

# THE LAW TEACHER



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### CO-DIRECTORS' CORNER

## Supporting Effective, Efficient, and Engaged Faculty

We have just wrapped up our Spring conference at Emory University School of Law! They were terrific hosts, the participants were wonderfully engaged, and the presentations were incredibly useful in helping professors incorporate formative assessment in large classes. If you missed the event, we'll be posting some of the conference materials on our website, so be sure to check that out.

And while you're there, feel free to register for our Summer 2017 Conference at Bowen Law School in Little Rock. Workshop sessions will focus on the requirement of ABA Standard 302(d) that we teach our students "other professional skills needed for competent and ethical participation as a member of the legal profession." Come join us and get ideas for how to include professional competencies in your classroom! (For more information, check out pages 11 and 12!)

Other than conference-planning, ILTL co-directors and consultants have been hard at work on various book projects. The second edition of *Teaching Law by Design for Adjuncts*, authored by our illustrious consultants (Sophie M. Sparrow, Gerald F. Hess, and Michael Hunter Schwartz)

## SPRING 2017

### PROMOTING THE SCIENCE AND ART OF TEACHING

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

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

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has been published by Carolina Academic Press. In addition, *Experiential Learning Across the Curriculum*, a book edited by the co-directors based on the Gonzaga conference by the same name, will be available soon, also from Carolina Academic Press. It is our hope that these books continue the work of the Institute and help professors strengthen their own teaching methods in the classroom.

In addition to these projects, we continue to support faculty across the country in the effort to be more effective, efficient, and engaged in the classroom. To that end, please do let us know if we can be of any help to you and your faculty.

Enjoy the rest of your semester. And as always, teach well.

*Emily, Kelly, and Sandra*

## Making a Case for Case Studies, Table Top Exercises, and the Grand Simulation

By Jill Bronfman

Law school education has centered upon a time-worn model. Do you remember how to brief a case? I remember it well. It hasn't changed in a significant way in many years, and arguably, with good reason. Other law school methodologies and modalities have been updated. For example, citations now include YouTube videos, and going to the physical library to Shepardize a case has been replaced by online citatory services. Yet we still expect students to read a judicial decision and analyze it using the same structure. This pedagogical technique is effective because the law in practice (and on the bar exam, to no small effect) still utilizes these skills.

We must query, however, whether this model will encompass the totality of students' experiences with the law after graduation. Increasingly, students are offered positions as the sole counsel in a startup business, or asked to participate in a law firm team tasked with advising a company in the throes of a data breach crisis. What shall we teach students that will serve them well in these scenarios? A brief map for the (r)evolution follows.

One, we keep the core curriculum to cover the law as reflected in judicial decisions and statutes. As stated above, learning how to read a case, brief a case, and compare cases with one another will serve as a valuable foundation for students' legal careers. I will leave it to others to rebuild the first year curriculum when the time comes.

Two, more urgently, let us look carefully at the upper level elective classes. These are the classes that assume that law students understand legal basics but have not yet garnered the tools to become useful counsel to others. For these classes, the instructors should ascertain the students' level of knowledge of prerequisite courses and materials and then offer supplemental readings to bring the students together for launch. These materials may consist of case law summaries, nutshell readers, and selected readings of relevant full decisions. Some of these judicial decisions and federal and state statutes, in high tech classes, may be provisional or draft.

Three, launch into case studies, table top exercises, and the Grand Simulation.

**Case studies** in law school classes may have only a passing acquaintance with case law, and have quite a bit more familiarity with business school case studies. These case studies each examine a factual scenario, and then parcel out which companies or agencies attacked the problem and how. We need to bring these case studies to the students to demonstrate success and failure and to model not only legal but also business, government, and NGO success and failure.

A **table top exercise**, an idea taken from data breach prevention, is based on the idea that in order to prepare for a crisis, or even a routine contract negotiation, it is a fantastic idea to give it a run-through before the actual event. The exercise consists of gathering the stakeholders into a (virtual) room and imagining, discussing, and solving the potential dilemmas and sub-dilemmas that may arise. In a classroom situation, students may be assigned roles of the various stakeholders and asked to raise issues and offer solutions from their avatar's point of view.

The **Grand Simulation** takes the long view of a previously piecemeal solution to learning the law. This simulation asks students to work collaboratively beyond a discussion of a sole case or case study and beyond the single session table top exercise. Students may be assigned projects that extend through several class sessions or through the entire semester, and they may be asked to place these experiences in the context of a large-scale deal, lengthy litigation, or an administrative proceeding.

Using one or ideally all of these techniques in designing a new law school syllabus creates a law student, or in actuality, a lawyer, that is not only intellectually challenged

*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](mailto:emily.grant@washburn.edu).*

but is also ready to challenge the world. The students in my Privacy Compliance class last semester heard live lectures from Google, Twitter, 23andme, the Attorney General's office, and from a class action attorney in the throes of a Supreme Court case. These speakers raised case studies from their own experiences that reinforced legal abstractions in a way no textbook review session could have done. Further, the students participated in table top exercises designed to prepare them for the scenarios described in pending job descriptions for new lawyers. Finally, the grand simulation, a work in progress for future classes, is designed to pull from the students' pre-registration experiences, take them through the learning process in class and class preparation, and stay with them beyond the final exam.

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*Jill Bronfman is an Affiliate Scholar and former Director of the Privacy and Technology Project at the Institute for Innovation Law at the University of California Hastings College of the Law, and a former Assistant General Counsel at Verizon. She can be reached at [Bronfmanj@uchastings.edu](mailto:Bronfmanj@uchastings.edu).*

## Doing the Hokey Pokey: Essay and Rubric Drafting as a Key to Student Success

By Angela Mae Kupenda

*You put your right foot in  
You put your right foot out  
You put your right foot in  
And you shake it all about  
You do the hokey pokey  
And you turn yourself around  
That's what it's all about!*

...

*You put your whole self in  
You put your whole self out  
You put your whole self in  
And you shake it all about  
You do the hokey pokey  
And you turn yourself around  
That's what it's all about!<sup>1</sup>*

Who would have thought that the Hokey Pokey, a song and dance many of us enjoyed as children, could provide a pedagogical basis to help law students perform better on their essay examinations?! The Hokey Pokey goes through steps of putting a part of one's body in the circle, taking it out, and putting it back in and the shaking it all about. Then, the final stanza calls for players to put their whole self in and shake it all about. "That's what it's all about."

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<sup>1</sup> <http://www.wikihow.com/Do-the-Hokey-Pokey>

I have tried for many years to teach law students to do the Hokey Pokey to better their academic performance. I try to explain that by stepping into the minds of their professors, and then stepping out, they can do better on their examinations. I think that once students shake themselves about in their professors' mindsets, they are more prepared for the final examination and have a better understanding of the professors' expectations.



Several years ago, a 2L student was referred to me by an alum. The student was having difficulty passing another professor's first year course, having taken the course twice before and not passed. I did not teach that course subject, but I agreed to meet with the student weekly in person or by email during the fall semester, before the start of the student's final semester of law school and his third try at the course that was only offered once a year in the spring.

I was hoping to help the student troubleshoot his academic difficulty with this course and develop strategies for success before the spring semester started. Toward the end of our sessions, I could see he was still struggling with the subject matter. He understood the rules, but he had difficulty determining how to use the facts in long essay questions to spot the issues and apply the related rules to the facts in his analysis. Although we had worked together for several months, I was concerned that the student might still have difficulty passing the course.

Then I thought of the Hokey Pokey as an assignment. The student was to step into the professor's mind by first creating a comprehensive one-page essay question with a creative fact pattern, just like his professor did. The student created the essay fact pattern and emailed it to me. I lightly modified some aspects of the fact pattern.

The next step was for the student to step back into the professor's mind by preparing a grading rubric for the essay. Then, the student was to put all of that to the side, step back into his role as student, and write an essay answer for the question.

Finally the student was to put his whole self in and grade his answer as if he was the professor. As he graded it, he could see how his rubric at times had to be modified for unintended related issues that arose in the exam fact pattern.

The student later told me that the Hokey Pokey was the best exercise of all of our sessions. He said this exercise helped him understand how the professors were placing issues in the exam through the fact pattern and how to spot and analyze the intentionally implanted issues. He was also able to see that other nuances could develop even if they were not intentionally placed there by the professor who drafted the question.

This exercise helped him step into the mind of the professor and step back out as a better student. He put his whole self into the professorial role, and then he stepped back out and wrote a better answer. He learned: that's what it's all about.

That spring, the student took the course, for his third time, and he was successful. I heard from him as he was later studying for the Bar exam, and he felt very comfortable with the same 1L subject with which he had struggled for almost three years. He later contacted me with the great news that he passed the bar exam the first time he took it, and that subject was his highest score.

Remembering his enthusiasm for that learning tool—of drafting an essay fact pattern and then drafting the answer and rubric—I incorporated the tool also into my large Constitutional Law class. In that class, 9% of the grade was based on collaborative group work done mainly in class. I asked each group to draft of a ½-page long fact pattern for an essay exam and then to draft a sentence outline of the answer and create the grading rubric. The students seemed to enjoy the process and to learn more about what the professor (me!) was expecting in the exam analysis.

Creating a technique for one student taught me something that helped an entire large course. Even students in an upper level class can learn how to step in, and step out, of the minds of professors with essay exam and rubric drafting as a key for student success. As the children's game goes: "You put your right foot in, you take your right foot out, you put your right foot in and you shake it all about, you do the hokey pokey and turn yourself about, that's what it's all about!"

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*Angela Mae Kupenda is Professor of Law at Mississippi College School of Law. She can be reached at [akupenda@mc.edu](mailto:akupenda@mc.edu).*

## Metacognitive Assessment as a Means of Learning and Teaching

By Anowar Zahid, PhD

I teach International Commercial Law. My teaching methods include, among other things, lecture, interactive discussion, and tutorial class. Lecture is a one-way conveyance of knowledge. Interactive discussion involves the students in the learning process. It elicits what questions are hovering in their minds. When I properly address them, it fills the gaps in the students' knowledge. At the same time, I may re-think my lecture content or style.

However, I find that most of the students do not take part in the interactive discussion. I do not have any idea whether they have actually understood what I taught. Many times I thought how I could reach each and every one of the students and get their feedback. Recently I devised a method, which I call metacognition of class. In this method, after every lecture I ask students a few questions through our university online learning and teaching facility and have them e-mail me their answers. The questions I ask are as follows:

- What did you learn today in class?
- Why did you learn it?
- How can you put it in practice?
- Do you have any questions?

I would like to share with you the students' metacognition for the last class. I lectured on *Lex Mercatoria* as a Choice of Governing Law for an International Sale of Goods Contract. *Lex Mercatoria* (Merchant Law) may be simply described as an anational (non-national/transnational) system of rules and principles generally accepted in international trade. For the last week's metacognitive assessment, one student asked me the following question:

"How exactly would a practitioner discover the substantive content of *lex mercatoria* and then reach a conclusion in a case in which the relevant rule had not yet been firmly established?"

I was impressed by the question as it was a creative and thought-provoking question. Average textbooks even do not cover the issue. I got back to her with an answer, as well as a cite to the proper source of my knowledge (p.22 of *Ramberg's International Commercial Transactions* book).

Then, the student replied, "I would like to thank you for your reply on my question in my previous metacognition. It had indeed helped to answer my curiosity and enriching my knowledge even more than before on the topic...your words would motivate me to strive to do even better in the days to come."

I think this assessment process may help us directly address each and every student's queries, build a teacher-student bond, and stimulate students to immerse themselves into the sea of knowledge with all earnestness.

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## WILD AND WACKY FEDERAL CRIMES

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*(See answers on page 13)*



# WILD AND WACKY FEDERAL CRIMES

- ACROSS -

1. You can go to prison, be fined, or both, for using this bear's name or likeness, per 18 USC §711.
7. According to 18 USC §2195, you can't abandon one of these guys even if he happens to be dead drunk.
13. Describes the *Don* for whom no federal criminal charges would "stick."
14. Friend of Gilgamesh.
15. Automatic direction finder (Abbr).
16. Prefix meaning to cover or surround.
17. Woman (Slang); Note that according to 18 USC §2198, it is against the law to seduce one on the high seas.
18. Mother.
19. Politically incorrect chemical.
21. Member of a Siouan-speaking tribe of North American Indians.
22. Public Law (Abbr).
23. Medical for "enema."
24. Very soon (Abbr).
26. Trust receipt (Abbr).
27. Subchapter S Revision Act (Abbr).
29. Morning time.
30. American Association for the Advancement of Science (Abbr).
32. Special Prosecutor fired by Nixon for doing his job too well.
34. Annoying child.
36. Travel from wildest city to the most conservative (Abbr).
37. Teaching English as a second language (Educational abbr).
40. Omissions excepted (Abbr).
41. Cavity.
44. Prosecutes wild and wacky tax-related crimes (Abbr).
45. Executive order (or an 11 in craps - take your pick).
46. Rehabilitation Services Administration (Abbr).
48. Illegal frolic on the high seas per 18 USC §1655.
49. Comparative.
50. Day in Court Act (Abbr).
51. Confederate States (Abbr).
52. Space Odyssey (Roman number).
53. Continent.
56. Original American.
58. It is a crime to make a false weather \_\_\_\_\_! See 18 USC §2074.
59. 18 USC Chapter 29 regulates this fundamental American right.



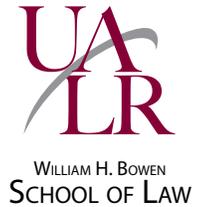
## WILD AND WACKY FEDERAL CRIMES

- DOWN -

1. Reuse them and you can be delivered, shipped or sent to prison under to 18 USC §1720.
2. Keep them polished! If they become defaced, you can go prison under 18 USC *Chapter 33*.
3. Not functioning.
4. Kiloliter (Abbr).
5. Red crystalline solid, used chiefly as a dye for silk.
6. Yes/no (Abbr).
7. Big trucks.
8. Indefinite article.
9. First and third components of a three-dimensional vector.
10. Data storage and retrieval technique, usually implemented using a queue.
11. U.S. folk singer.
12. For S & L's, you can scrap the *First Amendment*. Circulating mere \_\_\_\_\_ about insolvency can send you to jail under 18 USC §1009.
16. It isn't very reassuring that we a need a statue (18 USC §655) to prohibit theft by bank  
\_\_\_\_\_.
19. Inadequate supply.
20. National Army (Abbr); did you know that it was illegal to poll its members (per 18 USC §592)?
25. Insignificant.
28. Revenue Adjustment Act (Abbr).
29. Sigh.
31. George \_\_\_\_, American humorist.
33. Exist.
34. The hundred yard dash across this finish line is regulated by 18 USC §1407.
35. If you \_\_\_\_\_ someone on the way to the gas chamber, you can be convicted under 18 USC §753.
38. It is a federal crime to "corrupt" one per 18 USC §1657.
39. \_\_\_\_\_ defense information is punishable under 18 USC §793.
42. Out of print (Abbr).
43. It is allowed (Latin legalese).
44. Prefix meaning "likeness."
47. American Association of Retired Persons (Abbr).
52. One thousand and two (Roman number).
54. Word element meaning "egg".
55. Major governmental concern (Abbr).
56. The square root of 16 (Roman number).
57. Detective (Slang).

# INSTITUTE SUMMER 2017 CONFERENCE

SAVE THE DATE: JULY 7-8, 2017



University of Arkansas at Little Rock William H. Bowen School of Law and the Institute for Law Teaching and Learning are collaborating to present:

## Teaching Cultural Competency and Other Professional Skills Suggested by ABA Standard 302

ABA Standard 302 requires all law schools to establish learning outcomes in certain areas, such as knowledge of substantive and procedural law, legal analysis and reasoning, and the exercise of professional and ethical responsibilities. While requiring outcomes in these areas, however, the ABA also has given law schools discretion under Standard 302(d) to individualize their programs by establishing learning outcomes related to “other professional skills needed for competent and ethical participation as a member of the legal profession.” These other professional skills “are determined by the law school and may include skills such as interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency and self-evaluation.” This language encourages law schools to be innovative and to differentiate themselves by creating learning outcomes that are consistent with their own unique values and particular educational mission.

The Institute for Law Teaching and Learning is thrilled to host a conference addressing the many ways that law schools

are establishing learning outcomes related to “other professional skills,” particularly the skills of cultural competency, conflict resolution, collaboration, self-evaluation, and other relational skills. Which, if any, of the outcomes suggested in Standard 302(d) have law schools established for themselves, and why did they select those outcomes? How are law professors teaching and assessing skills such as cultural competency, conflict resolution, collaboration, and self-evaluation? Have law schools established outcomes related to professional skills other than those suggested in Standard 302(d)? If so, what are those skills, and how are professors teaching and assessing them?

Workshops will address the teaching or assessment of such skills in first-year courses, upper-level courses, required courses, electives, academic support teaching, or extracurricular programs. Workshops will present innovative teaching materials, teaching methods, course designs, assessment methods, curricular ideas, or program designs. Each workshop will include materials that participants can use during the workshop and also when they return to their campuses.



- continued -

# INSTITUTE SUMMER 2017 CONFERENCE

[www.lawteaching.org/conferences](http://www.lawteaching.org/conferences)

## SCHEDULE OF EVENTS:

The UALR Bowen School of Law will host a welcome reception on the evening of Thursday, July 6. The conference will consist of concurrent workshop sessions that will take place at the law school all day on Friday, July 7 and until the early afternoon on Saturday, July 8.

Reservations also may be made by calling the hotel's reservations department at 877-759-6290 and referencing the UALR Bowen School of Law/ ILTL Conference Room Block.

## TRAVEL AND LODGING:

A block of hotel rooms for conference attendees has been reserved at the Little Rock Marriot Hotel, 3 Statehouse Plaza, Little Rock, AR 72201. The discounted rate will be available until June 5, 2017. Reservations may be made online by clicking on this [link](#).

## REGISTRATION AND FEES:

Register for the conference here:

The conference fee for participants is \$400, which includes materials, meals during the conference (two breakfasts and two lunches), and the welcome reception. The conference fee for presenters is \$300.

<http://ualr.edu/law/iltl-summer-2017-conference/>

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# WILD AND WACKY FEDERAL CRIMES

- SOLUTION -

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