference is a point of reasoning when the inference is used to prove or disprove the law. In both instances, the inference must be permissible, meaning that it directly flows from the known facts.

**Clarify**

- Clarify law, facts, and issues to reason.

We are all experts at clarifying. In law school, a professor’s syllabus might state, “You may use one pass if you are not prepared.” A student trying to use a pass for a second time that term might clarify the rule: “The rule does not indicate whether it applies to the whole term or just one class.”

The U.S. Supreme Court reasons similarly in more than one out of every ten arguments. It simply clarifies the law, the facts, or the issues. Clarifying is putting a finer point on the law, the facts, and the issues by stating what they are or are not. This defines them. Clarifying can also be reasoning when it is used to explain how the facts satisfy the rule.

**Hypothesize**

- Hypothesize a fictional situation where the issue and conclusion are clear. Reason by comparing the fictional situation to the case at hand.
We hypothesize in everyday speech. In my teenage years, the curfew was normally 10:30 p.m., but it was midnight when I was playing basketball with the boys. When I was caught at 11 p.m. bowling with the boys and some girls, my dad was mad because I disobeyed the curfew rule. I said, “Dad, you’re cool with me playing basketball with boys until midnight, right? Well, what if a few girls showed up once. Could I still play basketball until midnight?” Dad answered that I could. Why? The risk of hanky-panky was low. “Fine,” I said. “Well then,” I asked, “what’s the difference between playing basketball at 11:30 with guys and girls and bowling at 11:30 with guys and girls? In either case, the risk of hanky-panky is low.”

You can probably remember such negotiating with your parents. My hypothetical, basketball with guys and girls being okay after 10:30, was a fictional situation that we both agreed on. I then compared that fictional situation to my situation — me being caught at the bowling alley after curfew with girls. Because the justification in the hypothetical (no chance of hanky-panky) could be applied to my current situation (caught after curfew), the argument had a chance of success.

Hypothesizing is similarly used to reason in the law. The reasoner creates a hypothetical where all parties agree that the rule is or is not satisfied. That hypothetical, or fictional situation, is then compared to the case at hand to decide whether the rule is satisfied. So hypothesizing is largely imagining what would satisfy or what would not satisfy the law.

Effective hypotheticals have three components: (1) a fictional situation where all parties agree on the conclusion, (2) the salient factors that make the conclusion agreeable, and (3) a comparison of the fictional and actual situations with focus on the salient factors.

**Characterize Law**

- Characterize law to explain whether a rule is easy or difficult to satisfy.

A high jumper needs to know the bar’s height before attempting a jump. Knowing the height might change the equipment, the approach, or the technique during the jump. The same applies in the law. An attorney needs to know how to approach the law. Is it strict or lenient? Is it narrow or broad? Characterizing law in this way brings a new perspective to help the attorney decide whether the facts satisfy the law. In other words, characterizing law explains how much wiggle room there is to fit the facts into the law.

Wiggle room in the law is necessary. Legislatures, when drafting statutes, and judges, when fashioning a holding that will apply to future cases, must keep in mind that law must apply to any given unknown circumstances. So the law must be flexible enough to include a variety of conduct. This explains why the word “reasonable” is written into so many laws and is often litigated. This wiggle room also allows flexibility in resolving disputes.

**Analogize**

- Analogize by comparing and contrasting precedent and statutes.

Reasoning by analogy requires comparing and contrasting two similar things. As an everyday
example, consider buying a car. When deciding where to buy a car, you will weigh your options: buy from a dealer, buy from a private citizen, buy using Craigslist, etc. The past is one factor that will help you decide. If you have had a bad experience with a car dealer, that past experience will influence your current decision of where to buy a car. In other words, you would analogize your current situation to similar previous situations.

The same type of reasoning is used in the law. Attorneys compare the case at hand to precedent — previously decided cases that are similar to the case at hand. If the precedent is similar to the case at hand, then the precedent will control the case’s outcome. It controls because stare decisis requires judges to follow previous similar cases.

When writing an analogy, include three parts: (1) State the concept in common between the precedent and case at hand. (2) Explain the precise similarity or dissimilarity between the precedent and case; this requires comparing both facts and reasoning. Not only do the facts have to be similar in nature, but the justifications for the holding in the precedent have to equally apply to the case at hand. (3) Explain the significance of the similarity or dissimilarity. See the table below for an illustration of these three points. The middle column of reasoning is what you would write on an exam, in an intra-office correspondence, or in a brief to a court.

<table>
<thead>
<tr>
<th>Visualize</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Precedent</strong></td>
</tr>
<tr>
<td>Facts</td>
</tr>
<tr>
<td>Reasoning</td>
</tr>
<tr>
<td>(3) State significance of similarity or dissimilarity.</td>
</tr>
</tbody>
</table>

Omitting the (2) precise similarity or dissimilarity and (3) the significance of the similarity or dissimilarity are the biggest potential problems with writing an analogy. If you were asked to explain why love is like an ocean, what would you say? Some would say that the constancy of ocean waves is like the constancy of love. Others might say that people drown in oceans like they drown in love. Those recovering from a bad relationship might say that both love and the ocean are turbulent. Is that what you would say? Chances are that you would say something different. This illustrates that simply making a comparison — e.g., love is like an ocean — without more, leaves a large gap in reasoning. The writer or speaker must fill in the gap by explaining precisely how the two objects are or are not similar.
Quantify

- Quantify chance of success.
- Quantify facts to prove the rule with adjectives, adverbs, and numbers.

To quantify is to measure. We quantify all the time. Saying “every,” “all,” “most,” “some,” or “none” is quantifying. When asked whether you will see a certain movie, you respond by quantifying: “probably,” “maybe,” or “probably not.”

In everyday speech, quantifying adds emphasis and perspective. For instance, Google started offering phone calls from Gmail in August 2010. On the first day of business, Google tweeted, “Over 1,000,000 calls placed from Gmail in just 24 hours!” Here’s how one journalist quantified this: “For comparison, there are somewhat more than 300 million people in the United States. If the average person makes 10 calls per day . . . that means about one out of every 3,000 calls in the U.S. went through the service on its first day.”

One million calls made on the first day of business is impressive. But the ratio of one to 3,000 sounds even more impressive — especially given the fact that this took place on the first day of business and that there are myriad other telephone companies. That is just one everyday example of quantifying.

In legal analysis, too, stating facts as numbers, including ratios and percentages, adds perspective in deciding whether a rule is satisfied.

Evaluate Opposing Arguments

- Evaluate factual and legal weaknesses in opposing arguments.

Most legal arguments have two sides. That is true whether in an adversarial setting like a lawsuit or in a transactional setting like advising a client on an estate plan. Addressing the other side’s view can be reasoning when used to prove the rule. The U.S. Supreme Court does this in every opinion, and law students should do it on exams and later in practice.

Once opposing arguments are identified, attorneys evaluate them by exploiting factual and legal weaknesses. If the opposing party characterizes the facts to fit the law, for example, the attorney will offer a characterization to support his or her client’s position (a factual weakness). If the opposing party relies on certain precedent, the attorney will distinguish it (a legal weakness). Those weaknesses provide a foothold to reason in your client’s favor.

Attorneys evaluate opposing arguments by using the other eight reasoning techniques. They also evaluate opposing arguments by down playing them and neutralizing them.

_________________________

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Bradley Charles is an assistant professor at Thomas M. Cooley Law School. He can be reached at charleb@cooley.edu.
Building a Bridge to Practice Using Letters to Student Lawyers

By Steve Gerst

Dear Student Lawyer:

I purchased a new carpet for my office from Carpet Emporium based on an advertisement for quality carpeting that included free installation. Although I am satisfied with the quality of the carpeting, I am totally unsatisfied with its installation. I have consulted with a carpeting expert who is willing to testify, if necessary, that as a result of the shoddy workmanship in the installation process the entire carpeting will need to be removed and replaced. I would like to know if I have rights that can be enforced in court, and what laws would apply to this situation.

Thank you for your anticipated response.

Rosemary

In my contracts classes I use teaching methods which demonstrate to students the usefulness of the material they are learning. Appellate decisions often involve situations that are not typical of the kinds of cases that form the “bread and butter” of the practicing lawyer. As a result, students often acquire a skewed view of the kinds of problems that they will be called upon for legal advice and representation. This is one of the reasons I created and incorporate a teaching method which I have titled, “Letter to Student Lawyer.”

The letters are presented to students in the following manner: Several days before a subject is covered by a reading assignment, I electronically post a “letter to student lawyer” which seeks information regarding a legal issue that is typical and common to the problems that clients bring to lawyers. The letters are similar to what one might find if one were writing to an “Ask a Lawyer” newspaper column.

The students are instructed to use the materials and cases in their reading assignments as their resource in drafting a response to the letter. Students are directed to deposit the responses in a designated electronic drop-box at a time before the beginning of the next class. The responses are not graded. They are, however, spot-checked to determine the level of understanding of the issues and legal principles involved, and the quality of the written communication. During class, I provide an opportunity for students to form groups of three to discuss their responses to the letter for approximately five to eight minutes. I then call upon one of the groups to begin a discussion on how a response to the letter should be structured and what information it should contain. This invites a full class discussion where I receive comments and questions from other students as we structure the outline and content of a response letter. After each class, I post my own sample response for students to use in improving the content and style of the response they drafted. At the end of the semester I review the drop-box for each student and award participation points based on the extent of a students’ participation in these assignments. The following is a sample response to the letter used in the beginning of this article:
Dear Rosemary:

In the situation you described you entered into a contract with Carpet Emporium for the sale and installation of carpeting for your office. As a result you have enforceable rights in the event this matter cannot be resolved. Since the transaction in this case involves both the sale of goods (carpeting), and the sale of services (installation), a determination will need to be made by your attorney as to whether the law applicable to your situation is governed by state statutes known as the Uniform Commercial Code, or by common law which is based on court decisions. The UCC statutes, which govern the sale of goods, set forth specific warranties that are not as clear as cases under common law. The UCC also has limits on the time one can file legal actions that are different than contract actions brought under common law.

Courts have developed principles to resolve issues involving mixed transactions, where a sale involves both goods and services, such as we have in your case. In the majority of the states, the law is that if a transaction is “predominantly” a sale of goods, it is governed by the UCC of the state. A minority of states make the determination of what law applies by looking at the precise cause of the complaint. In this case it appears that the sale of carpeting was the predominant purpose of the transaction you described. On the other hand, your complaint arises out of the installation services that were part of the sale.

Your attorney will make a determination of which law applies in your state and, either negotiate a settlement for you, or file a lawsuit under the UCC or common law, whichever is applicable, to enforce your contract rights.

I hope this information is helpful to you.

Respectfully,

Student Lawyer

Student participation and reaction has been very positive. The following comments are typical of those received in a student survey:

“An effective approach….because it involves application. I feel (the Letter to Student Lawyer)… has truly helped me learn and grasp the material effectively.”

“I have enjoyed the student letters. It provides a nice opportunity to review the material and put the rules into my own words.”

“Practice with the student letters helps to solidify our learning.”

“I especially like the student letters because they are not graded; however, it gives us the chance to put into practice what we just read.”

“I like the student letters exercises. They help me understand the concepts…not in textbook form but rather in real life scenarios.”
I have now used the Letter to Student Lawyer teaching method through an entire two-semester course. I have found that, in addition to the students enjoying the letter exercises, they are demonstrating a better understanding of legal principles, improvement in legal analysis and application, and a noted improvement in written communication.

Some of the benefits of this teaching method are:

1. Students develop and practice the skill of written communication in responding to questions that involve legal principles they are learning;
2. Students learn how application of legal principles is useful in solving practical problems they are likely to encounter in the practice of law;
3. Students learn how to extract legal principles from their reading assignments and apply them to the issues raised in the letters;
4. Students are provided with a means for consistent improvement of skills through self-learning, collaboration, feedback, and repetition.
5. Students learn how to speak and write the language of the law with confidence.

With regard to item number 5, above, Peter Kalis, chairman and global partner of K&L Gates, is quoted in The National Law Journal, in January 2012, as saying that he considers the criticism leveled against law schools misplaced. Law schools’ failure lies not in their inability to teach practical skills, but rather in their diminishing ability to produce lawyers “able to speak the language of the law with confidence.”

It is with this goal in mind that I hope the reader finds the information contained in this article helpful. If you would like more samples of letters and responses on issues related to contracts, please feel welcome to contact me.

Stephen Gerst is a professor of law at Phoenix School of Law. He can be reached at sgerst@phoenixlaw.edu.

A Mystery Statute Approach: How to Teach and Test the Legal Skill of Statutory Interpretation

By Cynthia M. Ho

Do you teach a class that focuses on statutes, rules, or code? Are you frustrated that students seem resistant to deciphering such language without study aids, even though this is what they need to do as attorneys? If so, I not only empathize, but have a possible solution to your frustration—what I dub a “mystery statute” approach to learning. Basically, to get students to focus on statutory language, rather than merely parrot what someone else (whether a professor or commercial outline) says the language means, I regularly use “mystery” statutes.

What is a mystery statute? The so-called mystery statute may be a real statute that was not
assigned, or a fictitious one that is based on a statute that was covered. The term “mystery” refers both to the fact that students are previously unfamiliar with the statute, as well as the fact that for some students, the meaning of a statute may seem a mystery. To help perpetuate the mystery with statutes that are in fact real, I present them without identifying information, such as title, or even statute number. So, for example, my students might expect to see 28 USC XXX on an exam. By removing identifying information, I force students to focus on the language, rather than relying on what they can find with an index.

I use mystery statutes in my civil procedure and intellectual property classes, where I find that it is an effective way of teaching a key skill that generally gets short shrift in most classes. Whereas there are countless sources for students to learn how to brief a case, there are almost no sources that inform students how to interpret a statute. In addition, a more intentional approach to teaching what is a core legal skill seems appropriate and also consistent with the general recommendations of the Carnegie Report.

I use a mystery statute, together with related short answer questions (does the statute provide a claim, how is it different than X that we previously learned, etc.), as one form of assessment on my civil procedure exams for 1Ls. I believe that incorporating this on an exam sends the strong signal that class is not only about learning substantive material, but also about learning the skill of statutory interpretation. In addition, performance on the mystery statute can provide valuable feedback. In particular, for students who do better on the mystery statute (and multiple choice section), I can more easily diagnose that the problem is a need to focus on exam writing, rather than to overhaul all their studying strategies.

I will confess that it does take more time to create a strong mystery statute and related short answer questions than a traditional issue-spotting essay exam. I often feel like each part is its own exam. In addition, I find it particularly challenging to write good short answer questions because removing ambiguity is much more important than with traditional issue-spotting essay questions. However, I feel strongly that this can be an important form of feedback to 1Ls, so I have been using this approach for years in civil procedure, whereas I generally do not incorporate a mystery statute in upper-level exams, even though I may use some during class.

An obvious critical question is how to create and use a mystery statute. As I recently had the opportunity to explain at the Hybrid Teaching conference, I have a three step framework for incorporating a mystery statute approach: (1) identify the issue to address, (2) illustrate it in class, and then (3) use a mystery statute to assess students. I will explain how this works with one example from my civil procedure class.

**Step 1: Identify the Issue to Address.** A point of common confusion in my first semester IL course in civil procedure is that language directing federal courts that they “shall have jurisdiction” means that plaintiffs must file in federal courts. In addition to identifying the statutory interpretation issue, it is helpful to understand the basis for the problem to more effectively tackle how to disabuse students of incorrect ideas. With this example, I know from asking former students that they believe the word “shall” is mandatory, but that they forget who the language is directed to. Interestingly, although most students can parrot the fact that federal courts are courts of “limited jurisdiction,” they have a much harder time identifying the language that does this. Accordingly, the next step is critical.
Step 2: Illustrate. After identifying that I want students to understand “shall have jurisdiction,” I then illustrate this language and alternatives in class. In particular, I contrast language that provides federal court jurisdiction with language that provides them exclusive jurisdiction. Once I point out the key word “exclusive” (often displayed in red on a PowerPoint slide), some students have an “aha” moment and look for this word thereafter as pivotal. However, even for students who have an “aha” moment, they sometimes fail to repeat this when the word does not show up in red font.

Step 3: Assess. The last step is to assess whether students understand the issue that I have attempted to illustrate. This assessment piece can happen in class, outside class, or on an exam. So, continuing with the above example, after showing the students contrasting language, I may provide “mystery” language that is similar, but slightly different than what was just illustrated. I usually do this on a PowerPoint slide with a multiple-choice question that contains not only the correct answer, but also common error(s) and do an in-class polling (through a “clicker” device). Usually, not everyone gets the right answer. For critical issues that I want to reinforce, I may repeat this process with a slightly different, yet similar provision in a later class or through an internet-based question, such as on TWEN, before asking it again on an exam.

Test before you Assess. Although there are only three steps from identifying to assessing students with a mystery statute, there is one additional sub-step built in. Basically, before you formally (summatively) assess students using a mystery statute, testing your statute and accompanying questions is key. I find it invaluable to ask a colleague or even a former student about whether questions are phrased correctly to get the desired answer, as well as whether time estimates are appropriate. In fact, I often find this step more important with mystery statutes than standard issue-spotting essay questions. In addition, sometimes during this testing phase, I will find that the statutory language taken from a real statute can be further edited down to more easily focus on the issue at hand given my desired time constraints.

Getting Fancy. The above example obviously focused on a relatively simple situation of a single clause, but the same approach works for more complex issues or statutes. The mystery statute can obviously be longer, with multiple components. By including multiple components, I can ask students how the components fit together. However, even if there is only one component, students can still be asked how the mystery statute works with existing statutes that they know. Some 1Ls assume that every new statute replaces all others, so this is a point that I often ask in the short answer questions.

Even with the approach explained above, the mystery statute could have an additional question to ask a related frequent point of confusion: whether the language “shall have jurisdiction” creates a cause of action. Many students think that it does, even after I show them different statutory language that creates a cause of action (and even though they are told on the first day of class that our focus is not on the substantive law).

What about the students? A final question might be student reaction. As with things that are difficult, some students will be very resistant. Other students are able to immediately see the value of learning a legal skill even as they are developing it; some 1Ls remark that they like feeling like a “real lawyer” in their first semester. Still others may not see the value initially, but later find that they have developed a valuable skill. I had a former student tell me that he believes his
ability to carefully and accurately read statutes so impressed attorneys that he was interning with, that they offered him a permanent position. This is, of course, a single anecdote that is far from representative of my typical experience with students, but it nonetheless helps reinforce my belief in the value of this approach.

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A Bluebook Snob Goes ALWD

By Jeanne M. Lamar

As a 1986 law school graduate, my world of legal citation was strictly by The Bluebook. Decades later, after years as a litigator in state and federal courts that uniformly adhered to Bluebook conventions, I began working in the law school setting. There I learned that another citation manual existed, something called “Allwood.” My reaction was less than enthusiastic. Citation had always seemed an unyielding and almost mathematical discipline. Did I really need to learn a new system? Did the new book hold promise for practitioners in state or federal courts?

The answers were yes and yes. Yes, I did need to learn and understand the ALWD Citation Manual: A Professional System of Citation in order to guide my students whose legal writing professors were assigning ALWD rather than Bluebook in their courses. Although not many courts have adopted ALWD, change is in the air. Federal judicial conferences have sought public comment on simplified citation standards, at least one Circuit Court of Appeals judge has repeatedly called for the abolition of The Bluebook, and legal writing professionals have lauded ALWD’s succinct and coherent citation system.

During my first cursory review of the ALWD Manual, I tried not to treat the bright green tome with too much suspicion, but neither did I give it much attention. At least not until I needed to lead a citation workshop for law students required to use the ALWD Manual, which meant I had to create exercises based exclusively on ALWD. In the process I began to appreciate the plain language of ALWD and its straightforward and transparent organization. I enjoyed the logic of using one consistent set of rules for all kinds of legal documents, a no-brainer when training law students preparing to enter the competitive marketplace of the practice of law.

ALWD is singularly well-designed to educate law students on proper citation form for lawyers. This is a critical skill in a job market where, increasingly, interns and first-year lawyers must arrive with practical skills and be productive during their first weeks of employment. First year associates are expected to provide usable (and billable) work product in the form of research and legal memoranda. Mastery of legal citation is an essential marker of competence for anyone seriously attempting to land a job in our profession’s new economic landscape.
ALWD’s streamlined focus on citation for the practice of law is a marked improvement over The Bluebook, a resource originating in 1926 as a pamphlet whose narrow purpose was designating proper citation forms for Harvard Law Review articles. In contrast, ALWD is a resource designed to teach law students the principles of legal citation - and to serve as a reference text for proper citation forms during law school and in a legal career.

Once I dove into ALWD and began using it with students, I became a convert. The advantages of ALWD are clear from its preface, which notes ALWD’s foundational principle is clarity and conciseness in citation. It provides consistent rules for all forms of legal writing, eliminating Bluebook’s tyrannical demand that academic writing adhere to archaic conventions. ALWD allows “flexibility where it facilitates good writing,” requiring first and foremost that readers be quickly advised of the writer’s source and its location. ALWD also promotes rationality in citation forms: in the absence of an on-point rule, ALWD directs writers to use the most analogous one, acknowledging that consistent use of a logical format is always better than adherence to tortured formalism.

The coherent organization of ALWD brings The Bluebook’s flaws and inconsistencies into stark relief. Consider a law student searching The Bluebook for a citation rule. The student must first parse the organization of The Bluebook as divided between the Bluepages and the Whitepages. The Bluepages are promoted as the entry point for professors teaching first year students. But they are later described as an “abbreviated introduction to the Bluebook system” that rely on related rules and tables found later in the book, in the Whitepages. The Bluepages are described as a guide for “everyday citation needs” while the Whitepages are defined as providing “general standards” of citation for use in “all forms of legal writing.” What, the student wonders, is the difference then between Blue and White?

The Bluebook further confuses the matter when it delineates rules 1-9 as the general standards of citation for all forms of legal writing but then defines rules 10-21 as being the citation rules for cases, books, etc., the examples of which use “conventions standard in law journal footnotes.” In effect, “Here are examples of the rules using our rules.” Say what?

This is the essence of The Bluebook maze (and the irony of its subtitle, A Uniform System of Citation): a reader must review virtually all sections of the book, collect the various rules about each part of the citation form being sought for the particular type of document being written, and then synthesize all of these parts to come up with the ultimate citation form. Compare ALWD, which lays out citation as a single system, for all documents and all uses in the practice of law. For example:

- The Bluebook divides its rules into Bluepages with rules B10 through B12 followed by the Bluepages Tables BT1 and BT2, then adds its Whitepages rules R1 through R21 followed by Whitepages Tables T1 through T16.
- Contrast ALWD, which lays out forty-nine rules, and seven appendixes.
- The Bluebook prescribes ten separate lists of word abbreviations in tables T6 through T16. This includes separate tables for abbreviations of words found in legislative
documents, geographical locations, titles of judges and officials, names of select periodicals and individual words commonly found in periodical titles, publishing terms, commonly used service publishers, and names of document subdivisions.

- Contrast *ALWD*’s three lists of word abbreviations: general abbreviations, court abbreviations, and abbreviations for periodicals.

- On the subject of local court rules, *The Bluebook* table T1 (U.S. Jurisdictions) instructs readers to “adhere to local citation rules” and sends readers to Bluepages table BT2. This table does not provide the local rules, it merely identifies court websites, leaving the reader to navigate the Internet in search of those rules.

- Contrast *ALWD*, which includes the actual language of the local court citation rules by specific jurisdiction or court in Appendix 2. Additionally, *ALWD* gives the reader the citation for the full text of the local rules and provides the URL for the citation rules page of the courts’ websites.

The 21st century law student enters law school with different, often less developed, research and writing skills than did students in previous generations. As high school students, they completed fewer and shorter writing assignments. As college freshmen, many arrive on campus needing remedial coursework to develop their writing skills. Others enroll in courses that require them to write fewer than twenty pages per term. The dearth of writing practice continues through college graduation.

Those college graduates who go on to law school begin with less practical experience in assembling research in written formats, and they are less familiar with sources of academic authority and the purpose of citation. In short, these students begin law school as less accomplished writers with far less experience than their counterparts only a decade earlier. Further, their limited research experience has often been centered on Internet sources rather than printed texts. They may have little practice using a table of contents or an index. Then they’re handed *The Bluebook*, 500+ pages of abstruse rules, knotty typeface conventions, multitudinous abbreviation tables, and the mystical diptych of Bluepages and Whitepages.

*ALWD* is more effective than *The Bluebook* for training students in the practice of law. *ALWD*’s plain language and linear organization enable law school professors to train students coming from varied instructional levels, to familiarize them with the print and online sources of legal authority and their citation forms. *ALWD*’s transparent and logical system creates a bridge to legal research and writing for those students whose educational backgrounds may have lacked a rigorous writing component. It pays particular attention to practitioner documents, the types of which a majority of law students will go on to create and use in the practice of law. Even better, it is an effortless text for those with lots of research and writing experience. It meets the needs of lawyers in their first or their twenty-first year of practice, as *ALWD*’s citation principles conform to decades of legal custom and practice.

The starting point for most new hires is the ability to perform effective research and reduce it to a readable, easy to access memo or court document. Lawyers need to cite. *The ALWD Citation Manual* is a tool that helps them do so quickly and easily. I may still keep my copy of *The Bluebook*,
a historic text that has strangled my research and writing for decades, but purely out of nostalgia.

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Eliminating the Blackacre Opportunity Cost Through Experiential Learning: Using “Targeted Fact Environments” in First-Year Lawyering Skills Courses

By Charles E. MacLean

First-Year Lawyering Skills (“FYLS”) students have historically developed their legal research and writing skills through imaginary fact patterns regarding Blackacre, or Dewey, Cheatem, & Howe, and the like. Instead, a substantial portion of FYLS assignments should be derived from one or more Targeted Fact Environment (“TFEs”) based on the real legal dilemmas faced by communities in need around the law school. Through those real-world TFEs, FYLS students would still learn the same legal research and writing skills and resources, but would also perforce learn about the contours and depth of the TFEs. And when TFEs are relevant to achieving key parts of the law school’s mission, TFEs also serve as a springboard for critical ancillary benefits:

- Creating motivated FYLS students;
- Informing an entire cohort of students about critical legal problems in our communities;
- Giving life to our law schools’ mission statement pronouncements that we are committed to diversity, pro bono service, community outreach, etc.;
- Providing critically important legal research to non-profit and other helping agencies and needy people in our communities; and
- Fostering a student body that values pro bono service as a natural outgrowth of our profession rather than a chore or afterthought.

Using imaginary “Blackacre” fact patterns instead of TFEs carries an obvious opportunity cost.

To start using TFEs, a FYLS professor or program only needs the following: (1) a community constituency in need, (2) a substantial legal problem or set of legal problems confronting that constituency, (3) a cooperative FYLS director and academic dean, and (4) enough time to craft or obtain a TFE and weave it into the assignments throughout the year. Any FYLS program that fails
to take this path is simply agreeing to continue paying the Blackacre opportunity cost.

Why in FYLS Classes Instead of Relegating this to Upper-Level Electives?

An upper-level elective benefits only those few students who take the elective. On the other hand, every student in each cohort must take FYLS in virtually every American law school. Thus, FYLS students are a captive audience, and the value of using TFEs benefits every student in that entire cohort. There is a clear opportunity cost when we fail to achieve something a bit more grand in those FYLS courses. The answer lies in simply using TFEs and bringing this experiential learning into the first-year curriculum.

Consider a TFE centered on the issues confronting homosexual and homeless veterans in our community. Within that one grand scenario lies the source material for assignments useful in every module of a classic FYLS course: (1) statutory, rule, case law, and secondary research; (2) Bluebook or ALWD citations for that research; (3) predictive writing and oral presentation; (4) persuasive writing and oral argument; and (5) every other topic and sub-topic in any FYLS course. Using such a TFE would create a cohort of students who have developed all the same legal research and writing skills they would have under the traditional random “Blackacre” fact pattern construct, but with a real and abiding knowledge of issues confronting our homosexual and homeless veterans. Sounds like a win-win.

Creating and Selecting TFEs

Once a program or professor chooses to use the TFE framework, the next task is to determine the target. Possible sources for TFEs include (1) law school mission and vision statements, (2) ABA Standards, (3) local news of the day, and (4) area non-profit or governmental organizations serving the needs of area clients.

1. **TFEs can be derived from each law school’s mission statement.**

Let’s say the law school’s mission statement provides as follows:

The School of Law prepares graduates who are committed to the premise that the cornerstone of meaningful existence is service to humanity.

The School of Law will enhance access to quality legal counsel for the under-served rural communities of Appalachia.

A Blackacre-based FYLS curriculum would scarcely contribute to the highlighted parts of that law school mission. A TFE-based FYLS curriculum, on the other hand, could focus on the legal issues confronting rural communities in Appalachia, such as utility shutoffs; uninsured or underinsured medical care; homelessness, alcoholism and drug abuse; social security; Medicaid and Medicare eligibility; SSI disability; workers’ compensation; and the like. In that way, in the first year, law students are confronting and learning about issues that may otherwise be covered in law school, if at all, only through upper-level electives that reach only a small percentage of each cohort. Using TFEs to insert those issues into FYLS classes guarantees that every matriculant will be exposed to and will develop an awareness of those precise legal challenges the law school felt were important enough to incorporate into its vision or mission statements. Any key quest
identified in any law school vision or mission statement can serve as a rich source of TFE topics.

2. **TFEs can be driven by ABA Standards.**

One example will suffice to illustrate the concept. ABA Standard 302(b)(2) provides “A law school shall offer substantial opportunities for student participation in pro bono activities.” ABA Interpretation 302-10 clarifies as follows:

> Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities . . . rendering . . . meaningful law-related service to persons of limited means or to organizations that serve such persons . . . Standard 302(b)(2) does not preclude the inclusion of credit-granting activities within a law school’s overall program of pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Because even credit-bearing pro bono activities can help a law school meet ABA Standard 302(b)(2), TFEs could focus on the real needs of persons and institutions in our communities. For example, a local social service agency serving homeless veterans or crime victims could benefit from legal research (even from first-year law students) on matters confronting their clients. The benefit to the outside agency is clear, but the benefit to our students is even clearer. Instead of rolling their collective eyes at yet another make-believe Blackacre scenario, those FYLS students would be tasked to do what many of them came to law school to do: help others. This would energize and involve the FYLS students, improve student learning outcomes, and serve the underserved. Another win-win.

3. **TFEs can be derived from collaborations with law school clinics.**

Clinical programs are one of the bastions of experiential learning in law school. FYLS professors could reach out to clinic coordinators in search of recurring legal issues confronted in the clinic, and then use those issues as the TFE core. FYLS then have a real-world set of legal issues to research and write about, and clinic coordinators gain some additional research on recurring legal issues facing their clinic clients. Another win-win.

4. **TFEs can be derived from direct collaborations with area non-profits.**

Perhaps the most fool-proof way to obtain nearly all the advantages of using TFEs in FYLS classes can be realized by partnering directly with a non-profit agency serving persons in need in the areas around our law schools. Depending on the collaboration, the agency chosen, and the topics at issue, that approach could combine the three prior TFE sources into one grand scheme that would:

- Help achieve law school vision and mission statement goals;
- Inculcate pro bono energy in our FYLS cohorts;
- Meaningfully bring the skills within the law school out into our hinterlands;
- Energize a cohort of FYLS students by having them help real neighbors with real problems (gaining some of the advantages of clinical classes in FYLS classes);
- Respond to and achieve ABA Standards; and
Conclusion

Using TFEs in FYLS classes, particularly in service to an area non-profit, and at essentially no additional cost, would create a more relevant first-year experience, inform and energize an entire captive cohort on issues of import to our communities and to the practice of law, provide a public service, help our students make a difference in the first year, and avoid or eliminate the Blackacre opportunity cost. This TFE path would further crystallize some of the recent literature on ways to incorporate FYLS into doctrinal courses, or meld FYLS and clinical courses, or create more practice-ready graduates, or improve our relevance and footprint in our communities, or help meet enhanced ABA scrutiny, or enhance pro bono service mindsets, or all of the above. What dean would oppose teaching the same skills now taught in FYLS while simultaneously gaining so many other benefits? Law schools cannot afford the Blackacre opportunity cost any longer, and as part of the shift toward experiential learning and practice-ready graduates, law schools should adopt TFEs in FYLS courses. The time is now. The cost is minimal. The benefits are clear and substantial. The choice is yours.

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Introduction to a Discussion Process
Based on the Novice Game

By Roger Manus

On December 14, the AALS Section on Balance in Legal Education hosted a Topic Call where I introduced and led participants in the use of a particular discussion process to address the culture of fear in law school.


The discussion process was based on The Novice Game technique, originally developed in 1986 by Thomas Shelden Griggs, Ph.D. The Game is an approach to collaborative learning and wisdom-seeking wherein one person poses a one-sentence open-ended question and invites the others present to each formulate their best one-sentence answers to the question posed.

The Novice Game is distinct from other ways of teaching and learning in groups such as casebook analysis in study groups, Socratic questioning, storytelling, free flowing conversation, using a
talking stick, and brainstorming.

It is based on the same insight that informs clinical teaching and that we all seek to impart to our students as they prepare for careers which require collaborative work: There is wisdom in the group.

Using this approach offers participants practice in formulating questions and responses that are well considered and concise and at the same time susceptible to nuance—in a word: pithy.

Users find that it works synergistically. Usually, its use also offers participants the opportunity to build on their tolerance of and appreciation for silence.

**Brief Description of The Novice Game**

Unless participants are skilled in the use of the Novice Game, a moderator is required to describe the process (as below), say whether or not the questions should all be on one topic, initiate the process by choosing a person to pose the first question, and get participants back on track if the discussion diverges into storytelling, free flowing conversation, side-talking, etc.

When granted the floor, one person formulates a one sentence open-ended question. The question should be intended to get the wisdom of those present, so the question poser is not seeking:

- Yes or no answers, or
- Voting.

For example, at the Southern Clinical Law Conference, I posed this question: How does law school inspire or discourage students regarding doing social justice work? Once the question is posed, there may be some period of silence as those others present each think to formulate his or her best one sentence answer to the question. As those present begin to indicate that they have an answer to offer, the questioner selects one of those who have so indicated.

The person who posed the question then replies in one of three ways:

a. I’ll take another response (i.e., I’d like to get also someone else’s one-sentence answer to my question), or

b. I have another question (because sometimes the questioner finds that the answer suffices or gives rise to another question), or

c. I yield the floor (i.e. someone else gets to ask their one-sentence question).

If there is an assumption in the question with which a listener disagrees, this is not the time to challenge the assumption; just don’t offer an answer.
Aside from the moderator, all participants should stay silent during the game except when they have the floor to ask a one-sentence question or give a one-sentence answer. The one exception is: If unable to hear, anyone can say, “Speak up!”

When the moderator and the group take responsibility for rigorous attention to these few simple rules, this process usually works well to stimulate wise, creative and synergistic thinking in a group setting. Let me know how it works for you.

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Integrating the Teaching of Doctrine and Skills: An Example Intended to Stimulate Ideas for Your Own Class

By Sarah E. Ricks

My presentation at the Institute for Law Teaching and Learning was intended to generate ideas for integrating the teaching of skills in doctrinal classes. Conference participants engaged in a classroom exercise intended to show that simulating how lawyers use doctrine in practice can deepen students’ understanding of doctrine and of their professional roles.

The exercise teaches the concept of state action; specifically, at what point does a police officer stop being a private citizen and instead act “under color of law.” Using a partially filled-in chart (see illustration below), participants synthesized legal rules from multiple sources and jotted them down in the middle of the chart. Participants applied those rules to real video evidence of an off-duty officer beating up a bartender (available at http://constitutionallitigation.rutgers.edu/content/online-resources-related-book). Participants paired up to draft client interview questions to elicit legally significant information about the event in the video from their client, the bartender. They then shared the interview questions they drafted with the group.
Participants in the Institute for Law Teaching and Learning conference recognized that the exercise was designed to help students learn doctrine while developing the professional skills of:

- Synthesizing rules from multiple sources of law (cases, jury instructions, etc.)
- Thinking about how to build an evidentiary record to satisfy a legal test by gathering facts from the client
- Communicating with a non-lawyer client in language the client will understand
- Drafting client interview questions

Moreover, the exercise was designed to appeal to different learning styles by using variety of teaching methods:

- **Visual materials** – the partially filled in chart to help students synthesize legal rules, real evidence of the video
- **Collaborative learning** – pairs that together draft client interview questions
- **Reading & paraphrasing**
- **Immediate feedback** – from listening to client interview questions drafted by other students in the class
The exercise demonstrated is from a casebook that uses practical materials to integrate the teaching of skills and constitutional doctrine. Current Issues in Constitutional Litigation: A Context and Practice Casebook (Carolina Academic Press 2011) casts students as lawyers handling simulated legal problems. The textbook is structured around fifteen law practice simulations that allow students to creatively explore how attorneys shape and apply doctrine. Simulations include, e.g., a jury charge conference; a meeting with a client to decide next steps in the litigation; a settlement conference before an appellate mediator; and testimony before a legislative body. In class, students often collaborate on short practical exercises based on how lawyers use doctrine in practice, such as drafting discovery requests or the client interview exercise explained above.

The book exposes students to more voices than just the Supreme Court. Students learn to appreciate the many different roles lawyers play by reading lawyers’ oral arguments, appellate briefs, government policies, expert reports, jury instructions, and interviews with civil rights lawyers and clients. The class learns how lawyers use doctrine to litigate the most common current constitutional claims, those arising under the 4th, 8th, and 14th Amendments, and 1st Amendment issues in prison. To appreciate the difficult choices faced by those on the front lines of constitutional decision making, students discuss factual background about the work of prison guards, police, and social workers.

The book is part of the Context and Practice Casebook series designed to help law teachers implement educational reforms recommended by the Carnegie Foundation. To further bring real life into the classroom, a companion website (http://constitutionallitigation.rutgers.edu/) features YouTube videos, links to websites (such as testimony by prison rape survivors), and guest talks by civil rights lawyers representing plaintiffs and defendants.

Professors who have assigned the book have found students welcome the opportunity to learn doctrine while practicing skills lawyers use in practice. The practical approach of the book “is ahead of the curve when it comes to addressing the crisis in legal academia because these materials expose students to the practice of law prior to their entrance into a tight legal market,” said Sahar Aziz, Associate Professor of Law at Texas-Wesleyan. “My students raved about the class. When I asked them whether I should use the book again, the answer was a resounding yes.”

Toledo Law School Professor Rebecca Zietlow said integrating skills and doctrine was “a refreshing alternative to the standard case analysis approach of law school classes”: “The students found the simulations interesting and challenging. They were incredibly engaged throughout the semester.”

My own students are also receptive to this practical approach. Last year, I visited at the University of Pennsylvania Law School and, in anonymous evaluations that Penn permitted for use in this story, students praised the course as: “Superlative. Prof. Ricks exudes passion for this area of law. The entire design of the course is based around engaging students beyond the traditional realm of learning doctrine. She brought in guest speakers, provided examples about doctrine and practice from her own career, and wove in many lessons on practical aspects of being a litigator. She also encouraged debate and discussion that solicited conflicting opinions on many topics.”

Next year, I will teach the course for the eighth time at Rutgers-Camden Law School. I teach in this practical way to help prepare students for events I encountered in my eleven years of law practice, which included clerking for a federal district court, working as a litigation associate at Pepper Hamilton and, for seven years, serving as an appellate and legislative attorney for the
Participants in the Institute for Law Teaching and Learning Conference recognized that integrating skills and doctrine is valuable not only to expose students to how lawyers use doctrine in practice. Challenging students to actively apply their understanding of rules to practical problems lawyers face also creates a lively classroom. That’s more fun for the students and the teacher — and hopefully, results in better retention.

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The Joy of Collaboration: Reflections on Teaching with Others

By Richard Strong, Elizabeth A. Shaver, and Sarah Morath

Our collaborative course was conceived over appetizers and drinks in May 2011. We had gathered at a trendy eatery in downtown Akron (yes, there is a trendy eatery or two in Akron, Ohio) to celebrate the end of the school year. As often happens when a group of professors get together, we started to discuss how we might improve the courses we were scheduled to teach in the next year. When the conversation turned to our legal drafting courses, Sarah described a presentation she had seen at a legal writing conference early that year. Three professors from Duquesne University School of Law had presented on a team-taught upper-level writing course in which students were divided into the roles of plaintiff’s counsel and defendant’s counsel.1

We began to discuss the possibility that we could do something similar with our legal drafting classes, with an additional class of student-judges. At Akron, legal writing professors traditionally had taught an upper-level “drafting” or writing course designed to enhance the students’ legal writing beyond the first-year curriculum. At the time we began to discuss our collaboration, Betsy and Rick previously had taught stand-alone litigation drafting courses, and Sarah was planning to teach a judicial opinion writing course. We hoped that, if we linked our three courses together so that each class assumed a professional role of either plaintiff’s counsel, defense counsel, or judge, we could enhance our students’ experiences by adding professional identity and practice-ready skills in a simulated litigation context.

Once we agreed that this would make a unique and rewarding course for our students, we quickly moved forward to the development and design stage. We envisioned that our student-advocates would draft or oppose various pretrial motions that our student-judges would analyze and rule on in written decisions. Because students would assume a particular role, plaintiff’s counsel, defense counsel, or judge, they would develop a sense of professional identity as they communicated with opposing counsel and the court. Students would better appreciate their future professional positions as well as the ethical obligations associated with these positions.

Over the next several months in 2011, we worked together to create a litigation hypothetical that...
would provide the substantive issues and educational opportunities necessary for the courses. We created a comprehensive set of course materials that provided our students with complex legal issues for their writing assignments, exposure to procedures specific to state court civil litigation, and various professional and practice-ready skills.

We taught the courses collaboratively in both 2012 and 2013. We also co-authored an article that describes in detail our pedagogical goals, course designs, experience in implementing the course, and student feedback. We also presented on our course design at several conferences.

Over the years that we worked together, the collaborative nature of the project was a very satisfying way to approach our work as professors. This essay describes why our experience collaborating with one another worked so well. In particular, we outline the many benefits that we experienced as part of a collaborative process. We also discuss several benefits that our students and our institution experienced. For those interested in collaborating with others, we conclude with some useful tips.

Personal Benefits

When we reflect back on our experience, we can identify at least three important benefits that accrued to each of us through this collaboration. First, our collaboration helped us to be better teachers. Second, our successful teaching collaboration naturally gave rise to collaboration in the area of scholarship, resulting in our co-authored article. Third, our collaboration strengthened our friendships with each other.

The most obvious benefit of our collaboration was in the classroom. Had we not agreed to collaborate with one another and link our courses together, we almost certainly would not have completely revised our courses to emphasize practice-ready skills and professional identity. Only by working together could we undertake the task in the first place. Collaborating with one another gave us the incentive to innovate.

As we began to work together, we immediately experienced the benefits to our teaching that this collaboration would bring. Through a great deal of back-and-forth discussion, we were able to rigorously assess the quality of our fundamental course design even before we taught the course. Indeed, our litigation hypothetical and course materials worked so well in the first year that we taught the courses that we made very few substantive changes before we taught the courses again.

Even after we agreed on the course design and each began to teach our own courses, collaborating with one another strengthened our classroom experience. During the semester, as our students would raise issues or pose questions, we would meet as a group outside of class to discuss those items, thus fine-tuning our pedagogical approach with the goal of improving the students’ experience. We used each other as trusted sounding boards when preparing for class. When one of us prepared a class exercise or other materials that were specific just to our set of students, we were able to rely on the other two to give valuable feedback. We also worked together to find solutions to any course-wide problems, as did occur in the first year with regard to an electronic document filing system we used.

Of course this teaching collaboration had practical benefits. The three of us working together
were able to create a much more comprehensive set of course materials than any one of us working alone. And, because we each depended on the other two to complete certain tasks, we adhered to a set of deadlines that kept the project on track. Yet collaboration did not mean that we simply divided tasks and each ended up with less work. Because of our interactive course design with three classes of students working with one another in a simulated litigation, we had additional logistic challenges. Those complexities would not have existed had we taught our own courses autonomously. We also had to take the time to meet, discuss, revise, and review in order to get “group” approval for any modifications. The trade-off, however, was overwhelmingly positive.

For us, collaborating on scholarship was a natural extension of our teaching collaboration. We were excited about the success we had achieved in the first year of teaching, and we wanted to share our work with others. We felt that the strong working relationship we had developed when collaborating on our teaching would translate to a successful writing collaboration. As with our approach to teaching, we thoughtfully discussed how to divide the work fairly. We set firm deadlines so that we would stay on task. We were respectful of each other’s opinions and, in our view, successfully married the writing styles of three individuals in a published piece.

Our scholarship collaboration provides benefits far beyond the one article that we co-authored. We now have a level of comfort with each other such that we can support each other in any future scholarship efforts, whether they will be collaborative efforts or not. Each of us knows that the other two will be an important sounding board for new scholarship ideas. Indeed, the ability to discuss even “unformed ideas” with a supportive colleague likely will spur our creative natures. During those discussions, we can act as a valuable resource for each other by sharing articles or other materials that might relate to a topic of interest or suggesting additional individuals to contact on a particular topic. We also know that, as we begin to write, we can ask each other to review any works in progress, and we trust that the feedback that we receive from each other will be thoughtful and valuable advice.

Finally, our collaboration helped us view our employment more positively. Teaching is for the most part a solitary job, and collaborating with a colleague can combat any feelings of isolation that we teachers sometimes feel. As we collaborated with one another, we strengthened our friendship and respect for each other. We learned more about our respective families, our past professional experiences, and some of our personal struggles, both big and small (from cleaning flooded basements to family health issues). We recognized each other’s dedication to the work that we do, a recognition that perhaps is more acute because we three all teach Akron’s first-year legal writing course, a course where certain days and weeks during the semester can be very hectic. As a result of our collaboration, we now value our friendships with each other as an important “perk” of our jobs.

Benefits for Our Students and the Institution

While our experience has yielded wonderful personal dividends, we believe that our students and our law school were also big winners. Our initiative provided our students and our school with some substantial additional benefits.

Our fresh approach to a required upper-level writing course provided multiple benefits to our students. Because we crafted an engaging hypothetical that featured human drama and enough ambiguity to accommodate the twists, turns, and chaos of a typical case, our students were able to experience the ups and downs of litigation practice. Because we set our hypothetical case in Ohio state court and, in particular, our local trial court, our students learned about matters specific to our state civil procedure rules and the local rules of our county trial court. Indeed, our courses are the
Our collaboration also modeled for our students how a team approach works. Within each set of the respective roles of plaintiffs’ counsel, defense counsel, or judges, we asked each set of students to work together to either develop the best argument for the client or fairly analyze the issue to reach the just result. We created in-class group exercises for our students to complete with one another, in part to reinforce the concept that good lawyering most often is the result of collaborative, not isolated, efforts. We also asked the students to help improve each other’s work by completing peer evaluation forms for their opposing counsel and judges. Through these various means, we encouraged our students to view their classmates as partners whose input would improve their own work product rather than competitors for a particular grade in the course.

In addition, by informing our students at the outset of our goals, commitment, and hopes for the collaborative project, we made them partners in the success of the courses. We encouraged honest and direct comments and feedback from students about the course design and implementation far beyond the single end-of-semester evaluation form. We then collaborated with one another to make improvements that we felt were necessary in light of the students’ comments.

Finally, by collaborating with one another on a project of this scale, we modeled for our students how collaborative partners work with one another. From time to time, students in one class would level a complaint about the other class, much like the complaints that lawyers in private practice might make about opposing counsel or a judge whose ruling was controversial, or complaints that judges might make about lawyers who appear before them. Those complaints provided opportunities for us to model good collaboration. Although we listened to the students’ complaints and, when appropriate, sought clarification from each other on a particular point, we also were careful to display the appropriate respect for our colleagues and the students in their classes. On those occasions we would remind our own particular set of students that the other individuals in our interrelated course were working hard and deserved our respect even as we might not always agree with their approach to a particular issue.

Our collaborative effort also benefitted our law school on a number of different levels. First and foremost, we created a course that put our students into the role of lawyers and judges. In addition to the traditional role of the upper-level drafting course as further refinement of students’ legal writing skills, we added the important elements of professional identity and practice-ready skills. We used our collective experience to replicate much of what we encountered when we worked in the litigation profession and courtroom.

Finally, our collaboration created a stronger connection to work that benefitted our institution. Because we worked so well together on this project, the three of us have collaborated with one another on other projects within the law school. Those collaborations include co-coaching a moot court team and co-creating or sharing materials for other courses that we individually teach. Having successfully worked with each other, we can approach other members of our faculty with a more collaborative outlook for other projects, including committee work, distance learning, and advice and feedback on other teaching or scholarship ideas.

Useful Tips for Collaboration

While you may not always be able to choose with whom you live (e.g., your parents or your children), you can choose your partners for a collaborative project. Because everyone has strengths and weaknesses, the right form of collaboration can emphasize strengths while weaknesses become less consequential. Although you must choose carefully those with whom you might collaborate,
all collaborative efforts will experience some bumps along the way. The following tips might help make the process somewhat easier.

**Determine everyone's strengths and build on those strengths.**

As already mentioned, one of the great things about collaborating with others is that you no longer have to do it all by yourself. One key to a successful collaboration is to build on the strengths of each of the collaborative partners. For example, in our group, Rick has many years of experience litigating medical malpractice claims. He also has an MFA in Creative Writing. Rick was the natural choice to be the creator of our hypothetical fact pattern, and he delivered in spades. Betsy conducted research to find interesting legal issues of the appropriate complexity and, being somewhat obsessed with logistics, created a semester-long schedule that would allow three different classes of students to exchange assignments with one another in a seamless way. Among Sarah’s many strengths are the ability to create valuable and interesting in-class exercises that focus on practice-ready skills and concepts and extensive knowledge about the scholarship process (she is a wiz at drafting eye-catching titles!). By leveraging each other’s strengths, our project moved forward smoothly and successfully.

**Value everyone’s contribution throughout the life of the project.**

For collaboration to work, each individual needs to feel like the others are contributing equally to the end result. But it is also important to recognize that everyone’s contributions will be different and that each may contribute more or less at different times during the project. For example, one of the collaborative partners might be great with technology, so this person’s contributions might be more apparent when preparing to make a presentation. Another person might be great at calling meetings and getting the ball rolling, so this person’s contributions might be more apparent at the beginning of a project. Although these contributions occur at different times, both are important to the overall success of the project.

**Expect disagreements.**

When two or more people work together, disagreements are bound to arise. Do not let disagreement derail your project. Concede the little stuff, like a stylistic point. If the point of disagreement is a more major issue, be sure to keep the lines of communication open. Your colleagues are not mind readers. Arrange a face-to-face meeting with the entire group in order to talk over the point of contention. Although perhaps a little more difficult to schedule, face-to-face meetings are often more productive because the individuals will better focus on the issue and also take the time to listen to a colleague and respond politely. The face-to-face meeting will allow you to regroup and make sure that your goals remain the same.

**Collaborate with someone with a similar work style and someone you trust.**

One reason why our collaborative project worked well is that we all have similar work styles. We communicate well in person and through email. We know that each other has a strong work ethic and that, when work is divided up, the work will get done. We were committed to producing the best end product without regard for whether any one of us got credit for a particular piece of the project. We also trusted each other not to be judgmental about each other’s contributions. We freely shared work that was “in progress” because we understood that the feedback we receive would be honest, but constructive. Because we trusted each other and shared a similar work ethic, our collaboration worked tremendously well.

What started as a causal discussion over appetizers and drinks resulted in a successful
collaborative course and led to numerous presentations and articles. Collaborative projects are not always easy sailing, but in our experience, the benefits of collaboration outweigh any negatives. Simply put, our collaborative journey has been a joy.


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Teaching Through the Test: Using Post-assignment Review Exercises to Improve Student Writing

By Robert Somers

As a professor of lawyering skills, I focus on teaching students to research and write for the practice of law, but I frequently disseminate information about substantive classes. I emphasize that outlining and memorizing the rules and cases for substantive classes is the easy part of studying. The difficult studying is learning to issue spot and apply authority by taking practice tests and comparing them to example answers or test keys. I give this advice from experience: A practice contracts exam taught me that knowing the law does not mean knowing how to apply it or spot issues. After that practice test, I studied by taking every exam on reserve that had a sample answer or key. Recent scientific studies support the conclusion that taking tests is the best learning tool.

For years, I largely ignored tests as a method for improving legal writing. Rather, after major writing assignments, I distributed a list of common errors, major errors, and the corrections of them in a five-to-ten page handout organized by the section of the assignment where the error(s) occurred. Unfortunately, most students appeared to ignore this handout on future assignments even though we reviewed it in class. Moreover, a significant percentage of students did not seem to transfer generic writing, editing, and citing exercises to their work. Then the bulb lit: If practice exams are the best way to study for substantive classes, review tests specific to a writing assignment could improve writing skills. Now, after grading a major assignment, I distribute a test comprised of mistake-laden sentences, paragraphs, and citations taken from, or at least inspired by, student papers. The questions in my “good faith” review test ask students to identify, and often correct, the errors.
Question Evolution

The idea of the review test was easier conceived than executed because mistakes that are obvious to a professor are not always obvious to students. I quickly learned that very general questions about a passage filled with errors often do not elicit even the identification of the errors. However, my two most recent review tests elicited correct responses to about ninety percent of the questions because most questions specifically pinpointed the mistakes. Thus, my questions have evolved from general to very specific as illustrated by the following examples:

For my first review test in 2011, I wrote sentences with mistakes in them with the simple instruction to “fix and rewrite the following sentences.”

By fall 2012, this type of general question had evolved into questions similar to the following example:

- **IREAC rule where the case has not been previously cited:** According to Wilson, whether the sheds unnecessarily exceed ten feet in height cannot be answered without reference to the ostensible purpose of the structure. *Wilson v. Handley*, 97 Cal. App. 4th 1301 (2002).
- What are the three problems with the citation in and to this rule sentence?

And by spring 2013, my questions had become even more specific:

- **Thesis rule:** We review a grant of summary judgment *de novo*. *Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1001 (9th Cir. 2001); *Botosan v. Paul McNally Realty*, 216 F.3d 827 (2000). Viewing the evidence in the light most favorable to the nonmoving party, we must determine whether there are any genuine issues of material fact and whether the lower court correctly applied the law. *Id*.
  a. What are the format errors with the case names?
  b. What is the problem with “9th”? 
  c. What page number is missing from the *Botosan* cite?
  d. What is missing from the *Botosan* date parenthetical?
  e. What is the format problem with “Id.”?
  f. Why is using “Id.” improper?
  g. Why are the cases cited substantively incorrect?

Directing students to the mistake allows them to identify the problem and correct it at a much higher rate than more general questions. This is a “no kidding” conclusion, but the goal of the review tests is to teach students to identify mistakes and correct them. If the review questions are too general, then they never practice identifying the mistake. Even though students will not have targeted prompt questions when reviewing their own work, the test forces them to ponder common and major errors, which is a much more productive review than a list of errors or a review test that confounds most of the class.
Example Questions

The following questions demonstrate that you can test numerous legal writing concepts, including grammar, clarity, organization, and content. The answers to these questions may not be obvious or even identifiable to the reader because they are specific to my assignments; however, the answers were identifiable to my students.5

1) ‘A’ in IReAC: Similarly to White, where here the defendant used a robot dressed in a wig similar to the plaintiff, respondent did in fact give Clark’s job title as programmer of the game Minefield. Like in this case, where there was a robot in a setting that looked like “Wheel of Fortune,” Hall also in fact listed appellant’s location in the neighborhood, this shows that respondent used appellant’s identity.

   a. Generally, are these sentences clear and concise?
   b. Why is “similarly” incorrect?
   c. Why is “here” incorrect?
   d. What is wrong with “did in fact give Clark’s job title as programmer of the game Minefield”?
   e. Why is “in this case” incorrect?
   f. What is wrong with “there was”?
   g. What is wrong with “also in fact listed”?
   h. Is the second sentence a run-on sentence?
   i. Are the terms “defendant,” “plaintiff,” “respondent,” “appellant,” “Hall,” and “Clark” a clear combination of terms?

2) After multiple sentences of ‘A’: Hall used the information about Clark in an advertisement for a house for rent. In Abdul-Jabbar, the advertisement gave information on Abdul-Jabbar’s accomplishments. Therefore, . . . .

   Why is the sentence about Abdul-Jabbar improper in the ‘A’ section?

3) ‘e’ section without citation: In Robinson, the court held that defendant HSBC does not use the plaintiffs’ identity. The court reasons that the use of the plaintiffs’ unique house and its location does not identify them.

   a. What is the problem with the facts given?
   b. What is the problem with the reasoning given?
   c. What is the tense problem with the verbs “does,” “reasons,” and “does”?

4) Respondent’s ‘eA’ format: ‘de’ for Newcombe, ‘de’ for Motschenbacher, then ‘dA’ using Motschenbacher and Newcombe, then ‘e’ for HSBC, then ‘A’ using HSBC.

   What is the problem with the placement of the HSBC ‘eA’?

5) ‘A’ section sentence: Hall’s height plus the ramp’s height are nine feet, six inches, which gives him six inches of clearance.
What is incorrect about this measurement?

6) ‘A’ section: Here, the sheds unnecessarily exceed ten feet. Similar to Hutcherson, the height over ten feet is not essential. First, a person can argue that the sheds do not need to be over ten feet to act as a fence because the previous fence was only about seven feet high. Second, the shed housing the boat does not need to be above ten feet. (Student note: Analysis on ramp shed omitted.) Therefore, a reasonable person will likely find that the sheds do not need to be above ten feet, Clark can most likely prove this element.

   a. What is the content problem with the second sentence?
   b. What is the word choice problem with the third sentence that begins “First”?
   c. What is the content problem with the fourth sentence that begins “Second”?
   d. What is the word choice problem with “a reasonable person”?
   e. What is the sentence structure problem with the final sentence?

Conclusion

So does it work? Anecdotally, yes. As my review exercises have improved, so have my students’ assignments. The biggest improvements are citation, comma splices, and organizing the IReAC. No more rules and rule explanations in the middle of the ‘A’ section. My students’ analysis is also more complete, which likely results from repeatedly testing this problem by omitting analysis from review questions. Students tend to spot this problem easily on the review test because they are left asking the same question we ask: “Why?” Additionally, I see more “aha” moments during the review, which tells me that even if the student could not identify the mistake herself, she tried, and the in-class review created a learning moment when the mistake was identified and corrected. According to students, the review tests help future writing for two main reasons: (1) students identify a problem and correct it. Therefore, they know it exists and can more easily spot it in their future work; (2) they use the test as a reference when editing their future assignments. If nothing else, the review test greatly increases student engagement in the post-assignment review, but more importantly, it will reduce the number of papers that leave you wondering why they ignored your comments.

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2 A formal office memo, a rewrite of it, a second formal office memo, an appellate brief, and a rewrite of it.
3 For comparison purposes, I limited the 2012 and 2013 example questions to citation.
4 For my class, students must underline material Bluebook italicizes. Therefore, an italicized case name needed correction.
5 The answers are not included because they are irrelevant to this article.

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Published by Harvard University Press, What the Best Law Teachers Do introduces readers to twenty-six professors from law schools across the United States, featuring close-to-the-ground accounts of exceptional educators in action. Join us to interact with these instructors and learn more about their passion and creativity in the classroom and beyond.

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Conference schedule and registration information are forthcoming on the Institute’s website at lawteaching.org, and in the Spring 2014 issue of The Law Teacher.
How to Effectively Use ResponseWare in Asynchronous and Synchronous Environments to Meet the Needs of Digital Natives

By Jalae Ulicki

I. Introduction

Imagine a world in which a society exists divided into two separate factions. One segment is the “teachers,” those who for 200 years have been the “keepers of the books.” In this segment of society, there exists a hierarchy, and movement within that hierarchy is dependent upon various rights-of-passage. Only those among them who strictly follow carefully laid down rules from the “ancestors” can move within the branches of that society or upward through the hierarchy of that society. Despite these divisional segments, the goal of the faction is clear: impart the “information in the books” to the other segment of their society the “learners” through the use of a methodology that has served the “keepers of the books” well for over 200 years. The “keepers of the books” have now gathered together to face a surmounting problem: Why does it appear that the information is not being absorbed by the “learners”— what is wrong with those “learners”?

Imagine further that through evolution, the society of the “keepers of the books” has remained much the same. Little change has been seen within this rigid society over its course of development. True, more and more books have been created with more and more information for the “keepers of the books” to pass on, but they have remained true to their accepted methodology of passing on that information. On the other hand, the “learners” are not constrained only to the knowledge that the “keepers of the books” have to impart. They have within their society seen the development of numerous sources of information that is being disseminated to them at a faster and faster rate. The “learners” have morphed through rapid changes over 200 years — adapting continuously to the changes within their environment and rapidly changing their internal receptors to accommodate the various sources of information that is available to them. Although they would like to join the society of “keeper of the books,” they can’t seem to absorb the information that the “keepers of the books” have to impart. What is wrong with those “keepers of the books” they ask?

Like the melting of the glaciers, the traditional methods utilized by law school professors in their approach to teaching is slowly beginning to melt, but the thaw is slow, much too slow to accommodate the changes that are facing them. Law schools can no longer rely on the natural erosion or evolution of their traditional and archaic approach to teaching law and hope that, through evolution or natural changes, the methodology will ultimately change to accommodate students. The climate of teaching has changed, because of the emergence of the digital natives. The sudden arrival of the digital age has had a meteoric impact. The arrival of this digital age has caused huge clouds of dust in teaching, blocking out traditional methods, and it has cleared the way for the evolution of teaching in the digital age. It is incumbent upon us as law school educators to squarely face the possibility of the extinction of the 200-year-old traditional law school professors and their methodology. The survival of law schools is now dependent upon a mass exodus from traditional methods of teaching and a giant leap into the future digital world to address the needs of the existing “digital natives,” signaling the change in the methodology of disseminating that
information to “digital natives” through the use of technology both in the classroom and in online courses.

Teaching 21st century learners denotes a shift from teacher-centered instruction to student-centered learning. It affords law professors the opportunity to reflect not only on their own teaching methodology but also on the changes and opportunities brought into the law school environment by technology. Active participation by digital learners marks the change in the evolution of teaching in law school. Using ResponseWare is one method that increases active engagement by students, affords the professor an opportunity to make immediate changes in the learning environment at the lesson level, and provides them with an opportunity to reflect and incorporate changes in the course level.

II. Designing Questions

With today’s technology, using ResponseWare is rather simple; a student purchases the license and can connect via an internet connection through a computer, a tablet, or even a cell phone. This program can be used in the classroom or in multiple remote locations and helps keep the remote audience engaged by displaying their input as well. PowerPoint polling has built in questions for multiple choice, short answer, numeric, true/false, essay, priority ranking, and likert. It also provides a number of visual displays and answers displays as well.

But learning to use ResponseWare effectively is another matter. As with most things, organization is the key. The first step is to consider building the questions. What type of questions do you want your students to answer? Categorizing your questions around your objectives clears the way to an engaging and focused class. There are as many types of questions as there are objectives, and you are only limited by your own imagination in reaching your classroom objectives through question design.

Questions to Start Discussion Topic

In this category starting with an “ice-breaker” question gets students actively engaged and looking forward to discussion on the topic even before the discussion begins. It actively engages the entire classroom and is a great alternative to cold-calling on students or asking for volunteers.

For example, in one of my family law classes I wanted the students to see that public awareness of intimate partner violence has changed considerably over the past fifty years. I intended to have the students look at surveys on stalking from the National Institute of Justice and to compare definitions contained in those surveys with those used in the Violence Against Women Act and their own state’s antistalking law. I intended to illustrate how difficult it is to use a subjective definition to create policy driven legislation.

The “ice-breaker” question:

<table>
<thead>
<tr>
<th>Number</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. 850,000</td>
<td>0%</td>
</tr>
<tr>
<td>2. 3.4 million</td>
<td>0%</td>
</tr>
<tr>
<td>3. 5.2 million</td>
<td>0%</td>
</tr>
<tr>
<td>4. 6.6 million</td>
<td>0%</td>
</tr>
</tbody>
</table>

How many people are stalked in the United States each year?
As soon as the results were up on the screen students started asking questions such as “How did the survey conducted define ‘stalking?’” That led to a lively discussion among the students on their own individual definition of stalking. As the discussion continued, students who were victims of stalking started sharing their own experiences. That was a real “ice-breaker.”

Using student definitions of stalking allows a natural segue to the class objective by transitioning into a discussion about the strong link between stalking and other forms of violence in intimate relationships. From there, students can make a smooth and almost imperceptible transition into critically thinking about the range of definitions of stalking and how that might be addressed in policy-making initiatives.

Questions to Solicit an Opinion

Studies have shown that valuing opinions enhances performance. In one class, the objective was to have the students be conversant with the rationale for mandating pre-marriage education classes before a marriage license is issued by a state. The discussion started with a slide soliciting their opinion and then led into a discussion where students had to voice the rationale for their opinion, accomplishing the ultimate objective:

Questions to Spot Check Students’ Grasp of Assigned Material

One of the major uses of ResponseWare is that it allows the ability to modify classroom instruction at the lesson level. Spot-checking students’ grasp of assigned material allows the professor to emphasize material that wasn’t fully understood and to avoid wasting valuable class time on material that was thoroughly understood. In the following example, nearly half the class had chosen a wrong answer. Armed with such immediate statistics, I was able to immediately reinforce the topic during the class session. It also can serve as an indicator to modify that topic for the next semester, perhaps to change treatment of the material or the time devoted to that particular topic. A professor can decide, based upon individual classes and preferences, at what point correction might be needed:
Questions to Spot Check Students’ Grasp of Material Being Presented in Class

Using questions to spot check students’ grasp of material being presented in class allows the professor to modify classroom instruction at the lesson level, to set the pace in the classroom, to revisit material not being thoroughly understood, or to move on if the material is being understood to keep the students attentive. For example, a professor may wish to ascertain whether students are fully grasping the material being presented right at that moment and to determine whether students were able to distinguish the presented content material from other topics previously covered in class.

Providing students with the data as a large visual picture to the response data serves multiple purposes. The students can compare their own performance against the entire class, reinforce their own preparation of that day’s topic, or recognize that they need to change their preparedness for future classes. It allows the professor to gauge whether to immediately change the presentation of the material and/or discussion. In the following example, 69% of the class got the question right. In this instance, a professor might conclude that the majority of students were grasping the material. The data would allow the professor to capitalize on the opportunity to explain why the incorrect answers were wrong and to direct students to relevant pages in their reading to review the information.
Questions to Start Practice Skills

To streamline effectiveness in process our society has become a society of forms. To make students aware of the multitude of forms in existence and their profound use in every segment of society, including business, courts, industry, and education, a professor might spend some time designing questions to infuse skills into the classroom and beyond. There is no doubt students will in fact be using forms in their future careers, so teaching them to critically think about those forms is a must. These types of questions might also be used to introduce students to an in-class practice exercise using teams or individual exercises.

How many family law related court forms are there on court websites?
A. 1,000
B. 2,000
C. 3,000
D. 4,000

From this type of question an exercise could be created in which students locate a particular form that is relevant to the course. The professor can emphasize the topical material by using various sections of the form and having students understand and learn the significance of the information being requested in the form. It is a wonderful opportunity to teach students not to blindly fill out forms without understanding the ramifications that would result for their future clients.

Questions to Improve Future Performance

Often times students are unable to apply, analyze, and hypothesize information obtained from a previous topic to a new but similar situation. To help build those skills, professors can compare available data from two separate questions to generate a class discussion. For example, students could be asked questions like “What did you see differently in Answer 2 in Question 2 than you did in Answer 2 in Question 1?” This usually opens up the discussion on why they chose the particular answer and provides an opportunity to direct their analysis to reach the ultimate correct answer.
Armed with pre-designed questions and with a solid objective in mind, students’ engagement in the classroom increases, they look forward to participating, and their pre-class preparation increases and ultimately so does their retention of the material.

III. Data Collection

In addition to the variety of questions that can be asked to collect data, the use of ResponseWare allows the professor to collect and utilize the responses from the session for reflection on course management. Data can be collected as to each student’s individual performance on the questions asked; comparative results can be obtained comparing questions; results can be obtained with percentages as to each question answered in the category; and for those who are statistically inclined, question statistics can be obtained for the mean, median, variance, and standard deviations. The data report also presents a visual graph as has been depicted in the various questions.

IV. Summary

As law professors, we are embarking upon a journey of continuous improvement. The arrival of these digital natives has now required us to shed our cloak of comfort in traditional teaching and to look upon the horizon and embrace with enthusiasm the available technology that will benefit our students.

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Optimizing the Law School Classroom through the “Flipped” Classroom Model

By Angela Upchurch

If you are like me, you have several items on your teaching “wish list” that do not materialize every semester. Despite careful preparation, it is challenging to balance sufficient coverage of course content with legal skills training, multiple assessments, individualized feedback, and meaningful group work. The desire to make better use of my class time and provide students with more opportunities for active engagement with the course content drew me to the “flipped” classroom model. Regardless of your teaching style or your individual teaching “wish list,” you can use the “flipped” model to engage your students and accomplish more of your teaching goals.

What is the “Flipped” Classroom Model?

A flipped classroom turns the traditional teaching paradigm on its head – altering the roles of both the professor and the students during shared classroom time and during time outside of the
In the traditional model, in-class time is largely devoted to the delivery of new content. Teachers spend the majority of their time acting as “presenters of information,” while students spend time taking notes. Students largely draw connections between concepts and attempt to apply concepts outside of the classroom, usually without assistance from the professor. In a flipped model, the professor presents some new content in taped online videos which the students view outside of the classroom. As a result, more in-class time can be freed up for activities or concepts that would benefit from modeling or demonstration by the professor or from group work.

In 2012, I adopted a blended teaching approach in my Civil Procedure: Jurisdiction course — I combined aspects of my traditional class with the flipped model. I typically taped one or two ten-minute online videos per week. These videos often contained core legal concepts that could be presented in a lecture-based format. I typically created a short PowerPoint presentation on a topic and then recorded my voice as I talked through the presentation using a screen capture recording tool. I provided students with a handout to guide them through the video and assessed them on their understanding of the content through online quizzes before class. Class time was reserved for more advanced legal analysis and practical legal skills exercises.

Reasons to Consider Using the “Flipped” Classroom Model

While I expected that my Civil Procedure students would appreciate the additional assistance from online videos, I was surprised by the radical transformation in our classroom experience. The change was such a positive experience that I have incorporated online videos into each of my other classes. Here are a few of the benefits I attribute to use of the flipped classroom model.

Greater student engagement with course material

One of the most immediate benefits was increased engagement by the students with the course material. Initially, I was actually skeptical the pre-class videos would make much difference because I have always provided students with substantial guidance including guided notes to accompany complicated subjects, explicit instructions about what questions to consider in the casebook before class, and pre-class quizzes. However, because the videos offered students the ability to pause, rewind, and review explanations, they engaged with the material more frequently and came to class with an improved understanding of the material. They also expressed an appreciation for the videos and appeared to be less frustrated with traditionally difficult concepts. While I had been giving students the same substantive guidance in the form of documents and quizzes, the videos provided a more interactive medium and different benefits not possible in a purely textual format. With my voice, I emphasized important points by changing my tone or rate of speech. I also added explicit instructions for the students to pause or reflect on a topic. I displayed images that served as memory cues for the students. While I had used legal text in my handouts in the past, the ability to highlight the portions of the relevant text in real-time and combine my verbal instruction with the text created a more informative tool for the students.

Students put more effort into the class

Initially, the videos provided the most help to the students performing near the middle of the class. With some additional guidance, these students were able to correct their misunderstandings of the law before class. They could verify their assumptions by taking the post-video quizzes and receive immediate feedback on their performance. This provided them with confidence and
reinforced the value of class preparation. These students expressed to me that they saw a direct connection between their work outside of class and their ability to master concepts. They came to class ready to work (and excited to learn) and they expected the same of their classmates. They also wanted to cover more challenging content in class and were well-prepared to consider more complex legal problems.

Targeted assistance to the weakest students

While, initially, the students at the middle of the class appeared to benefit the most from watching the videos, the students at the bottom of the class ultimately received the most benefit from the flipped classroom by reviewing the videos multiple times. Additionally, I began creating optional class videos to provide academic support (on topics such as outlining and exam essay writing) and to review concepts at the end of a unit. My weaker students reported that they watched portions of the class videos multiple times, reviewed them before meeting with me during office hours, and referred to them when they had a disagreement in their study group.

Improved performance of the class as a whole

The additional instruction from the videos helped close the gap between the strongest and weakest students in the class. Moreover, the class performance as a whole improved. By the middle of the semester these students were consistently out-performing prior classes on objective assessments, such as questions recorded by a classroom performance response system (i.e., clicker questions). The class average was significantly higher on these questions than in prior years on the same questions. Moreover, their performance on the final exam (including on the same bank of multiple choice questions) was much stronger than in previous years.

Optimized use of in-class time

The videos replaced class time I had previously spent reviewing basic concepts through lecture or introductory hypotheticals. Because the students came to class better prepared, we were able to start our class with more advanced hypotheticals. Moreover, I began to notice that the class time I freed from flipping content into class videos was not limited to the time I was no longer lecturing on basic content. The benefits spilled into classes for which I had not flipped any content. Students applied themselves to the other class materials with more focus and confidence. After flipping one or two ten-minute segments of class per week for thirteen weeks out of the semester, I accumulated approximately 4½ (fifty-five-minute) class sessions.

During these accumulated classes, I spent more time modeling practical skills and providing guidance to students as they engaged in practical skills exercises. Additionally, I was able to provide more opportunities for productive in-class group work. Because the flipped classroom model can be altered to allow for any classroom activity, professors can use this to accomplish more of their individual teaching goals.

How to Use the “Flipped” Classroom Model in your Courses

Step One: Determine which approach you will use to create your videos.

There are two primary ways to create videos – video-taped live lecture (the white board approach) or recorded audio over a computer screen (the screen capture approach). Both approaches will deliver
the benefits from the flipped classroom model; therefore, choose the method with which you are most comfortable. Under the *white board approach*, the professor simply tapes himself or herself in front of a white board or flip chart. For this approach, you will need a video camera and the ability to upload your videos to the internet. Most laptops or smartphone have built-in web-cameras that will permit you to make these types of videos. Helpful resources on this approach can be found at http://professor.fizzedu.org/.

Under the *screen capture approach*, the professor creates visual presentations, such as PowerPoint or Word documents, and then records her voice while running the presentation on the computer. The video will show the movement on the screen synced with the audio recording. This approach requires you to create some visual content to display on your computer; you can create slides for this purpose, or simply use slides that students considered most confusing in class. You will also need to use a screen capture recording device. I use an inexpensive platform available at www.screencastomatic.com. Finally, you will need a way to record your voice. While you can use your computer’s internal microphone, for the best sound quality, you should use an external USB headset. For an example of the screen capture approach, see http://youtube.com/professorupchurch.

Whether you use the *white board approach* or the *screen capture approach*, you will need to upload your videos to an internet platform to share them with your students. You can share videos from many platforms including TWEN, Dropbox, or Moodle. I have used YouTube which is easily accessible by the students and has a variety of privacy settings available so that you can limit access to the videos. For more information on how to create a YouTube channel, see https://support.google.com/youtube/answer/1646861?hl=en.

**Step Two: Select course content that you would like to deliver in a video format.**

You can use videos to teach content, provide basic training on skills, provide academic support, or give students feedback on their work. In determining what to flip, consider the nature of the content and the video format. Content that is best-suited for flipping is usually a straightforward concept, basic application, or demonstration of a skill. Content that is confusing, yet can be previewed to assist class discussion, is also well-suited for flipping. The video format works best with material that is discrete and can be displayed in a visually engaging manner.
Some examples of material well-suited for flipping include: preview and review of concepts; summary of law or prior cases; basic concepts or theory; legal definitions; basic skills to be modeled or discussed; basic problems and application of law; and feedback on assignments.

**Step Three: Optimize in-class time.**

There are a variety of activities that can take place during class. It is best to take advantage of this time to provide enrichment to the students rather than add additional content. From student feedback, it was clear that the students appreciated that class provided advanced training on the same concepts contained in the videos (even if the coverage wasn’t an exact overlap). The flipped classroom model provides you with the opportunity to guide students through complex application of the law, unpack policy arguments, and model problem solving and professional judgment. Some examples of in-class activities include: discussion of advanced legal theories or skills; applying the law to advanced hypotheticals; engaging in role plays or simulations; drafting legal documents; staging a policy debate; incorporating topics or skills from other courses; and actively involving practitioners in class activities.

**Strategies for Success: Avoiding a “Flop”**

For those who are new to the flipped classroom model, this approach might feel overwhelming at first. Here are some tips to make the transition a smooth one.

**Start small.** You don’t have to commit to this model for an entire semester. Pick one unit of material and apply the flipped classroom model to this unit. For example, you might decide to choose a unit that the students find challenging. The additional benefit from the videos on this material will have a positive effect on your class. You can start even smaller with flipping what you would normally lecture to clear up confusion in a single class.

**Make your videos succinct.** Ideally, you want to keep your video to about ten minutes in length. The students will be less inclined to pause, rewind, and review the video if it is longer than ten minutes. Additionally, breaking up the material encourages the students to focus their efforts in preparation. A student might only be struggling with one concept. If that concept is packed into a long video, it is difficult for the student to find and retrieve the portion of the video that they need to review.

**Make your videos engaging.** Consider using images, charts, and graphs to illustrate your concept. Change the pacing and intonation of your voice to emphasize concepts. However, do not worry that you need extensive graphics – I do not use anything different than the tools I usually use to create slides for class.

**Avoid the “Hollywood” trap.** Do not become obsessed with making the perfect video. My videos contained unnecessary pauses, “ums,” and other mistakes. I tried to make my videos in one take, and I did not heavily edit my videos. The students were not distracted by these “imperfections” and I believe they gave the videos some authenticity. One student commented that he “felt like he knew me better than any of his other professors because he heard my voice at home.”

**Avoid distractions in your videos.** Images that do not relate to the topic or unnecessary motion can make your video distracting. Try to link the imagery with the concept and use motion when it relates to the concept (i.e., to signal transitions) or to emphasize a particular point on the screen.
Provide assistance to the students on how to use the videos. In the assignment instructions, clearly indicate when the student should watch the video. For example, should the video be watched before or after completing the reading assignment? During the video, provide instructions to the students on when to pause, reflect, or take notes. A helpful note-taking tool can be found at http://www.videonot.es/. This tool, which uses Google Drive, allows the student to create notes while watching the video. These notes are then automatically synced and bookmarked to the portion of the video being watched. When the student reviews her notes, she can move to the portion of the video that corresponds with the note.

Provide the students with tasks to complete while watching or immediately after watching the video. This will help the student stay engaged while watching the video and will reinforce the take-away concepts. For an example of a class handout I use to accompany my video on transfer of venue, see my blog at http://teaching2now.com/.

Assess the students on their work. I often paired videos with an online quiz or short writing assignment. These assignments accounted for 15% of the semester grade. By assessing their work, I was sure the students would watch the videos and benefit from them. They also reported that they appreciated the feedback and felt that their work was being rewarded.

Have fun. Use the additional in-class time as you’d like — whether as model, guide, and facilitator. Enjoy whatever role you decide to take during class. I hope you and your students flip over your flipped class.

1 See Jonathan Bergmann et al., Flip Your Classroom: Reach Every Student in Every Class Every Day (2012).

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Making Good Use of a Crisis

By Michael Vitiello

I. Introduction

Everyone in legal education knows that we face a crisis. Concerns about cost have driven away applicants; employers demand that graduates can practice law from day one on the job; critics of legal education share New Times writer David Segal’s view of legal education. As he stated his 2011 article What They Don’t Teach Law Students: Lawyering, “what [students] did not get, for all that time and money, was much practical training.” But participants in this year’s Institute for Law Teaching and Learning conference should take comfort in Rahm Emanuel’s advice: “You never let a serious crisis go to waste.”
Whether one agrees whole-heartedly with Segal’s critique, we can do a better job of teaching practical skills. But we need to find ways to do so consistent with the current law school model. Proposals for radical reforms face an uphill battle: Some are goofy, like one proposal to let anyone who can pass the bar practice law without attending law school. Others are idealistic, but financially unsustainable, for example, proposals that would have us adopt the medical model for legal education. Further, institutional pressures are likely to make radical reform unrealistic: absent a university’s declaration of a financial exigency, tenured faculty members remain in place. Reformers are better off thinking how to implement modest but meaningful reforms. Those reforms should be ones that more traditional faculty members can endorse.

That takes me to the topic of this paper: how can those of us who believe in experiential learning and skills training use our current crisis to implement meaningful reforms? Section II reviews briefly why change is imperative. Using my own transformation from traditional academic, section III describes how I integrate skills training into a traditional classroom. There, I describe the components of a year-long simulation that I use in my Civil Procedure course at McGeorge School of Law.

II. The Crisis

The tension between theory and practical skills is long-standing. While a bit two-dimensional, Segal’s portrayal of the trend towards theory offers a summary of what many see as a problem with legal education. According to Segal, professors teach “antiquated distinctions” and “are rewarded for chin-stroking scholarship, like law review articles with titles like ‘A Future Foretold: Neo-Aristotelian Praise of Postmodern Legal Theory.’” Despite demands from the profession to produce practice-ready lawyers, law schools are averse to “all things vocational.” Further, professors lack incentive to excel at teaching but have incentive to publish what he characterizes as “head-scratchers.” Since faculty members are paid, in part, to produce scholarship, and using what may seem like funny math, critics like Segal argue that 40% of tuition subsides meaningless scholarship. Often with advanced degrees in non-legal studies and with no or little legal experience, new faculty members have no interest or ability to teach how to practice law. The bottom line for Segal is that law graduates are unable to practice law and are asking, “Why didn’t you teach me how to practice law?”

Previously, graduates got on the job training. Senior lawyers had associates prepare memoranda and passed along the cost to their clients. That model became unsustainable during the recent recession when clients began demanding legal services for lower fees. Anecdotally, many clients refuse to pay for work done by anyone other than the lawyer hired to perform the relevant services. That limits the utility of recent graduates.

Employers now expect new lawyers to bring “value-added” to the job. That includes the ability to solve problems; to have good judgment about the value of their work product; to be able to work effectively with others; and to know how to prepare legal documents. In effect, employers want associates to come to work as if they have already practiced law. They cannot invest in associates for three years before they produce a profit for the firm.

Some critics propose that legal education should imitate the medical model. Internships and externships would certainly mean that new associates would have on-hands experience. But such proposals ignore the expense of medical school. New doctors, unlike new lawyers, can expect to make salaries commensurate with their student debt. Short of radical reforms that would result
in much lower cost of legal education, we must find ways to make our graduates practice-ready without massive changes to the way legal education is financed. The next section explores some modest reforms that allow us to give our graduates much more practical education within the existing legal academy.

III. Not Wasting a Crisis

Law schools often respond to reports like McCrate and Carnegie with modest curricular reform. But the current crisis in legal education creates an opportunity for broader, even if not radical reform. What should that reform look like?

Here, I want to take a detour to describe my evolution as a professor and to use lessons I have learned about teaching Civil Procedure as a model for reform.

When I graduated from college, I envisioned pursuing a Ph.D. in English. After a stint as a high school English teacher, I recognized the limited employment opportunities (even then) in traditional academic disciplines. The political climate of the early 70s made law seem like a noble pursuit. Combine those insights with a pivotal conversation with my father, who persuaded me that I could become a law professor. With that in mind, I pursued the typical route to the academy: a judicial clerkship and publication of two law review articles. Legal experience counted for little.

As I began teaching in 1977, lower tier law schools began emulating prestigious law schools. They reduced teaching loads, for example, from 18 units a year (as I taught in my first year), to 12 units a year. In return, they expected faculty to publish.

Until recently (at least in schools where I have worked), associate deans assigned courses to faculty members, with little room for bargaining. As a result, I ended up teaching courses that were outside my primary area of scholarship. That led to my assignment to teach Civil Procedure.

For years, when students had trouble with arcane procedural rules, I offered the stock response: apart from urging them to take clinical courses, I explained that they would receive on job training upon graduation. But the response seemed hollow.

Little about Civil Procedure is intuitive. Eventually, I realized that I needed to bring Civil Procedure to life. For several years, I adapted others’ materials to my purposes with good results: notably, students had a better grasp of the material.

In 2011, West Publishing agreed to publish a series of supplements to traditional case books. The Bridge to Practice books consist of simulation exercises. I offer an overview of the exercises that I have incorporated in Civil Procedure based on The Bridge to Practice: Civil Procedure Simulations (West 2012). That offers a sense of how students in a traditional classroom begin to practice law from their first day of law school.

During the first class, students meet their client. A young lawyer, formerly a law clerk to a prominent judge with political enemies, has contacted us, a New York law firm, about representing her. An internet journalist based in Connecticut has threatened to publish an article that will state that when she worked for the judge, police found child pornography on her and the judge’s office computers. The journalist, who sees himself as a crusader against political corruption, believes the
judge used political influence to get charges dismissed. The journalist has agreed not to publish the article immediately but he threatens to do so soon.

The assignment includes questions for students to consider in advance and requires them to prepare questions for the client. They also read four cases, two from New York and two from Connecticut, involving defamation and the right to privacy torts: if New York law applies, their client cannot recover. Connecticut law is more favorable.

The first class involves a discussion of strategy, of the need to build rapport with the client and to understand her litigation goals, consistent with her limited financial resources. The assignment introduces them to basic techniques for client interviewing. After we have discussed those issues, members of the class interview our client. The session ends with a discussion of the hidden choice of law problem (i.e., many students assume that New York tort law will apply if we file in a New York court).

My goals are ambitious. But the class enlivens procedure. In addition to discussing the possibility of getting Connecticut law applied in New York courts, I explore forum shopping. Why does our client prefer staying home in New York, rather than filing in Connecticut? Why may she prefer federal or state court if we have the option?

Over the next few weeks, the course looks like most traditional Civil Procedure courses, with a discussion of personal jurisdiction. Throughout, I refer back to the fact of the case so that students see problems that they face if they file in New York. After the first class, the next simulation exercise takes place in mid-semester when students, in teams of two, argue before a “magistrate judge,” one of my research assistants or recent alum. Students argue two aspects of the personal jurisdiction question: one student argues whether the New York long-arm statute applies; the second student argues whether the assertion of jurisdiction violates due process. The assignment gives students the chance to develop an overview of personal jurisdiction.

Later simulation exercises include some in-class discussion. Others involve writing assignments. Here is an overview of those assignments: an in-class discussion focuses on a determination of the plaintiff’s state of citizenship. Another involves removal, joinder of additional defendants, and supplemental jurisdiction. Yet another involves venue, transfer of venue and choice of law. During the second semester, students submit written assignments on a Rule 12(b)(6) motion, a Rule 15 relation back problem, and a summary judgment motion. Between the Rule 12(b)(6) and the summary judgment exercises, students, working in groups, engage in a series of discovery simulations. Those include providing automatic disclosure, drafting and answering interrogatories, and for several volunteers, conducting a deposition.

When I began using simulation exercises, I struggled with the perennial concern about how to grade the exercises. Providing an academic grade added significantly to the workload, put a lot of additional pressure on students, and was complicated by the fact that I was going to use the same problem over a number of years. As a result, students might be tempted to borrow work ideas from former students. As a result, I do not put an academic grade on the paper.

The choice not to give an academic grade poses another problem: how can I keep students engaged? Highly motivated students welcome any opportunity to receive feedback. The harder problem is inspiring less motivated students. My compromise is that, while the effort is not graded, I explain that students who fail to perform the work have their grades lowered and that students
submitting work demonstrating little effort must rewrite the papers. Thus far, I have had to enforce sanctions in very few cases. I acknowledge that my choices are less than ideal. This may be an instance, though, where the perfect is the enemy of the good.

Although not in the Bridge to Practice book, I ended this year with a trial on the merits of the dispute (two class sessions) and an appeal on two of the legal issues. This year, I relied on volunteers. In the future, I hope to require all students to conduct trials with my research assistants serving as judges.

Several of my colleagues are working on books in the series, with an Evidence simulation and a Property simulation book about to be published. If a faculty buys into a project like this across the curriculum, every law student has begun practicing law from her first day in law.

IV. Conclusion

When presenting to the Institute for Law Teaching and Learning conference, I am no doubt preaching to the choir: we need to give students meaningful practical skills. My greatest contribution, I hope, is to demonstrate how we can do so within the traditional classroom structure.

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Lost in Translation: Effective Techniques for Teaching International Law Students and Inter-Disciplinary Students

By Dr. Keith E. Wilder

Most American law schools have in recent years developed expansive LL.M. programs, which actively recruit international students. This internationalization of American legal education has led to an ever-growing number of non-native English speaking students studying at American law schools. As a result of this trend, there is a heightened need to foster a learning environment for these international LL.M. students that takes into consideration their lack of formal and informal socialization in both the legal and cultural traditions of the United States.

In addition, an ever-increasing number of law schools abroad have developed extensive programs whose sole mission is to teach common law topics in English. These programs often not only aim to give their students not only a high level of legal English training, but also are designed to actually mirror the American law school curriculum. Teaching non-native students entrenched in their own legal system substantive common law subjects at American-law-school standards in their own country presents yet another set of challenges.
With the law itself historically being regional, even parochial, this movement of students and faculty across continents and legal traditions often requires a re-assessment of tried and true teaching strategies. While communicating legal concepts to the new and uninitiated can prove challenging at the best of times, a new layer of difficulty is necessarily added when one is confronted with teaching international, in particular non-native English speakers, legal vocabulary and theory. In such a learning environment; in-class references, analogies, and definitions must be consciously crafted in order to make them readily accessible and accurate. In addition, exercises to learn and review vocabulary need to be in line with the goals of the learners themselves.

The following discussion will focus on English as Second Language (ESL) law students, particularly European civil law students; however, the challenges discussed, and the tools used to overcome these challenges, would be equally applicable to both students from other legal traditions as well as interdisciplinary native-speaking students.

The Goals

In order to successfully instruct ESL students, one must always keep in mind why they are interested in studying American law and the common law tradition in the first place. One primary reason is simply that English is currently the most important international language, and therefore the vast majority of international students have studied English since an early age as their primary second language. Given this reality, most often the students’ goals are to refine both the theoretical and practical spectrum of their English in order to function both confidently and efficiently within the modern international legal environment. Second, as law students, they appreciate the impact and importance of the common law tradition on a host of fronts. Therefore, ESL students want to be able to both develop their English language abilities and their knowledge of the common legal tradition simultaneously. In order to facilitate this goal, it is essential to create a dynamic learning environment in which students are allowed to speak and use their newfound legal vocabulary and knowledge of the common law in context.

The Challenges and Methodology

One of the great challenges, and why often many legal concepts get “lost in translation,” is due to the simple fact that it is nearly impossible to translate one-to-one between languages, let alone between completely different legal systems. Whether the common law could even exist within a non-English speaking society is a topic for another day, but the fact that both developed over a millennium in relative isolation has resulted in the formation of a legal paradigm quite alien to other legal traditions around the world.

This reality manifests in another pitfall of teaching non-native English speakers: namely, the danger of narrow and self-referencing definitions. All too often, the common law and civil law systems are so dissimilar that even an apparently simple definition can prove anything but clear and helpful. Take, for example, the legal term “hearing.” First of all, at least within the German system with which I am most familiar, a hearing in the common law sense of the word does not exist per se in Germany. Perhaps one could then attempt to help a student by simply defining a hearing as a “mini-trial”; but alas, that is also of little help. The litigation process (a concept that, again, is nearly impossible to translate accurately) and the interaction between the bar and the bench are so divergent between the civil and common law countries that what would pass for a perfectly understandable and easily grasped definition for even a young native English
speaking child ("a hearing is a mini-tria,") would likely leave a foreign-trained jurist scratching his or her head. These sorts of self-referencing pitfalls are at every turn and can lead to disastrous miscommunications and even more troubling long-term misunderstandings.

One solution is to avoid as much as possible both “simple” one-to-one direct translation and self-referencing definitions in favor of broader legal conceptualization and interactive dialog. Discussed below are a number of techniques I have found over the years to be invaluable in bridging the gap between languages and legal traditions in the common law classroom.

The Tools

1. **In-class exercises designed to allow students to apply the common law legal concepts by creating legally “borderline” fact scenarios.**

There is inevitably the temptation to translate terms one-to-one in order to bring a complex legal concept a little closer to the ESL student’s own legal tradition. However, as discussed above, such translation of terminology (even if you have a good working command of the language in question) too often leads to confusion, in the best case scenario, and deep-seated long-term misunderstanding in the worst case scenario.

In addition, LL.M. programs and the better ESL law programs abroad are not structured or designed to be “foreign language classes,” but rather designed to be substantively the same as a course at an American law school, without any concession made regarding content or, at least on paper, the non-native speaking environment in which the courses are taught. The challenge, of course, is that the students are already deeply ingrained in their own legal traditions, systems that are by and large very alien to that of the common law tradition. So while the substance must be the same as the equivalent American law school course, the context in which the materials are taught is, by definition, dramatically different. A professor teaching international LL.M. students at an American university would face much the same challenges.

In presenting specific legal concepts to students from non-common law countries, I have found one of the most effective methods is to frame the issue in a “big picture” context, and then discuss it from various angles with a host of examples. I then break the students into groups and ask them to come up with a “borderline” fact scenario relating to the topic at hand. The goal is for the students to come up with a fact scenario that half the class will think would be considered a family based on the case law discussed in class, and half the class would not. The “winning group” is the one that splits the voting right down the middle. By working in the group to come up with a fact scenario describing in detail the grey area of the law, let alone discussing and analyzing the other students’ scenarios, the individual ESL student comes out of the lecture with a much more subtle and comprehensive understanding of “family” within the U.S. common law context than simply marching through a series of cases using the Socratic Method. It also naturally allows the more nuanced or misunderstood areas of law to rise to the surface, pinpointing them and allowing them to be clarified through further discussion and refinement.
2. Assignment of a specific U.S. state to each student in order for them to give the class weekly feedback on that state's specific laws during the discussion of more general legal topics — a learning tool I call “State by State.”

One of the great challenges of teaching ESL students is to make clear to them that there is no such thing as “American law,” but rather that each individual state and the federal government have their own distinct systems. While we generally discuss major trends and general common law principles, it is essential that the ESL students do not lose sight of this reality.

One very effective way I have found to both make the law more real and personal, yet also stress the diversity of law across the United States, is to assign at the start of the term a U.S. state to each student. The student is then in charge of reporting back to the rest of the class each week regarding the specific law of their assigned state on the legal topic at hand. For example, again in my Family Law course, each student is assigned a U.S. state to monitor throughout the semester. Each week they are then given a specific “state by state” topic relating to the next week's lecture. Typical “state by state” topics would be common law marriage, same-sex marriage, the definition of “family,” price and requirements for divorce, etc. At the start of the lecture we then discuss various state approaches and explore how they differ from the general common law trends and why this might be the case in a given state. This not only makes the law more concrete and tangible, it also highlights the diversity of approaches to these issues across the country. In addition, the students are very enthused to make the law not only more concrete, but also personal, often growing rather attached to their particular state. At the end of the semester, each student turns in a summary of their particular “state by state” topics as part of their overall assessment. In this fashion, the ESL students learn not only the general common law trends, but also specific variations on the theme based on both individual and collective research.

3. Use “communicative crossword puzzles” to introduce and review vocabulary and theory:

One of the most effective ways I have found to enable ESL students to develop and demonstrate their command of common law legal concepts in context is through the use of “communication crosswords.” These allow ESL students not only to develop and refine their spoken English, but also to demonstrate their understanding of the word or legal concept itself.

Communication crosswords are a learning technique by which students are given two crossword puzzles, each of which contains half of the relevant words to complete the entire puzzle. The goal is to describe the words that appear on the one sheet to the other participant whose crossword lacks these words. This not only allows for the students to demonstrate their knowledge, but also encourages them to articulate the surrounding principles in order for the other students to understand what word they are attempting to describe.

If a student lacks the knowledge of the legal meaning, or the other student lacks that knowledge, they are encouraged to use “everyday English” to describe the word. This not only often leads to the correct solution, it also demands a degree of creativity and visualization through word association that often results in the ESL student ultimately retaining the legal meaning of the word in question more easily.

The vocabulary employed in the puzzle can of course be of any complexity, though I normally try to give the students a range of difficulty so that they can gain confidence by presenting easier words early on, and then strive to articulate more difficult words and legal concepts as the exercise progresses. Ordinarily I do not circulate at the beginning of the exercise, as the students obviously
first select the words they know best at the start; this lack of initial contact also allows them to build their confidence and familiarity with their partners. However, as the exercise progresses, I move from group to group and ask them whether they need any help, are struggling with any of the words, or need to break the word down into syllables and use “ordinary” rather than “legal” meanings to solicit the correct answer. In the latter case, I then explain what the legal meaning is and clarify the etymological association, or lack thereof, between the legal and common English meaning of the word.

A sample communication crossword puzzle:

I use communication crossword puzzles in a number of ways:

1. At the start of the course: I sometimes utilize a communication crossword the first day of a course, after the initial introduction. Having discussed the formalities of the course, and with many students lacking the materials to begin substantive study on the first day, a communication crossword not only establishes a positive learning environment from the start, but also allows me to see the depth of the students’ existing knowledge of the topic in a “state of nature.” This method might be of particular interest to cross-disciplinary educators. Also, reviewing the terms as I work around the groups or together at the end, it allows me to give the students an overview of the topics of interest we will explore over the course of the semester, rather than marching through a standard syllabus.

2. Periodically throughout the course: In order to review materials or vocabulary after discussing a specific topic, I often construct a short communication crossword that takes 20 minutes or so to complete at the start of the lecture. This allows the students not only to review, but also to realize how much of the material they do, or do not, naturally retain as the course progresses.

3. At the end of the course: At the end of the semester I often give a more comprehensive
communication crossword puzzle to once again give the students an idea of the key words and concepts I would like them to take away from the course. It also allows students to establish for themselves how well they have mastered the subjects discussed in the lead up to the exam.

For ELS students in particular, the communication crossword puzzles are particularly popular because they fulfill the goals discussed earlier--speaking, practicing and learning--in an enjoyable and effective manner. Through this method, the entire class can be engaged in an intense one-on-one experience, actively speaking and developing their ability to articulate complicated legal concepts in English.

In order to create a communication crossword, I use software known as “Eclipse Crossword,” which is a free program available on the internet. Rather than typing out answers, I simple generate a word list, and then print the “complete answer” page twice. I then lay them side by side and use white-out to eliminate the answers from the alternate sheets. This program therefore allows you to tailor a communication crossword for any set of vocabulary words you wish.

Conclusion

With ever-expanding LL.M. programs across the country aimed at ESL students and the explosion in the teaching of common law topics in English at foreign universities, there is a vital need to adjust and adapt the legal learning environment to meet these needs. The desire to refine and advance both their linguistic and legal skills motivates these ESL students to explore the wonderful enigma that is the common law. It is hoped that the challenges discussed above, as well as some of the creative means of meeting those challenges, will aid both ESL students and their instructors in getting the most out of this new and rewarding learning opportunity.

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THE CONSTITUTION

Across
1. Pennsylvania General Assembly Clerk Shallus, who physically wrote the Constitution.
12. In 1902, this great author was appointed Associate Justice of the U.S. Supreme Court.
14. Expulsion of a foreign diplomat from the country.
16. Second Amendment topic.
19. Equitable or extraordinary relief (Abbr).
20. Lane (P.O.).
23. Canadian interjection.
24. Permissible Exposure Level (Environmental law acronym).
26. Female given name.
28. The gathering of military intelligence by monitoring electronic signals.
30. High-definition television (Abbr).
32. Diminutive suffix.
34. Not elsewhere specified (Abbr).
35. Founding father, who envisioned a nation built on agriculture, not industry; neither he nor George Washington signed the Constitution.
38. Screen Actors Guild (Abbr).
40. Cosmic principle of order, justice and truth.
41. Helped spark the War of Independence (British term).
44. Town in Surrey England.
46. Open (Poetic).
48. Style of Algerian popular music played on an electric guitar.
49. Administrative order (Abbr).
50. Nevada city.
51. Service mark (Abbr).
54. Right and left (Abbr).
57. Mathematical equivalent of n - squared.
58. Constitutional component.
62. This important governmental component was constructed in accordance with Article I, Section 3.
64. The legislative power of the United States consists of two of these, according to Article I, Section 1.
65. The only Supreme Court justice ever to be impeached (The case against him, however, failed in the Senate).
THE CONSTITUTION

Down

1. Youngest Supreme Court appointee, _ _ _ _ _ _ Story.
2. In 1799, this Moore was appointed as an Associate Justice of the High Court.
3. Copyright infringement(Abbr).
4. Presidential office.
5. In relying upon our copyright and patent provisions (Article I, Section 8), the U.S. lost a substantial portion of its semiconductor industry by delaying adoption of this 200 year old convention that protects all creative endeavors.
6. Freight release (Abbr).
7. In the case of.
8. Amendment XXI was the only Amendment to _ _ _ _ _ an earlier Amendment.
10. More than 40 million years before the signing of the Declaration of Independence.
11. These 10 critical items necessary for the ratification of the Constitution took effect on December 15, 1791.
13. Room (Abbr).
17. Article IV, Section 3 concern.
22. Stingers.
27. Definitions (Abbr).
29. Politically closer to the Chief Executive.
31. The day of May 8, 1945.
33. Contrivance.
36. Widespread repute.
37. Hypothetical force once believed to pervade nature.
38. A right that is specifically limited by Amendment IV.
39. President Kennedy's vow helped place it on the Moon.
42. Do-gooders.
43. One who put his name on the Constitution.
45. Roman god of the underworld.
47. Especially (Abbr).
52. Two attendees of the 1787 Constitutional Convention (Abbrs).
56. Confederate States (Abbr).
59. Symbol for one of the only two elements permitted by states (per Article I, Section 10) to be used as tender in the payment of debts.
61. Plural suffix occurring in loanwords.
63. Assay Act (Abbr).

Crossword solution is on page 76.
IDEAS OF THE MONTH

http://lawteaching.org/ideas/

- September 2013: Classroom Management, Body Language, and “Power Poses”
- August 2013: Our Development as Teachers - Plan It, Do It
- June 2013: Maximizing Active Learning
- May 2013: Resources for Incorporating Practical Problem-Solving Teaching Into The Doctrinal Classroom
- April 2013: Student Advisory Team

ARTICLES OF THE MONTH

http://lawteaching.org/articles/

- August 2013: Nancy Rapoport, Rethinking U.S. Legal Education: No More Same Old Same Old, 45 Conn. L. Rev. 1409 (2013).