THE LAW TEACHER

GONZAGA UNIVERSITY SCHOOL OF LAW | WASHBURN UNIVERSITY SCHOOL OF LAW | UALR WILLIAM H. BOWEN SCHOOL OF LAW

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Inside...

Kelly, Sandra, and Emily with Barb Anderson, former Program Coordinator for the Institute. Barb recently left Gonzaga University School of Law to take a position with the School of Osteopathy in Yakima, Wash. We are grateful for her help over the years and wish her well in her new endeavors!

INSTITUTE FOR LAW TEACHING AND LEARNING

Co-Directors' Corner

Excitement Building for ILTL's Upcoming Book

The summer of 2015 was remarkable for the release of some of the most anticipated books in recent memory, including the announcement of new works from Toni Morrison, Kazuo Ishiguro, Jonathan Franzen, Harper Lee, and now, the Institute for Law Teaching and Learning.

Taking a slightly different approach from our literary contemporaries, ILTL's new book will focus on experiential learning in law schools. This project was an outgrowth of our summer 2015 conference, Experiential Learning Across the Curriculum, hosted at Gonzaga University Law School in Spokane, Washington. Thanks to the support of Carolina Academic Press, over the next several months the ILTL co-directors will be compiling and editing a collection of some of the most innovative and useful experiential learning resources from our fabulous slate of presenters who agreed to contribute material for the project.

We hesitate to even guess when we'll put the finishing touches on the book, but rest assured, we'll let you know!

In addition to planning and writing and editing for the book, we've been busy keeping the conference trains running, and we've got some good ones coming up. Boston University

SPRING 2015

Promoting the science and art of teaching

The Law Teacher
Volume XXII, Number 1

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

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

School of Law will be hosting our spring conference on Best Practices in Outcomes Assessment on April 1-2, 2016. Our summer conference, focusing on Real World Readiness (say that three times fast), will be at Washburn University School of Law in Topeka, Kansas, June 10-11, 2016. Keep an eye on your email for information about registration and a call for proposals.

The fall semester is going quickly. We hope you're well, we hope you're enjoying your students and colleagues, and we hope you have time to read some of the aforementioned new releases, even the ones not about law school teaching!

Emily, Sandra, and Kelly

The Importance of Mediation and Peacemaking in Law and Business

By Richard E. Custin

Students from colleges and universities throughout the world recently participated in an international mock mediation competition held in Gainesville, Georgia sponsored by the InterNational Academy of Dispute Resolution (INADR) and hosted by Brenau University. I had the privilege of coaching a student team from the University of San Diego at this competition. During the competition, students acquired an applied knowledge of mediation and also an appreciation of the benefits of alternative dispute resolution. This valuable experience taught that peacemaking through mediation sets the stage for a satisfactory resolution that is often not possible in traditional courtroom civil litigation. Student participants studied and applied the process of caucus mediation that included, a mediator's opening statement, party's opening statements, joint discussion, the caucus and ultimately resolution. An integral component of caucus mediation is a form of "shuttle diplomacy," which involves a mediator meeting with the parties on an individual basis or in "caucus." The ultimate goal of the caucus is to cultivate a

positive relationship and learn as much information about the parties and their dispute as possible. Students also learned that confidentiality is key to maintaining a trusting relationship with the parties.

INADR sponsors undergraduate and law school mock mediation tournaments. This organization recently produced a video featuring international students who benefitted from a mock mediation competition. This interesting and informative video can be located at: http://www.inadr.org/.

Abraham Lincoln as an antebellum lawyer often referred to himself as a peacemaker. Lincoln and the lawyers of his day often preferred to resolve disputes by mediation as opposed to litigation. Lincoln proclaimed that, "as a peacemaker the lawyer has a superior opportunity of being a good man." Lincoln's advice extends far beyond the courtroom and traditional legal disputes. Peacemaking through mediation can be successfully applied to a wide variety of legal, business and personal disputes. Many conclude that peacemaking is the highest calling in the legal profession and one of the highest callings in life.

The concept of a lawyer as a peacemaker is new and refreshing to me. As I reflect on my law school education and my experience as an attorney, little if any emphasis was placed on dispute resolution. As an attorney I was trained as a litigator, where there was a winner and a loser after a hard fought trial. I always believed that there must be a better way to resolve disputes. Litigation, in my experience, rarely yielded a satisfactory resolution to disputants. My clients never said after a hard fought trial that they would like to do it all over again. As an attorney, I also rarely welcomed an opportunity to "do it again." In fact, my experience is that the stress of the courtroom did not end at the conclusion of a case. Unfortunately, the stress and angst of trial would often spill over into my personal relationships outside of my law practice.

Richard M. Calkins, attorney, mediator and a former Dean of the Drake University Law School introduced me to mediation as an alternative to litigation. In his *Mediation Practice Guide*, Dean Calkins provides a compelling quote concerning the adversarial nature of litigation. Dean Calkins quotes Former Chief Justice of the United States Supreme Court Warren Burger who observed that our court system "is too lengthy, too costly, too destructive and too inefficient for a civilized people."

We can learn valuable lessons from our children. Years ago, my daughter came home from grade school and proudly announced that she had been trained as a "playground ombudsman." Her assignment on the playground was to settle disputes between students during recess. There was no playground ombudsman in my grade school. Disputes were often settled by fists and with an obvious winner and a loser. Even childhood playground disputes have evolved from violence to more peaceful methods of dispute resolution.

I recently addressed the current popularity of mediation. An article I co-authored with University of San Diego Professor Michelle Ratcliff titled *The Mediation Solution* in BizEd Magazine revealed that business is embracing alternative dispute resolution including mediation and arbitration as favored methods of resolving disputes.[1] When *Cornell Business News* surveyed Fortune 1000 corporations, it found that 88 percent had used mediation to resolve commercial disputes in the previous three years, and 79 percent had used arbitration during the same time period. Eighty-one percent considered alternative dispute resolution including mediation a more satisfactory process than litigation—90 percent because it was a "critical cost-control technique," 66 percent because it led to "satisfactory settlements," and 59 percent because it could "preserve good relationships."

As outlined in *The Mediation Solution*, mediation can be successfully integrated into the curriculum using the following applied techniques:

Have students watch an actual mediation. This can be done through a class outing or through a video viewing. Recently students from the University of San Diego attended a live mediation at the nearby United States District Court. That court has successfully implemented an early neutral evaluation in which a magistrate judge serves as a mediator in civil cases. But we also have shown videos of actual mediation sessions, which the California courts offer for free on their website.

Give students a chance to participate in mediation role-play. While law classes typically draw on appellate case opinions to teach students the rule of law, professors can use the fact patterns from these cases as mediation prompts. For example, here's a leading business law contract case:

> *Zehmer discussed selling a farm to Lucy. Zehmer and his wife signed a paper agreeing to sell the farm to Lucy. Lucy agreed to the terms of the "offer." The Zehmers refused to sell the property, indicating that their "offer" was a joke. Lucy brought an action for specific performance.* (*Lucy v. Zehmer*, 196 Va. 493; 84 S.E.2d 516 (1954).)

This is a perfect dispute for students to mediate. Professors can break their students into groups of three—Lucy, Zehmer, and a mediator—and give them ten minutes to try to find a solution everyone can live with. At the end of those ten minutes, each group should elect a spokesperson to present its solution. We have found that it can be very illuminating for students to compare how the actual disposition of the case differs from the solutions that they propose during their mediation process.

Integrate mediation into the entire course. Professors first can go over who won, who lost, and what rule of law emerged. They can then set aside 15 minutes for students to participate in a role-playing exercise built around the same case. This exercise allows students to see if mediation can produce different—and maybe better—results than those that were actually achieved in court.

For an even faster exercise, the instructor can simply open the floor to a quick discussion of how the case might have had a different outcome if the parties had used mediation instead of litigation. Professors who repeat this exercise every few weeks in different areas of business law will quickly and easily integrate mediation throughout the business law curriculum.

It is important for students to understand the following benefits of mediation.

Mediation is Cost Effective

Compared with litigation, mediation is often the most cost efficient manner to resolve disputes. Mediation mitigates costly litigation expenses including extensive discovery trial and appeal

Mediation Preserves Business Relationships

Litigation often results in the destruction of business and personal relationships. By resolving disputes through mediation the participants reach a resolution that preserves dignity and can leave important business relationships intact. Litigation results in a winner or loser. The goal of mediation is to mend disputes by peacemaking.

Mediation Can Be Private

While litigation is public, mediation is private and presents an opportunity to resolve disputes without setting troublesome legal precedent.

Mediation Provides Unlimited and Mutually Satisfactory Settlement Possibilities

Mediation provides the parties with an opportunity to fashion a remedy that may not be available in a trial setting. Remedies that are unique to mediation may include apologies, non-monetary remedies, creative settlements and other creative possibilities.

Mediation Results in Individual Empowerment

The goal of mediation is not to defeat your opponent or obtain a "win." The ultimate goal of mediation is to reach a mutually satisfactory resolution and bring peace to the disputing parties. Mediation provides parties with an opportunity to fashion a unique remedy and resolve disputes and maintain personal dignity.

Mediation is widely recognized as an effective and efficient process to resolve disputes. There is compelling evidence that the mediation of disputes has significant benefits over litigation. The ultimate goal of mediation is to bring peace to parties by reaching a mutually satisfactory resolution. Traditional methods of dispute resolution continue to give way to peacemaking and mediation. It is imperative that students develop an implied knowledge of mediation and peacemaking.

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[1] See Michelle O'Connor-Ratcliff & Richard Custin, *The Mediation Solution*, BizEd Magazine 58-9 (July/August 2013).

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Richard E. Custin is a mediator, attorney and a Clinical Professor of Business Law & Ethics at the University of San Diego. He is also a Board member of the InterNational Academy of Dispute Resolution. Custin can be contacted by email at custin1@hotmail.com.

Modeling International Organizations as an Evaluation Tool

By Camila Soares Lippi

It was April 2014 when I had to teach, for the first time, International Organizations for International Relations undergraduate students at the Federal University of Amapá, Brazil, after teaching International Law for about a year on the same institution. It is a one semester, four-credit course, and the students were in the middle of a program that lasts four years. As a professor on the subject of International Organizations, I felt it was too little to teach only theoretically the composition and the work of international organizations, such as the United Nations (UN), the International Labor Organization, the Organization of American States (OAS), the International Monetary Fund, the International Criminal Court (ICC) and others.

By the rules of the Federal University of Amapá, we must provide 2 to 3 evaluative activities to students during the semester. So, I decided that, in the semester I was teaching International Organizations, one of those evaluations would be on modeling an international organization. Because of the number of students at the course, I decided the organization would be OAS General Assembly (it has 35 member States, just a little bit more than the number of students in classroom). The theme to be discussed there would be human rights violations at Venezuela. The other two evaluations were an individual report, based on the movie *The Interpreter*,[1] for which they had to connect the story of the movie with the relations between the UN Security Council and the ICC, and a final examination, for which they had to study all the subject of the course.

With the modeling international organization activity, each student represented one OAS-member State, and they would be evaluated on the basis of the following criteria: good presentation of arguments; knowledge of the theme to be discussed; knowledge of the foreign policy of the State they were representing; knowledge about the OAS; and good behavior during the discussions.

Submit articles to *The Law Teacher*

The Law Teacher encourages readers to submit brief articles explaining interesting and practical ideas to help law professors become more effective teachers. Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. We encourage you to include pictures and other graphics with your submission.

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.

On the day of the Modeling International Organization, I was positively surprised by the engagement of the majority of them on the activity (with a few exceptions). They arrived knowing a lot about the OAS rules, about the theme to be discussed there, and about the foreign policies of the States they were representing.

Compared to the other evaluative activities (the report and the final examination), students' performances were generally better at the Modeling International Organization than on the other activities. This suggests that they are more engaged in practical activities where they can apply theoretical knowledge learned through classes and texts. They were more engaged with this activity than with the others. Actually, some of them told me, after the activity, that it was a good activity, since it was one of the few occasions they had practical activities in classroom, and that they missed such activities.

So, I would recommend all the professors who teach International Public Law and related subjects, such as International Organizations, International Human Rights Law, International Criminal Law, and others, to try to use Modeling International Organizations both as an evaluative and a learning tool.

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[1] *The Interpreter* (Universal Pictures 2005) (motion picture) (directed by Sidney Pollack & starring Nicole Kidman and Sean Penn).

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Camila Soares Lippi is a Professor of International Law, International Relations Department, Federal University of Amapá, Brazil. She can be contacted by email at camilalippi@gmail.com.

INSTITUTE SPRING CONFERENCE 2016

Boston University School of Law and the Institute for Law Teaching and Learning are collaborating to present:

Responding to the New ABA Standards: Best Practices in Outcomes Assessment

APRIL 1-2, 2016

"Responding to the New ABA Standards: Best Practices in Outcomes Assessment" is a one-day conference for law teachers and administrators who want to learn how to design, implement, and evaluate effective institutional outcomes for their schools. The conference will be an interactive workshop during which attendees will learn and apply the steps of an outcomes-assessment process from start to finish. The conference will open with a reception at Boston University School of Law on the evening of Friday, April 1, 2016, and workshop sessions will take place at the law school on April 2.

CONFERENCE CONTENT:

Sessions will address the following topics:

- Identifying and Creating Institutional Outcomes
- Translating Outcomes Into Competencies and Rubrics
- Curriculum Mapping
- Evaluating Attainment of Outcomes and Creating an Assessment Plan

BU School of Law

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INSTITUTE SPRING CONFERENCE 2016

http://lawteaching.org/conferences/2016spring/

By the end of the conference, attendees will have concrete and practical knowledge about outcomes assessment to take back to their colleagues and institutions.

WHO SHOULD ATTEND:

This conference is for all law faculty and administrators. It likely will be of particular interest to Associate Deans and faculty who serve on assessment, curriculum, self-study, or outcomes committees.

CONFERENCE FACULTY:

Conference workshops will be taught by experienced faculty, including Emily Grant (Washburn), Lindsey Gustafson (UALR Bowen), Peggy Maisel (Boston University), Michael Hunter Schwartz (UALR Bowen), Katharine Silbaugh (Boston University), Sandra Simpson (Gonzaga), Sophie Sparrow (New Hampshire), and Kelly Terry (UALR Bowen).

REGISTRATION INFORMATION:

The registration fee is $225 for the first registrant from each law school. We are offering a discounted fee of $200 for each subsequent registrant from the same school, so that schools may be able to send multiple attendees, such as the members of their assessment or curriculum committees. To register, visit: http://www.bu.edu/law/events/outcomes.shtml

ACCOMMODATIONS:

A block of hotel rooms for conference attendees has been reserved at the Hotel Commonwealth, 500 Commonwealth Avenue, Boston, MA 02215. Reservations may be made online at https://bookings.ihotelier.com/bookings.jsp?groupID=1502241&hotelID=15517 or by calling the hotel at 866-784-4000 and referencing the ILTL Room Block.

FOR MORE INFORMATION, PLEASE CONTACT:

Associate Dean Sandra Simpson
ILTL Co-Director
ssimpson@lawschool.gonzaga.edu
509-313-3809

Professor Emily Grant
ILTL Co-Director
emily.grant@washburn.edu
785-670-1677

Professor Kelly Terry
ILTL Co-Director
ksterry@ualr.edu
501-324-9946

De-Constructing the Silos of Legal Education: A Roadmap for Implementing Experiential and Integrative Pedagogy into the LRW Classroom

By Michael W. Pinsof

A. Introduction

Among the great joys we derive as legal educators are those moments when we are able to demonstrate to our students how the myriad of substantive areas of law inter-connect, and how procedural law provides an undercurrent to them all. Legal Research and Writing ("LRW"), Legal Skills, and Legal Analysis instructors should strive to help our students realize that to practice law requires far more than displaying comprehension of a disjointed series of separate and distinct "silos" of courses, each punctuated by a final exam. Unconstrained by the artificial boundaries of substantive subject matter, we are able to more effectively simulate the real world by using an experiential, integrated approach to the analysis of real problems experienced by real clients, and providing the means with which to effectively advocate on their behalf. After all, most clients don't come into a law office and say, "I have a commercial impracticability problem under section 2-315 of the UCC."

This article suggests a practical framework and proposes a series of lesson plans and learning outcomes as a means to achieve success in reaching these goals. Through this pedagogy, the student will (a) frame the issues of a hypothetical set of facts, (b) identify the material facts necessary to prove the elements of the cause of action, affirmative defenses, and potential counterclaims, (c) formulate a discovery plan with an eye toward summary judgment, and (d) lay the groundwork for the introduction and admission of competent, admissible evidence at trial, and conversely, contemplate potential evidentiary objections. As we guide our students through the layers of a hypothetical case study, they will experience the process of practicing law.

B. The Client and the Legal Issue

A case that recently crossed this author's desk provides an instructive vehicle for teaching students how to develop and implement these skills. Our hypothetical client is a divorced mother ("Mary"), who has been granted sole custody of her then 8-year old daughter in a bitterly contested divorce. The daughter ("Daisy"), now 17 and a senior in high school, has run away from home to live with her unemployed father ("Fred"). Completely estranged from her mother, Daisy and her father proceed, without Mary's input or knowledge, to visit various colleges, complete the FAFSA, and enroll Daisy in an

expensive out-of-state school. Daisy retains counsel and initiates a post-decree divorce proceeding requesting contribution to her college expenses from her mother only. Daisy asserts standing and seeks to intervene in her parents' dissolution of marriage proceeding by alleging that she is an intended third-party beneficiary of her parents' Marital Settlement Agreement ("MSA"). This hypothetical provides five preliminary lesson plans and learning outcomes (hereinafter "LOs"):

> *Lesson plan #1: Provide the students with an actual MSA. What does the Agreement provide as far as the parents' (and child's) respective obligations to contribute to the child's college educational expenses? LO: Engagement in contract analysis.*
>
> *Lesson plan #2: Does the statute in your state require parents to contribute to their child's post-emancipation college education expenses? If so, how is the extent of contribution determined and allocated? LO: Development of state-specific statutory research and analysis skills.*
>
> *Lesson plan #3: Does the statute in your state confer standing upon a child to enforce his/her parents' MSA? If not, does case law establish that right? LO: Development of state-specific statutory and common law research and analysis skills.*
>
> *Lesson plan #4: What are the common law requirements in your state to establish third-party beneficiary contract rights? LO: Development of state-specific common law of contracts research and analytical skills.*
>
> *Lesson plan #5: What effect, if any, does the fact that Daisy is estranged from Mary, and Mary was deprived of any input whatsoever into Daisy's college choice and means of financing her education, have on Mary's legal or contractual duty to contribute? LO: Development of broader nationwide common law research and analytical skills. Opportunity for development of writing skills by means of a legal memorandum.*

C. The Standing Issue: Formulating a Discovery Plan and Applying Discovery Tools

Research into the requirements of third-party beneficiary standing should lead to the conclusion that Daisy must plead and prove, as an essential element of her case, that she had relied upon her mother's promise in the MSA to contribute to her college expenses at the time she enrolled in college. Suggest to the students that eliciting facts that might disprove Daisy's reliance may doom Daisy's standing argument to failure. Prepare to show them that a skillfully drafted series of discovery requests is the bridge to the holy grail of litigation: summary judgment.

> *Lesson plan #6: Yes, they learn(ed) the definition of summary judgment in Civil Procedure, but direct the students to find a case in which an appellate court addresses the granting or denial of a summary judgment motion in a case in which the plaintiff attempted to establish standing to enforce a contract as a third-party beneficiary. What genuine issue(s) of material fact(s) were dispositive? LO: Develop ability to focus research skills on the dispositive facts relevant to a motion for, or response to summary judgment.*

> *Lesson plan #7: Prepare a carefully crafted discovery plan, designed to elicit the necessary admissions on the reliance issue. Ask the students to craft a series of deposition questions, requests to admit facts, interrogatories, and requests for production of documents. LO: Experiential formulation of a discovery plan and drafting discovery requests and responses. This can effectively be used as an in-class "team" project.*

Assume for purposes of the exercise that Daisy's responses lead to the admission that she never relied upon any promise by her mother to contribute to her college expenses. Daisy further admits that the only promise made by her mother upon which she relied was Mary's promise to guarantee her student loans, just as she had previously done for Daisy's brother. Daisy's admission could conceivably suggest another potentially dispositive issue upon which to base a summary judgment motion.

D. The End Game—Summary Judgment—Should Always Be in Sight

Summary judgment should always be the aggressive litigation attorney's end game. Armed with these damaging admissions from Daisy to our discovery requests, students may draft a motion demonstrating that there are no genuine issues of fact and contending that, as a result, our client is entitled to judgment as a matter of law. The drafting of a motion will enable the student to experientially, rather than theoretically, master the difficult and amorphous concept of summary judgment.

> *Lesson plan #8: Draft a Motion for Summary Judgment and a Response, focusing on the absence of Daisy's reliance on her mother's promise. Show the students experientially how to argue both the absence and the presence of genuine issues of material fact. LO: Experiential drafting of a motion for summary judgment.*
>
> *Lesson plan #9: What effect, if any, did Daisy's reliance on Mary's subsequent, superseding promise toguarantee Daisy's college loans have on Mary's contractual and statutory obligations under the MSA to contribute to Daisy's tuition and room and board expenses? Was Daisy's enrollment in college in reliance upon that superseding promise sufficient to modify or discharge Mary's obligations under the MSA, and effectively create or substitute a new contractual obligation? Could it be argued that by virtue of Daisy's reliance on the subsequent promise only, her remedy as third-party beneficiary should be limited to enforcing the finite scope of the one and only promise on which she relied when enrolling in college? LO: Development of broader nationwide common law research and analysis skills. Opportunity to develop writing skills by means of a legal memorandum.*

E. Joinder of a Necessary or Indispensible Party: A Detour Down the Path of Civil Procedure

What is conspicuously notable about Daisy's petition is that she only seeks contribution from our client, her estranged mother, and not from her father. Encourage the students to question whether Daisy should be able to name only one party to the MSA as a third-party respondent in her petition. Assume for purposes of the assignment that the operative term in the MSA tracks the language of the statute, providing that both parents agree to contribute to the child's college education expenses to the extent of their respective resources and abilities, and based upon the child's own resources, aptitudes, and special needs.

> *Lesson plan #10: Since this is a bilateral contract, calling for presumably mutually dependent obligations from both parties, may the third-party beneficiary elect to sue only one party to the original contract? LO: Development of broader nationwide common law contracts research and analytical skills. Opportunity to develop writing skills by means of a legal memorandum.*

Preliminary research into substantive contract law may provide a disappointing answer to that question for our client. The black-letter law seems to be clear: a third-party beneficiary may sue either the promisor or the promisee, or both. I suspect that most students would stop at this point and recite the hornbook rule of contract law and conclude that there is no legal basis upon which to object to Daisy's attempt to impose financial liability solely on our client and enable her father to escape exposure. For reasons that will shortly become apparent, I would give that student a C-minus.

To effectively advocate for our client, students should be encouraged to find a way to get Fred joined as a party to the litigation, so that he has some "skin in the game." Plant the seed that the solution may lie in murky waters outside of their substantive law comfort zone. Digging a little deeper, the student should discover a line of cases that applies a different framework for analysis of our issue, founded upon precepts of civil procedure. This authority turns upon whether the party to the underlying contract who was not named as a defendant by the third party beneficiary might be an "indispensable party." Under some statutes, a non-party may be joined by the court if a complete determination of the issues cannot be made without his presence as a party, and if his rights would be affected by an adverse resolution of the issues.

> *Lesson plan #11: Urge the students to discover and analyze the procedural devices that may be codified and in your own home state's Code of Civil Procedure, and interpreted by applicable case law. LO: Teachable moment – facts of case require a shift in focus to procedural rather than substantive analysis. Development of research skills focused on state-specific procedural statutes and rules.*

> *Lesson plan #12: Based upon the procedural remedy provided by statute, draft a motion to compel Fred's joinder as a party respondent. LO: Development of drafting skills necessary to a procedural motion.*

F. Discovery of Documents and the Infusion of an Evidentiary Dimension

Daisy contends that, although he is disabled and unemployed, her father has paid thousands of dollars in tuition and room and board expenses directly to the university, and that those contributions should essentially insulate him from further court-ordered obligations. Suggest to your students that aggressive, focused discovery can be the most effective way to advocate for the client and achieve the optimal result.

> *Lesson plan #13: Prepare a Request for Production of Documents. What documents might be requested from Daisy (and from her father, assuming that we have succeeded in joining him in the litigation) to verify these contentions? LO: Written or in-class "team" exercise can be used to develop discovery skills with an eye toward identifying the opponent's exhibits that may be introduced.*

Consider presenting the students with a list of the documents that Daisy produces, and might be expected to introduce at trial, including bank and credit card statements, screen shots of Daisy's online account with the university, canceled checks.

> *Lesson plan #14: Instruct the students to formulate potential objections to the admissibility of the documents at trial. More fundamentally, how might Daisy have to lay an evidentiary foundation for admitting the paid tuition and room and board bills, and how might we object based upon the lack of proper foundation? LO: Written or in-class team exercise can be used to develop ability to formulate potential objections to the admissibility of the opponent's exhibits.*

These queries will provide an excellent opportunity to discuss and write about basic evidentiary concepts of foundation, authenticity, and hearsay. What witnesses will Daisy need to have personally appear in court to lay the proper foundation? Do original documents exist, or should we research the "best evidence rule" and anticipate potential issues? What exceptions to the hearsay rule do we need to consider, before we step into the courtroom, to object to the admission of documents? If we can train our students to anticipate and plan for the admission and objections to admission of exhibits into evidence, they will become more effective advocates in the courtroom.

G. A Detour into the Realm of Public Policy and Constitutional Analysis

In the traditional law school curriculum, students are too infrequently reminded that the study of the law is inextricably linked to politics, conflicts in the balance of power between the legislative and judicial branches, and the articulation of public policy. The issue of Daisy's standing as a third-party beneficiary of her parents' MSA brings up at least two practical teachable moments that would probably be overlooked in a traditional

substantive law classroom. The first involves the distinct differences in public policy between the minority of states that allow a child to sue as a third-party beneficiary of his/her parents MSA, and those that don't. The second, and arguably more subtle and important opportunity for students to ponder is the interplay and conflict in the respective roles of state courts and state legislatures in enunciating public policy. In Illinois, for example, one of the minority of states in which a child was vested with the common law right to assert standing as a third-party beneficiary to enforce her parents' MSA, a comprehensive bill overhauling the entire Marriage and Dissolution of Marriage Act has just been enacted, which includes a provision that bars children from doing so.

These inquiries lead to a discussion of a provocative issue with compelling constitutional implications: How is it that a divorced parent can be statutorily required to contribute to the cost of his/her child's college education, while a married parent is essentially immune from such legal compulsion?

> *Lesson plan #15: What are the respective roles of courts and legislatures in shaping public policy, and which branch is the more appropriate vehicle for doing so in the domestic relations arena? What public policy if any, is promoted by statutorily barring a child from asserting third-party beneficiary standing to enforce his/her parents' obligations under an MSA? Under what circumstances, if any, should a state legislature be able to essentially abrogate an established common law remedy of a child to do so? LO: Introduction of an inquiry into and analysis of how public policy and the balance of powers between branches of government impact the evolution of the law. Can be used as a vehicle for an interactive in-class team debate or as a research/writing exercise.*
>
> *Lesson plan #16: Can it be argued that a statutory mandate that a divorced parent contribute (to the extent of his/her ability) to the cost of his/her child's college education, which does not similarly apply to a married parent, violates the Equal Protection Clause of the Constitution? LO: Introduction of a constitutional dimension to a seemingly simple family law/contracts case. Can be used as a vehicle for an interactive in-class team debate or as a research/writing exercise.*

H. Conclusion

This series of experiential lesson plans intertwined with a real-life hypothetical enable LRW and clinical professors to equip students with the essential analytical and communication skills that they must possess when they leave our classrooms. Ideally, students will reach one of those inevitable "ah-hah" moments in legal education, when they come to realize that being an effective advocate for a client requires the integration of substantive expertise, procedural skills, and evidentiary analysis. Ideally, this pedagogy could provide a platform on which to design a third-year capstone course, to be implemented as a vehicle for integrating the areas of substantive law into which the students have previously been immersed. Whether implemented as semester-

long curriculum or as a few cherry-picked assignments, the suggested lesson plan is designed to illuminate the path for our students to achieve a successful career in the integrative practice of law, rather than the mere mastery of disjointed silos of substantive knowledge.

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Michael W. Pinsof is and Adjunct Instructor, Paralegal Studies Dept., Roosevelt University. J.D., DePaul University, 1979; B.A., University of Iowa, 1976. He can be contacted by email at mpinsof@sbcglobal.net *or at www.michaelwpinsofpc.com.*

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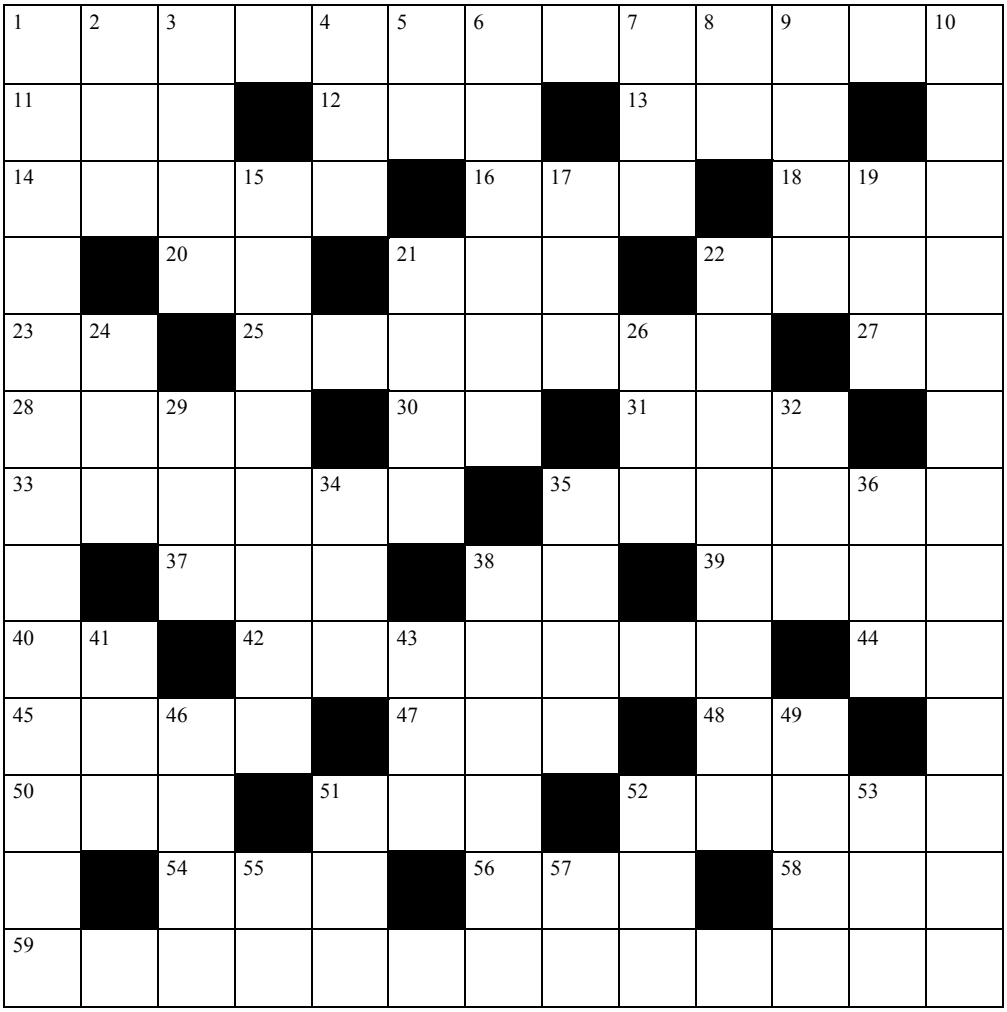
SIX GUN JUSTICE



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(See answers on page 25)

SIX GUN JUSTICE

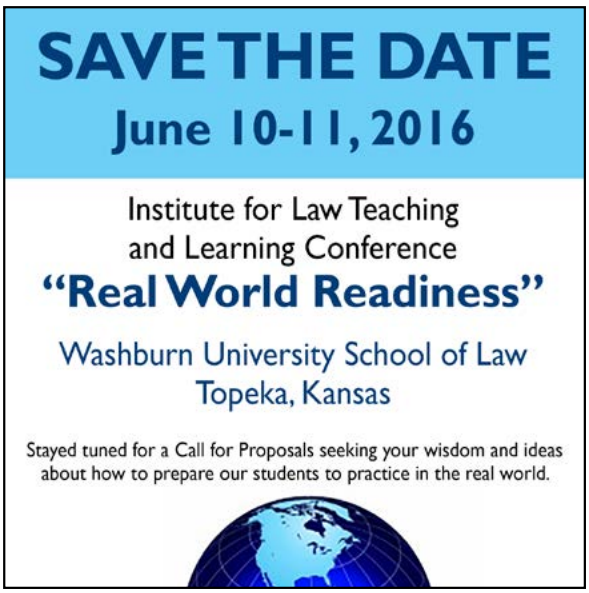
- ACROSS -

1. Excellent and somewhat ironic study of a lynching and its relation to vigilante justice in general (Two words).
11. Actor who portrayed a very famous friend of the Earps.
12. The number of guns packed by most western marshals.
13. For Texas it was much more profitable than guns or cattle.
14. Musical composition.
16. The front division of an army or any group leading an advance.
18. The famous "Palimony" Marvin who was shot by "The Man Who Shot Liberty Valence."
20. Errors excepted.
21. Western state (Abbr).
22. Certain punishment for all horse thieves.
23. Previous question (Abbr).
25. Once told Humphry Bogart - "Badges... We don' need no stinking badges."
27. Duke (Abbr).
28. Spontaneous.
30. Atomic Absorption (Abbr).
31. Effluent Limitations Guidelines (Environmental law acronym).
33. Occupation of the Old West.
35. At the Alamo, it was falsely promised to Colonel Travis.
37. A common punishment in the Old West for less-than-capital crimes involved this substance combined with chicken feathers.
38. Cathode (Abbr).
39. Phrase above famous crucifixion.
40. The number of Earp brothers (In Roman Numerals).
42. Set ablaze.
44. Right Guard (football).
45. Somethin' that smells "right fishy."
47. Bales or barrels (Abbr).
48. Hero of the Confederacy (Initials).
50. Tuco (a/k/a "The Ugly") once shot a man while sitting in one covered with soap bubbles.
51. Caliber (Abbr).
52. Famous western marshall.
54. Intense anger, similar to that often expressed by Ethan (John Wayne) in the "Searchers."
56. A female given name.
58. To kill (Slang).
59. If caught in the Old West, he would certainly be hanged, even by the most lenient of judges.

SIX GUN JUSTICE

- DOWN -

1. Term used by Santa Ana to describe the volunteers who died at the Alamo.
2. Totem pole of various North American Indians.
3. Color associated with gun maintenance.
4. Grievous distress.
5. Not excluded.
6. Here, you can still carry a gun, gamble, drink 24 hours a day, and engage in prostitution, all legal-like.
7. Electrically charged atom.
8. Drill Instructor.
9. A female name.
10. Gregory Peck starred in this classic study about a professional killer attempting to forget his past (Two words).
15. The media's inaccurate portrayal of many rugged figures of the Old West.
17. Any of several black tropical American cuckoos.
19. Jesse James met his via a bullet in the back.
21. A knot on a tree or in wood.
22. Legendary figure who died of tuberculosis, not from gunshots fired at the O.K. Corral.
24. In the character or capacity of.
26. A three-way joint.
29. High explosive used for mining in the Old West.
32. Favorite "man's drink" of the Old West.
34. Small unit of work.
35. Folks who shot other folks in the back.
36. Do it while drawing a gun, and you might not live to do it again.
38. You could easily hire one of these "Clint Eastwood" types in the Old West.
41. Visual display unit.
43. Its members fire shots, but not at people.
46. Obituary (Informal).
49. Where horse thieves awaited a trial or a hangin'.
51. A transparent celluloid sheet.
52. Happened in the past.
53. Trichloroethylene.
55. Right.
57. Short for view meter.



On the Clock: Incorporating a Timed Motion Brief Assignment to Promote Efficiency and Self-Awareness in the Writing Process

By Cecilia A. Silver

It is a constant refrain in legal writing classes that students "will probably write more than a novelist" in their careers.[1] We also remind students that as lawyers, they will continually face time pressures imposed by clients, supervisors, and the court. These seemingly conflicting aspects of legal practice frustrate newly minted lawyers, who lament the perceived need to sacrifice quality for efficiency in their writing. To prepare our students to flourish in the face of real-world litigation time constraints, we must train them to take a journalistic perspective; students have to be conditioned to run sprints as well as marathons. They need to practice condensing the demanding process of thinking, planning, drafting, rethinking, editing, polishing, and proofreading to produce a high-quality product in a short span of time. To accomplish this goal, students must not only become aware of the ticking clock but also how to approach the writing process.

I. Background

With the legal world dominated by the billable hour, time is a valuable commodity that must be managed effectively.[2] To best prepare for the realities of the legal marketplace, students must learn to write under severe time pressure so that they will be poised to perform well under the typical conditions they will encounter in practice. In my career

spanning both the private and public sectors, I frequently had to crank out emails, letters, memos, and briefs on an expedited basis with little-to-no lead time. An audience expects to be instantly gratified in today's technology-driven, hyper-connected world. So effective time management and vigilant self-editing are essential professionalism skills to instill at this early juncture of students' legal careers.[3] To achieve these aims, I incorporate a timed discovery motion assignment into an upper-level, writing-intensive course I co-teach in Civil Pretrial Litigation.

II. The Contours of the Assignment

Our Civil Pretrial Litigation class acquaints students with the types of litigation documents they likely will encounter in the real world. Students are divided into plaintiff and defendant firms, taking an employment discrimination case from initial client contact through settlement by preparing pleadings, responding to document requests and interrogatories, briefing a discovery dispute, and drafting a summary judgment motion. In addition, students have several opportunities to refine their oral communication skills by conducting client interviews, participating in conferences before the judge, and engaging in oral argument.

We chose a discovery motion for our timed assignment because junior attorneys are often tasked with drafting the moving or opposition brief from soup to nuts and with a very tight turnaround. The discovery dispute centers on the plaintiff's postings on various social media platforms and stems from the students' responses to the parties' document requests and interrogatories. After denying the existence of any postings responsive to defendants' document requests and interrogatories, the parties contest whether a photograph of the plaintiff lounging in a hammock with the caption "I could get used to this . . ." that defendants located on Flickr undermines her claim of emotional damages. Based on the alleged relevance of this information, defendants move for disclosure of plaintiff's username and password to allow unfettered access to her other social media accounts. The parties' impasse while attempting to fulfill the obligation to meet and confer before taking the dispute to court is documented in a series of "nastigram" email exchanges between the senior partners of the two firms (played by me and my co-professor).

To simulate the conditions young lawyers usually face, the students are given just eight hours to complete the brief. While they can allocate the time how they choose over the course of several days, they must certify that they have spent no more than eight hours cumulatively. So that the task is not too daunting, we provide the students with a closed universe of four cases; one case helpfully summarizes the relevant jurisprudence on social media discovery. By supplying both the discovery motion standard and substantive research, the students can focus on critical reading, outlining, drafting, and polishing rather than getting mired in the research process.

A. Assessment

After the students submit their briefs, we perform live critiques of their papers. Given the time pressure of the assignment, we have found this method of feedback very beneficial. Engaging in a dialogue with the students helps us understand the strategic choices they made in drafting their briefs and allows the students to reflect on their writing process and time management. The live critique also reinforces oral communication skills because the students conduct themselves as if they were meeting with a supervisor or partner. After the live critiques, the students have the opportunity to revise their briefs without the time pressure. The initial draft is worth 15% of the final grade; the rewrite counts for 10%.

B. Lessons Learned

Student reception of this exercise has been uniformly positive. They enjoy having the opportunity to think critically about and discuss the decisions they made in crafting their briefs. They gain insights into how they problem solve and convey their analyses in writing that transcends the motion brief assignment. The students also appreciate that the eight-hour deadline for the assignment does not impose too much on their other commitments. And they like the element of realism inherent in producing a short motion brief on the cutting-edge topic of social media on a tight timeframe.

We have found this exercise to be an excellent tool to underscore the value of organizing and outlining before putting fingers to keyboard. When executed properly, the students realize that good briefs become great briefs during the editing phase of the writing process. The compressed format of the timed motion brief assignment prepares students for the rigors of practice both by getting them comfortable with time pressure and illustrating the importance of organization and editing. Students learn to write like they are breaking the news and not leisurely penning The Great American Novel.

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[1] Margaret Z. Johns & Clayton S. Tanaka, *Professional Writing for Lawyers* 3 (2d ed. 2012).

[2] Camille Lamar Campbell, *Timing Is Everything: Teaching Essential Time Management Skills for "Real-World" Legal Writing*, 22 Persp. Teaching Legal Res. & Writing 125 (2014).

[3] *See* Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. Cin. L. Rev. 897, 900-01 (2013) (discussing the MacCrate report and ABA's recognition that time management is an essential skill for law students).

Cecilia A. Silver is a Legal Practice Skills Lecturer and the Writing Specialist at the University of Pennsylvania Law School. She can be contacted at csilver@law.upenn.edu.

Incentive Games and Group Work in the Law School Classroom

By Lauren Vitale

The private sector has long applied the many uses of incentive games. They can develop a sense of shared purpose, increase output, and encourage team-building. TV game shows adroitly develop the excitement of competition, the calculation of immediate vs. deferred payoff in the pursuit of gain, and the vicarious sharing of instant rewards. The law school professor can import these proven techniques to help shy or under-prepared students to better answer questions in class. The silence of these students both undermines their growth and allows extroverted students to dominate class discussion. All teachers want to motivate such students to participate more, as active engagement during class sessions promotes learning and provides better feedback. I often remember my father, a seasoned teacher, reminding me to engage all of my students during class while warning me not to give in to the temptation to play the role of the "sage on the stage". This article will offer practical suggestions drawn from observation and experience as to how a combination of mystery incentives and group work can provide a strong incentive for shy or under-prepared students to increase their class participation while leading to robust class discussions of caselaw and legal issues.

The inspiration for this approach formed one morning while I was driving to work. A segment on a radio program caught my attention. The host was explaining that one way to get people to work harder is to keep the reward for their efforts unknown, because the mystery of unidentified compensation can enhance motivation and drive. As with gambling, there are times when not knowing what you are going to earn or win serves as a very strong motivator. For example, a group may be told that they will be rewarded with either a small reward, such as $1.00, or a larger reward, possibly $2.00, after they complete a small task like sweeping the floor. The group will actually work harder to complete the task if the amount of compensation is unknown than if the amount of the compensation were fixed in place.

Neuroscientists and researchers have distinguished between the "wanting" of rewards and the actual reactions people have to receiving the prizes. Because of this, not knowing what a prize is, or keeping a prize a mystery, can serve to increase the anticipation of possible compensation. Mathematicians have studied a similar issue in the analysis of the "Monty Hall Problem." They formulate equations to predict possible advantages of risking known rewards for greater prizes. Alternative

treatments of the question sometimes termed "goats and cars behind three doors" have surfaced in popular culture, easily recognizable by today's law students. The CBS series "NUMB3RS" and the best-selling novel "The Curious Incident of the Dog in the Night-Time" are two other popular examples in which incentive and reward theory are dramatized.

Prevailing research suggests that the anticipation and excitement of not knowing exactly what the reward is motivates participants to work harder. The prospect of a mystery prize may result in a degree of anticipation, hope, and reactions similar to the stimulation experienced in gambling. This reminded me of the archetypical game show host who increases the interest and energy level of the game show participant by offering up mystery prizes and asking the participant what prize they want to win. I was very excited to experiment with this research within my classroom. I wanted to apply these concepts to group work in the hope of drawing out the shy and sometimes under-prepared students in the class. Group work engages students in a different way than does the traditional Socratic method. It encourages students to practice collaboration and joint problem solving. I added mystery incentives within this context and was delighted to find that my students' participation and enthusiasm were ignited.

I told the students that we would be playing a Jeopardy-type review game in class, and the students were told about the possible addition of small mystery prizes at the end of the game. Prior to beginning the game in class, I placed a series of small boxes in a prominent location under the blackboard at the front of the room. Each was labeled "Mystery Prize." The content and level of the prizes awarded at the end of the review game would depend on the groups' performance. (The actual contents of the mystery prizes were nothing extraordinary. I just decorated some empty boxes and filled them with candies and healthy study snacks.) The students' motivation did not stem from the cash value of the prizes, but from the excitement of competing for a prize of unknown value.

As with any group work, it was important to clearly define the rules while providing instruction as to how to collaborate. I divided the students into small groups of three to five. I challenged each group to create a team name and write it on a placard for their group (which they loved doing). I instructed them as to how to play the review game and buzz in their answers. One student helped me keep score. At the end of the game, the groups were awarded the appropriate mystery prizes. This exercise was extremely successful. It proved to be an easy way to engage all of the students and informally test their understanding of course materials.

A similar experiment involving group work and mystery incentives at another point in the course proved equally successful. Prior to oral argument group work sessions, the students were informed that they would be awarded mystery prizes based on their

group's performance. They were divided into small groups of three or four, and small mystery prizes were awarded to the teams at the end of the oral arguments.

In both cases, the incentive of the mystery prizes was interwoven with the structure of group work, which motivated the students to work harder and engaged the whole class. As the students had known about the exercise in advance, they had the opportunity to prepare. This allowed them to build confidence in their knowledge of the material, secure the information in their memories, and revealed the concepts that remained difficult for them. Speculation over the small mystery prizes also energized the class as a whole to better prepare their answers.

As with any group work, it was important to include opportunities for individual responsibility. This added to the discourse while encouraging individual participation. This framework proved especially beneficial for shy and less prepared students, because such students found it easier to contribute to a small group than in a whole-class format. The allure of mystery prizes further incentivized reticent students as well as those with a weaker grasp of the course material to become involved. The top-rated students also appreciated the excitement of the group work structure combined with the small mystery incentives. They found they were able to move quickly through the exercises and get more out of the class sessions.

The student feedback from these exercises was both positive and enthusiastic. The students rated their experiences very highly. Their ratings demonstrated that they felt they got more out of the class with this method. A few students even asked me in class or by email if we could do this again before the end of the semester. The students were clearly more prepared for the class sessions when this method was implemented. That allowed them to partake of class activities at a higher level of knowledge and skill.

It is also important in group work to make individual assessments and provide tailored coaching concerning individual performance. Traditionally, you might do this by observing the group at work, taking notes, and providing feedback at the end of the session. When awarding small mystery prizes in the context of group work, the provision of feedback is intrinsically part of the exercise. One important way to do this is through recognizing the students' correct contributions, summarizing or clarifying them for the class, and awarding points and prizes. This was also a natural method to provide positive individual assessments.

In summary, this technique provided a positive and worthwhile experience for the students and was very easy to administer. It can be well adapted to small and large group work exercises. It will work best with group work where there are clearly defined and unambiguous rules. There should also be many opportunities for group collaboration and participation. Small prizes are to be awarded to groups at the end as the result of clear roles for student participation. Examples of this are buzzing in

answers during a game or providing mock oral arguments. Constructive feedback can be provided to students throughout class as well as at the end of the session.

Accordingly, combining group dynamics with mystery incentives will provide a secure foundation for the innovative professor.

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Lauren Vitale is a lecturer on law at New England School of Law. She can be contacted at LVitale@nesl.edu.

Teaching Beyond Boundaries: Using Signature Pedagogies to Enhance Learning Outcomes

By Steven I. Friedland

Donald Rumsfeld once said: "There are things…we now know we don't know. But there are also unknown unknowns…, things we don't know we don't know."[1] This statement describes much of my early teaching career. Having had no training or experience, I was having a great time teaching law in my mid-to-late 20s, not knowing what I didn't know. My mother, an elementary school physical education teacher for 30 years, described my obliviousness best when she once asked me, "What do you know about teaching?" The answer was "nothing," but it did not stop me one bit.

Looking back, I would have to say I was enthusiastic, but essentially unconsciously incompetent. Today, I like to think I am at least consciously incompetent and, hopefully, sometimes rise above that plateau to the consciously competent level. I am still far from being an expert (although I can sometimes act like one). Along with age, I have learned a few things along the way.

1. It is student learning that matters, not my teaching.

A colleague of mine used to tell his class, "If you stop learning before I stop teaching, that would be unseemly." In today's multi-tasking era, a common question that arises is, how can we engage the students? This is an important question because engaged students can achieve better results. A different way of asking this question can be a useful and measurable yardstick — "What are students learning because of my class and me?" Thus, I can be a success even if the most helpful approach is to just get out of their way.

2. Changing pedagogy is difficult.

Transforming the law school classroom is sometimes difficult or even insuperable, somewhat like turning an aircraft carrier quickly. Although it appears that we can teach any way we want, the pressure to cover material, the nature of textbooks, the demands of scholarship and service, and a lack of training all contribute to invisible pedagogical barriers. These barriers help to perpetuate the continued dominance of traditional pedagogical orthodoxy — classes that focus on teaching thinking through a critical examination of textual materials oriented around appellate case reports.

3. Teaching "critical thinking" is no longer sufficient.

The most famous celluloid law professor, Professor Kingsfield, once said: "You come in here with a skull full of mush. You leave thinking like a lawyer."[2] Following the great recession of 2008 and the emergence of a volatile law practice arena, the demands on law schools have changed. Law schools are embedded in a world in which Legal Zoom is thriving, clients demand flat fees, and legal information flows freely on the Internet. There is increasing pressure on law schools to teach more than critical thinking, something the schools have concentrated on for more than a century. Now, the same schools are being asked to create a coherent program of practical training, in part because the profession can no longer readily serve as a finishing school for new graduates.

4. Adopt a new education model: thinking, acting and performing with integrity.

A useful construct for professional training has been advanced by one of the authors of the Carnegie Report on Legal Education[3] and former Stanford Education School professor, Professor Lee Schulman. Professor Schulman suggested that training people to become professionals means they are taught to think, act and perform with integrity in the professional domain.[4] For lawyers, the thinking component means legal analysis or problem solving. To act means to deal with other colleagues, assistants, superiors, officers of the court, clients, and witnesses. To perform means to engage in skilled tasks — including arguing in court, writing briefs, and negotiating with other lawyers. The term "integrity" suggests acting with a considerable degree of accountability and fairness. It infers a high bar, not the floor of acceptable behavior.

5. If broader learning outcomes really do matter, there are ways to supplement and expand traditional methods.

Additional approaches to legal education are not meant to eliminate traditional methods like the Socratic dialogue, but rather to supplement and expand the framework of learning. The added methods attempt to traverse the multiple dimensions of professional work, engaging students to give them a high impact and relevant educational

experience. In the multi-dimensional approach, professors can help guide students — often on the side, and not necessarily as sages on the stage — to maximize whatever students are ready to receive. This is especially true when not all of the students are equally prepared for law school given their prior educational experience. Thus, including multiple types of pedagogies will have extra utility and efficacy if students will be learning in different ways and speeds.

SIGNATURE PEDAGOGIES

Signature pedagogies from the professions and other learning domains can serve as a supplement to the dominant pedagogy in legal education. A signature pedagogy is intended to mean the dominant teaching methodology of the professional domain, along with the prevailing culture of the educational process. Commercial pilot training, for example, has a visible signature pedagogy — pilots use flight simulators to confront potential problems and deepen understanding of aircraft and situations.

For legal education, the signature approach is the Socratic method. It frames a culture of rigorous class dialogues between the teacher and individual students. For medical school, the signature tool is rounds, a process by which students discuss diagnoses and treatments of patients with professors in the practice setting of a hospital. For design (and architecture) education, the signature is the hands-on project, where students sit and work, often experimenting as well. For business school, the featured approach is the case method, where students discuss the raw facts of cases to construct a picture of what has occurred and what ought to be done to resolve actual or latent issues.

The notion of signature pedagogy extends to undergraduate education as well. For physics, teachers have come to use just-in-time teaching, where the instructor receives student responses just in time to make minor changes in emphasis before class time. This involves teachers giving students quizzes or questions to be answered in advance of class. This approach is designed to provide feedback to the teachers to better calibrate to content of the upcoming class. Another approach developed by Physics professors, but now used in many undergraduate domains, is the SCALE-UP idea ("Student-Centered Active Learning Environment – Undergraduate Programs"), which serves large undergraduate classes. There, the room is set up in tables, like a studio, where students work collaboratively and several teachers might rotate from table to table to discuss the student activity at hand.

APPLICATIONS

I beta-tested the following applications of signature pedagogies, mostly out of curiosity about how they would fare in the legal education context. The applications were often borrowed and adapted from others in some form. Overall, I found them to be successful in promoting student engagement and learning, and received good feedback

from the students about them. That does not mean the applications will work in all types of schools, courses, classrooms or settings, but they can be successful in advancing the trilogy of thinking, acting and performing as a professional with integrity.

a. Medical School

Legal Rounds. We can use the medical school model to shift the linear dialogue between teachers and students and create a different structure for discussion. To start the rounds, students are assigned problems in advance. These problems are to be answered in writing, posted, and brought to class. In class, everyone, including the professor, is seated around a circular or rectangular table at the same level and apparent equivalency. The students are appointed to lead parts of the discussion, including reading portions of what they have written in advance. A practicing lawyer can be invited into the discussion. The lawyer also would explore the problem — after the students do so — and provide real-world expertise and context. Further, a mock client can be added as the patient equivalent if the focus is on fact development and organization.

Ignite Presentations. Another application within the umbrella of the medical school model is to assign students to collaboratively create "Ignite" presentations. An Ignite presentation usually lasts for five minutes and involves a series of PowerPoint slides that advance automatically every 15 seconds. Students are given the authority to present on a problem, issue, or point of law in class, reaffirming important points of the course and the opportunity to explore some aspect of the course in depth.

b. Design Studio

Deliverables. The design studio concept promotes collaborative exercises and deliverables. It also promotes depth and understanding of a subject. A deliverable is some tangible outcome that students can be asked to find, obtain or create. It is especially powerful because it provides the teacher with evidence-based learning and formative feedback. One deliverable exercise I have used involves asking students to find a legal concept and bring in a manifestation of it, such as a photo or drawing. When covering easements in Property Law, for example, students were asked to find an easement, take a picture of it, and bring that picture in to class, ready to explain why it is an easement and what kind it is.

Concept Mapping. Deliverables can overlap with the notion of concept mapping, where theory and conceptualization are mapped in a tangible medium such as paper, a computer screen or a photograph. One illustration in Property Law is to ask students to draw a concept, such as real covenants, to help ascertain the depth of their understanding — but also to unleash their creativity.

Note-taking Breaks. Note-taking is generally an essential tool for students. For such an important part of the student toolbox, the topic often goes without mention or notice throughout law school. It is assumed that students have note-taking competency. One way to find out is to make note-taking a class deliverable. One way to do this is to stop in the middle of class and asked students to review their notes for the two or three most important points advanced in the class thus far. Students are then asked to share these points with their neighbors. The collaboration provided the students with formative feedback and, at least for some, enhanced the accuracy of their notes — which otherwise might be inaccurate all the way to the exam.

c. Business School

Interviews. Business schools use raw facts in a way that appellate cases do not. Unlike appellate cases, the raw facts in business school cases are not neatly wrapped up. To promote the skills of gathering, organizing and arranging facts, students can be asked to do interviews of persons within the substantive domain. For example, in Criminal Procedure, I asked students to interview a police officer on such topics as body cameras, street encounters, and traffic stops. The students were asked to write a report detailing the most important points emerging from the interview. The reports illustrated their fact gathering, arranging and organizing skills, which we then discussed.

Student Management Groups. Business schools often change student roles in analyzing and resolving cases. A student management group changes student roles by giving them authority and accountability. It works like this. Students are asked about the course once or twice during the semester in self-selected voluntary teams outside of the classroom. The volunteer group can be asked in a neutral location (e.g., a different classroom or a commons area) what learning techniques should be started, stopped, or continued in the course. The ensuing discussion can delve into what students are learning in the course, what is working or not, and how a better learning environment can be achieved. Whatever happens in the groups can then be discussed in class, with the explanations providing students with some insight into the course — and that there might be a method to the professor's madness.

d. Physics

Pre-class Posts or Quizzes. The idea of pre-class assessment aligns nicely with flipping the classroom — asking students to engage in course work prior to the regularly scheduled class. These assessments, through on-line posts or quizzes on platforms such as TWEN and Blackboard, provide formative feedback to both teachers and students. Teachers can use the results to tweak and adapt class content, and can provide information gleaned from the pre-class assignment during the class to spark improvement in the students. This utility holds true for law school as well as physics.

CONCLUSION

The dominant signature pedagogy in law school — the Socratic method – does not need to be replaced. The current post-recession era of commoditized legal education, however, suggests that teaching critical thinking alone will not suffice; instead, a broader framework of thinking, acting and performing with integrity is appropriate. To meet the demands of this broader framework, signature pedagogies from other professions and learning domains could be adopted as a supplement.

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[1] See, e.g., Errol Morris, "The Certainty of Donald Rumsfeld: Part 4" NY Times Opinion (March 28, 2014)(also noting that this quote has components that can be traced back to 19th century poet John Keats and Civil War veteran John Wesley Powell).

[2] The Paper Chase (IMDb 1973). For illustrations of what thinking like a lawyer means, see generally Frederick Schauer, Thinking Like a Lawyer: A New Introduction to Legal Reasoning (2009).

[3] William M. Sullivan et al., Carnegie Found. For the Advancement of Teaching, Educating Lawyers: Preparation for the Profession of Law 13-14 (2007).

[4] Lee Schulman, "Signature Pedagogies In the Professions" *Daedalus* 135 (Summer 2005) ("If you wish to understand how professions develop as they do, study ….their forms of professional preparation.")

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Steven Friedland is a professor of law and senior scholar at Elon Law. He can be contacted at (336) 279-9224 or by email at sfriedland2@elon.edu.

SIX GUN JUSTICE

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IDEAS OF THE MONTH

http://lawteaching.org/ideas/

February 2015: Let Your Students Run the Class

March 2015: Student "Law Firms"

April 2015: Letting the Students Run the Review

May 2015: Making Explicit the Link between Briefing and Exam Writing

ARTICLES OF THE MONTH

http://lawteaching.org/articles/

February 2015: Kris Franklin, *Theory Saved my Life*, 8 N.Y. City L. Review. 599 (2005)

March 2015: Jeff Thaler, *Meeting Law Students' Experiential Needs in the Classroom: Building an Administrative Law Practicum Implementing the Revised ABA Standards* (2015)

April 2015: Linda Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. Legal Educ. 181 (2014)

May 2015: James B. Levy, *Teaching the Digital Caveman: Rethinking the Use of Classroom Technology in Law School*, 19 Chap. L. Rev. ___ (forthcoming 2015)