

Reflecting Well: Guided Journaling to Improve Transfer of Learning

Summer 2011 Conference
The Institute for Law Teaching and Learning

Use of Journals in Legal Education

- **Definition of Reflective Journal:**
 - Regular, written communication from a student to a teacher
 - Related to the course of study
 - Authored by the student at the request of the teacher
 - To which the teacher may respond in writing

Use of Journals in Legal Education

- **Purpose:**
 - Record observations and reflections
 - Encourage deeper, more critical thinking about the subject matter
 - Empower students to take more responsibility for their own learning
 - Offer a safe environment for raising student questions and concerns
 - Provide periodic student feedback

Use of Journals in Legal Education

- **Benefits:**
 - Improve problem-solving skills
 - Promote more and higher quality of introspection
 - Foster self-awareness
 - Allow for the release of stress
 - Nurture a lifetime of self-directed learning
 - Enhance **transfer of learning** to new contexts and assignments

Transfer of Learning

- **Definition:**
 - The application of knowledge or skills learned in one setting or for one purpose to another setting and/or purpose.
- **Types of Transfer:**
 - Within the same course
 - Across the law curriculum
 - Into law practice

Transfer of Learning

- **Steps of transfer:**
 1. Identifying the problem or task
 2. Searching/retrieving analogies
 3. Mapping/comparing to analogies
 4. Applying/adapting solutions

Transfer Through Reflective Journaling

- **Metacognitive**
 - "Thinking about thinking"
 - Self-monitor learning processes, styles and motivations
- **Targeted**
 - Backward-looking
 - Organize existing knowledge
 - Discriminate between effective and ineffective strategies
 - Forward-looking
 - Consider implications of past experience for future learning/practice
 - Engage in more effective planning and goal setting

Creating a Guided Journal for Your Course

Prompts for student reflection:

- Course goals
- Knowledge and skill categories
- Analogous prior experience
- Anticipated future applications
- Learning styles
- Psychological states and motivations

Professor Balsam - Group 8
Lawyering Progress Journal - Fall 2010

For Your Consideration:	World Trade Center Interpreting the Law as an Advocate	Cardozo's Light Interpreting Facts	The Super Counseling a Client
<p><i>Lawyering Across the Dimensions:</i></p> <ul style="list-style-type: none"> • <i>Facts</i> • <i>Rules</i> • <i>Goals</i> • <i>Context</i> • <i>Professional Role and Responsibilities</i> <p>Keeping in mind the Lawyering dimensions:</p> <ol style="list-style-type: none"> a. What about the exercise challenged you the most? b. What about the exercise seemed the most intuitive or easy to you? 	<p>Two aspects of the WTC exercise challenged me the most. First, I struggled initially to strategically use the cases to advance my argument. In other words, I had a general idea of the kind of argument I wanted to make, but I had some difficulty accounting for and rationalizing the cases with that argument in mind. Second, and perhaps an extension of the first obstacle, I did not feel entirely comfortable synthesizing the cases in my rule proof in a clear and flowing manner.</p> <p>The most intuitive part of the exercise and most fun was developing the argument in my application of my rule to the facts of the case. I had an opportunity to add my own insights in this section which also helped me express myself more clearly and in more of an advocate tone. As I mentioned before, I struggled incorporating conflicting rules and facts from other cases, but the point counter-point feel of the application to the facts section came the easiest to me.</p>	<p>The most challenging part of this exercise was balancing the ethical component of portraying accurate information and the advocate component of framing the affidavit in a way most beneficial to the Museum. I had a difficult time leaving out information because of the ethical considerations as well as the need to present something to the affiant that she would be willing to sign. But as I look over what I included and how I framed the story, I recognize that certain details are not essential or absolutely material to the central point of the story. Balancing these two components proved difficult, but going forward, I need to consider the problem from the perspective of all interested parties early on in the process to see which direction would be most beneficial at the outset.</p> <p>The most intuitive part of this exercise was crafting a narrative out of the facts. Although I may have included some facts that could make the museum's</p>	<p>The most challenging aspect of the counseling session was the initial interview. We didn't have a hard and fast plan going into the interview because we weren't sure about the details beforehand, but looking back, I think we should have done some research about what we would need to know about a generic employment discrimination claim to do our due diligence. If we had, we might have thought to ask more about Anya's children and how other employees with children are treated among other things.</p> <p>I didn't find any part of this exercise particularly intuitive, but I did draw on some of the lessons from the previous assignments about how to craft my writing. After receiving feedback in the conferences, I felt a lot more comfortable with the Rule Statement, Proof, Application to Facts process, and I think I was able to provide a clear and concise analysis on the major points.</p>

		<p>settlement negotiations more difficult, I think I did a good job managing the story and accounting for any holes or inconsistencies that may exist. As we spoke about in class and via email, I was always conscious of the risks of including certain facts, so I framed them in such a way to least damage the museum's chances for success. I found the affidavit structure to be intuitive as well. I decided to build the witness's credibility and then proceed to present her recollection of the facts of the day in question, which seemed separate the issues in a clear way.</p>	
<p><i>Skills Acquisition:</i></p> <ul style="list-style-type: none"> • <i>Managing interpersonal interactions</i> • <i>Planning strategically for each phase of the exercise</i> • <i>Developing and framing narratives</i> • <i>Developing fundamentals of legal analysis and writing</i> • <i>Using the appropriate voice for the context and audience</i> • <i>Collaborating with colleagues</i> • <i>Thinking critically about issues of difference raised by the exercise</i> • <i>Organizing tasks and managing time effectively</i> • <i>Critiquing your own work and others'</i> • <i>Participating in class and small group settings</i> • <i>Anything else?</i> <p>Keeping in mind the above skills, or any others you find relevant:</p>	<p>I think this exercise most helped me improve my ability to critique my own work. Even though I worked hard on the first draft, the exercise forced me to step back and take a serious look at my work and question each of my decisions. In so doing, I anticipated many of the critiques I received in conference which validated my self-critique. Going forward from this exercise, I think I am better prepared to think critically about my writing in a very active sense. <u>I have an arsenal of questions and reminders now that will help me continue to improve as a legal writer.</u></p> <p>This exercise exposed two areas in which I would like to improve. <u>First, I need to do a better job advocating for my position throughout my argument, not just in the application of the rule</u></p>	<p>I think I improved in thinking critically about the various choices and different directions I could have taken in this exercise. While I am not sure now whether I ended up pursuing the right path, I am confident in that I understood the consequences of the various directions as I perceived them, weighed the pros and cons of each, and moved forward on the one with which I was most comfortable. I think I succeeded in meshing the facts I ultimately chose to include into an affidavit that would advance the client's goals.</p> <p>Having said that, I think some of the decisions I made ended up being exposed as unhelpful in advancing the museum's interests. From that perspective, <u>I need to</u></p>	<p>I think I improved most on my writing in this assignment. The open-ended research made organization of the memo challenging, but I think I was able to reign in the broadness of the subject enough to produce a useful memo that gave a balanced assessment of how a case against Casey would likely proceed.</p> <p><u>I would still like to improve on client interaction,</u> which I feel like was not quite spot-on in either the interview or the counseling session. The counseling session got a little side-tracked, however, because I participated with a different group at the last minute and we had different plans for how we were going to proceed. <u>The biggest thing I want to remember</u></p>

<p>a. Identify a skill or an area explored in this exercise in which you improved the most since the last exercise (or since starting Lawyering).</p> <p>b. Identify a skill or an area explored in this exercise in which you think you need the most improvement.</p>	<p>to the facts section. I struggled incorporating an advocate's perspective to the rule proof section in particular. Although the cases we were given made that task difficult at times, I was able to see different ways I could have improved after attending the conference.</p> <p>Second, I need to improve on the clarity and structure of my writing. I tried to work on this in my second draft by honing my topic sentences and emphasizing key points over "filler" sentences or redundant ideas. I think this is a very achievable goal this year, and I intend to concentrate very hard on this task in our other writing assignments.</p>	<p>work on combining my understanding of the issues and facts presented with an awareness of the stakes of the interested parties and the context in which those parties will resolve the dispute. In this exercise for example, I failed to foresee that a relatively open negotiation conference presented an opportunity to draft an affidavit that, while ethical and complete, presented only such information that was absolutely essential to the matter at hand. This is a big picture improvement that I think I can consciously practice until it becomes more natural as my experience grows.</p>	<p>next time is to be comfortable with the client, listen carefully to what they are saying, and give thoughtful responses as best I can. If I stay aware of that goal, I think I will improve in my next client interaction.</p>
<p>Faculty Response to Student Self-Assessment</p>	<p>Developing an advocate's voice is often the most challenging aspect of legal writing. But keep your neutral, analytical voice in reserve for the next major writing project during the counseling exercise.</p>	<p>I agree this exercise poses some tough ethical choices. Do you think it was fair of your classmates to omit certain facts from their affidavits or were you won over to their view that those facts were fairly omitted on relevance grounds?</p>	<p>I agree that your writing showed appreciable improvement in this exercise. You are clearly gaining traction on the formulas for organized, persuasive legal analysis. Good that you recognize that preparation is the essential ingredient for any lawyering task or interaction. Even when you don't have much to go on, there is always something you can read/research to expand your knowledge base to be better prepared.</p>

PROGRESS JOURNAL FALL 2010

Complete the relevant portions of this journal electronically (using as much space as you need) and email it to your professor and your TA

*I. How have you increased your skill at **finding and interpreting authority**? What goals do you have for further improvement in this dimension?*

Interpreting the Law as an Advocate

World Trade Center

This was the first time I had ever had a universe of cases within which to work, and had to define each of the cases' holdings and work them into a coherent whole. I did not utilize all 7 cases in my brief, but I think I stand by that decision, as I was able to categorize the cases and I was confident in the line I drew between the products liability cases and the duty cases, as I saw them. I will probably repeat this comment throughout this journal, but it is pretty amazing to me how much we have learned in the first few weeks of school. To further improve this dimension, **I will look forward to assignments in which we have to seek out our own authorities and mold them into a coherent whole.**

Interpreting Facts

Cardozo's Light

The authorities we had to work with in this assignment were more limited – basically just the material we got from Robin's interview (in conjunction with the museum protocols, etc.). I felt fairly comfortable working with the interview material and attempting to write in such a way that Robin would not be uncomfortable signing the affidavit – years of working under others and writing their letters for them has forced me to develop this skill! But **I would look forward to being better able to discern which facts to leave in and which to take out**, and where I can maybe massage a little bit, push the interviewee's words in a more "advocacy" direction, and bring in some more interesting, compelling, or possibly emotional phrasing, where appropriate.

Counseling a Client

I think this exercise definitely helped me hone my skills in researching and using authority. I feel very confident in my ability to work out research questions and to develop search terms that will get me where I need to be, but I think I still need to work on "Shepardizing" and figuring out what is still good law and how all the cases I find interact with one another. This project also made me realize that **I still have a lot of work to do on citations**, as there will be times when I am confident in the citation work I have done and yet I have forgotten entire rules. I also found myself, halfway into writing, coming up with new research questions, and it was interesting to see how that unfolded.

*II. How have you increased your skill at **discovering and interpreting facts**? What goals do you have for further improvement in this dimension?*

Interpreting the Law as an Advocate

World Trade Center

In this exercise, we were limited to the facts contained within the complaint. I think I did an OK job of picking out the facts that would help me, but I think **I need to work more on being able to look at a set of facts and, from the get-go, seeing how the other side might strategize.**

Interpreting Facts

Cardozo's Light

The exercises surrounding this were very helpful in thinking about what questions to ask in an interview, and in bringing to the front of my mind the discrepancies between reality and recall. During the Robin S. interview

I also found myself confronting a psychological hurdle, in that I found myself wanting us to back off on certain points, or just believe her when she said a certain thing, but as the activity unfolded I came to realize that is not the right instinct. While you don't want to push so hard as to alienate your interviewee, you do want to approach them with a good amount of internal skepticism, and listen to the social voice inside that says "don't push on that point" and, instead, push a little bit.

Counseling a Client

This exercise gave us the opportunity to start from scratch, eliciting facts from the client and then using them to develop and support an argument. I believe we were able, through the interview, to elicit a lot of really good information. However I know that during the initial interview and the final counseling session, we could have pressed further on Anya's conduct as an employee, and been a little more skeptical about her representations of her own work. In terms of using her facts to build and support an argument, I think I did a good job whittling down the facts section of my brief to include only the material facts, and writing it in a concise way. Going forward I would like to develop the skill of being more skeptical of the client and therefore pressing for important information, while still maintaining a strong and comfortable relationship with the client.

*III. How have you increased your skill at **fixing and strategically pursuing desires or ends**? What goals do you have for further improvement in this dimension?*

Interpreting the Law as an Advocate

World Trade Center

As I stated in our conference, I felt lucky to have been assigned to the side I was in this case – the side of the widow. I think my own psychological orientation made it easier for me to see the merits to this argument, and I experienced no cognitive dissonance when thinking through this argument. I think it will be valuable for me to argue on the side of something I don't necessarily agree with at first blush. Where the ends that my client desires match with mine, I don't see this as being very difficult. But when they don't necessarily match, I think it will be more difficult.

Interpreting Facts

Cardozo's Light

In this exercise, we were confronted with a number of obstacles between us and our goal. I found it difficult to find ways around these. It was interesting to try to figure out how much to say, how much to leave out. In writing my affidavit I think I erred on the side of leaving more in, but as I have come to understand more about the goals, and about the possible future uses of the document, I think I will need to work on this skill.

Knowing that an internal affidavit could eventually become something that is shared in discovery, etc, influences how you should think about what you would leave in and what you would take out.

Counseling a Client

In this exercise it was difficult for me to see how the help that we could provide – basically, going to court – would help our client to achieve her goals. I think I was quick to discount the adversarial option and to look for alternative methods to resolve the issue, without knowing much about what those alternative methods might be, how to research them, or what outcomes they might produce. I look forward to learning more about the lawyer's role outside of the courtroom and how our skill set might be able to help in difficult situations like the one with which we were presented.

*IV. How have you increased your skill at **communicating effectively**? What goals do you have for further improvement in this dimension?*

Interpreting the Law as an Advocate

World Trade Center

This was a great exercise for me in terms of starting to think and write like a lawyer. I enjoyed thinking about my argument in terms of its component parts, and laying out the outline of it. I think I will need to work on consistency throughout the argument (making each section work as a coherent whole with all the others, for example in the 3-part structure I used here). I also think **my writing lacks a little bit of the punch** that some others' has. **I would like to work on being able to liven it up a bit**, without losing credibility.

Interpreting Facts

Cardozo's Light

This exercise worked on communication on many levels – in the interview, in writing, and in working in the group. I already wrote a little bit on how I would like to see my skills grow in terms of interviewing and using others' words in writing affidavits, so in this section I'd like to focus on communicating within the context of group work. I find it difficult to balance between being overbearing and being too submissive. **I would like to work on finding ways to express my opinions without feeling like I am taking over, while also learning how to allow others their chance to contribute without feeling like I am being lost in the process.** I think this is a delicate balance that takes a while to fully appreciate and learn how to navigate.

Counseling a Client

In this exercise **I enjoyed building off the previous exercises and paying attention to the legal writing principles that we have learned thus far.** When I first sat down to write the brief in this exercise, all the structure of the argument that we had learned in the previous exercise flew out of my head, and I had to work to remind myself of all of it. I enjoyed putting the entire argument together, from question presented to short answer to facts to analysis. I also worked to try to implement the principle of supporting every assertion, and making one statement per sentence. I think this skill is developing, and I think this exercise helped me to work on it quite a bit. I look forward to working on making my legal writing flow better. This exercise also helped us to work on communication within our teams, and with our clients. I think our team did a great job planning for the first interview, and not as good of a job of planning for the second interview. I would like to improve this dimension by planning better, laying out for myself how the session will go and what issues might arise, so that I will be prepared to answer any questions. It is always easier to abandon a plan that to create one from scratch.

V. *How have you improved your understanding of a lawyer's roles and responsibilities? What goals do you have for increasing your understanding?*

Interpreting the Law as an Advocate

World Trade Center

Both of my parents went to law school, so I have always had a vague sense of the roles and responsibilities of being a lawyer, but I feel like I have already learned so much about what it all means. In this exercise, I thought a lot about how a lawyer uses authority and introductory signals to citations, how a lawyer can forcefully use authority while staying within the bounds of representing the cases faithfully. I would like to work on learning to use the introductory signals better, and feeling more comfortable doing this. It will also be interesting for me to think and learn more about the instances where there is **tension between ethical responsibilities to society/policy as a whole and your zealous representation of your client.**

Interpreting Facts

Cardozo's Light

This exercise got me thinking a lot about the way a lawyer is able to utilize witness testimony, and the interplay between eliciting the responses you want, making sure you become aware of and prepare for anything that might hurt your case, and representing the viewpoints of the witnesses faithfully. **I would like to**

work on defining the edge a little more – “massaging” the testimony to better represent my side while still staying faithful and acceptable to the witness.

Counseling a Client

This exercise allowed us to explore the lawyer’s role in many facets – in the initial interview, building a relationship with the client, as a researcher, defining issues, in guiding the client through the various choices available to find the best one to reach her goals, and finally in thinking about how a lawyer can help, and where a lawyer’s ability to help ends. It was interesting to me to realize in the final interview that, at that point, the most valuable thing we did for Anya was to arm her with information. I think it will be important throughout my career to remember that valuable aspect of the lawyer’s role. In going forward I look forward to learning more about the lawyer’s role in alternative dispute resolution settings.

VI. How have you improved your skill at critiquing your own work and the work of others and learning from the experience? What goals do you have for further improvement in this dimension?

Interpreting the Law as an Advocate

World Trade Center

I have never been one who was able to edit my own writings. Once I finished draft one of a paper in college, that was basically it. I appreciate the opportunity to be forced into critiquing and re-drafting, as this is not a skill I have ever developed and I will need a lot of work in order to hone this skill. I would like to work on ways to step outside of my own way of thinking and see what I have written from a neutral perspective, which I think is the skill that truly allows for effective editing. In this exercise, the inconsistency between the rule statement, the first “section” and the second “section” in terms of the three-part structure was obvious once I looked at it in the critique session, but was not something I was able to articulate when looking at the piece on my own.

Interpreting Facts

Cardozo’s Light

This exercise made me think a lot about what to leave in, what to leave out, and how to “massage” facts to make them work for our argument. This, to me, was less about the writing and more about the substance and structure of what I put in the affidavit, as well as looking at others’ affidavits and selecting what worked, and what didn’t. Everyone had a slightly different take on what was important, what order things should go in. I think, in the face of others’ work, I have a tendency to disregard my own, so I would like to work on looking at my own work with the same critical perspective as I look at others – not just looking for what doesn’t work, but also looking for what does, and standing up for it if I feel strongly.

Counseling a Client

I think it is still difficult to work on critiquing others’ work, because I don’t think I am very confident that the way I am doing something is the “right” way to do it. This will get better with experience, as already I feel more confident in certain things just by virtue of getting feedback and knowing what was correct and what was not. In critiquing my own work, page limits have been very helpful – having to cut portions of the memo was the best tool to determine what was necessary and what was not.

Faculty Response

You have identified the process of selecting authority as an important area for you to focus on next semester.

What have you learned this semester that you can apply in future assignments? How are the skills you developed in fact selection possibly relevant here? Consider how you can apply to case and fact selection the skills you have developed in connection with defining and strategically pursuing desires. Your observations about client empowerment are similarly insightful and will bear fruit in next semester’s mediation exercise.

Summer 2011 ILTL Conference: Engaging and Assessing Our Students Guided Journal

Pick one session you attended so far at the Summer 2011 ILTL Conference and answer the questions below with regard to that session. You may use the back of the page if you need more space.

What was your understanding of the goals of the session?

What did you learn in the session that is relevant to your teaching? (Describe specific information relevant to classroom methods, course materials, out-of-class interactions with students, lawyering skill-building, assessment tools, use of technology, etc.)

Describe anything in your previous experience that helps you make sense of or provide context for what you learned in the session.

How might you incorporate what you have learned in the session in your future teaching?
