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Chilean law professors at the Assessment Methods Workshop in January 2015.

Co-Directors' Corner

Training and Conferences

Continuing its mission of enhancing legal education around the globe, in January the Institute hosted a two-week training workshop for a group of Chilean law professors from the Pontificia Universidad Católica de Chile. The six professors spent the first week at the UALR Bowen School of Law in Little Rock, where they attended workshops on teaching methods, observed classes, met with Bowen faculty, and prepared a micro-teaching demonstration as a capstone project. In addition to these workshop sessions, the professors toured the Central High School National Historic Site, visited the Clinton Presidential Library, toured the State Capitol and federal courthouse, and met for coffee with a federal magistrate judge.

The Chilean professors spent the second week of the workshop at Gonzaga Law School in Spokane, where they focused on assessment methods. They attended workshops on methods of formative and summative assessment, observed classes, met with Gonzaga faculty, and prepared a final presentation on an assessment project. To round out the week, they also attended a Gonzaga University basketball game, toured the Museum of Arts and Culture, viewed the falls of the Spokane River, had a private wine-tasting party at Barrister Winery, and spent an afternoon with federal judges viewing their courtrooms, chambers, and sitting

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in on a trial. It was a fantastic two-week visit for everyone involved, with lots of great exchanges on teaching and learning. And we enjoyed the added benefit of learning about Chile, where we are now dying to go so we can visit our new friends!

In addition to hosting the Chilean law professors, we've been deep in conference mode. Our spring conference, held at UCLA law school at the end of February, was a rousing success! (And with way better weather than any of our home institutions that weekend!) We're also incredibly excited about the summer conference at Gonzaga University. We spent February looking through all the fabulous proposals we received — it's going to be a wonderful event, and we hope you can join us.

Until then, good luck with the rest of your semester. Teach well.

Emily, Sandra, and Kelly

Synthesized Rules as Class Preparation: Teaching Synthesis Techniques While Ensuring Every Student Is Prepared for Class

By Hillary Burgess

One of the biggest complaints I have hear from fellow law professors is that students are under-prepared for class. Traditional methods of ensuring preparation, such as cold-calling, often create a game of chances. Students weigh the odds between coming unprepared for class and being called on.

However, my passion is not about teaching students who won't study. My passion is teaching students who will study, but may not know how to do so effectively. Too often, when

students, especially 1Ls, are under-prepared for class, it is because they don't know how to adequately prepare. To aid these students, I developed class preparation exercises. In this essay, first, I'll explain the struggles I faced that gave rise to this exercise. Then, I'll explain the exercise. Finally, I'll share my results and student feedback.

Students Coming Under-prepared to Class

At both my second and fourth tier schools, I found that many of my first year students spent hours preparing for class but were still under-prepared because they didn't know what it meant to prepare adequately. These students could become excellent, competent, and responsible attorneys. However, their prior education did not adequately prepare them for law school learning, especially the self-reflective aspects of that new challenge. I wanted to help these students realize their full potential.

Simultaneously, I realized that traditional doctrinal classes do not provide much opportunity to teach and test synthesis. The traditional Socratic method walks students through the pre-cursor steps to synthesis, but it often falls short of teaching the highest levels of synthesis. It is true that students must supply rule statements on exams. However, students have often pulled rules from outlining supplements, past exam model answers, horn books, or (gasp!) even Wikipedia. Thus, a good rule statement on an exam does not indicate the student can synthesize a rule objectively and persuasively without supplements.

Initially, I thought it would be enough to explain my class preparation expectations explicitly. When that didn't work, I demonstrated how I would prepare for class as a student. Yet, hard-working students were still under-prepared for my class. My mother's words haunted me: "your students will start learning when you stop speaking."[1] So, I knew that continuing the show and tell teaching method would not be effective.

I also felt strongly that, if students had to turn in a class preparation assignment, the assignment needed to help them meaningfully prepare for both class and exams. Case briefs might help students prepare for class, but they would not help students see the "big picture" or prepare for the exam. Moreover, struggling students would not be able to produce a quality brief. Even if I provided feedback on the briefs (a time consuming process, to be sure), the briefs would still only help students learn to read and understand individual cases, not synthesize a rule of law.

I needed to find a tool that would require students to think deeply about the reading, improve their synthesis and analysis skills, and not feel like busy work.

Initial Class Preparation Exercises: Progress Short of Goals

Initially, I decided to ask students to come to class with a synthesized rule of law. Yes, students synthesized the rule before I taught the material. In class, I would cold call on a

student and we would display that student's synthesized rule. We would then engage in the traditional Socratic questioning about the cases to correct and deepen the rule.

I noticed a significant increase and improvement in students' level of preparation. However, this method did not help students learn how to synthesize better than the traditional Socratic method. Too often, I was likely to get a copy and paste from, at best, a credible source. Thus, I still was not testing the students' ability to synthesize. There had to be a better way.

Oops! Teaching Synthesis First

When I started writing synthesis section of the *Taxonomy of Cognitive Legal Learning Objectives and Outcome Measurements* (manuscript in process), I realized that I never provided a concrete definition of synthesis. As so many of us do, I would often tell my students, "how to synthesize a case depends on the context." By putting myself it the student's shoes, I realized that calling many various techniques by an umbrella term was, at best, confusing.

As a remedy, I wrote a brief handout explaining what synthesis meant. For example, a single case could be used to gather background rules, narrow holdings, or broad principles. Synthesizing rules can apply to a single case or multiple cases and can be done objectively or persuasively. Finally, I identified that "synthesis" includes many sub-tasks like expanding, contracting, generalizing, creating exceptions, and overruling.

While this explicit explanation was important, this strategy brought me back to a *show and tell* model of instruction. And, again, my mother would remind me that students will only start learning when I stop talking.

Finally: A Solution

I modified the class preparation quizzes to guide students through synthesis tasks.

First students needed to identify the background rules, the narrow holding, and the broad holding from each case. Then, students had to synthesize the first two cases using every individual synthesis tool, regardless of whether it was appropriate. For example, the quiz directed students to provide a synthesized rule assuming the second case expanded the first case. In the next question, the quiz directed students to provide a synthesized rule assuming the second case created an exception to the first case. In the next question, the quiz directed students to provide a synthesized rule assuming the second case overruled the first case. And so the quiz continued, running through each of the synthesis tools. Finally, students had to choose the rule they thought was the most objectively reasonable rule and explain why.

The quiz repeated these questions for the third case. If there were more than three cases, the quiz simply asked for a final synthesized rule, to keep the time manageable.

After the first three units, I only asked students to provide an objective synthesized rule because students had internalized the process.

Logistics: Paperwork and Grading

The logistics were fairly easy. I had ten quizzes over the semester. Combined, the quizzes were worth 5% of the student's grade.

My TA "graded" the quizzes holistically. Solid and accurate, yet imperfect, quiz answers earned full credit. Good faith quiz answers earned 60% of the points. Bare-bones or horribly off-track quiz answers earned 20% of the points to ensure there was incentive to not skip the quiz. I reviewed all answers that did not earn full credit. Each week, I spent about 15 minutes grading.

The TA also provided group feedback via an examiner's report.

Results

The class preparation quiz forced all students to read the cases and think about them at a deeper level. They couldn't "play the odds" because every student had to turn in a quiz.

Because students had to use specific synthesis tools, there was no way for students to copy and paste a rule from a secondary source. Thus, all students had to prepare for class.

Student questions in class tended to be much higher quality as well. Often times, students' initial questions were the very ones I had asked in prior semesters.

The number of students participating increased. The quizzes tended to give even struggling students confidence that they were engaging in the same preparation as their classmates. Of course, there were still some students who would never ever volunteer in any class, but these quizzes can't change human nature.

I was able to identify students who were struggling in the first two weeks of the semester. Both I and my teaching partners, the academic success department, were able to intervene early and often.

Feedback from Students

The feedback from many students was extremely positive. Students thanked me in emails because the quizzes guided them through professor expectations, students were able to get more out of class than they had previously, and students successfully used the same technique in other classes.

The top students appreciated the exercises because the class could move faster. Many mid-range students and probationers appreciated the explicit, guided learning.

Not all students loved the exercises though. Students who wanted to do the minimal amount of work possible didn't like these exercises because there was no way to come unprepared to class. These students were vocal on my student evaluations. However, I don't teach for these students. I teach for students who want to succeed and are willing to work hard to do so.

Spin-Off Ideas

When I taught an upper level class, I anticipated that students would be able to synthesize the rule without issue. Thus, I had my 2Ls and 3Ls provide rule explanations to help them improve this practice-ready skill. The quizzes had similar results in terms of the level of participation, but more students resented the extra class preparation because they felt they had mastered the skill already.

In sum, this exercise proved to be a positive experience for me, overall. Other than a few students complaining (loudly, of course), there were not many downsides to the exercise. Students were more prepared for class, I was able to teach at a higher level, and the level of preparation created time for writing and practice-ready exercises in class.

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[1] My mother was dean of a nursing program for many, many years. I owe a lot of my interest in teaching and andragogical research to her.

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Students at the Front of the Classroom

By Emily Grant

Historically, law schools have employed a very teacher-centered classroom, assuming that education flows in one direction: from teacher to student. Teachers have the authority to determine what is covered, how the material is presented, and how learning is evaluated. Additionally — and phrased in the most negative light — students are presumed to be unqualified to add anything to the learning process. Although at times effective, this approach results in an extremely limited type of learning.

As part of the tenure-review process at Washburn University, tenured faculty observe classes taught by non-tenured faculty members. The day two faculty members visited my class, I happened to be doing a ten-minute segment where three to four students present a Bluebook lesson to the class. Later, one observer remarked that the Bluebook segment was the best part of my class. At first, I worried. "Did this observer really think the best part of my class was when I was not teaching?" After a bit of reflection, I realized

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this was not a criticism, but a compliment on my use of an interactive teaching method: peer teaching.

Abundant research and commentaries exist on the value of learning techniques beyond straight teacher-lecture format: group work, simulation exercises, flipped classrooms, and others. Peer teaching, though less heralded, can similarly improve classroom effectiveness as an aid to collaborative learning.

"Peer teaching" for purposes of this essay does not refer to small self-directed study groups, where students meet to review class notes or share outlines; nor does it refer to the process students undertake to edit each other's papers. It does not mean breaking a class into groups and then having a group report back to the whole class, or even the student-to-student teaching that occurs within a group for a particular project or classroom discussion. Instead, this essay describes peer teaching that involves a student or group of students at the front of the classroom teaching a lesson to the rest of the class. The students doing the teaching may be students in the class or even upper-level students who are invited to teach a particular lesson.

The remainder of this essay will discuss the costs of peer teaching, the benefits of peer teaching, how to create a peer-teaching assignment, and how to implement the assignment.

A. Costs of Peer Teaching

As with any innovative teaching method, there are costs associated with peer teaching. First, the professor is required to surrender control of the classroom. Some may feel this hampers the role of the professor and that the professor loses the chance to establish herself in the classroom before turning it over to students. However, aside from allocating class time, peer teaching does not require the professor to become a passive figure; the professor still has a role in assisting the student teachers outside of class and closely supervising the content of the students' lessons.

Additionally, implementing peer teaching is time consuming on various levels. The professor must give up class time that could be used to cover other material. Moreover, to ensure success, the professor will likely need to spend time outside of the classroom with students to prepare them for the lessons they will teach. Assignments must be carefully crafted and students need to be adequately prepared so that they do not present inaccurate information to the class. Any inaccuracies can of course be corrected

on the spot in class, but that can be awkward for everyone involved.

Lastly, some students will view the peer-taught lessons as a waste of time. However, this misperception is sometimes the result of students feeling that the subject matter being taught is itself a waste of time. Therefore, as always, the professor must reinforce the necessity of whatever lesson the students are teaching and must make clear to the students the sometimes hidden value of peer teaching. Additionally, students will want to be reassured that the instruction comes from the expert and not just their peers; to that end, professors should also reinforce the substance of what has been taught so that students hear it from the expert as well.

B. Benefits of Peer Teaching

Keeping those costs in mind, there are tremendous benefits to peer teaching for professors, for the student teachers, and for all of the students in the classroom. The most obvious benefit is that the student teachers learn the material deeper than they otherwise would, because to understand material well enough to teach it, students must research and study more than if only learning material for their own benefit. This cognitive process of reviewing material, becoming familiar with it, and organizing it to present to an audience results in more complete learning. It requires students to be actively engaged with the material; they have to think about material, rehearse how to explain it, say it out loud. Not only do the students become more familiar with the material, but the process of reviewing it for teaching shifts the information from short-term to long-term memory.

Second, students, as new learners of an idea, may actually be able to explain it better than professors. Sometimes, professors' knowledge or mastery of a particular topic is so advanced that their explanation of that topic may skip important steps. Professors may unconsciously omit information or procedural steps needed for complete understanding by less-experienced learners. Students, however, as they are reviewing the material, can easily identify which concepts or skills are likely to cause confusion for other students because the students can recall their more recent struggles with the material.

Third, peer teaching gives students a shared responsibility for the community of the classroom and ultimately, students and professors alike will gain insight into the most effective way to communicate information. Students become more aware of what the teacher experiences. In turn, the teacher becomes more aware of how classroom conversation feels from the perspective of an audience member. The students may even come to realize that whoever is at the front of the classroom can tell when a student is texting or perusing Facebook. As a result, students may be more likely to participate in subsequent class discussions.

Fourth, peer teaching contributes to the goals of humanizing legal education. It builds

confidence in the students. It allows the student to know that the professor believes in the student and trusts the student enough to share important material with the class. Additionally, peer teaching provides an opportunity for those reluctant to speak during a class discussion to contribute after advance preparation time, as opposed to being cold-called in class. It engenders a cooperative spirit among the class, and it helps students learn to empathize with others. And to the extent that students are working in groups, the activity encourages students to work together for a common goal and to practice communication skills, both of which are vital to law practice.

Finally, it gives the professor a chance to better know the students. It allows the students an opportunity to be creative and the professor to gain an understanding of the students' differing personalities. The professor gains a unique insight by watching what students come up with and how the students interact with each other. Similarly, this allows the students to get to know their classmates and to develop trust, which may in turn encourage greater class participation.

C. Creating a Peer Teaching Assignment

1. Find the right topic.

Professors will be on a spectrum with the topics they are comfortable assigning to students. At one end of the spectrum lies the professor who may only want students to provide a summation or review of the prior class. This works well in a casebook course where a student is assigned to be the scribe in one class, and then at the start of the next class, present a summation of the previous class. These students will not really present anything new, but will re-teach or at least repeat the prior class discussion. Similarly, a student might walk the class through a practice problem designed to expand upon material the professor previously taught. This exercise allows the professor to retain control of the presentation of new material while entrusting the student to demonstrate the proper application of this newly learned information.

Professors comfortable assigning students to present new material should identify material that is fairly straightforward, highly structured, and for which numerous resources exist to provide examples. Legal citation, for example, is an often-used subject; peer teaching can be an innovative way to teach what many agree is a cumbersome--if not boring--topic. Grammar and writing style may also work well as topics for peer teaching; although writing style can be a bit complex, it is certainly workable if narrowed to a specific topic. Areas of legal research, specifically how to use a particular secondary source such as West's American Jurisprudence or American Law Reports, are also topics that adapt well to peer teaching.

Although procedural or technical topics work well for peer teaching, substantive topics that relate to the students' legal analysis can also be used. In a transactional

drafting class, the professor might assign students to research particular clauses in a contract and then have the students present their research to the entire class. In a casebook course, students could teach a particular case to the class. In a legal writing class, after the students have had a chance to research their assignment, the professor might request individual students present to the class a particular part of the analysis or rule the student has learned. Without being too specific, this ensures that everyone is on the same page and understands what is required before the writing process begins in earnest.

If a professor plans to require each student in the class to teach a lesson, a recurring topic such as citation or grammar works best to ensure each student has the same basic responsibility. That does not mean, however, that nonrecurring topics are off limits. These topics provide the opportunity to invite a teaching assistant or former student who did well in the class to provide the lesson. A student who has demonstrated an interest in a future teaching career would make a good choice. And importantly, if a professor plans to test the students on a particular subject, it is best the professor maintain responsibility for teaching that material. This allows the professor to ensure the students are receiving the specific information the students may later see on an exam.

2. Decide on the mechanics of the peer teaching.

The mechanics of the assignment are directly linked to the topic selected. For example, if a professor plans for students to teach a short five- or ten-minute lesson, the topic selected must be able to be covered in that timeframe.

Choice of topic and allocation of time will also be influenced by whether the peer teaching will be voluntary or required of all students. If every student will teach a lesson, there may not be enough time or material for every student to teach a case to the class. Permitting the students to present in groups or even in pairs may reduce class time needed for the exercise and may also take some pressure off the students. This, like each logistical decision, depends on the individual professor's goals for the exercise.

Naturally, many of the students will become preoccupied with whether the teaching exercise will be graded. Again, how to handle this concern is a decision for the individual professor. Some may prefer to provide a grading rubric centered on the expectations the professor has explained to the class. Some may choose to make the exercise part of the participation grade. Some may wish not to grade the exercise at all. Graded or not, the professor might chose to allow other members of the class to evaluate the presentations. This keeps everyone involved and perhaps provides an added incentive for the peer teachers to put forth their best effort.

3. Make the assignment fun.

Lastly, and maybe most importantly, make it fun. Law students tend to have good energy and imagination. They are particularly creative and clever, but like anything else, sometimes things just flop. Therefore, when planning the peer teaching exercise, the professor should consider the personality of the class. Some classes tend to be more inventive and resourceful. Others may be more introverted and unimaginative. Thus two different classes, when tasked with the same exact peer teaching assignment, may produce completely different results. The inventive students may use props, costumes, and active learning techniques. The other class might only provide photocopied handouts, leaving the students to work in silence.

To ensure the professor understands the personality of the class, it might be helpful to begin the exercise later in the semester, after the professor has had an opportunity to get to know the students better. It is also helpful to pick the energetic, well-liked, and funny students who the professor believes will do a good job to go first and set the bar just a little higher than it might otherwise be set. Ideally, the students that follow will feel obligated to meet if not surpass this benchmark. If the professor has enough time, showing the students a model presentation by assigning a teaching assistant or bringing in a former student to provide the first lesson may also help to ensure a higher standard is set. Lastly, competition is always a good motivator. It may be tougher to implement over the course of a full semester, but a competition between the students encourages them to do their best.

D. Implementing the Assignment

Now that the benefits of peer teaching are clear, a topic has been selected, and any logistical concerns have been addressed, professors should consider the following to ensure the experience is positive for the peer teacher, the rest of the class, and the professor. First, explain to the students the reason for the exercise. Take the time to explain why, from an academic standpoint, peer teaching is important. Explain what it is that they will be learning and how peer teaching allows them to learn the material better and to practice public speaking skills. This provides the student a basis from which to learn the material and dissuades them from feeling that the professor is abdicating her teaching responsibilities.

Next, when preparing the students for the teaching experience, some may discuss basic teaching principles, while others focus on the importance of public speaking and suggestions for effective presentation. It is also helpful to provide the students with additional resources where they can learn more about the topic they will present or find helpful examples to use in class. Whatever direction the professor chooses, it is critical that the instructions given to the students are explicit and as detailed as possible. The professor should be specific in what she expects to see: A lesson plan? The incorporation

of active learning techniques? An overview of the topic or a detailed explanation complete with examples?

Lastly, review the students' plans in advance at the very least to ensure the information the student will present is accurate. This also provides the professor an opportunity to offer suggestions to make the presentation more effective. Although these processes may require a bit more of the professor's time, these simple steps will ensure the peer teaching experience is beneficial to all.

By implementing the peer teaching methods discussed here, law professors have the ability to harness the collaborative learning energy their students possess. And in turn, they may tap into the sentiment expressed by Kenneth Bruffee, an early proponent of collaborative teaching techniques: "[T]he fact [is] people have always learned from their peers and doggedly persist in doing so whether we professional teachers and educators take a hand in it or not."[1]

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[1] Kenneth A. Bruffee, *Collaborative Learning and the "Conversation of Mankind"*, 46 C. ENG. 635, 647 (1984).

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The Globalization of Legal Education: Role of U.S. Law Teaching in Asian Legal Reform

By Rosa Kim

Introduction

In the past decade, there has been an international trend towards legal education reform, most notably in Asian countries.[1] Legal education reform is but a component of judicial reform in a broader sense, but one that has led the way for other movement towards democratization in these countries. The anticipated benefits of legal education reform are clearly defined: better-trained lawyers in an ever-globalizing world, production of more lawyers to provide services to citizens, and integration into a U.S.-dominated world economy. On the other hand, there are significant challenges on the economic, cultural and pedagogical fronts posed by adopting an education model that is fundamentally different from the systems already in place. To understand these challenges, it is helpful to identify a shared theme of legal education reform in Asia.

Legal education reform in some Asian countries has followed a common process.[2] As law grows in importance as a tool of economic progress and globalization, the country is led to re-evaluate the legal profession's capacity to support such progress.[3] In turn, a demand for improved legal education grows, and reform towards a U.S.-style model is instituted.[4] That the U.S. model has become aspirational for some Asian countries makes sense in light of U.S. dominance in the world economy, and the fact that the driving force in social change in these countries tends to be economic.

For U.S. law teachers, the challenges faced by Asian countries in adopting a U.S.-style system raise the question of what, if any, role U.S. law teaching and education should play in this global phenomenon. The link between legal reform in Asia and U.S. law teaching is stronger than it may seem at first glance. First, some countries are adopting the U.S. model of legal education, i.e., undergraduate degree, three-year graduate program, bar exam, and thus are replicating or emulating the model of teaching that occurs at U.S. law schools.[5] This process is especially interesting when considered in the context that U.S. law schools are in the midst of re-evaluating their own efficacy and rethinking their curricular priorities. Second, the trend of Asian lawyers and students seeking law degrees, particularly the LL.M., in the U.S. has grown and remains strong. This trend is a function of both the perceived benefit of getting the degree from the perspective of the Asian student or employer who is footing the bill, and the benefit to the law schools offering the programs in creating a more globalized student body, not to mention the much-needed tuition dollars. Lawyers armed with LL.M. degrees from U.S. law schools are also bringing their exposure to U.S. style of law teaching to their domestic legal community.

Given the globalizing trend in legal education, it is important to understand and acknowledge the multi-faceted relationship between U.S. law teaching and Asian legal reform. Legal education reform in South Korea presents an excellent case study of this relationship.

Case of South Korea

South Korea's recent experience with legal education reform on a grand scale presents a case study of the common theme of Asian legal reform described in the Introduction. In 2007, Korea instituted legislation that transformed its legal education system in dramatic fashion. Prior to the reform, legal education in Korea consisted of an undergraduate degree in law, cram school, the National Bar Exam yielding a single digit pass rate, and for the tiny percentage of bar passers, two years of government-sponsored training. A quota system tightly controlled the number of passers and consequently kept the profession small, insular and elitist. However, Korea's quickly modernizing and globalizing economy created a need for well-trained lawyers who could compete on an international scale. Westernization of Korean society also meant that the need

for domestic legal services grew. After decades of debate about legal education reform, the Korean government instituted legislation that would change the system to meet this growing demand and begin to close the perceived gap in Korea's ability to compete internationally.

The new legal education system consists of an undergraduate degree, a law school entrance exam, much like the LSAT, three years of graduate law school, and a new bar exam yielding a pass rate of 80%. The legislation mandates a diversified curriculum including international law and skills-based courses, more faculty with practice experience, and attention to ethics and professionalism. The stated mission of the legislation is to create more professional and skilled law practitioners and to provide improved and broader legal services to the public. The specific mandates of the legislation make clear that the way to reach these goals is essentially to emulate the existing U.S. curriculum and focus. Thus, the new law schools in Korea in many ways reflect the resolve to instill skills and qualities of lawyering enunciated by the Carnegie and MacCrate reports.[6] This major shift in legal education in Korea towards a U.S.-style model exemplifies the pervasive influence of the U.S. on global trends in the law, particularly those countries that seek to compete effectively in the international marketplace.

U.S. Influence on Globalization of Legal Education

While debate about the future of U.S law curricula and legal education structure continues to rage among the legal academy and interested media, the fact remains that the U.S. style of legal education and training is still the "gold standard" that some countries, particularly in Asia, aspire to.[7] This fact, coupled with the dominance of English in international transactions, has propelled a broad interest among law students and lawyers in other countries to come to the U.S. for legal studies, to earn both J.D. and LL.M. degrees. On the part of the U.S. law schools, foreign students seeking LL.M. degrees, in particular, help promote their global branding and at the same time represent an importance source of tuition revenue. By creating more programs and opportunities for foreign law students to earn degrees, U.S. law schools are encouraging foreigners to be exposed to the U.S. law culture and are in effect driving the globalization of legal services.[8]

The exposure to U.S. law and legal culture afforded by the popularity of studying at U.S. law schools has arguably been one of the influential factors for legal education reform. Thus it would be reasonable to theorize that foreign lawyers who gain the experience of being students in a U.S. law classroom and earn a U.S. law degree, return home with an understanding of the U.S. legal culture that in turn informs and influences their professional outlook. Since the 1990s, U.S. law schools have steadily expanded their offering of foreign LL.M. programs. The presence of U.S. lawyers and law professors

visiting and teaching at Asian law schools also contributes to this exposure to U.S.-style law teaching. The pattern of foreign exposure to U.S. legal education is a direct channel by which U.S. law educators are communicating their knowledge and values to a foreign audience. It therefore raises some important questions for U.S. law teachers and administrators as to their role in shaping the evolving global legal education system and culture.

In light of the pervasive ways in which U.S. law and legal education system are influencing legal education reform in Asian countries, U.S. law teachers are already participating, consciously or not, in that process. While legal education reform in Korea, for instance, did not simply result from a desire to import the U.S. model, the "interdependency of knowledge flows" between the U.S. and Korea has helped shape the reform.[9] Given the global interest and increasing participation in U.S. legal education, it seems incumbent on U.S. law teachers to consider some important questions:

- What role *should* U.S. law teachers play in shaping legal education in other countries?
- Do we have a responsibility to factor in the impact of our teaching on the global community, whether directly to foreign students in the classroom, or indirectly by participating in the system that is being emulated?
- Should there be a reciprocal interest and investment in learning about law in other countries and systems? Should U.S. law schools require a more globalized curriculum?

While there are sure to be major differences among U.S. law teachers on the answers to these questions, we should all be in agreement that they are issues worth exploring. Recognizing the link between the shift in legal education systems around the world and the ongoing discussion of curricular and institutional reform of law schools in the U.S. will be critical to this process. Considering the impact of our teaching on an international scale should inspire us to "think globally" even while we "teach locally."

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[1] The list of countries that have undertaken partial or full reform includes Korea, Japan, Hong Kong, Taiwan, Philippines, Singapore, Vietnam, Cambodia, China, Indonesia, and Australia. Legal education reform in these countries has taken various forms, but most have incorporated aspects of the U.S. model.

[2] *See* Veronica Taylor, *Legal Education as Development*, in Legal Education in Asia: Globalization, Change and Contexts 215-40, 218 (Stacey Steele and Kathryn Taylor, eds., 2011).

[3] *Id.*

[4] *Id.*

[5] Japan and Korea are the most notable examples. Japan enacted its legislation in 2004, three years before Korea, allowing Korea to learn some lessons from Japan's experience.

[6] *See* Rosa Kim, *The "Americanization" of Legal Education in South Korea: Challenges and Opportunities*, 38 Brook. J. Int'l L. 49, 69-74 (2012) (discussing the application of best practices for law teaching to the new Korean law school curriculum). The success of Korea's new system will depend, in large part, on how well Korea adapts U.S. best practices to the particulars of the Korean legal culture.

[7] *See* Robert J. Rhee, *On Legal Education and Reform: One View Formed from Diverse Perspectives*, 70 Md. L. Rev. 310, 314 (2011).

[8] *See*, e.g., Carole Silver, *Book Review*, 61 J. Legal Educ. 691 (2012) (reviewing Stacy Steele and Kathryn Taylor eds., *Legal Education in Asia: Globalization, Change and Contexts* (2011)).

[9] *See* Taylor, *supra* note 3, at 216.

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Blended Teaching: An Experience and Practical Suggestions

By Aryan Kushan

I. Background & Introduction

I taught a two-credit course called "Social Media and the Law" during the 2014 summer semester at American University Washington College of Law (WCL) and it covered various legal topics that are impacted by social media (First Amendment, Fourth Amendment, Intellectual Property, Ethics, Defamation, Employment Law).

It was offered in a blended format using the online learning management system ("LMS") Desire2Learn ("D2L"). The course met one night a week for nine weeks, six of which were conducted live online via Adobe Connect (through D2L) and three were in-person. Fourteen students were enrolled in the course.

Each class was two hours and fifty minutes long. The participation grade was based on the submission of two reaction papers per student via the course blog and active participation via the course discussion board. The majority of the grade (75%) was a fifteen-page paper based on student topic choice.

II. Online & Technology Experience

D2L incorporates many features of a LMS, including the ability to post a syllabus or reading materials, a course calendar, a roster (including the option to upload photos), discussion forums, email capabilities, a drop box, and a blog. It is only accessible to students enrolled in the course and designated guest lecturers. The Adobe Connect online lecture is accessible via the course site. It does allow for the recording of the lecture.

We met in-person at WCL for the first class and attendance with a laptop was required. The laptops needed to have a working camera and microphone. WCL's Director of Online Education attended the first hour and conducted a hands-on training of D2L and Adobe Connect.

Between the first and second class, students were asked to log into Adobe Connect to ensure their system was working properly. The Online Education Program, D2L, and Adobe Connect have support emails in case the students have issues.

A few problems arose during the semester and they were very minor. One was a security feature of their internet browsers and another involved connectivity issues, specifically during storms. The students' abilities to connect to the online lectures were disrupted, but in my opinion, it was no different than a weather delay or cancellation of a traditional law school course.

Adobe Connect allows for all users to connect their cameras and microphones. It prevents everyone from speaking over each other and only allows one person to speak at a time. The system stacks the cameras on one side, where we can all see each other and the other side displays my PowerPoint presentation, analogous to an in-class session. As the instructor, I have the ability to monitor the participation. Students quickly picked up the "hand raising" feature to request to talk, which is similar to an in-class session. There is also a chat feature, where students can add ancillary comments or post links to relevant articles. Additionally, Adobe Connect allows me to share my screen or give a student the ability to share his/her screen.

III. Online Experience for the Students

This section is based on conversations I had with my students and also their responses to the online evaluation. Several students were skeptical of the online offering but found it exceeded their expectations. Many expected there to be some glitches but found that these were minor inconveniences and were complimentary of the quick help. The students were quick to participate and use the features of the system.

The online function gave students the option to work during the day in D.C. or work in another city during the summer while taking my class. It also provided them with

flexibility to travel and set aside three hours to participate from a remote location. Two students had family emergencies in which they had to leave D.C. but they did not miss the lecture because they could connect from their location.

Overall, the students' critiques were few and spoke more of some technical issues that we all had to experience as a whole, as this was a new experience for most. I believe the technical glitches did not take away from the lecture and online experience and Adobe has recently upgraded their software to correct these issues.

IV. Pedagogy Used

I included an element of participation in the course grade, and that element was based on student activity in the course discussion forum. Each student posted at least one new topic and there was a good amount of participation, though I would have liked more.

I also required the students to write two reaction papers equal to one page based on two separate weekly assignments. This also factored into the participation grade. The blogs were very well written and included their thoughts of the readings as well as how the law could be affected by social media trends and technology in the future. They were due by 12 p.m. on the day of the lecture, which gave me time to read them, and those students were on call to lead the discussion for the lecture. I did not require students to respond to the blog posts, but I would like to find a way to require this in the future as I believe it will encourage more participation during the lecture.

In the future, I would like to incorporate the use of a blog that is accessible to the world. The students would post their reaction papers and also post commentary on relevant issues that arise during the semester. This would be for three reasons: 1) allow students the ability to post their thoughts and analysis, 2) encourage discussion with the legal community, 3) give students practical knowledge of how to effectively write blog posts and maintain a blog. I would also like to use a Twitter account to publicize the blog and their posts.

Further, I would like to incorporate practical ethical exercises as I found the Ethics lecture to be the most engaging. During that lecture, we covered attorney Groupon "Deals-of-the-day" and reviewed one that a student found. We critiqued the advertisement and I had the students identify the ethical issues. I would like to incorporate an exercise where students create their own "Deals-of-the-day" based on ethical rules and guidelines. Additionally, we reviewed issues with LinkedIn, Facebook, and Twitter. In the future, I would like to either have someone from our Office of Career & Professional Development critique the students LinkedIn profiles, particularly in areas that may be impacted by ethics rules and guidelines.

V. Suggested Online Education Guidelines

This area will include suggested guidelines for online/blended courses.

A. Class enrollment size.

Due to the limitations of Adobe Connect, it is my recommendation that online courses that incorporate a live online lecture not exceed fourteen students. The reason is that the participants' cameras, including the professor's, are stacked in a small area of the screen and any more than fourteen would cause the screens to be too small and tough to view the students. The professor would be unable to see the students' reactions or faces indicating they have a thought, are bored, or are confused. Other software may provide better integration for larger enrollment.

B. Participation. I would suggest that professors require that all students not designated as on-call to be expected to answer at least one question. The reason is that it is easy for a student to blame computer problems, such as camera or microphone issues, as an excuse to not participate. Thus, a student could log into the session but not be present at the computer. Requiring them to answer a question would ensure that they are present for the lecture. Of course, an exemption could be granted if a student can provide documentation that their computer was in fact experiencing technical issues. Other software similar to Adobe Connect has a "check-in" feature which requires the participant to click on a box that pops-up throughout the session and that logs their participation.

C. Computer configuration. All courses should require a mandatory meeting, whether before the first class, or at the first class if it meets in-person, to conduct training on the software.

VI. Overall Experience

Overall, my experience was very favorable and enjoyable and I found it no different than an in-person class. D2L and Adobe Connect were easy to use and easy to navigate. The technology gives professors the ability to experiment and offer supplemental ways to enhance the course. Most importantly, online/blended courses give students the ability to work, intern, or extern during their law school tenure. It does not replace the traditional law school classroom; rather, it is a compliment that allows time for the students to gain valuable professional and practical experience outside of the classroom.

Aryan Kushan is the Office of Technology Training Manager and an adjunct professor at American University Washington College of Law. He can be reached at akushan@wcl.american.edu.

INSTITUTE SUMMER CONFERENCE 2015

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

Experiential Learning Across The Curriculum

JUNE 13-14, 2015 - SPOKANE, WASH.

The Institute for Law Teaching and Learning is pleased to invite you to our Summer 2015 conference hosted by Gonzaga University School of Law. The conference will focus on 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 conference will include presentations on 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. Workshops will address incorporating experiential learning in doctrinal, clinical, externship, writing, seminar, hybrid, and interdisciplinary courses.

- continued -

INSTITUTE SUMMER CONFERENCE 2015

http://lawteaching.org/conferences/2015/

CONFERENCE SCHEDULE:

All Sessions will take place at Gonzaga University School of Law.

FRIDAY, JUNE 12, 5:00 - 7:00 PM

Welcome reception at Barrister Winery
www.barristerwinery.com

SATURDAY, JUNE 13

8:00-8:30 a.m.	Registration and Breakfast
8:30-9:00 a.m.	Opening and Welcome
9:00-10:15 a.m.	Workshop Session 1
10:15-10:45 a.m.	Break
10:45-12:00 p.m.	Workshop Session 2
12:00-1:15 p.m.	Lunch (provided)
1:15-2:30 p.m.	Workshop Session 3
2:30-3:00 p.m.	Break
3:00-4:15 p.m.	Workshop Session 4
4:15 p.m.	Adjourn

SUNDAY, JUNE 14

8:30-9:00 a.m.	Breakfast
9:00-9:30 a.m.	Re-opening
9:30-10:45 a.m.	Workshop Session 5
10:45-11:15 a.m.	Break
11:15-12:30 p.m.	Workshop Session 6
12:30-1:45 p.m.	Lunch
1:45-3:15 p.m.	Workshop Session 7
3:15-3:30 p.m.	Break
3:30-4:00 p.m.	Closing
4:00 p.m.	Adjourn

FOR MORE INFORMATION, PLEASE CONTACT:

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

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

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

REGISTRATION:

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.

TRAVEL AND LODGING:

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
Tel: (509) 455-8888
Standard rooms starting at $155

Hotel Lusso (owned by Davenport)
800.899.1482
Standard rooms starting at $125

Fairfield Inn & Suites, Marriott
311 N. Riverpoint Boulevard, Spokane, WA 99202
Tel: (509) 747-9131
Standard rooms starting at $99
Contact is Paul Swavely

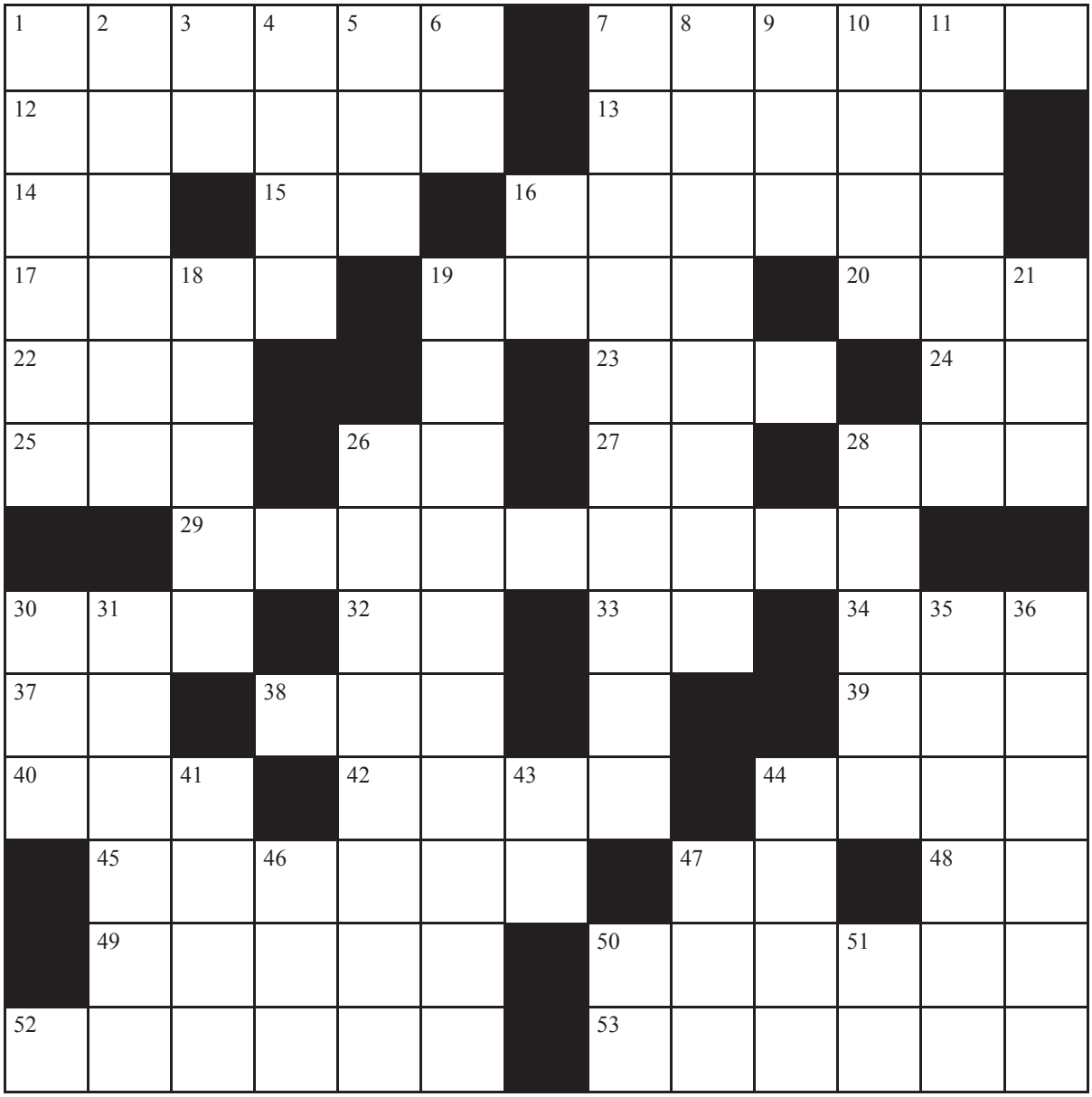
Oxford Suites
115 W. North River Drive, Spokane, WA 99201
Tel: (509) 353-9000
Standard rooms starting at $99

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

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

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

LEGAL EASE



(c) 1997 Ashley S. Lipson, Esq.

(See answers on page 33.)

LEGAL EASE

- ACROSS -

1. What a southern lawyer says when he completes his prima facie case
7. Exhibitionist or member of the Unification Church, take your pick.
12. Big brother.
13. King who was punished by Zeus for loving Hera.
14. Time loan (Abbr).
15. Comparative.
16. Place for lawyers forced to park in downtown Los Angeles.
17. International Investment Survey Act (Abbr).
19. Army-police in the evening (Two abbrs).
20. Capture.
22. Office of Economic Opportunity (Abbr).
23. Commit theft.
24. Thank you (British slang).
25. National Football Conference (Abbr).
26. Standard reaction to a bad performance.
27. Infernal (sic) revenue (Abbr).
28. Played killer in the courtroom classic "Anatomy of a Murder."
29. At common law, attributing unchastity to a single woman, incompetence to a professional, or a _ _ _ _ _ _ _ _ _ disease to anyone, constituted slander per se.
30. The number of federal circuit courts handling patent appeals.
32. Left hand (Abbr).
33. Not excluded from participating.
34. Group devoted to protecting our right to keep and bear AK-47's, rocket launchers, and other sporting goods (Abbr).
37. Lead (Chem. symbol).
38. Embezzle from the office till.
39. Abbreviated prefix for federal court of appeals cases.
40. Statute.
42. Demeanor.
44. Shipment (Abbr).
45. Food-conducting tissue of a plant.
47. Boolean operator (Abbr).
48. Owner/Operator (Abbr).
49. White escape vehicle (Use the abbreviated fast-getaway version).
50. One of four schools of Islamic law.
52. City in the Western Russian Federation.
53. Memos of law that are never quite what the term suggests.

LEGAL EASE

- DOWN -

1. Term for "lawsuit" designed to give the impression that something is going to happen within the next several years.
2. Depending upon the backlog, Rolaids may deliver it quicker.
3. She's trained to help cover the doctor's mistakes (Abbr).
4. Economic Stabilization Act Amendments (Abbr).
5. Soap pad that signals distress.
6. Trustee (Abbr).
7. When the jail official took the wrong turn on the wrong road.
8. Self-contradictory, like "speedy trial."
9. Had a large impact on the developing law of Texas and Louisiana.
10. Class of words.
11. Confined person.
16. Antipersonnel (Abbr).
18. Base of a pedestal.
19. Lawyer.
21. Forbid.
26. Cost of living together.
28. Judge's chair.
30. Office of Price Administration (Abbr).
31. Network delivering dribble (Abbr) and network delivering education (Abbr).
35. Official term for fraud.
36. Former province in Northern France, known for its water.
41. In one end and out the other (Archaic).
43. Prefix meaning to cover or surround.
44. Combining form meaning "sound."
46. Laughing out loud (E-Mail Computerese).
47. A place to get drunk or become a lawyer.
50. Halfback (Abbr).
51. Helped define the laws of the universe (Initials).

A Message from Your Body: Dream the Answer

By Jalae Ulicki

> So, you are sitting in class and listening to the professor's lecture and pretty soon the professor's voice starts droning on and on and you find yourself nodding off…your brain activity has started slowing down and you find your body muscles relaxing. As the class disappears around you, you have now entered the first stage of sleep from which you can easily be awakened. Suddenly, you hear your name being called by the professor and you jerk wide awake (called a myclonic jerk) and you ask the professor, "Could you please repeat the question?"

As law professors, we have heard "Could you please repeat the question?" umpteen times but many of us have little or no knowledge about the role that sleep plays in memory retention for our students or the effect that the characteristics of the surrounding environment have on recollection and retrieval of stored memories.

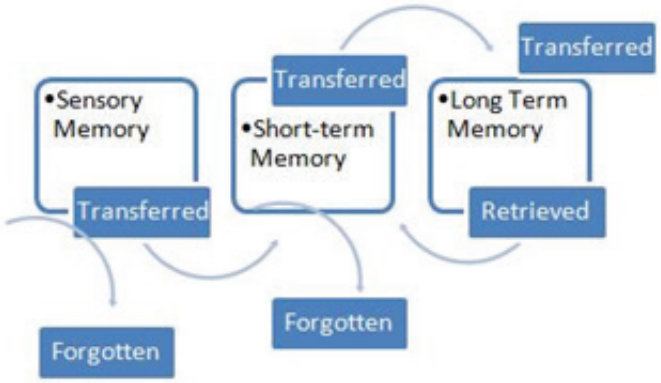
We are all familiar with the terms "long-term memory" and "short-term memory" and have a rudimentary understanding of what the terminology represents, but it is likely that you haven't learned about the processes involved in memory retention. In sum, memory involves encoding, consolidation, storage and recall/retrieval. In earlier years, experts thought that memory was simply putting something away in the brain as if in a filing cabinet. But memory is much more complex. In the first place, we really don't have one spot in the brain where memory is neatly filed away. Memory is a group of systems that, when processed by the brain, comes together to provide retrieval of that memory.

Encoding is the start of a memory. It is biological in that it begins with perception from our senses — hearing, seeing, touching, or smelling. That memory is then encoded and these bits of information are stored in various parts of the brain. Studies have shown that the characteristics of the environment also attach to the memory during that memory formation as part of a memory trace. This becomes important to us as professors because replicating the testing environment under "test-taking" conditions, such as silence, may increase student performance because of the similarities with the

characteristics of the environments that were part of the encoding process in students' brains while they were studying—for instance, in silence—and thus enhances the memory retrieval process.

Our long-term memory is divided into what is called "explicit" or declarative memory and "implicit" or non-declarative memory. So when you ask your student a question regarding facts or events they are consciously recalling this information that is stored and retrieved using their "declarative memory." The declarative memory is further sub-divided into episodic memory and semantic memory. The episodic memory consists of our memories of our own experiences and specific past events in time that are associated with our emotions. For example, you probably remember not only when you first heard about the unfolding events of 9-11, but also what you heard and where you heard it. Our semantic memory refers to our general knowledge about the world we live in and the meaning that we attribute to it.

Our short-term memory is limited and is only briefly stored unless a conscious effort is made to retain it, which will then transfer it into our long-term memory. We use our short term memory to keep information for a short period of time, such as remembering a telephone number retrieved from 411 long enough to dial it on our mobile phone. Our short-term memory also provides the basis for performing cognitive operations on those memories. The process of short-term memory serves as the "working memory" similar to the analogy of RAM — or the random-access memory in the computer which is either discarded or saved for later retrieval.



For many of us older professors we can recall our elementary teachers making us repeatedly write out a phrase in our composition notebooks at least "*100 times*." Well, those teachers really did have a point. Repetition improves moving information from short-term memory into long-term memory. As law professors, we can integrate that repetition into our classes by using a self-check review of the information from our class for the students, beginning the next class with a short review of the previous class, or a multitude of other lessons that require repetition.

So what does sleep have to do with memory? One thing that is pretty consistent in research is that sleep has a positive effect on memory. While your body is out cold and you are asleep, your brain is busy processing memory consolidation; that is, you have uploaded a bunch of information and your brain now takes those memories and integrates them with other prior memories.

Most researchers have spent a century taking a look at sleep and the benefits of retention memory. Early research concentrated on rapid-eye-movement (REM) sleep, which occurs during the second half of the night when you are in a deep or "delta" sleep. The newer research has focused on slow-wave-sleep (SWS) which occurs in the early stages of sleep during the first half of the night.

The researchers that focused on REM sleep hypothecated that REM sleep contributes to memory consolidation. Research indicates that the REM sleep is linked to the procedural and emotional memory while non-REM sleep is linked to declarative (factual) memory. One thing that has emerged fairly recently is the role of sleep on memory consolidation. The newer studies are focusing on the dynamics of memory formation as an active consolidation process that takes place during sleep and is actually one of the functions of sleep.

In a recent study conducted in Brazil, the computer game *Speedy Eggbert Mania* was used to probe problem solving. None of the 29 students used for the experiment had played that video game prior to the test. The groups were split into 15 for the control group and 14 for the napping test group. After playing for an interval the test group slept for 90 minutes while the control group remained awake. After that, the students were given another interval of game playing involving the problem solving. From the control group only 7 out of the 15 students were able to solve the problem while 12 out of the 14 nap students were able to solve the problem. The study showed that after sleeping, students were twice as likely to solve the problem when compared with the other students who spent the same amount of time awake. The researchers found "that sleep can improve cognitive performance through an active process of memory consolidation and integration of recent experience into previous developed networks."[1]

Cramming all night to prepare for an exam simply doesn't work. The longer awake a student is, the more sluggish their minds become. In fact, that type of cramming to learn new facts decreases the ability to do so by 40%! What does help is napping. In research from the University of California, Berkeley showed that a one and a half-hour nap dramatically boosted and restored brain power. In that study 39 participants were divided into two groups – the nap group and the no-nap group. They were given a task that involved storing fact based memories. The results of that study showed that those who napped did much better than the no-nap group and actually improved their capacity to learn. The results of the study reinforces the fact that sleep is needed to

clear the brain's short-term memory storage and move it into long-term memory storage thereby making more room for new information in short-term memory. The best advice to give a student leaving your classroom is to tell them to go take a nap. Taking a nap after learning a declarative or non-declarative task assists memory consolidation much better than staying awake.

Research on dreams suggests that you may in fact be able to dream the answer. We all have heard the cliché, "Sleep on it." Many artists, poets, painters, writers, inventors and scientists attribute dreaming for their problem solving. Mendeleev described dreaming the periodic table of elements in its completed form while Robert Lewis Stevenson said he dreamed two of the scenes in his novel Dr. Jekyll and Mr. Hyde. In more recent times, Jack Nicklaus credits his improved golf game to his dream in which in dreamed of a new and different way to grasp his club.

Today, many corporations, such as Google, Huffington Post and web-retailer Zappos are moving to replace coffee breaks with nap breaks and are encouraging their workers to take a power nap. It's no wonder. According to a study published in the journal Sleep, sleep loss cost US businesses $63 billion in lost productivity in 2011. Napping, helps improve alertness, mood and performance. Perhaps I should start setting aside the last 15 minutes of class for napping…

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[1] Felipe Beijamini et al, *After Being Challenged by a Video Game Problem, Sleep Increases the Chance to Solve It*, PLOS ONE (2014) *available at* http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0084342.

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Justice is Blind, But Should the Grading of Legal Writing Be Blind? The Case for the Use of an Anonymous-Identified Hybrid Style of Grading in Legal Writing

By Carla L. Boles

Most law schools require "blind" or "anonymous" grading, where students identify themselves on their examinations by numbers instead of by names. Many schools, however, exempt legal writing from this requirement.[1] At my institution, legal writing is exempt from mandatory anonymous grading; the decision of whether to blind grade is left to the discretion of the individual legal writing professor. Last year, of the twenty legal writing professors at my institution, eleven opted for blind grading while nine chose identified grading. Out of a first-year class of 516, there were only five complaints about legal writing grading, and those complaints were not on the lack of uniformity within the legal writing program, but instead on the perceived differences between the grading in legal writing and in doctrinal courses. Even though this represents an unclear complaint from less than 1% of the 1L population, the option of choosing between blind grading and identified grading led me to wonder which is the better method.

We owe blind grading to Dean Christopher Columbus Langdell of Harvard Law School. Langdell came from a relatively unknown family and was conscious of the fact that students from more privileged backgrounds often received higher grades in their coursework purely because of their family's wealth and social status. Langdell thus instituted the process of blind grading.[2]

The general adoption of blind grading at other schools followed the admission of significant numbers of minority students to law schools as a means of ensuring against favoritism for specially admitted minority students.[3] Blind grading was seen as a way of guaranteeing that race did not impact on the meritocratic evaluative process.[4]

Elimination of bias is still the chief justification for anonymous grading. The fear is that if identities were known, the professor may give the very likeable student the benefit of the doubt and grant points where that student's achievement of a standard may be questionable whereas the professor may grade the less likeable student more harshly, resulting in a reduction of points in more subjective areas. Grading should of course be free of personal bias--whether favorable or unfavorable—and blind grading frees the grader from conscious or unconscious attitudes towards individual students. Blind grading also assuages the student writers' paranoia (not necessarily unfounded) that we will be improperly influenced by something other than their actual performance on

written assignments. Thus, to shield legal writing faculty from the undesirable position to have to defend against a claim of giving unfair advantage or disadvantage, the common practice has been to blind grade.

And yet the preferred pedagogy of legal writing, which calls for *repeated individualized attention* to student papers, may destroy the anonymity offered by blind grading. Legal writing professors review drafts (or discrete portions thereof), conference with the student writers, have email exchanges about the students' writing, and answer specific questions about the writing during office hours. Because of their repeated exposure to each student's written work, many legal writing professors know the identity of the student writers while they are grading, even where there is blind grading.

One of my students used an unusual catch phrase in his writing assignments during the semester. Apparently, the student *loved* the phrase, thought it was very clever, and consequently used it in two drafts of the second writing assignment, verbally referenced it in a conference, used it in the final submission of the second writing assignment, and again in the third writing assignment. Accordingly, when I saw the phrase when blind grading the third assignment, I knew it was him. I even heard his voice in my head saying the words. The practical effect of the recursive and intensive individualized feedback in legal writing is "we know who you are anyway," thus the façade of anonymous grading is pierced. In light of this reality, explicitly adopting identified grading appears to be more accurate to what is possible in legal writing.

Furthermore, blind grading can lead to a sacrifice in the amount and nature of professor feedback to students.[5] For example, in grading Doe's paper, the legal writing professor has no information on Doe's prior performance; Doe's seeming understanding of the material discussed in class, in office hours, or in conferences; Doe's particular struggles with citations, grammar, or other writing mechanics; Doe's steady improvement of rule synthesis, or any other information relevant to the professor's provision of formative assessment. Although the professor can provide summative assessment by evaluating Doe's performance on the writing assignment based on objective standards, it is next to impossible to provide the individualized formative feedback, which is at the heart of legal writing pedagogy, to an anonymous student. Feedback, to be most effective, should be individualized and to accomplish this, the student author must be identified.

Anonymity, therefore, leads to fewer comments and more general comments, which are typically less instructive, less meaningful, and hence less helpful to students than individualized comments. This is troubling, as the lack of individual feedback may be detrimental to student performance on later. Further, the lack of individual feedback does not promote a process for excellence or promote student centered-outcomes, missions which most law schools share. Thus, anonymity may be too great a sacrifice.

It is possible, however, to maximize the benefits of both blind and identified grading, and to limit the risks or each. First, legal writing professors must understand that there is a difference between assessment and feedback and that the two processes should be separated. Assessment is the evaluation of the writing assignment using objective criteria, i.e., whether the student writer made fact-to-fact comparisons in the analysis, whether the discussion or argument is organized using CREAC (or IREAC, TRAC, BaREAC, etc.), and whether the writing mechanics of the paper are correct (font, spelling, grammar, citations, etc.). Feedback is providing individualized comments on the student's performance in light of past and present endeavors, making specific suggestions for improvement, explaining what a legal reader expects, challenging the student to conduct a greater depth of analysis, encouraging and inspiring the student to continuous improvement. While assessment should be blind (for the reasons discussed above), feedback, to be effective, should be identified.

To accomplish both the objectives of assessment and feedback, the initial grading or assessment of the student writing should be done through blind grading. After a meritocratic score or letter grade has been assigned, each writing assignment should be matched with the name of the student writer and the professor should review the papers a second time, this time to provide the crucial individualized feedback. This hybrid style of grading will ensure that the students receive unbiased assessments of their performance, while at the same time ensure the students receive invaluable feedback, individually tailored to address each student's strengths and weaknesses.

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[1]Jan M. Levine, *Symposium Legal Education: Response: 'You Can't Please Everyone, So You'd Better Please Yourself': Directing (or Teaching in) a First Year Legal Writing Program*, 29 Val. U. L. Rev. 611, 635 (Spring 1995).

[2] Jeffrey S. Wolfe, *The Times They Are a Changin': A New Jurisprudence for Social Security*, 29 J. Nat'l Ass'n L. Jud. 515, 564 (Fall 2009).

[3] Paul D. Carrington, *One Law: The Role of Legal Education in the Opening of the Legal Profession since 1776*, 44 Fla. L. Rev. 501, 565 (1992).

[4] Jan M. Levine, *Symposium Legal Education: Response: 'You Can't Please Everyone, So You'd Better Please Yourself': Directing (or Teaching in) a First Year Legal Writing Program*, 29 Val. U. L. Rev. 611, 635-36 (Spring 1995).

[5] *Id*. at 636.

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IDEAS OF THE MONTH

http://lawteaching.org/ideas/

SEPTEMBER 2014: Getting Students into the Office

OCTOBER 2014: Mid-Semester Feedback from Students

NOVEMBER 2014: Daily Assessment: You Can Do It!

DECEMBER 2014: New Semester's Resolutions

JANUARY 2015: Pass the Pen

ARTICLES OF THE MONTH

http://lawteaching.org/articles/

September 2014: Mari J. Matsuda, *Admit that the Waters Around you Have Grown: Change and Legal Education*, 89 Indiana Law Journal 1381 (2014).

October 2014: Emily Grant, *The Pink Tower Meets the Ivory Tower: Adapting Montessori Teaching Methods for Law School*, 68 Arkansas Law Review ___ (forthcoming 2015).

November 2014: Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 Clinical Law Review 317 (2014).

December 2014: Stefani T. Relles and William G. Tierney, *Understanding the Writing Habits of Tomorrow's Students: Technology and College Readiness*, 84 Journal of Higher Education 477 (2013).

January 2015: Mary A. Pyc, et al., *Test-enhanced Learning*, Applying Science of Learning in Education (2014).

LEGAL EASE

- SOLUTION -

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