

# THE LAW TEACHER



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## Inside...

Co-Directors' Corner .....	1
Counseling the Professional Turned Law Student.....	2
They Know Their Colors: Using Color-Coded Comments to Facilitate Revisions.....	6
Bringing Practitioners into the Classroom to Assist in Preparing Students to be Practice Ready .....	9
Book Review: A Short and Happy Guide to Being a Law Student .....	12
Beyond the Water Cooler: Reflections on a Junior Faculty Development Program.....	14
Institute Spring Conference.....	18
Teaching Deliberately—From Course Design to the Classroom and Beyond.....	20
How to Teach the Socratic Method with a Heart.....	24
Building an Integrated Learning Community: A Law and Public Policy Model.....	30
Improving Legal Education for Law Students and Our Profession .....	34
Crossword Puzzle.....	38
Better Law School Exams Through Pictures..	41
Call for Presentation Proposals.....	45
Speed Dating Peer Reviews.....	47
“Losing My Religion”: Extended Role Play and the First Amendment Religion Clauses.....	49
Experiential Education and the Law School Experience.....	52
Empathic Teaching and Empathic Learning..	54
Ideas and Articles of the Month.....	59
Crossword Puzzle Solution .....	60

## INSTITUTE FOR LAW TEACHING AND LEARNING

### Co-Directors' Corner

## Conferences Bring out the Best

We're nearing the end of our first year co-directing the Institute for Law Teaching and Learning, and so far, we haven't broken anything major. Our two 2014 conferences were wildly successful. We welcomed our new sponsor school, the UALR William H. Bowen School of Law, into the Institute family by descending in droves upon Little Rock and soaking up expertise about assessment methods for all aspects of the law school curriculum.

In June, law professors from around the globe met at Northwestern University School of Law in Chicago to hear from twelve of the professors featured in *What the Best Law Teachers Do*, the book co-written by our Institute consultants, Michael Hunter Schwartz, Gerry Hess, and Sophie Sparrow. In fact, five of the Best Law Teachers—Meredith Duncan, Paula Franzese, Heather Gerken, Nancy Knauer, and Ruthann Robson—have contributed essays based on their conference publications to this issue of *The Law Teacher*. Be sure to check those out.

And as always, we're delighted with the pieces selected for publication in this issue. We are consistently amazed, and we hope you will be as well, with the quality and creativity of our fellow law professors.

In fact, we're in the process of planning our conferences for

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## Promoting the science and art of teaching

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next year so we can continue to share ideas and learn from each other. On February 28, 2015, we'll be meeting at UCLA Law School for a conference on engaging students in all law school classrooms, featuring presentations by five of the Best Law Teachers. Registration information is inside!

On June 13-14, 2015, Gonzaga Law School will host our summer conference on experiential learning in all classrooms. Basic conference information and a call for proposals can be found on page 45.

We hope to see or hear from you soon. Enjoy the last part of the semester—you're in the homestretch now!

*Emily, Sandra, and Kelly*

## Counseling the Professional Turned Law Student

By Caryn R. Suder

"How's it going?" I say to the dentist/engineer/chemist who is now a first-year law student sitting in my office to discuss an assignment. "Oh, fine," comes the usual reply. "Law is my second career, and it can be really rough starting all over again when you're used to being competent," I say. *That* gets the student talking.

Law school is a major undertaking for anybody, but for students who have previously established themselves in another profession, it can be an even bigger adjustment. Returning for a master's or doctoral degree in a field in which one has already practiced can be a bit of a jolt, but it isn't starting back at the bottom. Here, it is.

Before going to law school, I was a delivery room nurse at a major medical center. When I started law school I knew I was ready for the intellectual challenges, but I quickly discovered a major problem: I was used to being competent, to being respected for my skills, to knowing what I was doing without looking everything up, to acting quickly to

solve problems, and to answering questions far more often than needing to ask them. Law school turned all of that upside down, and it was a pretty awful feeling.

I had to adjust to being the newbie again—the one who sometimes asked stupid questions and sometimes gave stupid answers, the one who had to read a case numerous times before even beginning to understand it, and the one who often made mistakes. I realized that if I was going to succeed without making myself crazy, I needed to adjust my thinking. Here are some things that I wish someone had told me before I started, that I tell my students who are already professionals, and that your second-career students may appreciate.

### Acknowledge Your Emotions, but Don't Let the Negative Ones Get in Your Way

The dangers of letting negative emotions get out of hand became apparent to me when I was studying for the LSAT. As a nurse, I tackled real-world, often life-threatening problems on a daily basis. A baby suddenly goes into distress? How can I intervene and whom do I notify? A newly delivered patient is bleeding too heavily? How can I stop it? A patient is in severe pain? How can we best control it? I had to think quickly and practically and use sound judgment, or my patients would suffer. When studying for the LSAT, on the other hand, I felt like I was in an alternate universe. I often tell students the following story about a question from a practice exam that still sticks in my memory. It went like this:

Susie wants to make a three-bean salad. She has six different types of beans: kidney, lima, black, garbanzo, navy, and pinto. The lima beans are rotten, and the kidney beans can't be mixed with the pinto beans. How many different three-bean salads can Susie make?

"Let me get this straight," I said irately to the book in front of me. "I spend my days trying to make sure children don't come into this world brain damaged, and you expect me to give a (insert double expletive here) *about Susie's three-bean salad?!?! If making a salad causes Susie that much consternation, tell her to order out! Problem solved! Move on.*"

Being angry and frustrated at the inanity of some of the questions I was faced with got me absolutely nowhere, and cost me precious time by interfering with my concentration. I quickly learned that I had to put aside the stress I was creating to burn off later at the gym, accept that there was some genuine purpose behind it all, and get on with it.

Similarly, I warn students who are professionals that many of the questions they will be asked to address in law school may appear to have no real-world application. Professors may build exam fact patterns or writing assignments around cartoonish characters or ludicrous circumstances. They may grill them in class or ask them

to engage in deep discussions with classmates about how the law should address seemingly impossible-to-believe scenarios. They may make them think they are paying a fortune to learn nothing of any practical value when instead they should be back earning a paycheck and taking care of their families.

But then I tell them that of course there is a method to the madness. Though it may not look like it initially, professors are training them to spot legal issues, to think critically, to argue and support those arguments with sound reasoning, to research, to anticipate the other side's arguments and rebut them, and to see how one change in a fact can make a huge difference in the outcome. So I tell them to just play along and do what they are asked to do. Then I tell them to expect to be pleasantly surprised at how their thinking evolves from one semester to the next.

### Be Open to Learning From Younger and Less Experienced Classmates

Because there may be a significant age and experience gap between students who are professionals and the majority of their classmates, they may tend to distance themselves, thinking they have little in common. I tell them that this is a mistake, as their classmates may be young, but they have a lot to offer. I encourage professionals to learn as much as they can from their younger classmates' questions, answers, and perspectives.

### Transfer Existing Skills

Before starting law school, I thought I wasn't cut out to be a litigator. When I took my advocacy and trial practice classes, however, I was amazed at how comfortable I felt speaking to judges and juries. In addition to working at my hospital job, I had taught undergraduate nursing students, and I realized that my teaching skills transferred very well to the courtroom. A jury became simply another group of students that I had to educate about my case. (And yes, I did become a litigator.)

Similarly, I often tell students that customer service and negotiation skills are easily employed when interviewing clients and working with opposing counsel. Being highly detail-oriented facilitates spotting issues and analyzing facts. I encourage students to make a list of the many skills they already have and determine how they can apply them in their law school courses. I also encourage them to sign up for a few courses they didn't plan on taking. Coming from a prior professional background, they may think they know in what direction they want to take their legal career, but, like me, they may end up changing their minds.

### Reawaken Your Previous Sense of Competence

For students who have left their careers completely to go to law school, the feeling of competence can sometimes seem like a distant memory. To help combat this, I suggest

picking up a current edition of a journal they used to read, getting in touch with former colleagues to “talk shop,” or going to a continuing education program in their previous field. It will remind them that they succeeded in the past, and that they will succeed in the future.

### Be Patient With Your Classmates

It is easy for professionals to quickly become irritated upon hearing directives and discussions about things that to them are simple and obvious, particularly with regard to matters like professional etiquette. It can help to provide a gentle reminder that most of the traditional students don't have any practice interacting with clients, focusing on details, or just plain behaving as a professional, and schools have to do their best to train them in those skills. I advise professionals to turn the irritation into an opportunity to lead by example, to tell a few good stories where appropriate, and to let their classmates learn from their experience.

### Get Extra Help When You Need It

Professionals who think they manage stress well may fail to recognize when they are in over their heads. With job and family demands often added to the mix, pressures can far exceed those that most traditional students face. Students who are professionals may need an extra nudge to take advantage of exam-taking workshops, writing help, mental health counseling, and the like. It may help to remind them that these extremely helpful services exist because so many students need and benefit from them.

### Know That Things Will Get Better

Professionals, just like traditional students, may need to be reminded to simply give it time. They didn't succeed at their other careers right away or learn everything overnight. I encourage them to be patient with themselves, and picture themselves receiving their diplomas and putting “JD” or “Esq.” after their names.

It's easy to think that students who are already professionals and who are used to demanding jobs don't need as much compassion and understanding from us as students with less life experience might. The reality is that sometimes professionals need these things more. They may feel that spouses, friends, and classmates who aren't similarly situated can't relate, and they may need us to be their confidential sounding board and their source of encouragement. Take the time to be those things. It's time very well spent.

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*The Law Teacher* encourages readers to submit brief articles explaining interesting and practical ideas to help law professors become more effective teachers. Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. We encourage you to include pictures and other graphics with your submission. Send your article via e-mail, preferably in a Word file. After review, all accepted manuscripts will become property of the Institute for Law Teaching and Learning. To submit an article or for more information, please contact Emily Grant at [emily.grant@washburn.edu](mailto:emily.grant@washburn.edu).

## They Know Their Colors: Using Color-Coded Comments to Facilitate Revisions

By Sarah J. Morath

### The Clarity of Color

Like any parent, I was proud to announce that my toddler-aged daughters “knew their colors.” At a traffic light they would announce: “red means stop, green means go.” At the grocery store they might remark: “lemons are yellow, carrots are orange.” At a young age, my daughters knew that color could be used not only to identify objects, but to convey information.

My legal writing students are much older than my daughters and have associated different colors with different meanings for a much longer time. They understand that an image of a woman dressed in black suggests she is in mourning, a map with blue and red states represents the outcome of an election, and a pink ribbon identifies a supporter of breast cancer research.

In the legal research and writing context, my students quickly learn colors have significance. For example, a red stop sign on their computer screen means something different from a yellow flag. In addition, like many legal writing professors, I have students use different colored highlighters to identify the issue, rule, application, and concluding sections of an IRAC paragraph. In both examples, students easily grasp that different colors stand for different things, be it the weight of legal authority or the different parts of an IRAC paragraph.

### Incorporating Color into the Commenting and Revision Processes

Like many legal writing professors, I often fear students will not read, and therefore not incorporate, the comments I have laboriously inserted for a variety of reasons, including that there are just too many. And when a student is confronted with several comments with a uniform appearance, the student might not instinctively differentiate between the type of comment and the importance of the comment. That student might not understand comments address a variety of topics including organization, analysis, grammar, punctuation, and citation. Similarly, students might not realize that during the revision process I, as the professor, would like them to address organization and analysis

comments first and citation comments last. Instead, what students see, if the professor has commented using Word bubbles, as I do, is a steady stream of bubble comments that all look the same. As a result, students might become overwhelmed or confused and not have the most productive or efficient revision experience.

Because of this concern and my success with the use of color in other contexts, I decided to experiment with color-coded comments. The experiment involved converting the second student memo of the semester into to a PDF. In this format, I was able to color-code the text box that encapsulated each comment. I told students that as they are revising the memo, they should keep in mind that the comments had different meanings: yellow comments related to organization and analysis, blue comments related to grammar, punctuation, and citation, and green related to things that were done well or started off well, but could still be improved. At this point, I might also add, I also had a personal goal of providing students with more positive feedback. I thought coding my favorable comments in green would allow me to quickly assess whether I had provided each student with some degree of encouraging feedback, as well as identified those areas needing improvement.

Although there are a number ways to color-code comments, I used two annotation features in Adobe Reader: the Sticky Note feature, which is essentially a text box which “sticks” anywhere on the document, and the Highlighter feature, which can be used to highlight text and insert comment boxes. Both features have a variety of colors to choose from. Students read the comments by either clicking on the sticky note or by printing off the comments on a separate page. (*See examples at the end of this article.*)

## Student Feedback

At the end of the semester, I solicited student feedback on this method of commenting. Specifically, I asked students the following: which type of commenting (comment bubbles in Word or colored comments in PDF) they preferred; why they preferred one type of commenting over the other; and which type of commenting they would prefer in the next semester. Four students responded that the type of commenting did not matter; it was the content of the comment that had value. Nine students responded that they preferred the color-comments in the PDF format, while fourteen students responded that they preferred Word.

Some of the reasons for preferring the color comments included: “It made clearer what was well done, what was almost there and what needed most work”; “caught my eye on what to focus on, but also seeing I did well in other parts”; “easier to understand the [comments] when printed off”; “Mac compatible.” Some of the reasons for preferring traditional bubble comments included: “makes editing easier”; “could see the comments as I edited my paper whereas with the PDF I had to hover over the comment and switch screens”; “too hard to find/too many pages to go through”; “easier to see what’s wrong”; “easier to read when printed out”; and “Adobe isn’t very user friendly.”

## My Assessment

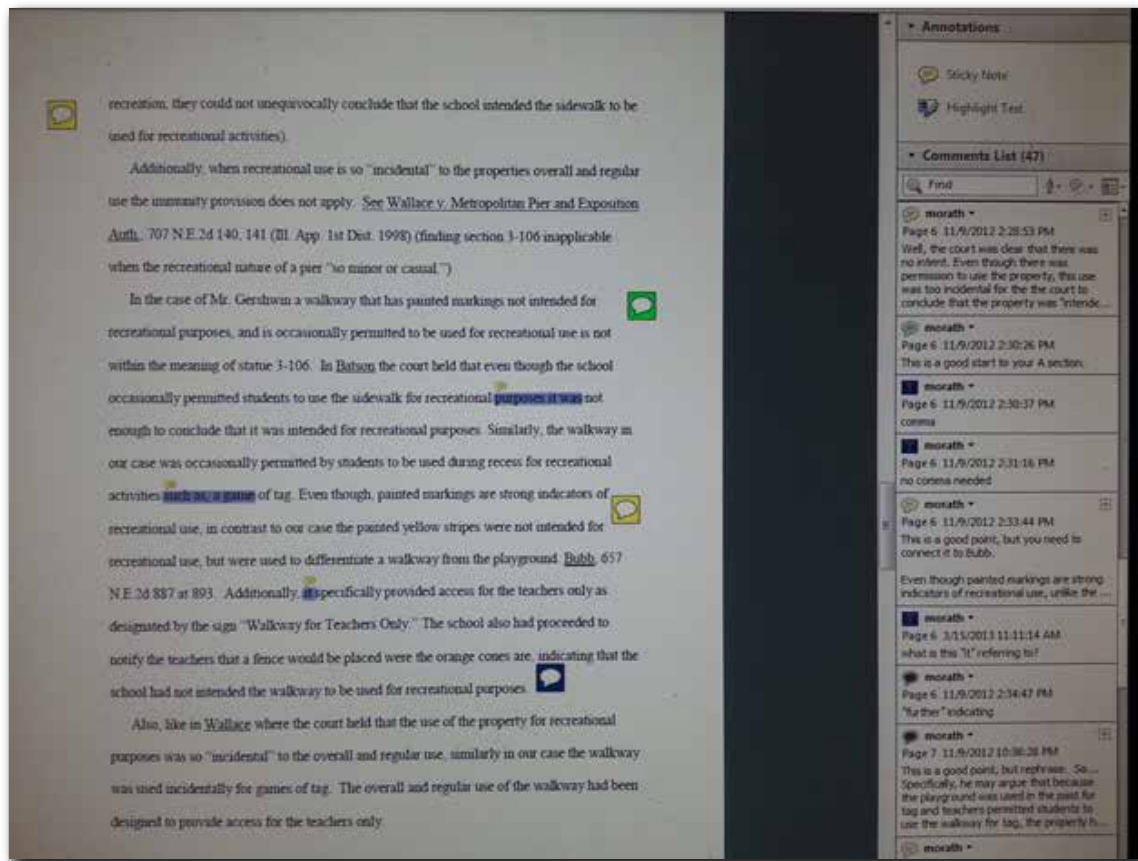
My own assessment of color coding comments is mixed. I like the way the color-coded comments look on the computer screen in PDF format. The screen is uncluttered and the colors are vivid. My impression and student responses reflect that this type of display is effective. Students can quickly identify what type of comment they are reading and can devise a game plan for the revision process, such as revising those comments in yellow first and attacking those in blue next. My assumption is that this approach would make the revision process much less frustrating for both the student and professor. I also could assess my own work quickly, picking out what the student did well and areas where the student should focus moving forward.

Although I like that Adobe Reader was free, commenting in the PDF format is cumbersome. And as a result, commenting takes more time. Adobe Reader does not allow the commentator to use keystrokes. In addition, the color effect is lost when the comments are printed off without colored ink. Because of these deficiencies, the following semester, I allowed students to choose the commenting method I used: traditional Word comment bubbles or color-coded comments in a PDF.

I still believe in the benefits of color coding comments, but for those looking to color-code comments on PDF documents, I recommend acquiring a license to Adobe Pro, a more advanced version of Adobe Reader. Adobe Pro has more annotation features and has the ability to save keystrokes. In addition there are a number of apps available for commenting on PDFs on iPads, including iAnnotate, PDF expert, and AirSketch. I also recommend that students are informed early on about the different meanings associated with the colors used. I am confident that with color savvy students and better software I will be able to proudly announce that my students not only “know their colors,” but know what to do with them, as well.







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## Bringing Practitioners into the Classroom to Assist in Preparing Students to be Practice Ready

By Carla L. Boles

Professors can provide practice pointers to their students all day long but unfortunately, we are seen by many of our students as simply professors—teachers, not practitioners. A strange phenomenon in view of the fact that many law schools require several years of practice as a prerequisite to a faculty position. However, as we become more seasoned in the academy, we also become more removed from our practice days. This quandary prompted me to explore the use of practitioners as guest speakers in my classroom to provide greater practitioner-infused lessons. Practitioners as guest speakers provide topical, relevant, and practical information that the students need and appreciate.

## A. Practitioners Will Testify to the Importance of Legal Writing to the Practice of Law

Although I provide students with newspaper and magazine articles, law reviews and bar journal excerpts regarding the application of legal writing to the practice of law,<sup>1</sup> and I show the excellent AALS video “The Case for Legal Writing,”<sup>2</sup> nothing compares to having a “live” practitioner visit the classroom and provide testimonials. The practitioner can be a litigator or a transactional attorney, and can practice civil or criminal law.

Practitioners can discuss the following topics and more:

1. How much of your practice is devoted to legal writing? The partner in a civil litigation firm blessedly stated 70% (client letters, briefs, memos—all the things we teach and preach), while the District Attorney and Public Defender reported a much smaller percentage but explained when and how legal writing was used in their practice.
2. Describe a Day in the Life of a Practitioner.
3. What was your most important class in law school? For each of the invited practitioners, legal research and writing was at or near the top of the list. (I did not coach the practitioners and I urged complete transparency.) Further, *Student Lawyer* magazine reports that attorneys asked that question in interviews stated unequivocally that it was legal research and writing.<sup>3</sup>
4. Does your firm or organization provide legal writing refresher/training to new associates?

For small firms, the general answer is “no.” For Big Law, some firms still provide training in a particular practice area, *but* they assume all new associates know how to write well.<sup>4</sup>

With respect to jurist expectations of legal writers, like many other legal writing professors I provide my students with relevant articles where judges stress the importance of legal writing,<sup>5</sup> and I show videos from Bryan Garner’s lawprose.com, which do the same. I can do this all day long, but *nothing* compares to having a judicial officer visit the classroom to provide that information first hand. Admittedly, this may be a harder task than getting practitioners in the classroom because of scheduling conflicts (it may work best for evening classes), but if you can swing it, it is well worth the effort. One recommendation is to look in-house: many law schools have judges on their adjunct faculty roster.

Jurists can discuss the following topics and more:

1. What judges expect in briefs;
2. Top 5 Writing Mistakes Attorneys Make/Top 5 Pet Peeves; and
3. The differences between writing and oral advocacy.

## B. Practitioners May Be Invited to Act as Supervising Attorneys

Another means of bringing practitioners into the classroom is to incorporate them into the writing assignments. One way is through a client interview video simulation: prepare a video of the attorney interviewing the client to use as the method of delivery of the assignment or of the facts of the assignment to the students. This simulation will compel the students to obtain the requisite information from the client interview as they would in practice rather than from printed materials provided to them.

Another option is to make the Assigning Memo from a “real practitioner, rather than from the writing professor, to the students. Provide the students with background information on the attorney, provide a photo of the attorney, or better yet, schedule a Skype session with the attorney during class. Students will be able to put a face to a name and it makes the assignment seem more “real.” Continue the use of the attorney’s name in the feedback you provide on the writing assignments. Students often claim “I am trying to give you what you want, Professor.” *What I want?* It is not what I want but what the reader wants – what the reader *expects*. Thus, comments should stress the concerns of the reader, i.e., “It would be helpful to Attorney Mendelsson to explain how the court arrived at this holding—which facts did the court find key in its determination?” Throughout the semester, have the attorney “check-in” with email memos, telephone calls, or Skype calls to provide new or changed facts, additional issues, or further instructions. Each of these methods will assist in achieving the desired practice-ready student outcomes.

## C. Students May Be Asked to Report to a Practitioner

Similar to other legal writing professors, I assign reading materials on reporting research results, and I require students to watch topical videos presented by Widener University, Washington University, and Wolters Kluwer to prepare for the research conference. Normally, students would then appear before their professor who may or may not take on a “persona” as a super-busy supervising attorney. However, why not use practicing attorneys to play this role? For many practitioners, it is not a make-believe role at all, but an accurate depiction of a practical duty.

Students seem to take the practice-ready exercise more seriously when it is before an “actual attorney.” And the legal writing professor benefits as well: the professor is able to observe and better assess the students’ performance without the additional, and sometimes interfering, task of playing the role.

## D. Practitioners May Preside over Oral Argument

Almost everyone solicits attorneys and judges as volunteers to preside over internal and external Moot Court competitions (even the practice rounds). However, Moot Court competitions are not the only oral arguments. What about the “regular” oral arguments that we conduct in legal writing (whether appellate or trial arguments)? The use of attorneys in these proceedings is invaluable to the students’ training in oral advocacy. The students receive questions, comments, and advice from practitioners who, earlier

that week (or even that day), were in court arguing. Further, the use of judges to preside over the appellate or trial arguments provides unparalleled exposure to the expectation of judicial officers and enables students to cultivate courtroom best practices as early as possible.

Now that you are persuaded to use practitioners in your classroom, how do you obtain volunteers? Start with attorney friends, or attorney friends of colleagues. Include recent or well-experienced alumni, and reach out to local bar associations. Regardless of how you choose to incorporate practitioners into your classroom, you will be rewarded with current and engaging lessons that prepare your students to be practice ready.

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<sup>1</sup> For example, see Mark Cooney, *Style is Substance: Collected Cases Showing Why it Matters*, Scribes J. Legal Writing (2011-2012).

<sup>2</sup> AALS section on Legal Writing, Reasoning and Research (June 2009).

<sup>3</sup> G.M. Filisko, *Ask Us Anything: Lawyers Answer Your Toughest Questions*, Student Law. (May 2012).

<sup>4</sup> Kerry Konrad, Simpson Thatcher & Bartlett LLP, *Bridging the Gap: A Big Firm Perspective* (March 9, 2012).

<sup>5</sup> For example, see Bryan Garner's interviews with Supreme Court Justices on legal writing and advocacy, Scribes J. Legal Writing (2010); Jim Salter, *Alito says Briefs are More Important than Oral Argument*, Jefferson City, Missouri News Tribune (May 17, 2011).

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## BOOK REVIEW:

# Paula Franzese's A Short and Happy Guide to Being a Law Student

By Angela Carmella

Paula Franzese's **A Short and Happy Guide to Being a Law Student** provides students with tips for success in law school, and oh so much more! Sharing wisdom garnered from her nearly three decades in the classroom as one of the nation's best law teachers in the United States (indeed, she is featured in the Harvard Press publication *What the Best Law Teachers Do*), Professor Franzese issues a call to service and the imperative to reclaim the gentler virtues. "Compassion without technique is a mess," she writes, sharing the wisdom of one of her heroes, Karl Llewellyn, but "technique without compassion is a menace."

The book describes the majesty of the law to help law students understand why being a lawyer is truly a noble calling. Most profoundly, the book sets forth an orientation to life that is intentionally positive, encouraging students to remember the gifts

of life, of family, of education, of community. Through storytelling and metaphor, Professor Franzese encourages the reader and affirms the dignity and wholeness of each person. She counsels that we become what we expect of ourselves—small, self-centered expectations will produce a small, self-centered person, but expectations for a magnanimous life, a life lived for and with others, will result in a generous, loving person whose work makes a real difference in the lives of others. The book reminds us to accept the miracle of our lives and the opportunities given us. Yet it is not about perfectionism—quite the opposite. It is a clear picture of our humanity and our frailties, but also of the energy and power we have within us to do great things. And doing great things always involves service to others because we are, by nature, social.

Law professors should read the book because it is a refreshing and energetic reminder of all that we are capable of being and doing as we guide young people into the profession. It renews for us the vision of justice and service present at the start of our careers, which may have lost some of its luster over time.

The book is organized into eight parts: You Are Going to Be a Lawyer. Be Excited and Feel Proud, Five Guideposts for Success in Law School, Preparing to Be Happy in the Practice of Law, How to Assure Success and Significance in School, at Work and in Life, Finding Your Calling, What to Do When You Feel Worried, Unsure or a Flop at the Task at Hand and How to Persist in Your Capacity to Love the Law. Each is infused with practical and inspirational guidance for the struggles that so often accompany the learning process.

There are sections devoted to preparing for classes and exams, how to read cases, how to argue before a judge, how to find teachers who inspire, what to do in settings that leave you uninspired, how to endure disappointment, how to rise above the fray, how to break bad news, how to deal with a disappointing outcome, how to succeed on an interview, how to handle rejection and how to survive family law days. Professor Franzese presents ten ways to make wise choices and devotes a whole chapter to how to use social media responsibly.

And though these sections focus on the practical, gratitude for all we have and service to others become the pillars of that advice. The author keeps the advice in this larger context, always inviting the student to take the high road, to be generous and helpful, to expect much from oneself and from others. She counsels wisely against negative thoughts, cynicism and comparisons, and how to keep criticism in perspective—but this is no psychological self-help book. All of the advice for practical success flows quite naturally from Professor Franzese's life-affirming orientation. "Do not confuse cynicism with discernment," she writes. "Some will suggest that the world and the people in it are more often rotten than good. Do not believe that. It is simply not true. The cynic's indictment is more than misguided. It is a form of cowardice. Be brave enough to



believe that life is beautiful and that people are good. Know that even in the face of disappointment, you are strong enough not just to love, *but to persist in love.*"

The book surely rejects a shallow definition of success. Indeed, it is a restatement of the classic definition of success: we are made for each other, we are capable of doing great things in service to others, and we have the responsibility to leave the world better than we found it. The profession dedicated to justice must be made up of compassionate lawyers, and compassion is born of our connections to others and our love for them. Don't be fooled by the smiley faces and the gentle humor: this is powerful stuff.

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Paula Franzese, **A Short and Happy Guide to Being a Law Student** (West 2014) is available on Amazon.

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## Beyond the Water Cooler: Reflections on a Junior Faculty Development Program

By Alyssa Dragnich

Three years ago, the University of Miami created a program designed to increase interaction among its junior faculty members—all of the pre-tenured professors from the legal writing, clinical, and casebook classes. The program has been successful even beyond the hopes of its creators.

At our first event, the goal was simple: learn each other's names! From 2009-10, Miami Law engaged in an ambitious hiring program (including 11 new full-time legal writing professors), and many of us did not know our colleagues well or even at all. The first reception/dinner provided an opportunity for professors from various fields to meet one another and gain a better understanding of their colleagues' works. Each subsequent year, there are new hires to introduce, but now that most of the group has been here a few years, we are able to offer a wider variety of events.

### Benefits of Junior Faculty Connections

Presumably no one would argue that being friendly with your coworkers is a bad idea. But the benefits of increasing collegiality among colleagues are substantially greater than just making a work environment more pleasant. Christine M. Riordan and Rodger W. Griffith found that what they term "friendship opportunities"<sup>1</sup>—the degree to which employees are able to talk to each other at work and establish informal relationships—have direct correlations with "increases in job satisfaction, job involvement, and organizational commitment," as well as a significant decrease in employee turnover.<sup>2</sup>

Other studies have found that even making “small talk” about non-work topics can have positive benefits and lead to higher worker productivity.<sup>3</sup> Employees who have more face-to-face interactions with one another are the most productive<sup>4</sup> and these benefits are especially noticeable when the employees work in different specialties and might not interact otherwise.<sup>5</sup>

At Miami Law, these repeated interactions have not only enabled friendships to develop but also have led to a greater understanding of the work that colleagues do. For example, our casebook and clinical colleagues had no idea of the number of pages of student writing that legal writing professors grade per year. With ten different in-house clinics, legal writing professors were sometimes fuzzy on the details of the work done in each clinic. Getting to know our casebook colleagues means we are more likely to attend their faculty talks and gain better insight into their research interests.

One goal of the program is to help junior faculty members feel more connected to the law school and therefore also more invested in the school. Especially for faculty without voting rights, law school hierarchy can sometimes lead to feelings of marginalization and even exclusion. This junior faculty initiative has allowed professors to meet one another on equal footing. As people begin to know one another as individuals, we develop a deeper appreciation for the different types of teaching that we each engage in. Giving each person a voice and making everyone feel like a stakeholder in the school leads to institution-wide benefits.

At the start of the initiative, a few people worried that this might work to divide “junior” faculty from “senior” faculty. This has not proven to be a problem, and in fact, some feel that the program breaks down barriers between pre-tenured and tenured faculty because a few formerly junior people are promoted to the tenure ranks each year. They obviously continue to talk with their pre-tenured friends and colleagues, and thus each year there are greater ties between pre-tenured and tenured faculty. In addition, we invite tenured faculty members to participate in some of our events, thus promoting interactions that might not occur spontaneously.

## Organization

Our program was created three years ago. At the outset, the dean selected faculty members to serve on a junior faculty steering committee. Care was taken to ensure representation from all three tracks (legal writing, clinical, and casebook), as well as a diversity of backgrounds. A tenured professor served as an advisor to the committee. Importantly, this professor had an advisory, not supervisory, role.

Over time, the committee has become fully self-governing, and new members are now solicited once per year. Any junior faculty member can volunteer to serve on the committee, and the current committee chooses from among the interested volunteers, taking care to ensure a continued balance among clinical, casebook, and legal writing professors.

One of the founding members of the steering committee was just granted tenure, and she will begin serving as the senior faculty advisor to the committee next year, which is exciting and rewarding for all of us.

## Annual Retreat

Our biggest and best-attended event is an annual retreat, open only to junior faculty. We hold the retreat at the beginning of the fall semester, which allows us to introduce newly-hired colleagues right away and offers a somewhat celebratory start to the new year. Our retreats are held off-site (*i.e.*, not at the law school), which helps to develop the attitude that this is a fun event and not a dreary, mandatory exercise. We have used local hotel conference rooms and private rooms at local restaurants for this event.

At the retreat, we make nametags for everyone. We have found that many of us don't know the names of 100% of our colleagues, but often are afraid to admit it. By having everyone wear a nametag, the "awkward factor" is reduced. Similarly, we have assigned seating for at least part of the retreat; otherwise, everyone tends to sit with his/her friends. Rather than grumble at the assigned seating, people often thank us for planning it. Chatting over lunch is a great, low-pressure way to interact with a new or casual acquaintance.

## Professional Development

Once or twice per semester, we hold a professional development event. These typically take place over a lunch hour and involve a roundtable discussion or panel presentation. Sometimes tenured faculty members are invited to participate, if more seasoned viewpoints would be helpful on a topic. At other times, junior professors are both the speakers and the audience.

Topics for these lunch sessions have included the sharing of new teaching innovations, ways to incorporate more student writing into the doctrinal classroom, and best practices for writing letters of recommendation for students applying to clerkships and fellowships. Last year, we used a free online survey program to assess the interest level in various topics—why hold a program that does not interest anyone? By choosing topics that appeal to a variety of colleagues, we ensure that the programs are well attended.

We also host at least one event per year devoted to emerging scholarship ideas. These events grew from a desire to have a "safe space" for colleagues to discuss scholarship that was still in the early stages—that is, an author wants feedback on her ideas but does not yet have a version of an article that she wishes to unveil before the full faculty. These smaller events are designed to be casual and welcoming. Anyone with an idea is encouraged to speak, whether that idea is just the kernel of a topic for a future paper or a draft that is fairly far along. Because we all know each other reasonably well, the venue is friendlier and more informal than the traditional faculty talk. Newer professors in particular are more comfortable speaking up in this forum, whether to present their own ideas or to ask questions or comment on colleagues' ideas.

## Social Events

A few of our events are purely social in purpose, but as discussed earlier, significant work benefits accrue when colleagues are friendly with one another. We try to vary the

type and timing of social events so that everyone can attend. For example, professors with young children often find evening events inconvenient, so we host some events at lunchtime and hold family-friendly events on weekends. But everyone loves happy hour, so we tend to have at least a post-work event at a local bar per semester.

### For Interested Schools

Our program has evolved into a fairly formal design, in part due to the size of our group (currently 36 people), but more informal programs could work equally well. Just hosting an event that gets people in the same room together is a good start. Support of the dean is always helpful<sup>6</sup> (especially for funding!) but not required. It may be that a sub-set of interested colleagues first begin getting together and as the program gains momentum, more colleagues will join.

Ultimately, people who like their coworkers are happier, more involved with their work, and less likely to leave for new jobs. Fostering connections between colleagues in various specialties is both personally rewarding and beneficial for the school.

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<sup>1</sup> Christine M. Riordan & Rodger W. Griffeth, *The Opportunity for Friendship in the Workplace: An Underexplored Construct*, 10 J. Bus. & Psychol. 141, 142 (Winter 1995).

<sup>2</sup> *Id.* at 150.

<sup>3</sup> Jennifer Robison, *Workplace Socializing is Productive*, Gallup Bus. J. (Nov. 13, 2008), <http://businessjournal.gallup.com/content/111766/news-flash-workplace-socializing-productive.aspx>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Darby Dickerson has stated that one job of a law school dean is to facilitate connections among various faculty groups. Darby Dickerson, *Building Bridges: A Call for Greater Collaboration Between Legal Writing and Clinical Professors*, 4 J. Ass'n Legal Writing Directors 45, 45 (2007).

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# INSTITUTE SPRING CONFERENCE 2015

*The UCLA  
School of Law and  
the Institute for  
Law Teaching and  
Learning (ILTL)  
are collaborating  
to present:*



## *Engaging the Entire Class— Strategies for Enhancing Participation and Inclusion in Law School Classroom Learning*

**SATURDAY, FEBRUARY 28, 2015**

### **CONFERENCE STRUCTURE:**

The conference will begin with an optional welcome on Friday evening. On Saturday, the conference will include an opening and closing led by ILTL Co-Directors and Consultants, and five workshop sessions. Each workshop session will be presented by a teacher featured in *What the Best Law Teachers Do*.

### **CONFERENCE PRESENTERS:**

Workshop presenters include:

- Patti Alleva (University of North Dakota)
- Steve Friedland (Elon University)
- Steven Homer (University of New Mexico)
- Nancy Levit (University of Missouri – Kansas City)
- Hiroshi Motomura (UCLA)

By the end of the conference, participants will have concrete ideas for enhancing participation and inclusion in law school classrooms to take back to their students, colleagues, and institutions.

*- continued -*



# INSTITUTE SPRING CONFERENCE 2015

## WHO SHOULD ATTEND:

This conference is for all law faculty (full-time and adjunct) who want to learn about enhancing participation and inclusion in law school.

## ADVANCED REGISTRATION:

Your best value is to register by February 12, 2015. General registration is \$250 per person, which includes all materials, continental breakfast, lunch, and snacks during the day.

A discounted registration fee of \$100 is available for full or part-time law school faculty from the following ILTL affiliated schools: Gonzaga University, University of Arkansas Little Rock, or Washburn University School of Law.

Full and part-time faculty from UCLA School of Law may attend for free, but must register in advance. After February 12, 2015, all registration will only be on-site and increases to \$300.00 for all participants except UCLA School of Law faculty.

Registration and payment by credit card may be made online through the following link: <https://apps.law.ucla.edu/cyberpay/?merchant=ILTLC>

## ACCOMMODATIONS:

We have reserved a limited number of rooms at the UCLA Guest House, which is diagonal to the Law School and only a five-minute walk, for the evenings of February 27 and 28, to check out on Sunday, March 1, 2015. These rooms are being held only until January 25, 2015. You should call the hotel directly to make a reservation, mentioning that you are participating in the UCLA School of Law's "Institute for Law Teaching and Learning Conference at

## CONFERENCE SCHEDULE:

All Sessions will take place at the UCLA School of Law.

### SATURDAY, FEBRUARY 28

8:00-8:40	Registration and Continental Breakfast
8:40-9:00	Welcome and Opening
9:00-10:00	Workshop 1
10:00-10:20	Break
10:20-11:20	Workshop 2
11:20-11:40	Break
11:40-12:40	Workshop 3
12:40-1:30	Lunch
1:30-2:30	Workshop 4
2:30-2:50	Break
2:50-3:50	Workshop 5
3:50-4:10	Break
4:10-4:30	Closing
4:30	Adjourn

UCLA". Reservations can be made directly with the UCLA Guest House by calling (310) 825-2923.

The cost is \$177.00 for a room with one queen bed, \$182.00 for a room with one queen bed and a kitchenette, or \$182.00 with one queen bed and one twin bed.

On-site parking is free, but limited. It is on a first-come, first-served basis. If the hotel parking lot is full; the Guest House sells parking passes for the closest UCLA parking structure number 3.

Please note that while the UCLA Guest House offers complimentary continental breakfast each morning, it is not a full-food service hotel—meaning that they do not provide the service of ordering food via room service, and there is not a lobby restaurant. There are, however, many restaurants in Westwood Village, which is less than a 15 minute walk from the hotel.

# Teaching Deliberately—From Course Design to the Classroom and Beyond

By Meredith J. Duncan

New law teachers too often enter the classroom with little to no guidance regarding how best to educate future lawyers. As a result, some choose to model what they perceive worked best for them as law students. Others attempt to replicate what they consider to be the “typical” law professor. In this essay, I will explain my approach to teaching, one that I characterize as *teaching deliberately*—making intentional and considered decisions regarding my students’ legal education. Teaching deliberately has positively shaped my teaching and the lives of my students. Being deliberate—from designing courses to developing the classroom and fostering a lifetime of wellness in my students—makes all the difference in being an effective educator of successful, healthy future lawyers.

## 1. Being Deliberate in Creating the Course

Being deliberate in designing one’s course is essential to creating a successful learning experience for law students. My mantra is always “begin with the end in mind.” The end for me is not necessarily teaching to the exam (although it is important to teach so that students will be successful on their assessments). Rather, my end goal, regardless of the subject matter of the course, is to develop competent, successful, and healthy law students and lawyers.

With that in mind, I pick course materials that will be useful, not only in imparting knowledge of the subject matter, but also will be effectual in teaching to all different learning styles. It is well-documented that students bring a variety of learning styles to the classroom. Some students are primarily auditory learners. Others are more visually oriented, while still others are kinesthetic or tactile learners. Most often, students fluctuate from one learning style to another or are even a combination of these learning styles at one time. Therefore, in picking course materials and choosing class activities, I am mindful to tailor to the different varieties of learning.

For visual learners, I often project PowerPoint slides in the classroom and provide handouts. Because I want my students to be engaged in our classroom conversation, my slides say surprisingly little so that students are not distracted or disengaging to read the slides during class. My slides, for example, may be diagrams of complicated facts or may just provide a mini outline of where we are in the course materials. I often hand out an abridged version of the slides out at the beginning of class for note taking in addition to projecting them onto the screen while I teach. My experience has been that how much content the slides contain is much less important than the fact that I *have* slides. Less is more when it comes to PowerPoint slides.

For auditory learners, I am mindful of the way in which I lead a class. My teaching

style is a modified Socratic method: I primarily teach Socratic, but with repetition and emphasis of important points. Employing simple techniques, such as speaking at an appropriate volume and projecting to all parts of the classroom, make a huge difference in students' ability to learn in the classroom. I also take care to alter the cadence of my speech, slowing and pausing at important points. It is also effective to add a bit of physical theater or memorable, dramatic stories from time to time.

For kinesthetic or tactile learners, I incorporate class projects into my course plans, such as problem sets, small group breakout sessions, and mini-writing exercises when possible. Not only do these activities prove a much-appreciated change of pace, but they also are very successful in solidifying course concepts, particularly to those who thrive when a physical component is part of their learning experience. Of course, these activities do not take place in every class meeting, but are interspersed throughout the course of the semester where appropriate.

## 2. Being Deliberate in Developing the Classroom

As a minority female who is short in stature, I appreciate (for better or worse) that some students may initially feel challenged in accepting me as authoritative in the classroom. Therefore, I deliberately set the tone for my classroom, even before our first class meeting, in at least two ways: by sending each student an e-mail and by creating an informative course web page.

The typical e-mail that I send to my students prior to our first class meeting warmly welcomes them to the course and explains how thrilled I am to be their instructor. To the e-mail, I attach the course syllabus, which sets forth all the required materials, reading assignments, and classroom expectations. I also provide a link to the course web page where students can find all sorts of useful information, such as my teaching philosophy, any electronic copies of the course materials, and announcements. I also highlight course information that is either of particular importance to me or that may be unique to my classroom, even though the same information is likely contained in the syllabus attached to the e-mail. For example, I usually highlight my electronics policy as well as the importance I place on professionalism.

Regarding my electronics policy, I am one of the few professors (at least at my school) who does not permit students to take notes on a laptop or allow any other use of electronics during my classes. Surprisingly, I receive very few complaints about my policy, which is also posted on my website. My policy reads in part:

Laptops and other electronic devices are not permitted to be used in my classrooms, absent special circumstances. This is a decision that I do not make lightly. In fact, after many years of trying differing approaches and based on considerable research and my experiences, I remain convinced that an electronics-free environment is most conducive to learning and teaching. I have several reasons for my decision, which I am happy to share with you. Some of the reasons in support of my electronics-free classroom approach include my desire to:

- Create and maintain a “safe” classroom environment;
- Minimize distractions as much as possible;
- Encourage meaningful discussions during class time involving all students;
- Maximize student learning in the classroom;
- Eliminate the temptation of students to take stenography rather than engage in thoughtful note taking; and
- Produce more significant learning and therefore higher quality student performance on exams.

My electronic policy goes on to provide various resources that support (and are critical) of my policy. Like most things, my experience is that students are more accepting of classroom decrees when they appreciate them as deliberate, thoroughly vetted decisions rather than knee-jerk reactions to perceived problems.

As a professional responsibility instructor, I demand professionalism from my students in every course that I teach, regardless of subject matter. So, all of my students hear about the importance of exhibiting professional conduct. As part of encouraging them to be their best professional selves, I also do my best to model professionalism. Little things like being on time (in fact, being early) to class each day and being well-prepared for every class session matters very much to students. I expect each of my students to be prepared every single class meeting, and they can expect the same from me. In class, I typically call on a random panel of students. In an effort to alleviate stress in the classroom, I tell my students who will be on panel each day at the beginning of our class meeting, but never before the beginning of class. I very rarely have problems with student preparedness in my classroom.

I also am quite deliberate in making sure to include minorities and women as members of the panels. As I encourage class discussion, it has been my experience that these groups are much less likely to participate if not on panel. Of course, my class panels are not *exclusively* minorities and women; rather, I just pay careful attention to make sure throughout the semester minorities and women do not fall through the cracks of class discussion.

I also make it a point to collect my students’ opinions and suggestions regarding their classroom experience. At least once a semester in every course, I have the students provide me with feedback concerning what is working well for them in the course, what is not working well for them in the course, and any other feedback they would like to share with me anonymously. After collecting their responses, I take a few minutes at the beginning of the next class to discuss their comments. If I am able, I make changes as necessary; if not, I at least explain to them why I am unwilling to make a change they have suggested. Allowing students input regarding their classroom experience helps create an effective classroom experience.

### 3. Being Deliberate Beyond the Classroom

I deliberately strive to foster wellness in my students by doing my best not to create unnecessary anxiety and stress. I do so in part by providing techniques, tools, and information that may be useful to them in maintaining a healthy lifestyle in a profession filled with occurrences of unhealthy behavior. Instances of lawyer and law student stress, depression, and substance abuse are well-documented. Unfortunately, the law school experience often creates unnecessary anxiety and stress in our students. Stress levels in law school are often increased by the traditional use of one final examination at the end of the semester to determine a student's grade. Some of that anxiety can be reduced by providing multiple opportunities for assessments.

Depending on the subject matter, I offer practice exams, midterm examinations, quizzes, or even group projects for my students to provide them with opportunities to be assessed during the semester and for them to measure how they are faring so far. Offering as much information on *how* they will be assessed *prior* to the assessment also increases their comfort levels. So a sample rubric of how they will be graded and how points will be distributed is quite valuable in diffusing what is unavoidably a stressful situation.

My experience has been that, although students are early and often told of the tragic realities of legal practice that await them, few are provided with tools to help them avoid becoming one of the statistics. In an effort to equip students with skills to combat the harsh realities of legal practice, I often have my students maintain a Three Good Things Journal. For this assignment, students are required every evening (1) to record three good things that happened to them that day and, (2) most importantly, to record why the three good things that they have listed for the day were good. Studies have shown that this simple exercise can help alleviate stress, decrease depression, and improve overall self-worth and mental health. I think of the Three Good Things journal assignments as a gift of wellness to my students that they can carry with them into their legal practice, and I have been told by many of my students that they regard it as such.

Although it becomes more difficult each year, I attempt to learn students' names as well as an interesting fact about each of them. I also try to maintain relationships with my students even after the course is over, by sending some of them an e-mail or giving them a quick phone call. Such small efforts go a long way in garnering good will in students, and maintaining relationships beyond the classroom has been rewarding for both me and for my students.

Teaching deliberately has resulted in great success in my classroom. It is not uncommon for me to receive notes of thanks from my former students. In fact, one recently wrote: "Thank you for being a badass professor. Torts has been a subject that hasn't presented much of a challenge while I've been studying for the bar, since it's ingrained in my memory." E-mails like these make all the hard work of teaching deliberately worthwhile. More importantly, I believe that teaching deliberately—from the classroom and beyond—has produced students who are well-equipped to be successful and healthy members of the legal profession.

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# How to Teach the Socratic Method With a Heart

By Heather K. Gerken

People who write about law teaching can sometimes be evangelicals, and I always find their confidence in the “one true way” to be a bit unnerving. Teaching is hard, and everyone is different. You are lucky if you find something that works for you.

What works for me is the Socratic method. I think it solves some of the tough pedagogical challenges associated with the law school classroom. It can be a tool of egalitarianism and a solution to the problem of large classes. It can also be done in a humane and helpful fashion, provided you recognize the method’s strengths and compensate for its weaknesses. It is possible, in short, to teach the Socratic method with a heart.

I recognize that I’m a bit of an outlier—a sinner among saints—for endorsing the Socratic method. A number of the people who care about law teaching seem to think that the Socratic method is an ancient torture device, or at least not *au courant*. That doesn’t bother me all that much. To be frank, I’ve found most of what I’ve read on law teaching—*What the Best Law Teachers Do* decidedly excepted—to be unhelpful. I’m a New Englander, and I’m cursed with self-awareness. Decentered teaching is definitively not my style. Even the way that some write about teaching gives me hives.

I hope you’ll forgive my being hideously concrete in this essay. If you are looking for abstract paeans to pedagogy, look elsewhere. I remember attending the New Law Teacher’s conference and listening to someone encourage us to be engaging and challenging and nurturing and all sorts of other inspiring gerunds. What I really I wanted to know was what to wear on the first day and what to say when I opened my mouth for the first time. We *all* want to be a list of inspiring gerunds, of course. The trick is to figure out how, and that’s where it’s helpful to be concrete. So here is a brief and simple set of reasons why I think the Socratic method works and what I do to make it work better.

## 1. The Socratic Method as a Tool of Equality

While I thought the Socratic method was a tool of gender oppression when I was in law school, I use it now because I think it’s a great equalizer. On the student side, we all know the problem. Gunners. And we all know that gunners tend to skew white and male. At the very least, they tend to skew toward those without a self-editing function. The other members of the class watch what unfolds in the classroom and—surprise, surprise—decide they don’t want to act like the gunners. As a result, they stop raising their hands, they stop acting like the classroom belongs to them, they stop taking ownership of class discussions.

Some professors think the problem is with the students who don’t raise their hands. Nonsense. The student who keep their hands down aren’t weak; they are just decent

human beings who recognize that other people have something to say as well. The students who keep their hands down are the people who haven't picked up the *bad* lawyering habit we teach in law school, which is to overvalue what one says and undervalue what others say. It's not as if our students have always been passive in the classroom, after all. Law schools admit some of the most successful students in the country—students who routinely raised their hand when they were in college. If they act differently when they get to law school, it's because of the way we've structured the law school classroom.

That doesn't mean letting the quiet students off the hook. They do need to act like they own the classroom rather than cede it to the gunners. They do need to put their hands up. But *everyone* is responsible for a productive classroom discussion, and that includes those who raise their hands before they've even formulated a thought. We spend a lot of time in law school teaching our students how to talk, but we don't spend enough time teaching them an equally important skill—how to be silent. I was a senior legal advisor to the Obama campaign during both election cycles, and I noticed that the most powerful lawyers on the campaign's weekly conference calls were inevitably the ones who spoke the least.

In a world populated by gunners, the Socratic method is a great equalizer in the classroom. If your calls are random, it guarantees every voice is heard routinely. More importantly, it gets people back into the habit of participating, something that leads to more hands in the air when you do open things up for a general discussion (especially if you give the quiet students the feedback they crave).

I think that the Socratic method can be an equalizer of sorts for faculty as well. I suspect that if you don't read as a stereotypical law professor—old, white, male—students are quicker to think that you aren't in control of the classroom or, worse, the materials. The Socratic method can compensate for that problem. Hollywood is on your side. Whether your students watched *The Paper Chase* or *Legally Blonde*, the Socratic method allows you to tap into a tradition long associated with law schools populated by people who don't look like you. It's the pedagogical equivalent of putting on a suit or wearing glasses or dropping your voice an octave.

I've found the Socratic method to be especially helpful because I like my students more than I should. I adore them, actually, and think of them largely as peers. That means that I tend to be fairly casual in the classroom and don't do much to conceal my affection for them. It would really tick me off, however, if I were mistaken for a den mother. The Socratic method is a formal structure that gives me room to be informal. It allows me to be myself while still making clear that law school is a professional school.

## 2. The Socratic Method as a Solution to Big Classrooms

There's a second reason that the Socratic method is so helpful: it helps solve the problem of big classrooms. In the ideal world, we'd tutor our students to lawyer one-on-one. Law school tuition is high enough, however. We can't do what undergraduate institutions do to solve the problem of large classrooms: lecture. Lecturing would work

if we were trying to cram a bunch of facts in our students' heads or just teaching them abstract theory. But legal analysis toggles between fact and theory, practice and principle. The students need to learn to do it for themselves, not just have someone describe how it's done. Just as it takes practice to speak a foreign language, it takes practice to speak like a lawyer. That's precisely why we teach students the language of law through the immersion method, asking them to speak a foreign language from their first day in the classroom. It's challenging but effective.

The Socratic method ensures that the entire class is practicing just about every minute of class. Students are obviously practicing when they are on call. But because students are all worried that the next call will go to them, even when they aren't on call, they are answering the question in their own heads and then checking their answers against those of their classmates. The class, in short, is engaged with the language of lawyering even at moments when they aren't speaking.

There are other benefits to cold-calling. Everybody reads. The supposedly kinder and gentler version of the Socratic method involves panels. But when students are on panels, a few students are hyper-prepared and the rest aren't. It gives the faculty member the illusion that the students are well ahead of where they really are and just about guarantees that the majority of students aren't absorbing everything they should from the colloquy. When you cold call, in contrast, you get an accurate measure of where the class is. Moreover, because *everyone* is up to speed on the cases, you can dig deep and use classroom time more effectively.

### 3. How To Take Advantage of the Method's Strengths and Compensate for Its Weaknesses

Done badly, the Socratic method is a disaster. If you don't call randomly, if you treat women and students of color either more harshly or with kid gloves, if you hide the ball or pitch softballs or ask imprecise questions, you are going to be a bad teacher. If you don't do what you can to take advantage of the method's benefits and compensate for its weakness, you are going to be a mediocre one.

#### A. The Socratic Method Done Well

If you want to do the Socratic method well, there are a number of dos and don'ts that will help.

**Set high expectations and expect them to be met.** Every student should read and come to class, and no student should be able to pass unless she has emailed you earlier in the day with an acceptable excuse. I don't think any of these requirements are a sign of disrespect for the student. To the contrary, you signal your respect for the students by demanding a lot and expecting them to meet those demands.

**Don't be a jerk.** Once you set those formal expectations, though, be a human being. The point of the Socratic method isn't to show how smart you are; it's to help the students figure out how smart they are. Tell them when you are asking an impossibly hard question, acknowledge how much you hated cold-calling in law school,

mock yourself, praise them, and do just about anything else to create a learning environment that is both challenging and warm. And remember if students who are prepared for class can't answer your questions, the problem is with you, not them.

**Remember that precise questions generate precise answers.** Larry Kramer, who was one of the best Socratic teachers I've ever seen, shared his notes with me when I started teaching. They were a revelation. It turns out he wrote out both questions and answers. That's why Larry was able to formulate questions so precisely—because he knew what answers he wanted to elicit. I do the same now, and after every class I review the notes to jettison the questions that didn't work and sharpen the ones that did.

**Don't hide the ball.** Nothing makes students crazier than the sense that the faculty member is going to keep asking the same, vague question until some lucky soul happens upon the right answer. You have to work with the answers you get from the student in front of you. Once a student gives you an answer, help her unpack it, hone in on the correct part, push it in the right direction, or flip it around. To be sure, you have to respect your students enough to tell them when they get something wrong. But that doesn't prevent you from helping them turn an okay answer into a great one. Remember what an idiot you sounded like when you were in law school and share with them the skills that you've had decades to build.

**Provide feedback.** There are lots of opportunities to provide feedback during a call. If a student hits an answer out the park, tell her then and there. And refer back to student comments in your class summary the next day.

You should also encourage students in a more private fashion. For instance, go back to your office after every class and email a couple of students who spoke that day. Sometimes the email will tell a quiet student how well he did and why you'd like to hear more. Sometime the email will be a sympathetic one, telling a student who stumbled in class that the questions were hard or you know she was prepared. Faculty often forget how much power they hold over students, both the power to wound and the power to encourage. Use that power wisely.

**Teach students the art of lawyering.** The art of lawyering involves knowing when to speak up and when not to speak up. The students pay a lot of attention to the cues you give them in this regard. So count to five before you call on someone during a discussion. You can even signal to the gunners, who are depressingly eager to please you, that you'd rather they share the discussion space. The phrase "let's hear from someone new" does wonders when a familiar set of hands goes up.

## **B. Compensate for the Method's Weaknesses.**

The Socratic method has a number of weaknesses, and you need to compensate for them.

**Make assignments manageable.** If you expect the students to come to class prepared for a call, you owe them something in return. You have to stick to the syllabus. You

can't expect to grill them on something they read three nights earlier. You can't give them huge assignments or dozens of case notes. There's only so much one person can keep in his head.

**Know your notes cold.** Lecture notes can be perfectly organized and move in a linear fashion. Teaching Socratic classes requires more flexibility. When students veer off from the conversation you want to have at that moment to the one you want to have in five minutes, there's little point in pulling them back. Instead, you should know your notes well enough to move with them.

**Help the students sort the signal from the noise.** There's a high noise-to-signal ratio when you use the Socratic method. You need to help the students figure out what matters and what doesn't, and that's tricky to do when you aren't in control of everything that gets said. Banning laptops helps immensely, as the students stop transcribing every word uttered in class (which is guaranteed to ensure their notes are filled with extraneous discussion) and actually listen. But you can also help by repeating important points or by writing something—anything—on the board to punctuate a key idea.

There are other strategies for helping students turn a nonlinear discussion into a coherent set of notes. I begin each class with a daily "speed round," where I spend a few minutes summarizing what we did the day before. It helps the students see the path they were taking the day before. It's also confidence-building; each day the students have a chance to figure out whether they caught the right stuff from the prior class.

I also give my students what someone once called "party favors." They are short outlines of the prior day's discussion or an effort to pull together a set of cases into coherent form (maps, matrices, decision trees, even bad doggerel). These party favors don't just ensure that the prior day's discussion gels in the students' minds, but they help teach students to outline (something that is particularly helpful for 1Ls).

**Mix things up.** Everyone who writes about teaching emphasizes the need to mix things up and cater to different learning styles, and everyone is right about this. Anything you can do to vary the tempo, package the same idea in different ways, and give students a chance to take a beat is helpful. You can break students into teams and have them talk to each other when you want to work through a problem that is too hard for one person to solve on the fly. (I can't stand the touch-feely "let's break into teams" approach, so I run it like a contest and put a free pass on the line). You can run mock exercises in which students play litigants or administrators or legislators. I play Family Feud (minus the kissing) with my 1Ls so they can learn to do issue spotters.

Moreover, as useful as the method is, no class should be exclusively Socratic. You need to open up space for discussion and questions. The key is to figure out how to do so without undermining the equality that the Socratic method helps promote. My go-to strategy is to have each student pen a sentence or two (no more!) on the on-line



discussion board. Ask the students anything—what drives them craziest about this line of cases, the best way to make the doctrine cohere, which opinion they wished they'd drafted and why. You'll have a really good sense of what the students are interested in. Moreover, even the shyest student will feel empowered walking into that discussion because he will have already thought through his point. And you'll have an easy way to pull the quieter students into the discussion as the conversation moves to a point that one of them made online.

**Talk about Cass Sunstein's dog.** I was once told (not by Cass) that whenever Cass Sunstein encountered that deer-in-the-headlights look from a student he'd called on, he'd talk about his dog. Whether the story is true or not, it's the right strategy. Sometimes students just need a moment to check their notes or scan the case or think. So give them that moment no matter how silly you sound as you're filling the space.

**Know when to turn to the camera.** There's no reason not to be open with students about your pedagogical choices. Sometimes it's helpful just to turn to the camera and tell them directly why you are doing something in the classroom. It's especially helpful for 1Ls. Don't just ask the students the facts of the case. Tell them why you are asking and why certain facts matter. Don't just ask the students for the doctrinal test. Tell them that cases always contain "magic words" and explain how to spot them.

**Dealing with the students who are scared to death of getting called on.** Finally, there are always a few students who worry more than they should about being called on. They will appear in your office, sometimes in tears, and you will be tempted to relent. Don't. I always require the students to be part of the pool. But I also work with them to get them ready for their first call. Sometimes I'll do a private practice session with them. Sometimes I'll email them in advance the first time they are called on. Sometimes I'll let them email me when they are ready to speak. In my 14 years of teaching, I've never had a student who didn't master the skill, and many of the students who were certain they couldn't speak in class ended up being positively loquacious by the end.

## Conclusion

I'll conclude by offering just one caveat about the Socratic method, one that the Best Law Teachers' Conference really brought home for me. The Socratic method can be a wonderful teaching tool if it's done well. It can promote equality in the classroom and compensate for the problems associated with large classes. As long as you pay attention to the method's strengths and weaknesses, you can adapt it to your own personality and style. But, as with any teaching methodology, nothing can substitute for liking and respecting your students. If you are a jerk, no teaching method is going to fix that problem. You can teach the Socratic method with a heart, but only if you have one in the first place.

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# Building an Integrated Learning Community: A Law & Public Policy Model

By Nancy J. Knauer

When I was asked to participate in the Best Law Teacher Project, it took me awhile to realize exactly what that meant or, more accurately, what it did not mean. As it turned out, I had not been selected for an award or an honor. Rather, I had just become the subject of a study, and the researchers had questions—lots of questions. They also wanted to see my classes—lots of classes. Although the process was at times nerve wracking and always humbling, it also gave me a new perspective on what I was teaching and how I was teaching. Most importantly, it gave me the distance to ask myself what I would do differently, if I were building a program from the ground up.

The result has been our new Law & Public Policy Program that is designed to respond to the changing market for legal services and meet a long-standing student demand for work that makes a difference in the lives of others. Now in its third year, the Program is organized as an integrated learning community that combines theory, practice, and professionalism. It begins with an immersive summer program in Washington, D.C., and then continues in Philadelphia with additional course work and related opportunities. Although I had been convinced that our students would benefit from the new skills and competencies that form the core of the Program, the student outcomes have exceeded all of my expectations. I believe that the success of the Program demonstrates what our students can accomplish when we treat them like the graduate students they are, as opposed to the high school students they sometimes can seem in law school.

Going into this project, I had a dual set of considerations—jobs and creativity. In today's legal market, first and foremost on everyone's mind is how to improve student outcomes and address the changing market for legal services. However, I also wanted to harness the creativity, optimism, and commitment to change that so many of our students express when they come to law school. As a long-standing member of the Admissions Committee, and now its chair, I am very familiar with the hopes and aspirations of our applicants as expressed in their admissions essays. And, I have always worried that law schools take some of the country's most engaged and creative minds only to beat that spark out of them during the first year. In legal education, our relentless focus on convergent thinking can disincentivize creativity, innovation, and entrepreneurship.

Designed to be student-centered, the Program is constantly evolving. Throughout the planning stages, I consulted with our career planning office, recent alums, members of our board of visitors, current students, and employers. The result was an immersive program that starts in the summer after a student's 1L or 2L year and continues through additional course work and opportunities beyond graduation. During the summer, the students live, learn, and work in D.C. as they build community and explore professional

goals. They then transition back to our main campus in Philadelphia where they can continue with upper level courses, additional internships, publications, conference presentations, and a semester-long program in D.C. during the last semester of their third year.

To help foster creativity and innovation, the Program has followed the advice of Eric Fromm and “let go of certainties.” It has questioned many of the standard components of legal education, including the casebook, the oral argument, the law review note or comment, and performance competitions. It supplements these traditional experiences that our students still get in the standard curriculum with new exercises and practices that are designed to equip our students for today’s dynamic job market and changing legal profession. Web-based materials, policy briefings, blog posts, white papers, conference presentations, and collaborative projects all stress the new competencies that will help our students transition from law school to today’s practice environment.

At the outset, I knew that I wanted to build a program that integrated Theory, Practice, and Professionalism—meeting the clear challenge laid out by the Carnegie Report to address all three of the core competencies. Across legal education, we have made great strides disrupting that false dichotomy between theory and practice by integrating skills across the curriculum. At Temple, we have long understood that theory and practice are but two sides of the same coin. For example, instead of taking a traditional lecture class in evidence, our students can enroll in a 10-credit year-long program that integrates evidence with trial advocacy. About 15 years ago, I started, along with my colleague Eleanor Myers, a complementary program in transactional skills, using Trusts and Estates and Professional Responsibility, along with interviewing, negotiation, counseling, and drafting. And, I think we are all convinced that a student’s learning is superior when practice is allowed to reinforce theory and theory serves to elucidate practice. Although one without the other will only make half a lawyer, it is professionalism and a sense of professional identity that will define and drive and inspire that lawyer. Accordingly, we augment the Program with alumni mentors, a Myers-Briggs workshop, media training, and leadership seminars.

Temple Law School is located a little over two hours north of Washington, D.C., which made the choice to start the Program in D.C. an easy decision. For our students who are interested in public policy, public service, and public interest work, D.C. offers a strong market for legal internships that reflect the broad range of student interests. It is also an excellent setting to explore the relationship between law and public policy and study how change happens at the federal level. The Program is limited to 18 students to maximize the opportunity for individualized instruction and counseling. The mix is generally two-thirds rising 2L students, with the balance comprised of rising 3L students. Organized as a collaborative learning community, the Program intentionally blurs the lines between course work, social events, and leadership training. The students intern at government agencies and advocacy organizations, as well as in positions on Capitol Hill. The students meet twice a week in the evening for classes and have at least one event scheduled each weekend.

In the summer, the students receive credit for two separate courses: Institutional Decision Making and Law & Public Policy I. The course work presents a thematic approach to current issues in Law & Public Policy, such as religious freedom, the war on drugs, LGBT rights, health care reform, and student loan debt. Organized through the lens of comparative institutional analysis, the materials purposefully disrupt the single institutionalism of legal education that still focuses primarily on the courts and the judiciary. The course materials are all web based and designed to be “sticky” with extensive use of hyperlinks to original materials, video clips, and a wide range of media.

Each student is also required to write a policy paper or white paper on a topic of his or her choosing, and the only requirement is that the solution must be statutory or regulatory. The policy paper exposes the students to a different type of legal writing. Structured similarly to a Congressional Committee Report, the papers outline current law, reasons for change, and the suggested solution. The papers engage the desire of the students to advocate for meaningful change. They also provide the students with an area of expertise that enhances their confidence and facilitates networking. The papers serve as excellent writing samples, and the students have been very successful publishing their papers and writing numerous shorter spin-offs in the form of op-ed pieces and blog posts.

The Program continues in the Fall with Law & Public Policy II. After spending the summer thinking globally, the students return to Philadelphia to act locally and consider how change happens at the municipal level. The students work in collaborative teams to study some of the most pressing issues facing the city and present novel suggestions for reform. A former student who is now the Special Assistant to the President of Philadelphia City Council helps identify the issues that the students study and works with the students to get their ideas before policy makers. In the Spring semester, students have the option of taking a semester in Washington, D.C., where they secure an internship and take an exciting new course offered by one of our alums called Meet the Policy Makers. Our students get the opportunity to meet in a small group with policy makers and industry leaders to discuss innovative solutions to complex problems.

Throughout the school year, students are encouraged to market their policy papers through conferences, op-ed pieces, blog posts, and other publication opportunities. Students have published pieces in *The Atlantic*, the *Washington Examiner*, *Forbes.com*, numerous ABA publications, as well as traditional law reviews. Students have also presented their papers at conferences at home and abroad, in Atlanta, Minneapolis, Boston, Brussels, and Budapest. In order to help defray the cost of some of the travel expenses, the students hold an annual CLE Update where the students present their policy papers and alumni of the Program serve as moderators. It is our version of a bake sale, and it is in lieu of a competition or other more typical law school activity.

One of the challenges to building this sort of learning community was how to facilitate communication, especially during the summer when students are at different

internships scattered throughout the city. In order to leverage the collective knowledge of the group, we foster a culture of collaboration and information sharing where knowledge becomes a form of social currency, but a listserv or a wiki did not provide the visual immediacy that this generation of students enjoy. Our solution was to create a separate closed Facebook page for each class of Law & Public Policy Scholars where the students can easily share articles and upload photos. After the students graduate, they migrate to the closed Facebook page for the Program alumni, which continues to have active discussion and serve as a career planning resource.

Professional development is a core component of the Program, and we stress that the students start building their professional reputations the first day of law school. The structure of the Program assumes that the students are professionals. We meet in conference rooms, and I circulate an Agenda for each class session. In their internships, they know that they are helping enhance our brand by acting as ambassadors for the law school. Increasingly, our students will not go into a practice world of large law firms. The advent of JD-advantaged career paths means that they will often be the only lawyer working on a project, as opposed to working on a team of lawyers. To help our students navigate the entry-level job market, we emphasize a portfolio approach to skills development. Students are encouraged to catalogue and reflect on their expanding skill sets and to assemble a range of diverse writing samples showing multiple competencies. We also discuss ways to market their ideas, as well as their resumes, and start building their own brand.

One of the most rewarding aspects of the Program has been watching the students work and collaborate across their diverse backgrounds and views to coalesce as a strong and supportive cohort. The students learn to practice “dialogue and not debate” and seek interest convergence around otherwise controversial issues. One of my favorite examples is the semester that I supervised a student who was interning at the Heritage Foundation while another student was interning at the Human Rights Campaign. Based on a foundation of mutual respect and a strong interest in crafting novel solutions, the students refer to the program as the place where “all great minds, don’t think alike,” and they have the T-shirts to prove it.

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# Improving Legal Education for Law Students and Our Profession

By Kathy M. Morris

In the Spring and Summer of 2013, I conceived of and launched the Legal Profession PREP Class, an acronym for the practice readiness project for Chicago-area law schools and students. In early 2014, I reported the findings of the project's electronic survey, which was responded to quantitatively and qualitatively by over 300 Chicago lawyers. This past Spring and Summer, I held four free PREP Class courses at the Chicago Bar Association on subjects most often suggested by the data, and I wrote and spoke nationally and internationally about the project findings. This article disseminates my recommendations arising out of this work.

The ABA Task Force on the Future of Legal Education, which issued its Final Report in January 2014, heard from recent graduates "a conviction that they received insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients." The PREP Class data reflects that same conviction, expressed both by new lawyers and by those across the spectrum who work with and supervise recent graduates

As one survey respondent summarized: "Some law schools do a great job of preparing law students to be great law students." This project, however, encourages law schools to be leaders in preparing their students to be successful lawyers by graduating law students who know how to better compete for jobs and to perform them more effectively from the start.

Another comment summed up the central point cogently:

*"Teach us how to BE a lawyer,  
not just THINK like one."*

## Methodology and Findings

The PREP Class electronic survey was emailed to its members in Chicago and neighboring counties by the Illinois State Bar Association, by several law firms to their lawyers, and by both a federal and state governmental agency to their law departments. The survey included a list of thirty skills, divided into six categories, asking the respondents to identify which of those skills law schools should give more emphasis, the same degree of emphasis, or less emphasis in preparing their students for graduation. Respondents also were able to indicate that they didn't know or that they thought a particular skill was unimportant or not teachable by schools.

The following skills received the most number of responses indicating that they need more emphasis in the law school curriculum:

- Communication Skills – Conveying Complex Information Clearly (223 responses)
- Communication Skills – Listening Effectively (211 responses)
- Communication Skills – Expressing Cogent Conclusions (206 responses)
- Client Service Skills – Managing Projects Efficiently (205 responses)
- Corporate Skills – Understanding Financial Documents (204 responses)
- Problem Solving Skills – Posing Practical Solutions (202 responses)

Respondents also were asked to name the practice readiness skill in the list of thirty that they judged to be of highest priority for law schools. The specific skills most often prioritized by the respondents were: *Writing Artfully; Developing Business; Handling Discovery Effectively; Managing Projects Efficiently; Conveying Complex Information Clearly; and Drafting Contracts Carefully*. When asked why they judged the skill to be so critical, respondents often lamented what their own legal education had lacked or described meaningful practice deficiencies of junior lawyers with whom they currently work.

Respondents were also asked if there were other practice readiness skills they recommended law schools consider incorporating in their curriculum. The most often-mentioned skills were related to pre-trial litigation, such as discovery, depositions, motion practice, and settlement conferences. Additional write-in suggestions included:

- Teaching new technology (e.g., e-discovery, the myriad of online resources for practicing law);
- Business development/financial skills (from business generation (through RFPs and networking) to the economics of a legal practice and the day-to-day tasks in running a business, such as billing);
- Oral communication (e.g., public speaking, listening, and client counseling);
- Strategic problem solving, negotiation, ADR;
- The everyday law that attorneys encounter—mortgages, landlord/tenant, consumer, divorce, probate practice in court, such as how to present an accounting, or how to close an estate;
- Basic law practice management and time management classes; and
- Ethics, professionalism and civility issues, many of which were identified as generational.

## The Legal Profession PREP Class Recommendations

If even several of a number of possible outcomes emerge from the launch of the Legal Profession PREP Class project, the Chicago pilot will have served its purpose as a catalyst for conversation and innovation and as a springboard for other law schools to take action, in part by adopting their own PREP Class initiative to help respond to the “perfect storm” facing the legal profession. The array of outcomes I suggest ranges from law schools fully reassessing their curricula to:

- Adding even a small number of experiential professional skills courses for upperclass students, focused on top priority employment-related practice readiness topics that require practical assignment-based advanced writing, speaking, simulated exercises, and/or actual client representation or job search steps;
- Revising traditional legal writing and drafting courses to include shorter day-to-day tasks new lawyers are more likely to encounter;
- Considering active inter-school learning opportunities, in person within a locale or via technology, on business subjects such as finance and accounting or on pre-trial skills such as discovery and depositions;
- Folding planned and spontaneous experiential components into traditional classes;
- Expanding a practice focus across the curriculum, e.g., by inviting as guest speakers the adjunct professors practicing in related areas to lead class discussions in the substantive and procedural courses on both representative and atypical applications of the course content to first-year lawyering tasks;
- Holding a designated Practice Month, celebrating the alumni working across a spectrum of practice areas and in alternative roles, who will share specific experiences and pointed advice for new graduates, again, in person and via technology;
- Hiring more professors, instructors, and administrators with not only academic experience but also the kind of background typically seen in adjunct professors;
- Creating dean-level faculty roles focused on advanced job search and practice readiness challenges for students;
- Harnessing all facets of the school community to help students tackle the small or so-called “soft skill” moments that can make or break a new lawyer; and
- Sponsoring a symposium drawing together students, faculty, practicing alumni, employers, and even clients--who need to see immediate value in the work of first-year lawyers--for further conversation leading to action steps.

## Conclusion

As law schools refocus, individually and collectively, to confer about the challenges and opportunities identified in this impact project and elsewhere, the path will widen for graduating people with even more promise, greater employability, and enhanced abilities to succeed in the profession from the start. Law students and lawyers will all be the better.

As Marian Wright Edelman, JD, Yale Law School, said:

*“Education is for improving the lives of others  
and for leaving your community  
and world better than you found it.”*

This is my fervent hope.

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*Kathy M. Morris founded Under Advisement, Ltd. in 1988, after practicing law and teaching at Northwestern Law School, which she continued to do over many years. Her counseling practice focuses on advising law schools, law firms, and individual lawyers. She has a steady history of innovation in response to the needs of the profession, and she considers the Legal Profession PREP Class to be among the most important work of her career. Please contact her via [kathy@underadvisement.com](mailto:kathy@underadvisement.com) with questions, comments, suggestions, or for a full copy of the Legal Profession PREP Class Report.*

# THE FOUNDING FATHERS

1	2	3	4	5	6		7	8	9	10	11	12
13							14					
15			16			17				18		
19		20		21	22						23	
24			25		26				27	28		
		29		30				31				
	32						33					
34						35						36
37					38				39		40	
41				42				43		44		
45		46			47			48	49		50	
51			52	53			54			55		
56							57					

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(See answers on page 60.)



# THE FOUNDING FATHERS

## - ACROSS -

1. Government favored by Washington.
7. Despite 1 Across, our nation's father stated that government is a "fearful \_\_\_\_\_."
13. Younger country symbol.
14. Luxurious.
15. Chemical symbol for nickel.
16. First initials of "Birth of a Nation" producer.
17. Judge Advocate (Abbr).
18. Grade point average (Abbr).
19. Used to connect grammatically coordinated clauses.
21. Benjamin, the baby doctor.
23. Medical for large.
24. Tax Treatment Extension Act (Abbr).
26. Emergency Housing Act (Abbr).
27. Mills Technical Amendments Act (Abbr).
29. Unit of luminous flux.
31. A small finch.
32. Unlike Washington and Hamilton, this founding father and signer of the Declaration of Independence was suspicious of strong central governments; his choice for the national bird was the turkey (Two words).
34. Have to (Slang).
35. Remove slowly.
37. Requirement for men of vision.
38. Protective covering.
39. Issued only by government.
41. Expression of disapprobation.
42. Associate Justice of U.S. Supreme Court, appointed in 1888.
44. Card game.
45. Receipt of goods (Abbr).
47. A nation ruled by laws not by men (Abbr).
48. Intellectual property (Abbr).
50. Trademark (Abbr).
51. Those which do it least, do it best?
54. Former teacher and conservative Associate Justice of the U.S. Supreme Court, appointed in 1986.
56. He became an Associate Justice of U.S. Supreme Court in 1894.
57. This poet, novelist, and Supreme Court Associate Justice once said "The life of the law has not been logic; it has been experience."

# THE FOUNDING FATHERS

## - DOWN -

1. The upper house.
2. Tamper with evidence.
3. Right Guard (Abbr).
4. Aged.
5. It traveled slowly during the revolution.
6. Gigaton (Abbr).
7. Mutual Defense Assistance Control Act (Abbr).
8. Determined the laws of the Universe (Initials).
9. Statute of Limitations (Abbr).
10. Its sinking gave rise to the modern rules and laws pertaining to the Work Product Doctrine (See *Hickman v. Taylor*, 153 F.2d 212).
11. Make intelligible.
12. The 40th president.
17. This founding father, nicknamed the “Atlas of American Independence,” was our first vice-president (Two words).
20. Repeal.
22. Trusted by the founding fathers to resolve legal disputes of fact (Singular).
25. Relatives.
27. Intended to be sung.
28. Power distribution scheme for the United States.
30. Master of Fine Arts (Abbr).
31. A blend of African-Jamaican folk music, calypso, and American rhythm and blues.
32. Earlier period.
33. National Retired Teachers Association (Abbr).
34. Appointed Associate Justice of the U.S. Supreme Court in 1922.
36. This founding father and president once said “A little rebellion now and then is a good thing.”
38. Unit of weight in India and other parts of Asia, varying greatly according to locality.
40. Satirical and topical comedy.
43. Racketeer Influenced and Corrupt Organizations Act (Abbr).
46. Gross vehicular weight (Abbr).
49. Intimate friend.
52. Easement appurtenant (Abbr).
53. Common (Abbr).
54. Phonetic call for quiet.
55. Lord Mayor (Abbr).

# Better Law School Exams Through Pictures

By Robert M. Jarvis

As I write this, I recently have finished grading my Spring 2014 International Litigation (“IL”) exams. I love teaching IL—I was an international commercial lawyer before I became a law professor, and IL was one of the courses I most wanted to teach. During the past three decades, the course has consistently proven to be one of my favorites. But until this year, I have never loved grading my IL exams.

## Course Basics

At my law school, most students who take IL do so because they hope to land a job after graduation with an international law firm or multinational corporation. Many of them are originally from another country, speak a second language, have lived or studied abroad, have served in the military, or are married to a foreign citizen. Over the years, a high percentage of my IL students have fit into more than one of these categories. Not surprisingly, IL also attracts a lot of the staffers on our international law journal.

Nevertheless, IL is a difficult course for all students. It requires a sound understanding of civil procedure (which many students don’t yet have), as well as an ability to manipulate novel and complex fact patterns. In addition to world history, students must know (or quickly learn) a fair amount of admiralty, antitrust, aviation, banking, customs, insurance, and securities law.

The quantity of material we cover is fairly breathtaking. To ensure that students leave IL with a solid foundation, they have to be walked through an entire lawsuit. This means everything from the considerations that go into filing a complaint to service of process, dismissal motions, discovery, trial and appeal, and judgment enforcement. Along the way, we delve into such arcane (but important) topics as *forum non conveniens*, *lis pendens*, and letters rogatory. We focus a good deal of attention on the Hague Service and Evidence Conventions and tackle the vagaries of the Foreign Sovereign Immunities Act and the Act of State doctrine. Time permitting, we discuss methods for locating overseas counsel, how to prove the contents of foreign law, and the role that arbitration plays in resolving international business disputes.

## Student Likes and Dislikes

We read a lot of cases in the course. Students have a strong preference for those in which people take center stage (such as the Nazi “looted-art” cases—George Clooney’s film *The Monuments Men*, which premiered halfway through this year’s course, was a big hit in class). Likewise, they enjoy discussions that take place in “real time.” The disappearance of flight MH-370, which occurred near the end of this year’s course, led to a spirited conversation regarding whether there was any basis for bringing suit in the United States; who could be named as a defendant (in addition to Malaysia Airlines, we considered the prospects for suing Boeing, its sub-contractors and suppliers, and the Malaysian government); and whether American lawyers could ethically solicit the passengers’ families.

Students also really like the opportunity to second-guess judges. Right at the beginning of this year’s course, the U.S. Supreme Court handed down *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). In that case, the Court unanimously decided that Daimler could not be sued in California for the activities of its Argentinian subsidiary during that country’s “Dirty War.” Students found this conclusion shocking (given the number of Mercedes-Benz automobiles on American roads), but became increasingly comfortable arguing the differences between general and specific jurisdiction as our review of the case progressed.

On the other hand, students have little patience for abstract concepts (or, perhaps more accurately, concepts they find abstract). They intensely dislike cases involving currency conversions, exchange controls, and profit repatriation. This year was a bit better, however, due to the U.S. Supreme Court’s vote, at the start of the semester, granting certiorari in *Republic of Argentina v. NML Capital, Ltd.*, 134 S. Ct. 895 (2014), a case stemming from Argentina’s repudiation of its sovereign debt. What particularly enthralled the class was NML’s seizure of the Argentinian warship LIBERTAD while she was in a port in Ghana, a brazen attempt at self-help that failed after the International Tribunal for the Law of the Sea declared the arrest unlawful.

## The IL Exam

For me, the biggest challenge of the IL course always has been the exam. Year after year, I prepared what I thought were creative and challenging questions, only to get back answers that were lifeless and dull. In response,

I tried making the questions harder, easier, shorter, longer...well, you get the idea. And yet nothing worked. So when I sat down to write this year's exam, I approached the task with dread.

I had decided to use our MH-370 discussion as the basis of the exam. But not wanting to immediately tip my hand, I set about creating a fact pattern involving a person who could not be located following a bomb attack. That particular idea had been rattling around in my head since reading a case in which the court held there was insufficient evidence to connect the bombing of the World Trade Center to two persons who were not seen again after September 11, 2001 (see *Hirsch v. Frieden*, 758 N.Y.S.2d 787 (N.Y. Sup. Ct. 2003)).

This being an IL exam in a Florida law school, I decided to make the missing person a Palm Beach businesswoman named Gloria Mellman. According to the exam's facts, she had traveled to Norway to attend a trade show and had not been heard from since a bomb exploded in the hotel where she was thought to be having drinks with clients.

As I worked on the question, I began to wonder where Gloria would have met her clients. So I Googled "Norway hotels" and among the hits I got was the very suitable Radisson Blu Plaza (RBP) in Oslo. As it happens, the RBP has a Wikipedia entry that includes a very nice picture (see [http://en.wikipedia.org/wiki/Radisson\\_Blu\\_Plaza\\_Hotel,\\_Oslo](http://en.wikipedia.org/wiki/Radisson_Blu_Plaza_Hotel,_Oslo)). And that's when an idea struck me—just for fun, why not include the picture in the exam? So I copied it and dropped it into my draft.



In *Hirsch*, the court was concerned with the summary procedure that New York was using to issue death certificates to the families of 9/11 victims. I wanted to incorporate that same procedure in my question. Once again, curiosity got the better of me and I Googled "Norway courts," which led me to the Wikipedia page of the Oslo District Court that also included a photo (see [http://en.wikipedia.org/wiki/Oslo\\_District\\_Court](http://en.wikipedia.org/wiki/Oslo_District_Court)).



By the time I finished writing the question, I had downloaded six more pictures, including the convention center where the trade show was being held; the bar at the RBP; and the headquarters of Assumption Life, the Canadian insurance company that had issued the policy on which Gloria's husband Mark now was suing (the exam told the students they had been



hired by Assumption Life and instructed them to write a letter to its general counsel regarding possible defenses).

In real life, Gloria and Mark Mellman are my sister-in-law and brother-in-law. A few years ago, their hometown newspaper ran a picture of them at a charity event (see <http://www.naplesnews.com/entertainment/nightlife/zoobilee-2012-photos-naples-zoo-fundraiser>). So at the end of the exam I included it with a caption that read, "Gloria and Mark Mellman (photo taken March 10, 2012)."



### Results

We proctor our own exams at my law school, so immediately after the test was over I was able to get my students' reactions (taking care, of course, not to breach their anonymity). As I had hoped, they all loved the pictures and told me that the photos had drawn them into the facts and made the question "seem more real." Their enthusiasm carried over to their exam answers, which were much better than those from past years. Not only did the students take extra care in getting the names of the parties correct (a long-standing pet peeve of mine), they seemed to have a greater appreciation for what Mark was going through and the adverse publicity Assumption Life was likely to suffer if it decided to fight a grieving widower.

### Conclusion

Based on this experience, I plan to start regularly including pictures in my exams. With Google Images and Wikipedia, and the editing tools in Word and WordPerfect, finding and downloading photos is easy. And because they are being used for a bona fide educational purpose, there should not be any copyright concerns.

I don't know why I didn't think to include pictures before now. Not only do pictures help make exam questions less hypothetical, they demonstrate to students the importance of visual evidence in the real world (particularly when they are in front of a jury). As the old saying goes, "A picture is worth a thousand words."

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*Robert M. Jarvis is a professor of law at Nova Southeastern University. Readers wishing to receive a copy of the exam discussed in this article should contact him at [jarvisb@nsu.law.nova.edu](mailto:jarvisb@nsu.law.nova.edu).*

# CALL FOR PRESENTATION PROPOSALS

## INSTITUTE FOR LAW TEACHING AND LEARNING SUMMER 2015 CONFERENCE

“Experiential Learning Across The Curriculum”

June 13-14, 2015

Gonzaga University School of Law—Spokane, Washington

The Institute for Law Teaching and Learning invites proposals for conference workshops addressing the many ways that law teachers are incorporating experiential learning in all types of courses. With the rising demands for legal-education reform and “practice-ready” lawyers, this topic has taken on increased urgency in recent years. The Institute takes a broad view of experiential education, encompassing learning that integrates legal theory and knowledge, practice skills, and guided reflection, with the goal of teaching students how to learn from experience. Accordingly, we welcome proposals for workshops on incorporating experiential learning in doctrinal, clinical, externship, writing, seminar, hybrid, and interdisciplinary courses.

The Institute invites proposals for 60-minute workshops consistent with a broad interpretation of the conference theme. The workshops can address experiential learning in first-year courses, upper-level courses, required courses, electives, or academic support teaching. The workshops can present innovative teaching materials, course designs, curricular or program designs, etc. Each workshop should include materials that participants can use during the workshop and when they return to their campuses. Presenters should model effective teaching methods by actively engaging the workshop participants. The Institute Co-Directors are glad to work with anyone who would like advice in designing their presentations to be interactive.

To be considered for the conference, proposals should be one page (maximum), single-spaced, and include the following information:

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

**The Institute must receive proposals by February 1, 2015.**

Submit proposals via email to Associate Dean Sandra Simpson, Co-Director, Institute for Law Teaching and Learning, at [ssimpson@lawschool.gonzaga.edu](mailto:ssimpson@lawschool.gonzaga.edu).

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The conference is self-supporting. The conference fee for participants is \$450, which includes materials, meals during the conference (two breakfasts and two lunches), and a welcome reception on Friday evening, June 12, 2015. The conference fee for presenters is \$350. Presenters and participants must cover their own travel and accommodation expenses. Local hotel accommodations include the following options:

The Davenport Hotel  
10 South Post Street, Spokane, WA 99201  
(509) 455-8888  
Standard rooms starting at \$155

Hotel Lusso (owned by Davenport)  
808 West Sprague Avenue, Spokane, WA 99201  
(800) 899.1482  
Standard rooms starting at \$125

Oxford Suites  
115 W. North River Drive, Spokane, WA 99201  
(509) 353-9000  
Standard rooms starting at \$99

Red Lion Hotel at the Park  
303 W. North River Drive, Spokane, WA 99201  
(509) 326-8000  
Standard rooms starting at \$105

Red Lion River Inn  
700 N. Division, Spokane, WA 99202  
(509) 326-5577  
Standard rooms starting at \$100

Holiday Inn  
801 N. Division, Spokane, WA 99202  
(509) 328-8505  
Standard rooms starting at \$119

The conference workshops will take place all day on Saturday, June 13, and until the early afternoon on Sunday, June 14. Gonzaga University School of Law is hosting a welcome reception on the evening of June 12, 2015, from 5 to 7 p.m. at Barrister Winery, located in the downtown area, [www.barristerwinery.com](http://www.barristerwinery.com).

*For more information,  
please contact:*

**Associate Dean Sandra Simpson**  
ILTL Co-Director  
[ssimpson@lawschool.gonzaga.edu](mailto:ssimpson@lawschool.gonzaga.edu)  
(509) 313-3809

**Professor Emily Grant**  
ILTL Co-Director  
[emily.grant@washburn.edu](mailto:emily.grant@washburn.edu)  
(785) 670-1677

**Professor Kelly Terry**  
ILTL Co-Director  
[ksterry@ualr.edu](mailto:ksterry@ualr.edu)  
(501) 324-9946

# Speed Dating Peer Reviews

By Douglas McKechnie

Last spring, when I taught my first seminar course, I knew, for most of my students, it would be the one time they had an opportunity to engage in academic writing. Most would have no context going into the experience and some simply would not want to do it. I began to think about what experiences and exercises are most fruitful for focusing my ideas and improving the arguments in my writing. Particularly at the beginning of the process, I have found that talking through my topic, thesis, and arguments with a colleague and answering his or her questions focuses my thinking. It often causes me to jettison terrible ideas and reflect on those I had not considered. Because I have always found this practice rewarding, I wanted to replicate it for my students. However, my experiences had always happened organically. As a result, I had to create a similar opportunity for my students that was, admittedly, contrived. The experience also had to be guided, as most of the students would never have engaged in a similar exercise. Additionally, I wanted students to get feedback from more than one or two people. That is how I invented my Speed Dating exercise.

For this exercise, I required the students to bring an outline of their paper along with a proposed thesis and conclusion to class. In class, I detailed what I discussed above about the fruitful nature of discussing one's paper with a colleague and told them they would be doing just that during class. Each person received a handout with "Discussion Points." I drafted the Discussion Points with an eye toward the students using them to facilitate their discussions with their colleagues. The students had five minutes to read through the Discussion Points and prepare for a discussion with a colleague.

I then divided the class into two groups: those who would sit and remain in place for the duration of the exercise and those who would be required to move about the classroom. I then paired the sitters and movers and gave them approximately 15 minutes (roughly seven minutes per person) to discuss their project. The student presenting his or her paper was instructed to explain things like the specific topic, the research he or she had conducted, and the arguments he or she planned to make in the paper. The student acting as the "listening" colleague was expected to use the Discussion Points to ask questions of the "presenting" colleague, make any suggestions he or she thought relevant, and give feedback about the presenter's work-in-progress. After approximately seven minutes, the students switched roles, the "presenting" colleague became the "listening" colleague, and the process began anew. After each pair had about 15 minutes to discuss their papers, the movers then moved down the line to the next, stationary colleague and a new 15 minutes began.

The students were able to have this discussion with six or seven colleagues during the course of an hour and fifty minute class. I got great feedback during and immediately after the exercise. Many students told me that it really helped them focus

their paper and consider some issues and arguments they had not already thought about. And, since that is precisely what I get out of the experience, I considered it a win.

## DISCUSSION POINTS

1. What is the topic?
2. What is the thesis (original and supportable proposition)?
  - a. What is the problem the thesis is trying to solve?
  - b. Is the thesis narrow enough?
3. What background will be provided?
  - a. Is the background basic enough?
  - b. Does the background give enough context?
  - c. Is the background thorough enough?
  - d. Is the background specific enough?
  - e. Is the background organized enough?
4. What is the solution for the thesis and how did you get there?

Points to consider:

- Is the analysis of the problem and solution explained clearly and thoroughly?
  - Are there advantages or disadvantages to the current state of the issue and/or the solution?
  - Is there a policy argument for adopting the proposed solution?
    - ✓ efficiency, public good, etc.
  - Are there reasons not to adopt the proposed solution?
    - ✓ What are the rebuttals to those reasons?
5. Is the overall organization clear?

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# “Losing My Religion”: Extended Role Play and the First Amendment Religion Clauses

By Ruthann Robson

I like to think that the idea for instituting an extended role play in First Amendment during the Religion Clauses portion of the course came to me while I was listening to the popular (and now classic) R.E.M. song, “Losing My Religion.” But whether or not that is accurate, the song provides a soundtrack of sorts to an approach I’ve used for many years in teaching material that is both controversial and confused. The assignments and adoption of a “religious” role by students when considering the doctrines and theories in the Establishment and Free Exercises Clauses of the First Amendment deepens class discussions and improves student comprehension. It also frees the class from our previous conceptions (of ourselves and others in the classroom) and allows us to disagree and debate in non-personal ways. Moreover, by allowing students to express sentiments and, more importantly, consider the application of specific cases and doctrines from the perspective of their “religious” role, students experience the complexities of any belief “system” in relation to the complexities of this area of constitutional law.

As described in the book, *WHAT THE BEST LAW TEACHERS DO*, by Michael Hunter Schwartz, Gerald F. Hess, and Sophie M. Sparrow<sup>1</sup>, this role play occurs throughout the five weeks of the First Amendment course that we study the Religion Clauses. Before we even begin the material, students are randomly assigned one of three categories: a recognized religion, a quasi-religion, and a non religion. Within that assignment, students must develop a specific role for themselves and post their role, with an extended explanation of their beliefs, on the course website. Repetition of roles is strongly discouraged, so that there can be a rush to post roles. I review the roles as they are posted, at times requiring from them more specificity or information.

Students adopting the first role, a recognized religion, may seem to have the simplest task, at least at first. Yet even they must decide for themselves what a “recognized” religion means before we have interrogated this question in the readings and in class. Moreover, they must be specific, selecting a particular sect and belief system. Students in this group often chose religions with which they are familiar, such as Roman Catholic, Sunni Muslim, Buddhist, or Pentecostal, but just as often chose religions that have fewer members, such as Fiver Percent and Indian Shaker. The second group, quasi-religion—or sometimes described as a “wanna-be religion”—is probably the most difficult. Again, students enact their own preconceptions in making this decision. A perennially popular choice in this category is the “Church of the Flying Spaghetti Monster” because it has received much press, but other choices include Anthroposophy, Zendik, Eckanar, and the hotly-debated for inclusion in this category, Scientology. Lastly, the nonreligious group might seem as simple as the first, but again calls for specificity, and at times a particular stance toward religion. Student choices



generally include Atheism, Agnosticism, Secular Humanism, and versions of Marxism. Thus, the class composition is guaranteed to be religiously diverse.

The class also requires that these diversities surface. From the point at which they post their role, each student is expected to inhabit that identity as fully as possible. I ask them to read the cases from the perspective of their role. As I prepare for class, I reread the cases with the list I've made of their roles at hand, making specific notes. During class, I will call on individual students, reminding them of their roles as I ask a question. At first, this can be startling to students, but they soon adjust. This role pervasiveness often illuminates the subjectivity of the Court's recitation of facts, as well as the reasoning, doctrine, theoretical perspectives, and the invocations of history. At the beginning, some students need to be asked quite directly how they approach the case: "What do you think of this outcome, Student X, as a Rastafarian?" At times, the response can be obvious and rather simplistic: "Since I believe in the spiritual use of ganja, I disagree with the Court's conclusion in *Smith*," in which the Court upheld sanctions for use of peyote by Native American religious practitioners.<sup>2</sup> At other times, the discussion is more demanding. The question is how does Student X, in a role as a Rastafarian, approach decisions protecting legislative prayer<sup>3</sup> or the "ministerial exception" to protections from employment discrimination.<sup>4</sup> Generally, students come to understand that very few cases are unqualifiedly "good" or "bad" from their point of view, even as their point of view shifts. Does it matter that no Rastafarian has been asked to give the opening prayer for town meeting? Does it matter that the Rastafarian employee has been the subject of racial discrimination? While certainly the same sort of discussions can occur without role assignments as hypotheticals, allowing students to be steeped in their role allows for a fuller, deeper, and richer discussion. It also simultaneously demands individual accountability from students for their positions while removing personal responsibility to defend beliefs. In the best classes, we can enact the religious tensions that are apparent throughout the cases without becoming tense ourselves.

In addition to the assigned cases, each class session encompasses the discussion of a problem, distributed during class, based on a very recent controversy that may be in the news, a bill or statute, or a decided state or federal case. In the problem, students assume typical legal roles such as counsel for the appellant, law clerk to a judge, advisor to a state senator, or attorney for a group writing an amicus brief. However, within this legal role, students must continue to inhabit their religious role. For example, Student Y, as a Sikh, now also takes on the role of a law clerk to a judge considering the constitutionality of the seventeen foot "Latin cross" at the National September 11 Museum.<sup>5</sup> Or Student Z, as a Secular Humanist, is writing an opinion as an administrative law judge in a sexual orientation discrimination case against a baker who refused to make a wedding cake for a same-sex couple.<sup>6</sup>

Thus, students must reconcile their assumed personal identity with their assumed professional identity. How does the student in role as Sikh respond to arguments that it is irrelevant whether or not there are no Sikh symbols, seventeen foot or otherwise, in the museum? Interestingly, the situations in which students say they experience no

conflict often transform into the most contentious, as other students press them on their conclusions in light of the consistency of their positions. How can they be sure that their professional conclusion is not unduly influenced by their most closely-held tenets? It's this unanswerable question, perhaps, that underlies what can be most difficult to unearth about the controversies regarding the Religion Clauses. It's also a good rehearsal for the practice of law in a world of diverse beliefs and too often unexamined majoritarian views.

R.E.M.'s song "Losing My Religion" is not, despite its title, limited to religion. Instead, the titular phrase is slang for losing one's temper or patience. Spotting student performativity of religious roles enables the class to maintain our equilibrium as we navigate controversial, contentious, deeply personal, and downright difficult terrain about religion. It has meant that a diversity of views surface and that superficial agreement is impossible. It has required the balancing of analytic rigor and theoretical perspective. It even provides some humor at times. And on more than one occasion, it has garnered some applause.

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<sup>1</sup> Michael Hunter Schwartz, Gerald F. Hess & Sophie M. Sparrow, *What The Best Law Teachers Do* 228 (Harvard Univ. Press 2013).

<sup>2</sup> *Emp't Div., Dep't of Human Res. v. Smith*, 494 U.S. 872 (1990).

<sup>3</sup> *Greece, N.Y., Town of v. Galloway*, 572 U.S. \_\_\_, 134 S. Ct. 1811, 188 L. Ed. 2d 835 (2014).

<sup>4</sup> *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. Equal Emp't Opportunity Comm'n*, 565 U.S. \_\_\_, 132 S. Ct. 694, 181 L.Ed.2d 650 (2012).

<sup>5</sup> *Am. Atheists, Inc. v. Port Auth. of NY & NJ*, 936 F. Supp. 2d 321 (S.D.N.Y. 2013), *aff'd sub nom. Am. Atheists, Inc. v. Port Auth. of NY & NJ*, \_\_\_ F.3d \_\_\_, 2014 WL 3702452 (2d Cir. July 28, 2014).

<sup>6</sup> See *Craig & Mullins v. Masterpiece Cakeshop, Inc.*, CR 2013-0008 (Admin. Ct. Colo., Dec. 6, 2013) (opinion also available at <http://lawprofessors.typepad.com/conlaw/2013/12/religious-right-not-to-bake-a-cake-for-a-same-sex-wedding-rejected-by-alj.html>).

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# Experiential Education and the Law School Experience

By SpearIt

“I got my client asylum!”

I will never forget this excited announcement, which came from a classmate in our first-year as law students as we assembled for our torts class. The woman who shared the news had just received word that her client would be able to remain in the United States. Her excitement was directed at a set of nearby classmates, but others heard too, which set off a chain of well-wishes and congratulations from students. Several had gathered around as this first-year law student, beaming with accomplishment, talked about her most recent court appearance. She had only been in school for about eight months.

What was poised to be just an ordinary day of reviewing cases in torts turned into a spectacular moment of empowerment that illustrated a different side of experiential education. For not only did she develop practical skills, my classmate was developing professionally as well. Rather than a moment for playing the role of a bumbling law student, it was a moment of identity-formation and for enjoying a taste of lawyering power—the opportunity to engage justice directly, rather than as a lesson from a book.

Today, law schools are stressing “experiential education” or “experiential learning” in the curriculum as a means creating “practice-ready” graduates. As the phrase “practice-ready” indicates, reforming law school curricula is framed largely in terms of how it benefits the legal profession. The equation is pretty simple: more skills training in law school equals less that the legal profession must invest in training of new lawyers.

The clamor for more practical skills training, however, has often overlooked broader implications for students and the law school experience. Beyond competencies in particular legal tasks are personal outcomes that bear directly on students, including the ability to exercise greater autonomy and agency in their legal education.

For example, experiential education adds diversity to course options in at least two important ways: on one hand, it leads to more diversity in the way traditional courses have been taught, inviting experimentation in the teaching of substantive law; on the other, more course offerings in client-centered education often engages social justice in a way that podium classes do not. Both work to recalibrate the heavy reliance on casebook-heavy curricula.

The opportunity for on-the-job learning means justice for those who learn best by doing and provides greater opportunity for students to be graded by alternatives to typical pen-and-paper examinations—including specific legal tasks such as writing briefs, arguing cases, or mediating cases. This orientation leads to greater classroom justice by leveling the grading field among students. Through greater variety in the way students are assessed, grading rewards professional and practical competencies in addition to knowledge of black-letter law, which bear directly on student GPA, and ultimately, rank in class.

As my classmate's experience proved, experientially-designed education provided an opportunity to confront justice issues face-to-face, while enabling her to help others access justice. Determining the value of the experience may be impossible, but the phrase "rite of passage" comes to mind. For her, there were several passages at once: to becoming a lawyer, building professional identity, and experiencing personal growth. It was a pathway to the sort of justice-oriented work that drove her to law school in the first place. Further, service learning allowed her to serve the community, fulfill her ethical responsibilities, as well as her school's stated mission.

Whether experiential learning, when fully embraced, will produce law students who will go on to pursue justice and service upon graduation is uncertain. As an empirical matter, determining this with precision is constrained by the need to sift such students from those who came into law school determined to advance social justice, from those influenced by a faculty member, from those targeted by a specific strategic planning goal.

Despite these uncertainties, experiential education promises a greater commitment to measuring effectiveness in terms of student outcomes over faculty performance. More certainly, opportunities for students to engage with social justice to see what social justice lawyering looks like provides a much needed counterbalance to the dominant message in law school—lawyering for monetary gain.

The counternarrative is important not only for persuading additional people to fight for the cause, but also in keeping sane those who would in any way be committed to pursuing justice while they have to get through law school. And I imagine it changes some minds.

As this piece tries to underscore, there is an array of student-centered benefits of experiential education. Although experience-based teaching is a means of training students in particular legal competencies, it is also a means of empowering students professionally and helping them achieve greater justice. When students provide legal assistance to the community, they gain practical experience of the law and ensure that law schools do more than just teach about justice—they advance it. Educators can exploit this side of experiential education to enhance the law school experience and help socialize soon-to-be-lawyers to their societal obligations as stewards of justice.

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# Empathic Teaching and Empathic Learning

By Paula A. Franzese

The principal cause of suffering is forgetfulness. Each semester presents an opportunity to remember why we choose to teach and why it matters so much. In these challenging times, we are uniquely situated to help our students remember, if not learn for the first time, the promise of the law and the nobility of our craft. There can be no justice without just lawyers. Shaping the future of our profession depends on our fortifying our students with more than theoretical and doctrinal predicates. It requires that we help them to see and to feel why they should care.

Traditional law school pedagogy exalts the linear, logical, and analytical, often at the expense of the more integrative, intuitive, and empathic. The latter faculties are sometimes dismissed as “soft” or less than rigorous, perhaps because we serve a profession where gentleness can be mistaken for weakness. As law teachers we can correct that misperception and show that wisdom and compassion are indivisible. The deductive can and must coincide with the empathic.

Using empathy to anchor core constructs gives our students a literal “feel” for the subject matter and therefore the opportunity to engage in conceptual thinking. Conceptual thinking is “out of the box,” creative, and integrative. It asks our students to “think away from the page” to see, and then derive meaning from, the larger contexts of which the cases are a part. Conceptual learning relies on big picture synergies and interconnectivities. It is the circle (and circle within circles) rather than the straight line. It depends on the more intuitive, emotionally alert, and nonlinear sensibilities.

Conceptual teaching equips our classes with a basis from which to discern not simply what happened in a given case, but what that case means and how that meaning affects and derives content from other contexts. That capability can help our students to better predict and respond to the changing demands of the clients and constituencies that they will serve. The bulk of those constituents will not depend on counsel to be information-providers or wielders of the *status quo*. Our graduates will be asked to apply a repertoire of skills that include but also transcend the legal. That skill set includes counseling, drafting, strategizing, predicting big picture outcomes, mediating office relationships and making ethical judgment calls.

With its emphasis on context, interconnections, and the nuances of interpersonal exchange, conceptual teaching helps our students not only to craft a good opinion letter but also to better decode the cues essential to success within the structure of a given organization, whether a law firm, a corporation, or government office. With its focus on

meta-conceptualizations, it can help to yield the sort of “non-routine savant” equipped to fashion new and more expansive ways to make a mark in increasingly integrated legal, business, and economic environments.

The idea behind empathic teaching is to consciously cultivate a classroom environment where students, having studied and analyzed the weight of authority, develop a cohesive experience about its meaning and applications and a baseline of proficiency that integrates both contextually deductive and emotional intelligences. Meaning is enhanced when students are helped to forge a narrative about a given subject matter, linking that story to real life circumstances and the larger historical, cultural, and socio-economic frameworks of which cases, statutory, and regulatory authority are just a part. Proficiency is enhanced when we present our classes with opportunities to weave together the theoretical, doctrinal, historical, and more contemporary contextual threads by applying those strands to settings that *feel* real.

An array of pedagogical devices can help to trigger empathic and more holistic neural pathways to learning. Those include:

- Story-telling, whether based on the teacher’s or students’ own experiences or depicted in a clip from a movie or documentary. Story is “context enriched by emotion.” For example, in my Property class, when we study servitudes, and particularly licenses, we begin with the doctrinal definition of the entitlement (a license is a freely revocable mere privilege to enter another’s land for some limited purpose), turn to the relevant case law to examine when a license might become irrevocable, and then discuss how tickets create freely revocable licenses. Still, that very linear and logical foundation seldom gives students the experience of what it might mean to have a license revoked. To do that, I tell the story of how, twenty years earlier, while in the audience of the Broadway play *The Phantom of the Opera*, I watched as the couple seated in front of me were asked (indeed told) to accept a rain check to that evening’s performance so that (allegedly) management could accommodate a certain celebrity’s desire to see that night’s show. I tell the story replete with the range of emotions that I and the affected patrons showed as the scene unfolded. The ticket-holders did in fact have to surrender their seats, raising a host of questions. Was management allowed to do what it did? (Yes, tickets create freely revocable licenses.) But what about damages to those ousted ticket-holders? (They should have a breach of contract claim for their actual as well as incidental and consequential damages). Did the supposed celebrity ever show up? (No. The conjecture was that she quickly took off to avoid the potentially unfavorable press). The telling of that story anchors the black-letter and theoretical predicates because, while it is one thing to be told or to recite back what the law is, it is quite another



to experience it. Students' empathic receptors (mirror neurons) are activated not only by firsthand experience, but also by listening to another's firsthand experience.

- Actual or simulated client interaction where the client gets to tell her story and answer questions. For instance, in Property, when we get to landlord-tenant law, I introduce the class to “Danielle and Kevin, “a fictitious couple (played by upper-class students) who are having problems with the apartment they rented. I do not tell the class that the pair is acting until the end of the segment. I have found that the level of class engagement and creative problem-solving is appreciably greater when the students believe that they are helping the couple out of a real life bind. The experience of lawyering when students perceive real stakes and the intelligences that empathy elicits make the class smarter, savvier, and even more earnest.
- The inclusion of multi-disciplinary referents and reading materials to help weave a narrative about the larger socioeconomic and political settings in which the cases reside. For example, when we turn to eminent domain I present excerpts of documentaries that chronicle “the battle for Brooklyn” as New York City used its taking powers to displace working class families to make way for the Barclay’s Center and the continued gentrification of the borough.
- Role-playing by having students re-enact certain cases. For instance, I place *Pierson v. Post* into the more contemporary context of the popular television show *The Amazing Race*. Sometimes I ask the students to put case law into journalistic settings, where one student becomes Diane Sawyer to interview the various litigants and litigators (played by other students) for an ABC “20/20” episode. That device allows the interviewees to become the people behind the cases, and the range of emotion typically displayed is vast and genuine as the opportunity is presented for the “as if” to feel real.
- Play through the use of in-class games and challenges aimed at helping students solve the puzzle of a given problem or contextual challenge. In my Commercial Law class, when we get to the UCC’s parole evidence rule, students tend to be perplexed by its premise that only partially integrated contracts (and not fully integrated contracts) can be supplemented by evidence of consistent additional terms. To bring that dry and elusive precept to life, I have two volunteers come to the front of the class. I select one who is casually attired and another who (perhaps with a job interview coming up later in the day) is very well-dressed. The more informally dressed student becomes a living, partially integrated contract. When

I endeavor to add to the “contract” a sports cap “term,” the class decides to allow the term in because it looks (and feels) consistent. By contrast, when I try to add the hat term to the more formally dressed student (the living, fully integrated contract), it quickly becomes plain that the term is incongruous. It just does not belong. That vignette sets the stage for discussion of how courts can tell the difference between partially and fully integrated agreements, why the former can be supplemented but the latter cannot and how and why context (the commercial backdrop against which the deal was struck) matters.

- Exercises such as “*you be the teacher*” (or client, judge, adversary, CEO, competitor – the possibilities, aimed at helping students put themselves in another’s shoes, are broad) and “*tell me what you just heard me (or your classmate) say*” (an opportunity to hone active listening skills and to reveal how, sometimes, what we think we have communicated is not what the listener actually heard) and “*what are you sensing right now?*” (a chance to tune-in to the intuitions and visceral responses that a given context elicits and then to test, learn from and use those). In class, I often introduce “You Be the Teacher” segments, where students are asked in advance of class to assume the professorial role to teach a portion of the assigned material. The exercise allows students to do for themselves what they perceive their teacher to be doing when she prepares for class. Students are charged with thinking about how best to render difficult material both accessible and understandable, how to put the assigned materials into a larger context, and how to help the class discern why the topic at hand matters. Significantly, most of the students who perform this exercise, standing at the podium, embrace a posture of confidence and expertise that far exceeds the norm. Certainly, this is in part attributable to the heightened degree of preparedness, but I am convinced that a good part of the students’ newfound acumen is attributable to their empathic experience of being a law professor. Again, our neurological hard-wiring allows the “*as if*” to become real.

In these interesting times, as law teachers we are uniquely situated to frame the task of reinvention for the academy and the legal profession. Staying relevant against the backdrop of significant demographic, socio-cultural, and economic shifts that have altered the ways that the law is perceived and practiced requires that in all courses we help our students to develop a cohesive experience about the meaning and applications of the theories and doctrines studied. Perhaps most essentially, we can teach and also show our students a view of the legal profession that feels and is noble, honorable, and, if justice is to be achieved, indispensable. The care that we take with each and every class can

demonstrate our love for the law, our profession and the sacred trust that we share with our students. At its best, our teaching is that love made visible.

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*The themes presented here are elaborated upon in Paula Franzese, Law Teaching for the Conceptual Age, 44 Seton Hall L. Rev. 1 (2014).*

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## IDEAS OF THE MONTH

<http://lawteaching.org/ideas/>

March 2014: “Reading” the Classroom: Encouraging Students to Perform Assigned Readings

April 2014: Beyond “Wexis”: Bringing Research into the Upper-Level Classroom

May 2014: Good Teaching Is Both Important And Quantifiable

June 2014: Get Off the Island

## ARTICLES OF THE MONTH

<http://lawteaching.org/articles/>

March 2014: David M. Moss, *The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 JOURNAL OF DISPUTE RESOLUTION 19 (2013)

April 2014: Peter H. Huang, *Tiger Cub Strikes Back: Memoirs of an Ex-Child Prodigy about Legal Education and Parenting*, 1 BRITISH JOURNAL OF AMERICAN LEGAL STUDIES 297 (2012).

May 2014: Steven Keith Berenson, *Preparing Clinical Law Students for Advocacy in Poor People’s Courts*, 43 NEW MEXICO LAW REVIEW 363 (2013).

June 2014: Michele R. Pistone, & John J. Hoeffner, *No Path But One: Law School Survival in an Age of Disruptive Technology*, 59 WAYNE LAW REVIEW 193 (2014).

# FOUNDING FATHERS

## - SOLUTION -

S	T	R	O	N	G		M	A	S	T	E	R
E	A	G	L	E	T		D	E	L	U	X	E
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R	O	G			U	S		I	P		T	M
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E	D	W	A	R	D		H	O	L	M	E	S