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and art of teaching*

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Teaching in Tough Times

By Barbara Glesner Fines, University of Missouri Kansas City School of Law

"Teaching in Tough Times" is the first in a new series for THE LAW TEACHER. For each issue, we will ask a leading teaching and learning scholar, such as Professor Glesner Fines, to serve as a guest columnist and offer her ideas on the teaching and learning topic of her choice. Each column will be accompanied by a sidebar "About the Guest Columnist" article.

Legal education is not immune to the economic recession. More than ever, our students are anxious about job prospects and challenged by their own financial pressures. Despite the conventional wisdom that applications to law school rise during economic downturns as individuals wait out recessions by improving their credentials, during this economic cycle there is evidence that applications to law school are actually declining and that legal education may be in for an "adjustment" as much as any other industry. Thus, faculty may be facing their own losses of resources and additional burdens. How is all this likely to affect teaching and learning?

For faculty, economic stresses may test our commitment to excellence in teaching. Recent months have seen law faculty asked to cut their travel budget, forgo salary increases or take pay cuts, and teach larger classes with fewer resources as public funding is cut and private endowments constrict. In such an environment, the quality of teaching can decline unless we find ways to achieve efficiencies in delivering excellence in education. We know that improving student learning takes faculty time – in attending to teaching methods as well as content, in providing regular formative feedback, and in simply spending time with our students. Yet, there are efficiencies to be found in these tasks if

we are willing to collaborate with one another.

This is why I am so pleased that Gerry Hess and Michael Hunter Schwartz have agreed to recreate the Institute for Law Teaching and Learning as a new center for collaboration. The Institute will be, as it has been in the past, a vehicle for promoting the scholarship of teaching. As we have seen from the "Legal Education at the Crossroads" conferences in the past two years, law schools around the country are reforming themselves in fundamental ways. These changes must be accompanied by careful study and assessment if they are to lead to real improvements. I am confident that the Institute for Law Teaching and Learning will play a central role in leading that scholarly endeavor.

Another long-time leader in legal education, the Center for Computer Assisted Legal Instruction, has just announced a new project that presents many exciting opportunities for collaboration. The Legal Education Commons is an online forum for sharing teaching materials. Like all CALI efforts, the Commons is user friendly and open to faculty from any CALI member school. Faculty can simply log on and upload their videos, slide shows, simulations, exercises, or other teaching

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About the Guest Columnist

Professor Barbara Glesner Fines is a caring teacher, a teaching scholar and a scholar about teaching.

An engaged scholar in the subjects she teaches, Professor Glesner Fines has authored law review articles and book chapters about doctrinal issues in family law, bankruptcy, remedies, and legal ethics. But she is THE LAW TEACHER'S first Guest Columnist because she is an inspiring teacher and because of her extraordinary body of teaching and learning scholarship. As a teacher, Professor Glesner Fines explains she is inspired most by her students. She feels inspired not only by students who "have found new faith in themselves" or have had the "magical moment . . . [of] sheer exhilaration of having wrestled a difficult concept or skill to the ground and become its master" but also by students who "have scolded me with harsh and accurate arrows when I assumed too much or cared too little."

Professor Glesner Fines' teaching and learning scholarship includes three widely-cited law review articles: *The Impact of Expectations on Teaching and Learning Law*, 38 GONZAGA LAW REVIEW 89 (2002/03); *Competition and the Curve*, 65 UMKC LAW REVIEW 879 (Summer 1997); *Fear and Loathing in the Law School*, 23 CONNECTICUT LAW REVIEW 627-68 (1991) and the more recent *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN LAW JOURNAL 313 (2008). She also has created more than a dozen CALI exercises, published problems in the areas of ADR, Property and Remedies, and created and continues to build a rich, incredibly useful, and extensive teaching and learning website, <http://www.law.umkc.edu/faculty/profiles/glesnerfines/bgf-edu.htm>.

Teaching in Tough Times

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materials. All materials posted to the Commons are contributed under the terms of a creative commons Attribution-Share Alike 3.0 license. This allows users to edit, copy, and distribute these teaching materials for use in their classes so long as proper attribution is given. The Legal Education Commons currently has over 700,000 court documents and over 300 original illustrations from CALI lessons that faculty can use in designing their own teaching materials. Faculty can access the Legal Education Commons at <http://w.cali.org/lec>.

A similar effort to share and improve teaching materials in the family law field is being led by the Family Law Education Reform project, sponsored by Hofstra Law School Center for Children, Families and the Law, and the Association of Family and Conciliation Courts has just launched a website for sharing teaching materials in the family law field. This project will be featured at this summer's teaching conference on The Future of Family Law Education. The conference is sponsored by the Midwest Family Law Consortium, a collaborative effort of the University of Missouri Kansas City, William Mitchell Law School and the University of Indiana-Indianapolis Law School.

All these collaborations to support teaching and learning are critical in times of budget challenge. Maintaining our quality of education will require that we freely share our discoveries in engaging students and improving their learning. The connections we make through these collaborative efforts will improve our teaching more profoundly than simply providing a few volumes of good teaching ideas. Sharing our enthusiasm for teaching with one another provides the support and encouragement we all need as we face uncertain changes in the economy and legal education. If your budget constraints prevent attending a summer teaching conference this year, I encourage you to make connections in other ways: read a book to inspire

your teaching, invite a colleague to team teach a class session with you, engage a faculty member in your field from another school in a correspondence about your teaching.



Barbara Glesner Fines

Our enthusiasm for learning is necessary more than ever – not only for our own motivation but to lead our students as well. For our students, economic stressors are likely to interfere with their ability and motivation to engage in learning. Whether distracted by balancing economic demands and job searches or debilitated by anxiety, our students need greater information and support. Our law school's placement offices and student services staff are on the front lines in this task, but we should attend to our student concerns in our classrooms and offices as well. We can give them information about trends in the legal marketplace and alternative careers enhanced by law degrees. We can provide opportunities for students to voice their concern about their career prospects. Just as we teach students that they must moderate their client's expectations, so we must be honest and forthright and avoid selling our legal educations as guarantees of high income. Rather, we should demonstrate to students our own passion for justice, enthusiasm about ideas, and profound respect for our students and the clients they will be serving. Where these principles lead, learning will follow and our students will graduate with courage and vision to weather even the harshest economic times.

Barbara Glesner Fines is the Associate Dean for Faculty Development and Ruby M. Hulen Professor of Law at the University of Missouri Kansas City School of Law.

Preparing law students to serve and lead

By Artika Tyner, University of Saint Thomas School of Law

“Servant leadership begins with the natural feeling that one wants to serve, to serve first. Then conscious choice brings one to aspire to lead.” ~Robert Greenleaf

An integral step of preparing law students to become “servant leaders” is to incorporate principles of social justice into the law school curriculum. Social justice has been defined as involving “the goals of equality, of access, opportunity and outcome.” (Marcia Bok, *CIVIL RIGHTS AND THE SOCIAL PROGRAMS OF THE 1960S: THE SOCIAL JUSTICE FUNCTIONS OF SOCIAL POLICY* 15 (1992).) The law school curriculum can be used to train law students in the ideology of social justice lawyering, enable law students to envision themselves as agents of change and create transformation in the legal system. Legal educators can aid in this training by engaging law students in an ongoing dialogue about social justice issues.

Methods of teaching the principles of social justice

In order to effectively respond to injustice and remedy inequities in the law, law students must recognize the marginality of less privileged groups within our legal system and address the needs of these marginalized populations. Further, students must understand that legal professionals have been instrumental in ensuring that promise of justice is manifested. This is evidenced through cases that have changed the course of U.S. history by upholding civil rights as paramount: *Brown v. Board of Education*, *Gideon v. Wainwright* and *Miranda v. Arizona*.

Law teachers can create opportunities in the classroom for students to explore and examine critical questions related to social justice issues, such as:

- Is the law value-riden? If so, which values are protected?
- How can equal access to the justice system be obtained?

- Is public policy created through pluralism, power of the elite, or sub-government systems? What methods can be used to create public policy that minister to the needs of marginalized populations?
- Has the law failed to remedy the legacy and presence of cultural and racial bigotry and prejudice in the United States?

These opportunities can be part of an ongoing dialogue about the practice of social justice lawyering. The dialogue can be facilitated in small group discussions and electronic discussion boards. Through this dialogue process, students should be challenged to think critically about how the law impacts society and seek opportunities to create equal access to the legal system. Also, students should write reflection essays or journals that explore their worldview as it evolves throughout their educational and professional development. Reflection will enable students to identify how their life experience has shaped the way that they view the concept of social justice. Subsequently, students should evaluate if their views have changed based upon class discussions. Ultimately, the ongoing dialogue challenges law students to examine the current legal system and discover ways to create equal access to the legal system for all.

Benefits of incorporating social justice into the law school curriculum

There are both societal and individual benefits that will be derived from teaching principles of social justice. Society will benefit from the training of leaders that will be agents of change. This is exemplified through the works of our predecessors, Justice Thurgood Marshall, Nelson Mandela and Mohandas Gandhi, who used their legal skills to further

humanitarian goals. In addition, the skills gained through learning social justice lawyering will be transferable into the future legal careers of students. Law students will be better prepared to serve and lead in the community.

Incorporating principles of social justice lawyering in the law school curriculum will enable law students to:

- Think critically and ethically

Law students will be challenged to examine the current legal system and determine whether the pledge to protect “justice for all” has been fulfilled. This is a critical question at this time. A 2005 study entitled: “Documenting the Justice Gap in America,” conducted by the Legal Services Corporation (<http://www.lsc.gov/justicegap.pdf>) found that 80 percent of the civil needs of poor people are not being met because of “chronically and grossly” under-funded legal services and pro bono programs. This study illustrates that access to justice may be limited by many factors, including: socioeconomic status, ethnicity, or gender. The study demonstrates a dire need for social justice lawyering.

After critically examining our current legal system, students will begin to explore their ethical obligations to further justice. Many opportunities are available for law students to provide direct services to those in need through experiential learning course offerings and volunteer experiences, whether by assisting a client with a criminal expungement or representing a client in an eviction proceeding.

- Brainstorm ways to create policy changes

Public policy creates ways to further political agendas and ideology. Law students can help to reshape the policy agenda to address social justice concerns. They should examine existing public policy and system structures to identify areas of law that should be changed and play an integral role in future agenda setting. Students can utilize their legal skills by becoming actively involved in legislative advocacy and policy reform.

- Effectuate systemic changes

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Preparing law students to serve and lead

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Law students will empower oppressed groups by creating access to the legal system. Students can use their analytical skills and advocacy capabilities to give a voice to individuals that would not otherwise be heard.

- Explore constructive conflict resolution methods

Law students can discover alternate methods to define and resolve conflict. For example, students that have an interest in family law may explore principles collaborative lawyering models; while students passionate about international law may study trends in international arbitration. Students then will help parties resolve conflict in a constructive manner.

Conclusion

The greatest benefit of integrating principles of social justice into the law school curriculum is to prepare students to serve and lead in their local communities and globally. Principles of social justice in the law school curriculum can help the next generation of “servant leaders” to emerge. Students will discover new ways to utilize their talents and legal skills to build communities, give a voice to the voiceless, and power to the oppressed.

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Perceptions of Favoritism in Constitutional Law

By Sonya Garza and Lawrence Friedman

We have both taught constitutional law to classes of between 120 and 140 students in any given year. So far as we can tell, we both teach the course in a similar way, with an emphasis on purposeful questioning of students about the cases concerning the spectrum of constitutional issues. Last year, it came to our attention from some comments on student evaluations that some students believed each of us, in our separate classes, favored women over men in discussions, both in respect to students upon whom we called and students who volunteered to participate.

We discussed these student comments and decided it was possible that each of us might be favoring the women in class in some way. As untenured members of the faculty, however, we have been observed by our tenured colleagues on numerous occasions over the past few years and none has noted such a tendency in our teaching. So, assuming that we and our colleagues might not see what the students in class see, we gave some thought as to why some students might perceive each of us as favoring women.

Many studies have been done in recent years about the different teaching approaches in primary and secondary education. While social scientists seem to agree that primary and secondary education reward obedience, the law school classroom—as well as most higher education—values assertiveness. Other studies have shown that men are more willing to volunteer in class discussions in law school, and to be more assertive in doing so.

Our experience with two kinds of class participation—professor-initiated participation and student-initiated participation—supports these conclusions. As an initial matter, it should be noted that there are more women than men in our constitutional law classes. Our law school, like many, now admits women in greater numbers, a reflection of the changing gender demographics in higher education. Competitive undergraduate programs are reporting difficulty in balancing classes of similarly qualified male and female applicants, which has a natural effect on the pool of qualified law school applicants. Consequently, in any given constitutional law class, when we select a student for participation by cold calling, it is statistically more likely that the student will be a woman, or, on days in

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Submit articles to *The Law Teacher*

The Law Teacher encourages readers to submit brief articles explaining interesting and practical ideas to help law professors become more effective teachers.

Articles should be 500 to 1,500 words long. Footnotes are neither necessary nor desired. We encourage you to include

pictures and other graphics with your submission. The deadline for articles to be considered for the next issue is October 16, 2009. Send your article via e-mail, preferably in a Word file.

After review, all accepted manuscripts will become property of the Institute for Law Teaching and Learning.

Please e-mail manuscripts to Robbie McMillian at rmcmillian@lawschool.gonzaga.edu. For more information contact the co-editors: Michael Hunter Schwartz (michael.schwartz@washburn.edu) and Gerald Hess (ghess@lawschool.gonzaga.edu).

Perceptions of Favoritism in Constitutional Law

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which several students will be called on, that the number of women will exceed the number of men—thus, the numbers may lead to a perception that women are called on more frequently than men.

Of course, the statistical gender imbalance in some years has been greater than in others and likely does not, in itself, account for the student perceptions of favoritism. Importantly, despite the fact that there are more women than men in our constitutional law classes, where student-initiated participation is concerned, men will volunteer more often than women—indeed, it will often be the same men

who regularly have their hands up. This means that—again, from the student’s perspective—it could appear that we are harder on men than

women when it comes to the quality of their voluntary comments and questions, because those male students who regularly raise their hands are creating more opportunities to offer comments that are not on point or just plain wrong.

In the 1970s and 1980s, many studies which noted the gender gap in law school classrooms concluded the gap was based on mere numbers. Today, there are more women than men in our classes, but men continue to volunteer more often and to be more assertive. This gender gap may be a function of socialization, which begins at an early age. If this is so, we law professors must compensate for entrenched habits and inequalities.

It may be possible to counteract the perception fueled by the demographic and social reality of classes at our

law school. First, we must be more vigilant about treating all students who participate in class discussions, whether voluntarily or not, with equal respect. There are ways to tell students that they are on the wrong track, and then there are ways to tell students they are on the wrong track.

Second, we could be more transparent about the demographics: if it seems like more women than men are cold-called, it may be because there are more women to call on, and not because the professor prefers to call on women; and if the professor seems to be telling more

[W]e must be more vigilant about treating all students who participate in class discussions, whether voluntarily or not, with equal respect.

men that they are off the track, it may be because, so far as voluntary participation is concerned, men participate at a higher rate than women and therefore present more opportunities to be wrong. Perhaps these discrepancies based upon gender could be utilized in a discussion about the validity of diversity as a compelling governmental interest in the context of higher education affirmative action policies, to illustrate that the attitudes and perspectives of students in the law school classroom are not necessarily identical.

Even if we were more transparent, though, it’s not clear that students would not continue to perceive favoritism. One of us (Garza) teaches upper division courses—family law, women and the law, and child abuse and neglect—in which the ratio of women to men is

exceedingly high. Despite near-complete transparency about the numbers game in those particular classes, women, according to student comments, are perceived as being favored. Further, the men still raise their hands more frequently in these classes—again, presenting more opportunities for the professor to point out those male students as being on the wrong path, or just plain wrong.

Much interesting work is being undertaken by scholars in the law school humanization movement to probe the use and effects of greater transparency

about pedagogical choices and the law school environment, and that research will no doubt prove instructive in helping professors

to determine when and how to discuss such matters with students. For now, though, the fact remains we need to be aware of the demographics of our law school classrooms and consider the ways in which they may affect some students’ perceptions of the classroom experience. As professors, we know that we can’t please everyone all the time, but we can try to mitigate the worst effects of a demographic reality that is beyond our immediate control.

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The Lost Art of Good Legal Writing

By Paula Colby-Clements, Massachusetts School of Law

Abraham Lincoln described writing as the “art of communicating thoughts to the mind.” (Lecture on “Discoveries and Inventions” in Roy P. Basler, ed. *THE COLLECTED WORKS OF ABRAHAM LINCOLN*, (Rutgers University Press, 1953)) As advocates, great lawyers paint vivid pictures that take hold of our minds and can drive us to action or distraction. A lawyer’s well-written and spoken words allow us to see, to think, to feel, to rejoice, to react, and to act positively.

Good powerful writing is in significant demand and short supply in this multimedia age. The keys to effective and eloquent communication are the same regardless of the setting. The keys to good writing are as simple as ABC – advocacy, brevity, and clarity. Then why do most law school graduates employ the very antithesis of the ABC’s of good writing?

Lawyers rely primarily on their speaking and writing skills. However, lawyers continue to draft verbose documents flush with antiquated legal expressions that even the most trained legal eye reads repeatedly to comprehend. Should the only people who have any chance of deciphering the meaning be those with years of law school training? Good lawyers must be good writers. They should aspire to be great writers.

Like Justice Brandeis, Learned Hand and Oliver Wendell Holmes, lawyers should be great advocates whose writings are clear and succinct. Brevity and clarity of expression allow the reader a clear understanding of both the meaning and import of the words. “Clarity alone may not account for the enduring quality of statements like ‘Don’t give up the ship!’ but it’s doubtful that Captain James Lawrence’s remark would be printed in every history book in the country if he had said, ‘Please be advised to retain control of this vessel until further notice.’” (Cocke, Krik Bell, *Do You Apprise or Tell?* CASE AND COMMENT (Vol. 71, No. 6, November-December, 1966, p.12).)

In good writing, advocacy simply means that the piece has a desired purpose and the words employed achieve that purpose. Effective advocacy forces the reader to think, to feel, and to act in the desired way. Brevity means the piece employs an economy of expression. Short plain words and sentences are used to provide emphasis and elegance by their design and simplicity much like the timeless classic black tuxedo or cocktail dress. Finally, precise well-written words that convey the writer’s thoughts simply in language all can understand achieve clarity. Hyperbole, arcane language and verbosity are discarded, as understated eloquence is the goal.

Lawyers who use critical thought and analysis to convey ideas in an interesting and cohesive fashion while using proper grammar, syntax, spelling, punctuation, and word choices are more effective advocates. Good advocates recognize that thinking about writing and the methods of “communicating thoughts to the mind” are as important as the writing itself.

Instead of merely reading and trying to figure out what the writer said, good advocates also discern what the writer wanted us to feel and understand. *How* the writer is conveying the message matters greatly. To read like a writer one must pay close attention to the techniques employed and how they contribute to the meaning of the piece and improve its quality. This attention will make a good writer. Ultimately, it will produce better advocates.

Teaching good writing is laborious and time-consuming. Since legal writing courses are a one-year or even one semester course, the teaching of writing itself can be lost in the effort to expose students to legal writing formats. Instead of teaching students clarity of expression and how to write elegant prose, many schools require students to follow form and draft legal memoranda and required appellate briefs. Gone are the days of teaching eloquent advocacy.

Critical thought, revision and repetition produce good writing. Law students must be forced to write pieces repeatedly until using clear, declarative language is second nature. Law students need to write again and again until focusing on organization, voice, word choice and sentence fluency are of paramount importance. In this process students learn why Justice Brandeis said, “There is no such thing as good writing. There is only good rewriting.” (Brandeis, Louis D., in Pierce, George W., *The Legal Profession*, *THE TORCH*, Vol. XXX (No. 2, April, 1957), p. 8.).

There is a national consensus that the basic elements of good writing apply everywhere, so why should the legal profession not take pains to follow the basics? Even in business, heads of global companies are applauded for clear and accurate writing. The National Commission on Writing for America’s Families, Schools and Colleges honored billionaire Warren Buffet for his “folksy, easy-to-understand annual report on Berkshire, Hathaway, Inc. as a major contribution to the art and craft of writing.” Buffet proudly states that “he writes his annual report as though he were explaining Berkshire to a sister who has been away for a long time.” (*BILLIONAIRE BUFFET HONORED FOR WRITING*, by Kirk Lindstrom, February 4, 2005.)

Legal audiences should be treated the same way. Good writers recognize that the methods of communicating our thoughts are as important as the message itself. Critical thought, revision and repetition produce good writing. Consistently measuring that writing for advocacy, brevity and clarity is the path to great advocacy.

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Wild and Wacky Federal Crimes

Feel like a diversion from grading your exams? Test your skills on this crossword created by Professor Ashley S. Lipson. The answer is on page 13.

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.

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.

WILD AND WACKY FEDERAL CRIMES

1	2	3	4	5	6	7	8	9	10	11	12
13						14					
15					16			17			
18			19				20		21		
22			23		24			25		26	
27		28		29			30	31			
		32				33					
34	35				36			37		38	39
40			41	42	43		44			45	
46		47		48						49	
50					51				52		
53			54	55			56		57		
58							59				

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16. It isn't very reassuring that we 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).

— see page 13 for solution

Why Teach The Rule Against Perpetuities? Four Good Reasons

By Diane J. Klein, University of La Verne College of Law

The Rule Against Perpetuities (RAP), it is fair to say, has fallen into desuetude. Most states have enacted reform statutes that mitigate the worst consequences of the ruthless application of the Rule; some have even abolished it (or very nearly). As a practical matter, what S.F.C. Milsom called “the original feudal particle, the holding for life,” what we would call the “legal life estate,” has almost completely disappeared. The overwhelming majority of future interests are created in trusts, and the alienability of the underlying property – the true rationale of the Rule – is assured by the trustee’s powers. A Rule

prohibiting *ab initio* certain interests that are not certain to vest within twenty-one years of some life in being at the creation of the interest is therefore not only somewhat convoluted and conceptually difficult – it is almost totally irrelevant, except as a historical curiosity.

Before becoming a Property teacher, I had the benefit of attending two Property courses myself, Prof. John Dwyer’s, at Boalt Hall, whose course I audited while deciding whether to go to law school, and Prof. Eben Moglen’s, a Columbia Law School historian visiting at Harvard the year I began. Dwyer’s course, almost too perfect for Berkeley, was all about Native Americans, the environment, and rent control. Moglen’s course was a virtuosic high-concept meditation on the meaning of property and power, which drew on historical and contemporary materials and focused significantly on the Supreme Court’s takings jurisprudence. Neither relied to any very great degree on a casebook. Neither taught the Rule Against Perpetuities.

But I do. Since I began teaching year-long, 6-unit versions of Property, I have devoted approximately a month of the fall semester to estates in land and future interests, including the Rule. About one third of my December exam requires students to classify the interests created by a particular conveyance; apply the common law Rule Against Perpetuities to each one, explaining why each is or is not valid; re-draft the conveyance as necessary; and move forward in time, distributing the gifts under the modified

“Studying the Rule Against Perpetuities makes you smarter... It requires precision, completeness, and clarity...”

conveyance. The student is then required to apply common law “wait and see” to the conveyance, explaining how this affects the distribution. Finally, the student is asked to apply the state reform statutes applicable in the jurisdiction (first New York, now California), and distribute the gifts under that regime. The exam usually includes two or three problems of this type, which students are expected to complete in an hour (20 to 30 minutes per conveyance). At least one typically involves a will, and one an *inter vivos* gift; at least one includes a class gift that implicates the Rule of Convenience for class closing. Young widows, after-born children, and suchlike, all make their appearance.

As you might guess, these questions are difficult, and a significant number of students do quite poorly, despite having had numerous (graded) Problem Sets during the semester on this material, many sample problems, and review sessions devoted to RAP. Even after a month of class time, lots of students still

just don’t get it. They are unlikely to use it in practice, and the level of complexity at which I teach it greatly exceeds that examined on any bar exam. So why do I bother?

I believe there are at least four good reasons to continue to teach the Rule Against Perpetuities in a thorough way which calls upon students actually to master it in order to receive a top grade in Property. These reasons apply most emphatically in a non-elite school, where Property is typically taught as a

full-year course. If I were teaching Property as a single-semester 4-unit course, in a top-ranked school, I might well take a

different approach. But here and now, I find these reasons persuasive.

1. Studying the Rule Against Perpetuities makes you smarter.

I really believe this is so. Most undergraduate philosophy departments require students to take a course in logic, even if the student intends primarily to study aesthetics or ethics, because the rigorous thinking required is valuable in all philosophical areas. Actually learning to apply the Rule Against Perpetuities is similar. Applying RAP properly requires a great deal of attention and focus. It requires that one read conveyances extremely carefully, both as a “technical” matter (to remember the legal difference between “so long as” and “but if”), and for their intended content. Explaining the series of events that threatens to produce remote vesting in a particular case requires creativity, open-mindedness, and flexibility of thought. It requires precision, completeness, and clarity, qualities sorely lacking from a great deal of legal writing.

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Why Teach The Rule Against Perpetuities?

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2. Studying the Rule Against Perpetuities is one of the most difficult things you will do in law school.

I tell this to my students, and it is true. This has at least two consequences. First, it is an opportunity to master something new and difficult. No one knows RAP before they come to law school. Everyone is confused by it when they are first introduced to it. But if you figure it out, you actually know something by November that you did not know in August. And if you can learn it, you can learn any other rule or concept to which you will be introduced in law school. For those who succeed, it is a tremendous confidence-builder.

3. RAP problems have right and wrong answers.

So much of law school can seem vague and indistinct, and many law teachers believe that an important part of socializing students into legal thinking is helping them to recognize that there often are not “right and wrong” answers. But for many students, this can shade over all too readily into thinking that one can always “BS” one’s way through any law exam. There is no “almost” knowing RAP. There is no “faking it.” In

addition, when a student’s answers are wrong, it is easy to explain why. (“You mean, he might go to law school more than 21 years after his own death?”) Students who receive poor grades in law school are often frustrated by their own inability to see the difference between their answers and answers that receive higher grades. In the RAP area, it’s easy.

4. The study of RAP is an initiation into law and law school.

Particularly for students at schools without a history stretching back a century or more, and for those at that increasing proportion of American law schools without a single legal historian on the faculty, the study of future interests, culminating in RAP, brings students into contact with some of the oldest legal ideas and materials in the curriculum. In studying RAP, students participate in an activity that is at least as old as American legal education itself, and it gives them something in common with all the older lawyers (and there are lots of them!) they are likely to encounter in practice. My first Dean at the ULV College of Law, the late Don Dunn, never tired of regaling me and my students with his own “RAP flashbacks” after he heard me teach the material.

But a former student has given me my favorite RAP anecdote so far. In traffic court last June, he was awaiting his turn and studying from his Barbri prep books, as the bar exam was just a few weeks away. The traffic judge noticed the books, deduced that the young man was a recent law school graduate, and when the time came to hear his disputed ticket, said (no doubt recalling his own law school experience), “If you can tell me the Rule Against Perpetuities, I’ll cut your ticket in half.” Without missing a beat, my student (from three years before!) replied, “To be valid, an interest must vest, if at all, within 21 years of some life in being at the creation of the interest.” The judge, both impressed and amused, was as good as his word, and reduced the fine accordingly.

Just another reason why it pays to the learn the Rule Against Perpetuities. And I plan to keep teaching it.

Diane J. Klein teaches full-time at the University of La Verne College of Law, and was a Visiting Professor of Law at UCLA School of Law for the fall 2008 semester. She can be reached at dianeklein@aol.com.

TEACHING AND LEARNING NUGGET

Do you sometimes wonder during class whether your students have learned what you sought to teach them? Try asking your students to take out a half sheet of paper and to summarize what they have learned that day or to identify what most confused them about what the class was learning that day. These “Classroom Assessment Techniques” will allow you to *know* whether your students have learned, correct misunderstandings, and make necessary adjustments in how you teach the same skills and knowledge in the future.

Personal Assessment:

Encouraging students in a skills course to reflect on what they have learned and to set goals for self-improvement during their careers (and, p.s., a conundrum about grading)

By Harriet N. Katz, Rutgers-Camden School of Law

At the first meeting of the skills courses I teach (“Interviewing, Counseling, and Negotiation” or “Negotiation”), I acknowledge to my students that they already know some of what we will be examining during the term. They have intuitive ideas about these interpersonal skills and their ideas are frequently reasonably sound. The class will help them refine their intuition, occasionally challenge it, and give them additional understanding. I also tell them that they won’t really learn that much in one term. They should be keeping their new tools in mind as they continue to hone their skills during their coming careers.

In “Negotiation,” I have wanted to encourage student thoughtfulness about understanding the process of continued development of skills. My stated educational goals for the course are to introduce fundamental elements B how a bargaining zone is identified or created, how the resulting cooperative surplus is divided, psychological and ethical dimensions of decisions B while requiring simulations that demonstrate each concept. My text has been Russell Korobkin’s *NEGOTIATION THEORY AND STRATEGY* (2002). In a recent version of the course, I added the following to my usual writing and performance assignments:

“Personal assessment”

During the first week of the term, look over the syllabus and note the various topics we will be examining. (The first few pages of each chapter will help you if the topic is not clear from the

syllabus.) Write a short note, 2 - 1 page is fine, about an aspect of negotiation you anticipate that you will find challenging to perform, and what you think you will find relatively easy, among these topics. Do not turn this assignment in; save it for future reference. At the end of the term, you will retrieve it and add a page assessing your predictions, and describing what you plan to continue to work to improve as you practice law. (You may wish to improve what you perceive as a weakness, or you may wish to concentrate on becoming excellent at some aspect of negotiation that you have decided you have a good feel for, you can decide this later.) These papers will be turned in at the end of the term. You will also be encouraged, but not required, to post these on the course webpage, and may get some helpful feedback from your classmates.

The resulting papers were, I would have to say, amazing.

Student “prediction” comments reflected confidence, anxiety, and curiosity. They were candid about discomfort they anticipated, for example, in using power or in carefully measuring what information would be revealed or concealed. Several, noticing that our course will cover “fairness” and “social norms in bargaining”, were sure they would find it easy to be fair, while wondering if others would be. Some noticed the topic “misrepresentation” and wondered how they would react to professional ethical norms that they anticipated would contradict their personal standards of behavior.

Student insights met the explicit goal of encouraging a receptive attitude toward examining individual values and skills. Almost equally important, student predictions served to accomplish an implicit objective (that I hadn’t really focused on, frankly). Judging by their written comments, to write part one of the assignment most of the students had read the syllabus through and even looked at the referenced chapters at the outset of the class. My unplanned success in getting students to read ahead likely explains how frequently student comments in discussions during the term involved concepts in chapters not yet assigned. (Bear in mind that I did not read the prediction statements when first written, instead I collected the completed assignment at the end of the term.)

Students’ final “assessment and goals” statements comparing their early predictions to their actual performance in the course simulations commented on how accurate their early predictions were, and identified strengths and challenges for future focus. Some also reflected on negotiation experiences outside the course.

One student reconstructed negotiations from his work experience, appreciating that he had used integrative bargaining to successfully reduce costs for his company by breaking down a contract into constituent parts and dealing with several vendors. One compared integrative bargaining and fairness norms and related each to her future employment in construction litigation, identifying strengths that she would

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Personal Assessment

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continue to develop. Several noted how challenging it is to keep in mind the nonmonetary concerns of a client so that the true bargaining zone is identified. Some identified a need to get over fear of math when figuring out whether a client's requirements have been met. Some insights were a surprise; others reinforced the student's earlier hunches. Paper after paper showed the effort and careful reflection I had hoped for.

I have several thoughts about why this assignment succeeded. I had tried to establish an expectation of reflective thinking in other assignments.

Students write at least four 1-2 page comments analyzing simulations in terms of a concept from the related chapter. (Examples: For a simulation illustrating lawyer-client issues in which some students were

clients, "How did the lawyer help or hinder the progress of this negotiation?" For a problem involving information that the parties wish to conceal, "What ethical or contractual concerns would you have about concealing X in a real negotiation?") Another assignment that brought the course ideas out of the classroom asked students to use a negotiating concept to analyze the negotiation potential of a situation or event reported in the news. In class discussions, class members offered supportive, sometimes humorous, but analytical approaches critiquing the performance and personal style of fellow students. Overall, I tried to emphasize

that the elements of negotiation theory and practice are applicable to real life, in general, and to each person's efforts to negotiate, in particular.

I also taught this particular class in the evening, and therefore had a number of older students. Like many faculty members, I have a sense of greater maturity and practical wisdom among our second career students, which may actually inspire the younger students, as well. In short, we had rapport, we had experience, and we had shared efforts at critical application of negotiation ideas.

Paper after paper showed the effort and careful reflection I had hoped for.... I had tried to establish an expectation of reflective thinking in other assignments.... In short, we had rapport, we had experience, and we had shared efforts at critical application of negotiation ideas.

I believe this assignment can be a regular part of skills courses that I teach. I believe it can be adapted for use in other skills courses, and quite possibly, in doctrinal courses, as well.

Here's the "p.s." noted in the title. I do have a problem to solve before I use it again — grading. Last year's students believed that these assignments were going to be one of eight written or performance elements of the final grade. I intended to grade them but finally did not. Abandoning my usual firm practice, consistent with our law school expectations and culture, I changed my grading scheme without

notice to students. Reasoning that seven assignments were an adequate measure of student achievement, and finding that I was hard put to differentiate among the personal assessment papers, I did not grade them. (No one complained. I did reply to each student with a paragraph or so of comments.)

So, here's my resulting dilemma about grading. I expect that the switch I made can't be done again, as the word will be out. I am fairly sure that a grade incentive helps get students to make an effort at the end of the term, so the effort

should be made to come up with a grading plan for this assignment. But the point of the exercise is to encourage continued self-improvement. Shouldn't students appreciate the value of

this effort to their careers as lawyers, and not be concerned about its effect on achievement in a class? I think the answer is that some will, and some would like to, but likely won't, as one student — one of the best in the class, but nevertheless a man with a full-time job and a family — told me candidly. So, in version 2.0, I will, somehow, grade. Discussion and helpful advice from readers are very welcome.

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Implementing Best Practices and Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum



INSTITUTE FOR LAW TEACHING & LEARNING SUMMER CONFERENCE: JUNE 23-24, 2009 GONZAGA UNIVERSITY SCHOOL OF LAW, SPOKANE, WASHINGTON

The Institute for Law Teaching & Learning will present its summer conference on June 23-24, 2009, at Gonzaga University in Spokane, Washington. The conference will feature 40 workshops that explore techniques for teaching skills and professionalism across the law school curriculum.

Structure of the Conference

The conference will include eight workshop sessions. During each session, five workshops will run simultaneously. Participants will be able to tailor the conference to fit their individual interests by choosing which workshop to attend during each session. The workshops will deal with innovative materials, alternative teaching methods, new technology, ways to enhance student learning in all types of courses, and means of restructuring legal education to foster healthy lawyers. Each workshop will include materials that participants can use during the workshop and when they return to their campuses. The workshops will model effective teaching methods by actively engaging the participants.

Benefits to Participants

During the conference, participants can expect to encounter many new ideas about teaching skills and professionalism in law school. In addition, the conference is intended to facilitate informal interaction among creative teachers who love their work with students. Participants should leave the conference with the inspiration and information to integrate skills and professionalism in the courses they teach next fall. The ultimate goal of the conference is to help the participants improve their teaching and their students' learning and to further their school's efforts to realize the promise of *Educating Lawyers* and *Best Practices*.

Summer is a wonderful time of year in the Inland Northwest and we encourage you to combine some vacationing with your work at the conference. The website experiencespokane.com can help you plan. Spokane offers shopping, fine dining, art and sporting events, public golf courses and nearby rivers, lakes, and national parks.

Registration and Deadlines

Attendance will be limited to 100 participants to facilitate small-group experiences. The roster will be filled in the order that the Institute receives the registration form *and* conference fee (\$395 for participants and \$175 for speakers; by Visa/MasterCard, or by check payable to Gonzaga University). *Refunds:* Attendees must notify the Institute to receive refunds. If notice is received on or before June 5, 2009, a full refund will be provided. No fees will be refunded if notice is received after June 5, 2009.

Meals

Light breakfast, lunch, and dinner on Tuesday, June 23, and light breakfast and lunch on Wednesday, June 24, are included in the registration fee. On Tuesday evening, law teacher-*cum*-musicians may bring their instruments if they desire.

Lodging and Transportation

Participants are responsible for their own travel arrangements. Limited blocks of rooms have been booked in several hotels, all near Gonzaga's campus, none more than a 15 minute walk away from Gonzaga Law School along Spokane's Centennial Trail (www.spokanecentennialtrail.org). All listed properties provide free shuttle service to and from Spokane International Airport. For reservations, call one of the following hotels and request the special rate listed. These rates are guaranteed until 4:00 p.m. on June 1, 2009.

The Red Lion River Inn –

700 N. Division St., (800) 733-5466
<http://redlion.rdl.com/HotelLocator/HotelOverview.aspx?metaID=62>
Institute for Law Teaching & Learning
Rate: \$99.00 standard single/double.

The Red Lion Hotel at the Park –

303 W. North River Dr.,
(800) 733-5466,
<http://redlion.rdl.com/HotelLocator/HotelOverview.aspx?metaID=18>
Institute for Law Teaching & Learning
Rate: \$99.00 standard single/double.

Courtyard Spokane Downtown at the Convention Center – 401 N.

Riverpoint Blvd. (800) 321-2211 or
(509) 456-7600
www.spokanecourtyard.com
Institute for Law Teaching & Learning
Rate: \$139 standard king.

Oxford Suites Spokane Downtown –

115 N. North River Dr. (800) 774-1877
or (509) 353-9000,
www.oxfordsuitesspokane.com
Gonzaga Corporate Rate: \$109 king
suite (includes hot breakfast).

There are three options for transportation between hotels and the Law School. First, it is a very pleasant walk along the Spokane River on the paved Centennial Trail. Second, for those with cars there is free parking at each of the hotels and at the Law School. Third, limited shuttle service will be available at the beginning and end of the day on June 23 and 24.

Pre-Registration

We invite participants to pre-register and begin getting acquainted at the Law School during a meet and greet between 4:00 and 6:00 p.m. on Monday, June 22. Afterwards, please feel free to explore Spokane and its great dining options individually or in groups.

Session 1

(9:00-10:15 a.m.) Tuesday June 23

Best Practices and Positive Psychology: Teaching Law and Legal Practice with Justice in Mind

(Colin James, University of Newcastle Legal Centre) [A]

Positive psychology focuses on positive emotions, positive character and positive institutions, and connects notionally with therapeutic jurisprudence, collaborative law, restorative justice and transformative mediation. In education positive psychology programs already help school children and trauma patients. This presentation will introduce legal educators to some insights of positive psychology that may inform curriculum decisions, teaching methodology and attitudes towards students that encourage optimism, self-care and respect, as well as a sense of professionalism that includes law-as-justice. We will discuss strategies on encouraging students to transition into practice with a grounded optimism and a realistic expectation of what lies ahead.

Enriching Your Course with a Case File

(Gretchen Viney, University of Wisconsin Law School) [B]

In this workshop, we explore how to create and use a case file as a class resource. This workshop is not about developing a course around a semester-long problem, but rather addresses how to put together a basic case file and integrate it into the structure of a more traditional law school class. Participants will learn two ways to create a case file, discover—through demonstration and participation—how to comfortably incorporate the case file into their classroom teaching, and leave with the motivation to give this a try.

Learning is Social

(Mary Patricia Byrn, William Mitchell College of Law and Morgan L. Holcomb, Hamline University School of Law) [C]

This workshop will begin with a short summary of Vygotsky's educational theory regarding the social aspect of learning followed by information on and participation in *ten* interactive instructional strategies. Attendees will *participate in* several interactive instructional strategies *while learning about* using interactive instructional strategies. The interactive instructional strategies used in the workshop will include graphic organizers; think-pair-squares; jigsaws; carousels; structured controversies; defining features matrixes; self-assessments; and cooperative assessments. The presenters use these strategies in their classrooms regularly and will provide each attendee with the information and modeling necessary to implement these strategies in his or her own classrooms.

Alternative Teaching Methods: Using Simulations to Enhance Substantive Courses

(Deborah Young, Cumberland School of Law, Samford University) [D]

This workshop will enable teachers to efficiently and easily incorporate skills activities and simulations into their courses. All teaching materials will be provided for advocacy simulations on authentication, hearsay, and impeachment in Evidence; a writing simulation on sentencing in Criminal Law; and writing and role-playing simulations on probable cause in Criminal Procedure. I will demonstrate the simulations to show how they are effective for teaching substantive material, assessing student knowledge, and raising ethical issues in the context of substantive learning. Principles of designing simulations for other courses will also be discussed.

Thinking Critically about Teaching Goals Through Designing Effective Assessment Rubrics

(Sandra Simpson, Gonzaga University School of Law) [E]

This workshop encourages professors to think critically about their teaching goals by focusing on designing effective assessment rubrics for use in assessing students' performance in legal writing courses or other doctrinal courses. To effectively assess students, professors need to articulate their teaching goals which will be reflected on their assessment rubrics. It is, therefore, important to build assessment rubrics which accurately reflect the professors' goals and the skills the students have learned. This workshop will present the attendees with the tools necessary to build their own assessment rubrics which reflect their individual teaching styles and their individual teaching goals.

Introducing 1Ls to "Thinking Like a Lawyer"

(Debra R. Cohen, University of Baltimore School of Law) [B]

"Thinking like a lawyer" is critical thinking applied to law. Students come to law school with general critical thinking skills but, like the definition of "thinking like a lawyer," these skills are often somewhat amorphous. After discussing the component elements of "thinking like a lawyer," I will suggest some teaching strategies to assist students in focusing on, and honing, their existing critical thinking skills, and how this facilitates their ability to transfer these skills to the legal arena. In particular I will offer suggestions on focusing students on breaking down compound notions into the component parts and identifying and questioning assumptions.

Why Tax Rules: Teaching Students about Clients' Biggest Moments through Tax

(Leah Witcher Jackson, Baylor Law School) [C]

Tax law impacts most major decisions – e.g. choice of entity for new ventures, optimal purchase and finance terms, family and estate planning, charitable giving, etc. Tax classes can be used to teach practical aspects of common transactions, and tax should be integrated into the study of transactions and decisions in non-tax classes. This workshop will include several examples, such as reviewing real estate closing documents and financial statements to teach income tax, using entity tax law to teach about the life cycle and legal issues of various entities, and requiring students to learn Excel to create financial statements.

The Village Approach to Raising Professional Lawyers

(Terri Davlantes, Florida Coastal School of Law) [D]

After being bewildered by numerous instances of uncivility and unprofessionalism by students that left us scratching our heads in amazement, the school decided to take action. We garnered the support of faculty, staff, alumni, local practitioners, the state bar association, and most importantly, the students. This workshop will examine instances of unprofessional behavior, many of them so humorous that we think we need to write a book, and discuss approaches schools can take to develop a proactive approach to promoting professionalism.

Session 2

(10:45 a.m.-12:00 p.m.) Tuesday June 23

"Leaps of Faith": Jumping into Interactive Teaching Methods

(Kris Franklin, New York Law School and Rebecca Flanagan, University of Connecticut) [A]

This program will focus on designing and developing interactive experiences in law classes. Participants will build an interactive classroom exercise together, and discuss both the design process and common blocks to experiential pedagogy. Those attending the session should leave with both some concrete models and ideas about specific interactive classroom exercises, as well as having carefully considered, and begun to break down, some of the implicit barriers to adopting this style of teaching more generally.

Integrating Writing into Casebook Courses without Significantly Increasing Grading

(Karen J. Sneddon, Walter F. George School of Law, Mercer University) [E]

This workshop highlights techniques to integrate writing into traditional casebook courses. The workshop will tackle the issues typically cited for not incorporating writing into traditional casebook courses, such as lack of professor expertise in writing instruction, time constraints, and grading demands. The featured active learning techniques will range from in-class exercises that take as little as five minutes of class time to extended projects to be completed outside of class time. Litigation and transactional writing opportunities will be included. Various methods of assessment, including group edits, structured peer reviews, and self-assessment, will be addressed. Workshop participants will try selected activities.

Session 3

(1:15-2:30 p.m.) Tuesday June 23

Techniques to Improve the Analytical Skills of Students in Large Required Classes

(Ruth Jones, McGeorge Law School, University of the Pacific) [A]

Learning the various modes of legal analysis is often an invisible educational objective to students. This workshop explores how to more explicitly teach the various modes of legal analysis in large required classes. Using materials I prepared for my criminal law and criminal procedure courses, I will describe how I have integrated a more explicit focus on identification and application of analytical skills in my courses and lead participants in brainstorming ways to adapt class hypos, simulations and other class materials and procedures to emphasize legal analysis skills.

Experiential Exercises with Flowcharts Facilitate Learning Law

(Hillary Burgess, Hofstra Law School) [B]

This workshop will provide concrete examples of how to incorporate interactive exercises into the law classroom using flowchart specific and general experiential exercises. Participants will have the opportunity to engage in specific flowchart exercises that demonstrate several interactive techniques. Among these flowchart exercises are puzzle flowcharts, pair and share peer teaching, fact pattern navigation, human hopscotch, and treasure hunts. All of these techniques will be grounded in educational psychology literature that empirically validates the effectiveness of the techniques.

Feedback on Feedback – A Two for One in Fostering Skill Development through Exam Conferencing while Increasing Student Outcomes

(Karol Schmidt, Phoenix School of Law) [C]

Exam grading and exam conferencing can present an optimal learning opportunity for both the law professor and the law student. This workshop will identify the objectives and benefits of feedback for students and professors through graded exams and exam conferencing. In addition, examples of best practices in feedback will be illustrated, including those of the law professor and self-regulated, self-directed opportunities for the law student. The goal of the workshop is to introduce a variety of feedback methods to increase student outcomes.

Festival of Damages Arguments: An Exercise for a First Year Torts Class

(Paul Figley, Washington College of Law American University) [D]

This workshop will demonstrate a problem-oriented exercise for teaching first year Torts students to think quantitatively about damages. It will address life expectancy tables, accounting for inflation, and assessing non-economic damages. In their exercise students develop, present, and decide appellate arguments on: the value of lost future income of a 42-year-old dentist; how to account for inflation in assessing those damages; the value of lost future income of a high school student who planned to become a dentist; and the value of her pain and suffering prior to death.

Interdisciplinary Instruction in the Millennial Age: Journalism & Law Students Blog the W.R. Grace Criminal Trial

(Andrew King-Ries, and Beth Brennan, University of Montana School of Law, and Nadia White, University of Montana School of Journalism) [E]

This teaching workshop will share lessons from the Grace Case website, <http://blog.umt.edu/gracecase>. Blogging a live trial provides a modern, interdisciplinary way to teach students about substantive law, evidence, trial practice, and professionalism. The presenters will discuss how they developed the website in their law and journalism classes, how to use similar technology at other schools, and teach you how to post on blogs and Twitter.

Session 4

(3:00-4:15 p.m.) Tuesday June 23

The Subversive Art of Teaching Interviewing and Counseling

(Joseph Shaub, University of Washington Law School) [A]

This approach to Interviewing and Counseling is termed “subversive” because, under the guise of a law school “skills” class, we can explore in a stimulating and supportive environment the humanity of both our clients and ourselves. Subjects of discussion include emotional literacy, tools for establishing empathic connection and students’ emotional self-exploration. A central theme of the course invites the thoughtful consideration of students’ own personal values and their impact on both their impressions of clients and the counseling they are able to provide. Student exercises, both in-class and homework, are described and demonstrated.

A World of Yes: Using the Language of Cognitive Optimism to Help Students Achieve

(Corie Rosen, Sandra Day O’Connor College of Law, Arizona State University) [B]

Can simple changes in a professor’s use of language reshape students’ relationship to the academic environment? Can language help defeat depression and motivate students who feel helpless in the face of negative feedback or low grades? By applying flexible optimism in the classroom, integrating the language of cognitive optimism into lectures and feedback, professors can bring about these positive changes, helping students to realize their potential and, ultimately, reinvigorate their love of learning.

Beyond the ADA: How Legal Skills Faculty Can Help Students with “Non-Visible” Disabilities Bridge the “Accommodations Gap” Between Law School and Legal Practice

(Alexis Anderson and Norah Wylie, Boston College Law School) [C]

All too little attention has been given to the role of legal skills faculty in helping students with non-visible disabilities succeed as lawyers. Because the ADA clearly applies to law school clinics and legal practice classes, faculty need to develop tools for helping students with mental health issues and learning disabilities prepare for clinical and experiential learning. We plan to engage the audience in analysis of two case studies of law students with mental health and learning impairments to determine how we might best accommodate their needs.

The Application of Student Development Theory in Legal Education: Using the Undergraduate Learning Environment Theories of Chickering, Reisser, and Gamson to Develop Law Students

(Andrew Faltin, Marquette University Law School) [D]

Diverse law student backgrounds make designing student development programs challenging. Chickering, Reisser, and Gamson proposed factors that enhance student learning environments and development: 1) student/faculty interactions; 2) student communities; 3) student understanding of learning; 4) prompt faculty feedback; 5) emphasis of time on task; 6) communication of high expectations; 7) respect for diverse learning styles; 8) student understanding of institutional objectives; 9) student understanding of the curriculum; and, 10) collaborative student development programs between faculty and administration. A discussion of those factors and their implementation in law schools will be followed by a group discussion of best practices.

Life after Langdell: Uncasebooks and Active Learning in Upper Level Courses

(Deborah Jones Merritt, Ric Simmons, The Ohio State University Moritz College of Law; and Leah Christensen, Thomas Jefferson School of Law) [E]

If you don't spend time deriving rules from appellate opinions, what do you do in the classroom? This session will illustrate use of an "uncasebook", materials that teach without any appellate opinions. Participants will receive a sample chapter of Merritt & Simmons's novel *Learning Evidence* text. Professors Merritt, Simmons, and Christensen, who have all taught from the materials, will show how they use interactive exercises, simulations, and writing exercises to surpass the case method. Participants will contribute their own experiences and brainstorm approaches to life after Langdell in large upper level courses.

Session 5

(9:00-10:15 a.m.) Wednesday June 24

Sneaking Skills and Professionalism into Every Course, Every Discussion, Every Day

(Carolyn Dessin, University of Akron School of Law) [A]

This workshop will explore techniques for bringing skills and professionalism training into traditional law school courses. The focus will be on various brief ways of encouraging students to think beyond the law they're learning to consider skills issues and professionalism. We'll explore

techniques by reading cases from across the curriculum, then doing a range of exercises that can be completed in a minute or two. The goal of the workshop is to encourage participants to believe that they can incorporate skills and professionalism into any course without diminishing coverage.

Creating a General Practice Skills Course: Using Lawyers to Teach the Skills and Values Essential to the Professional Practice of Law

(Stephen Gerst and Dave Cole, Phoenix School of Law) [B]

This workshop will introduce the GPS (General Practice Skills) course that was designed to insure that students in their third year of law school have the opportunity to learn and practice the skills and values they will need in the professional practice of law. The course is taught by teams of practicing lawyers who teach the skills and values they use in their daily practices. Students must complete skill exercises and resolve client problems in small group law firms, and individually, in seven modules which represent different practice areas. This workshop will deal with issues of course design, student assessment, integration with doctrinal courses, hiring and training of lawyer faculty, and course administration.

Phenomenological Research: How to Study Your Students' Problems to Improve Your Teaching

(Aida M. Alaka, Washburn University School of Law) [C]

Phenomenological research explores the lived reality of subjective experience and helps investigators identify problems encountered by research subjects in achieving their goals. This type of research can provide insight to instructors who are interested in discovering problems students are experiencing in their courses so that they may improve their teaching practices. After an introduction to phenomenological inquiry, workshop participants will design a plan of phenomenological inquiry, focusing on problems they believe are important in their own classrooms or institutions. Workshop participants will consider how to draft pertinent questions, select appropriate subjects, collect and analyze data, and draw practical conclusions.

Bridging the Gap: Seamlessly Integrating Doctrinal Learning into Skills Courses

(Miriam Albert and Elizabeth Glaser, Hofstra Law School) [D]

With the increasing emphasis on skills training in legal education, educators (both administrators and faculty) are confronted with significant challenges in integrating doctrinal law into practical skills applications. This session will focus on

ways to create overlap and bridge the skills-doctrinal divide; we will learn by doing, just as our students do in our classes. The goal is for participants to take away from the session a new way to think about both teaching doctrinal transactional law, and teaching transactional skills law—hopefully seeing overlaps and synergies, to help erode the divide between these two conceptually-linked areas of teaching and offer our students a more real-world based understanding of the relevant business law concepts.

Exploring the Attorney-Client Dynamic in a 20-minute Counseling Exercise and Reflection

(Jerry Organ, University of St. Thomas School of Law) [E]

Participants will spend 20 minutes participating in a dual scenario counseling exercise. They will spend one or two minutes reviewing a set of facts (one "attorney" set and a more complete "client" set) and then spend eight minutes engaged in a counseling conversation. At the ten minute mark, the pairs stop and switch roles and go through the same routine with a different factual scenario. At the ten minute mark, the counseling session concludes. Professor Organ then will lead a discussion of reflection questions he had his students answer in this exercise and the discussion themes generated by their responses.

Session 6

(10:45 a.-12:00 p.) Wednesday June 24

Autonomy Support and Law School: Irreconcilable Differences or Perfect Match?

(Paula J. Manning and Mary Basick, Whittier Law School) [A]

There is much opportunity to provide autonomy support inside and outside of the classroom, and to improve student outcomes and experiences as a result. Through a series of case studies, hypothetical situations, and interactive experiences, participants will learn about techniques that can be implemented to better support students' emotional, psychological and professional needs—including changing the focus and tone of courses and programs; minimizing unhealthy competitiveness; and using "positive" language in the classroom and in written feedback. Participants will have the opportunity to develop and refine their own ideas for providing similar support.

Everything We Need to Know About Teaching We Learned in Pre-school: Active Learning and How to Not Teach to Engage Students

(Rory Bahadur, Washburn University School of Law) [B]

If you ever wished your upper division students were as excited and enthusiastic in class as those new, incoming, bright eyed and eager 1Ls this workshop is for you. The workshop tangibly explores an active learning based, alternative pedagogy which maximizes law student engagement in the classroom. Initially, session participants will be exposed to the pedagogy as it is currently utilized both in an upper division and in a first year course. Next participants will precisely articulate any learning strategies identified, hopefully rethinking the relationship between teaching and learning. Finally, participants will depart prepared to implement the techniques in their own classes.

Using Wikis to Engage Your Students and Teach More Effectively

(David Thomson, University of Denver Sturm College of Law) [C]

Pedagogical technology has finally developed to the point where it can not only help us teach better, but it can also help us achieve some of the goals articulated in the *Educating Lawyers* and *Best Practices* reports. The worry is that more experiential teaching and providing more student feedback will increase costs. But the thoughtful use of educational technology can help us leverage our teaching resources to effectively achieve these goals and yet not significantly increase costs. The use of wiki software is particularly promising. This presentation will demonstrate the use of wikis in the teaching of several law courses. It will then demonstrate how attendees can set up a wiki for their own classes.

Making Simulations Real: Using Simulations to Teach Doctrine, Skills and Professionalism Across the Curriculum

(Julie Goldscheid and Jenny Rivera, CUNY School of Law) [D]

This workshop focuses on ways to use simulations based on social justice lawyering problems to teach doctrine, lawyering skills and professionalism. During this interactive session we will brainstorm, role play, and use small groups to work through the stages of simulation development, focusing on how to design and use a social justice problem. Participants will leave with a template and individualized work plan for incorporating simulations based on curricular needs, faculty and student interests, and teaching goals.

Helping Students Self-Assess Critical Skills in Light of Professional Expectations: A Timekeeping Exercise

(Grace Wigal, West Virginia University College of Law) [E]

This workshop will illustrate a timekeeping exercise that can be used in conjunction with a variety of drafting assignments or exercises. The timekeeping exercise asks students to describe, track, and bill their time on a project with a special focus on the following: (1) self-assessment of strengths and weaknesses in the production process, (2) self-diagnosis and prescription for future efficiency, and (3) preparation of a reasonable bill for the product. The exercise should make students more aware of themselves as professionals in the law firm setting and the hidden expectations of the law firm culture.

Session 7

(1:15-2:30 p.m.) Wednesday June 24

Understanding Learning Disabilities and Implementing Effective Teaching Methods to Assist Law School Students Affected by Learning Disabilities

(Jacob M. Carpenter, DePaul University College of Law) [A]

By understanding what a learning disability is, and is not, professors will realize that law students with learning disabilities can succeed in law school and as attorneys. During this workshop, attendees will participate in exercises that (1) demonstrate various learning disabilities common among law students and (2) replicate the difficulties law students with various learning disabilities encounter. The workshop will then address numerous techniques professors can use to assist students with learning disabilities more quickly and easily grasp the class material. Further, many of the techniques will benefit all students, not just those with learning disabilities.

It's All About Becoming a Lawyer: A First Class for Any Course

(Mary Lu Bilek, CUNY School of Law) [B]

This interactive workshop puts participants in role as students in the first class of any course. The class is designed to set the stage for the kind of learning environment I hope to foster, as well as to situate the students on a path to professionalism and to suggest that the three years of law school are not just an academic enterprise, but rather an opportunity to develop professional identity, skills, habits, and values. The workshop has two parts. The first part is the actual class, which is very interactive and during which Institute participants will be in role as students. The second part asks participants to deconstruct the experience, working backwards to

identify the explicit and implicit messages about learning and professionalism embedded in the class.

Teaching Students How to Frame a Jury Case for Maximum Persuasion

(Gerald R. Powell and James E. Wren, Baylor Law School) [C]

The workshop uses two fact situations as our working story samples. Workshop participants briefly tell the story as an advocate for either the plaintiff or defendant in each case, and then retell the story with adjustments. We explore how changes to the “framing” of the story change the effect. In the process, students absorb three principles of persuasive framing: (1) The first conduct examined frames the rest of the story; (2) Jurors are looking for conscious choices because motive matters; and (3) All people – including jurors – crave significance, so communicating the importance of the verdict matters.

Cultivating the Formation of Professional Identity—from the First Year to the Third Year

(Timothy Floyd, Mercer University School of Law) [D]

At Mercer, the formation of professional identity is at the heart of the first year curriculum, in a required course on professionalism. The course reflects a belief that ethics teaching should focus on developing virtues that allow lawyers to serve clients, fulfill public responsibilities, and find meaning in their work. Our upper level externship course follows up this emphasis by making formation of professional identity the primary educational goal through readings, reflections, discussion, and exercises. This session will describe and demonstrate ideas for fostering professional identity in both a large first year class and in an externship.

You've Got to Move It, Move It: Motivating and Moving Kinesthetic Learners

(Maureen B. Collins and Sonia Bychkov Green, John Marshall Law School) [E]

This presentation features two lessons that involve all students but are designed to reach kinesthetic learners in particular, a group often overlooked in traditional law school instruction. Professor Collins will demonstrate her “living outline” lesson as participants identify related rules and create a human rule hierarchy. Professor Green will involve the participants in her lesson on rule interpretation and learning style identification with the use of a soccer ball and the “off-sides” rule. The goal is to get the audience moving and learning at the same time and show how this can be done in a classroom.

Session 8
(3:00-4:15 p.m.) Wednesday June 24

Interpersonal Dynamics

(Joshua Rosenberg, University of San Francisco School of Law) [A]

This session will consist of some of the activities and ideas that form the classroom component for the class in Interpersonal Dynamics for Attorneys (see “Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance, of Human Relationships in the Practice of Law,” 58 MIAMI L. REV. 1225 (2004)). The concepts presented, and then practiced, in this session include (1) the importance of effective feedback and the concept of feedback as self-disclosure, (2) the need for self-awareness in the giving and receiving of effective feedback, and (3) the value of, and the means to, stay focused on the “here and now.”

Ground Control to Major Tom: A Model for Crafting the Formative Feedback Law Students Need as They Prepare for Launch

(Cindy R. Slane, Quinnipiac University School of Law, and Liz Ryan Cole, Vermont Law School) [B]

Although both the Carnegie Report and Best Practices stress the critical role of formative feedback in professional education, available evidence suggests that most of the feedback law students receive is summative in nature: letter grades on end-of-term exams designed to rank students for prospective employers rather than guide them as they prepare for the

professional roles they will assume upon graduation. Positing that our collective failure in this regard may stem more from a lack of facility with crafting effective formative feedback than from a conviction that current practices are pedagogically sound, this workshop proposes a straightforward fix (a four-step, formative-feedback model grounded on improved fluency in the language of critique) and invites participants to learn-by-doing as they offer affirming and corrective formative feedback on a simulated feedback conference – in four-step format, of course!

Best Intentions, Worst Results: The Potential Pitfalls of Innovative Teaching

(Nancy Soonpaa, Texas Tech University School of Law) [C]

This session addresses some potential pitfalls related to innovative teaching and how to manage, minimize, and eliminate them. Pitfalls include challenges inherent in the innovations themselves, as well as resistance from students and misunderstanding of colleagues. The workshop will identify four to six examples of teaching innovations, including technology, multiple assessments, using creative non-law examples, small groups and peer assessment, and multiple-source assigned readings, and discuss how to anticipate and help to prevent problems with implementing them. The session will include time for the audience to share their own experiences, ideas, and preventative measures with the entire group.

Teaching Students How to ‘Think Like a Lawyer’

(Peter Wendel, Pepperdine University School of Law) [D]

While virtually everyone agrees that the purpose of law school is to teach students how to ‘think like a lawyer,’ most lawyers and law professors say it is impossible to articulate what that means. Thinking like a lawyer is an active process; it cannot be described, it can only be experienced. This interactive workshop will challenge that assumption. It will offer a conceptual model of what it means to ‘think like a lawyer’ – as well as demonstrate how it can be taught.

Ending Our Sermonizing: Experiencing Professional Responsibility

(David F. Chavkin, Washington College of Law, American University) [E]

Although the Carnegie Foundation Report took legal education to task in several areas, it is perhaps in the “values” apprenticeship that American legal education has most failed students, clients, and society. Ethics remains “the dog” of the curriculum and too many schools continue to teach ethics as a rules-based course. In this workshop, we will explore a very different method of teaching ethics by integrating theory and practice. Through live-client representation, students finally see the ethical rules in context. Professional responsibility then comes alive for the first time.

Implementing Best Practices and Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum
INSTITUTE FOR LAW TEACHING & LEARNING SUMMER CONFERENCE: JUNE 23-24, 2009

Name: _____ Phone: _____ Fax: _____
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Check the boxes for the workshops you wish to attend (only one per session):

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Conference price is \$395 (Presenters \$175) which includes all meals on Tuesday, June 23, and 2 meals on Wednesday, June 24

Enclosed is a check payable to Gonzaga University for \$395.00 (Presenters \$175)
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Tuesday, June 23, 2009					
8:00 a.m.	Registration & Continental Breakfast				
8:30 a.m.	Opening				
9:00 – 10:15 a.m. Workshops Session 1	[A] Best Practices and Positive Psychology	[B] Enriching Your Course with a Case File	[C] Learning is Social	[D] Alternative Teaching Methods:	[E] Thinking Critically about Teaching Goals Through Designing Effective Assessment Rubrics
10:15 a.m.	Break				
10:45 a.m. – 12:00 p.m. Workshops Session 2	[A] “Leaps of Faith”	[B] Introducing 1Ls to “Thinking Like a Lawyer”	[C] Why Tax Rules	[D] The Village Approach to Raising Professional Lawyers	[E] Integrating Writing into Casebook Courses without Significantly Increasing Grading
12:00 p.m.	Lunch				
1:15 – 2:30 p.m. Workshops Session 3	[A] Techniques to Improve the Analytical Skills of Students in Large Required Classes	[B] Experiential Exercises with Flowcharts Facilitate Learning Law	[C] Feedback on Feedback	[D] Festival of Damages Arguments	[E] <i>Interdisciplinary Instruction in the Millennial Age</i>
2:30 p.m.	Break				
3:00 – 4:15 p.m. Workshops Session 4	[A] The Subversive Art of Teaching Interviewing and Counseling	[B] A World of Yes	[C] Beyond the ADA	[D] The Application of Student Development Theory in Legal Education	[E] Life After Langdell
4:15 p.m.	Adjourn				
6:00 p.m.	Dinner				
Wednesday, June 24, 2009					
8:00 a.m.	Continental Breakfast				
8:30 a.m.	Re-opening				
9:00 – 10:15 a.m. Workshops Session 5	[A] Sneaking Skills and Professionalism into Every Course, Every Discussion, Every Day	[B] Creating a General Practice Skills Course	[C] Phenomenological Practitioner Research	[D] Bridging The Gap	[E] Exploring the Attorney-Client Dynamic in a 20-minute Counseling Exercise and Reflection
10:15 a.m.	Break				
10:45 a.m. – 12:00 p.m. Workshops Session 6	[A] Autonomy Support and Law School	[B] Everything We Need to Know About Teaching We Learned in Pre-school	[C] Using Wikis to Engage Your Students and Teach More Effectively	[D] Making Simulations Real	[E] Helping Students Self-Assess Critical Skills in Light of Professional Expectations
12:00 p.m.	Lunch				
1:15 – 2:30 p.m. Workshops Session 7	[A] Understanding Learning Disabilities	[B] It's All About Becoming a Lawyer	[C] Teaching Students How to Frame a Jury Case for Maximum Persuasion	[D] Cultivating the Formation of Professional Identity	[E] You've Got to Move It, Move It
2:30 p.m.	Break				
3:00 – 4:15 p.m. Workshops Session 8	[A] Interpersonal Dynamics	[B] <i>Ground Control to Major Tom</i>	[C] Best Intentions, Worst Results	[D] Teaching Students How to ‘Think Like a Lawyer’	[E] Ending Our Sermonizing
4:15 p.m.	Closing				
4:30 p.m.	Adjourn				

My Faculty, My Students, Myself: Thoughts on Being New to Academic Support

By Corie Lynn Rosen

As a new Academic Support Professor (ASP), the challenges I faced were myriad, but the sense of accomplishment and delight inherent in facing and conquering them was unparalleled. In looking back on the past year, I found that the challenges I faced broke out into three major groups, which I will term my faculty, my students, and myself.

But before I faced any of those three, I had to first address a threshold question.

I needed to define my purpose, to get at what the large scale objectives were going to be in the universe of my classroom.

After much thought, I decided that Academic Support, at least for me, would be a program, a set

of classes and individual meetings, in which students would obtain necessary instruction and would benefit from a peer-supported learning environment. My classroom would be a forum where students could try on new, difficult, or otherwise missed ideas without fear of embarrassment, where students could tackle legal thinking and learning from a new angle, and where students would make understanding their own learning process part of addressing the larger questions that would ensure them improved classroom performance. I also wanted to create an environment in which students could rediscover the joy of learning that, more often than not, had carried them through their academic careers before the law school phase, but

had been lost in law school, perhaps as a result of the forced curve, difficulty level, or other concerns.

I would address needed skills and try to impart a passion for thinking critically about legal issues. If there was any big picture idea I wanted my students to have, a relentless passion for new knowledge was it. This passion, I thought, would propel them through the remainder of their law school careers and do much to ensure that they became

“My classroom would be a forum where students could try on new, difficult, or otherwise missed ideas without fear of embarrassment, where students could tackle legal thinking and learning from a new angle, and where students would make understanding their own learning process part of addressing the larger questions....”

happy, healthy lawyers beyond the university halls.

My major goals were then two fold: to help students with practical and immediate learning-related issues, and to ensure that the process of addressing those issues resulted in students who were able to carry those skills beyond the ASP classroom. These seemed reasonable tacks for a new educator and, as I grappled with these and other ideas throughout the course of my first year, I found that these were indeed workable goals for my teaching experience.

But, after settling these larger questions, I still found a need to address the other, less theoretical challenges that would face me as a new Academic Support Instructor. I broke these challenges

into three categories: dealing with the academy environment as an Academic Support instructor, reaching difficult students, and managing my expectations with respect to both myself and my charges. In other words, they broke into three clear categories, my faculty, my students, and myself.

Dealing with the academy was the first, greatest challenge that I faced outside of the classroom. I found that it was my duty to dispel what I call the Magic

Wand Theory of ASP – the idea that, with the help of a few key texts and exercises, absolutely anyone could turn a struggling student into a strong one, and that, as a result, ASP was not entitled to a

legitimate, important status within the legal academy.

Fortunately for me, I work with a wonderfully open-minded faculty, all of whom love to talk, listen, and debate. They dialogued with me as I explained teaching methods I had just learned about or described conference presentations by which I had been enlightened. They listened when I told them the stories of brilliant students who had struggled initially and, after a semester in ASP, had demonstrated their capability beyond all doubt. Slowly, conversation by conversation, a task that had at first had seemed daunting, began to be pleasant as I discovered that what I had thought was a complex

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My Faculty, My Students, Myself: Thoughts on Being New to Academic Support

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problem could be solved by the simplest of actions; just talking with our faculty has proven the most effective and straightforward means of clarifying the importance and efficacy of ASP. Today there are few, if any, adherents of the Magic Wand Theory remaining and the result of all this talking is that I enjoy wonderful working relationship with many of the people who I once worried would never embrace ASP.

The challenge that has proved far greater, and the one that, after years of preparation for the job, I thought I was most prepared to face, has been dealing with difficult student situations. Student troubles vary tremendously, often presenting me with a classroom of people who each have unique strengths and weaknesses, backgrounds and behaviors. I have been at this for less than three semesters and already I have seen issues that run the gamut.

Ranging from extreme PTSD to deep-seated family troubles, from an alarming lack of boundaries to simple anger at not having performed as expected, these individualized problems have presented my greatest challenges. Dealing with each has been very much an exercise in working case-by-case. In tackling these problems, I have found that identifying a student's problem is often half the battle. And in the identification game, I have found nothing more valuable than the students' trust. The rapport building needed to establish this trust takes time, and I have learned to allow the students to open up to me on their own schedules, to give them whatever space they need before we take on their troubles together.

Building rapport with students, convincing faculty that ASP is something to be embraced, and facilitating a classroom environment that stands

in line with my specific, daily and long-term, global teaching goals has sometimes felt daunting, but has also proven exhilarating. And in the course of addressing these goals, my third greatest challenge emerged. Learning to pace myself and allowing things to take time, instead of trying to do everything for everyone all at once, has been more difficult than I ever imagined. When I began at ASU, I wanted to do so many things. I wanted to maintain the spectacular program my predecessor had put into place. I wanted to both emulate her and develop my own style both in and out of the classroom. I wanted to expand our program and add an upper level ASP class. I wanted to give a presentation to the faculty. I wanted to meet everyone in our national ASP community. And I wanted to solve every student problem, whether academic or personal, with precision, perfection, and compassion. Needless to say, I learned very quickly that all of these things, together with preparing for a new slate of classes and establishing roots in a new city, were impossible to do all at once and, after months of sixteen-hour days, the law of diminishing returns found me at last and forced me acknowledge that I had become one of my own professional challenges.

Today, I allow things to evolve more naturally. Like building rapport with my students and my faculty, developing my program takes time. I am delighted now to look back on the past year and recognize how far I've come. I spent my first two semesters doing the essential, getting

to know the material in my classes, the seminal literature in the field, the culture of my institution, and the needs and personalities of the individual students. This semester I have inaugurated a program for upper-level students. Next, I will begin writing an article that I am researching. The semester after that, who knows? I have learned to trust that, with continued hard work and commitment to helping my students succeed, new goals, and the means by which to meet them, will arise in their own time. For now, I am delighted to work everyday toward helping my students through the law school learning experience, guiding and supporting them as they seek out their own goals and truths, to become stronger people, more effective law students, and, I hope, in the end, lifelong legal learners.

Corie Lynn Rosen is the Director of the Academic Support Program at Arizona State University. She can be reached at Corie.Rosen@asu.edu.

WILD AND WACKY FEDERAL CRIMES
Solution

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The Scarlet “W”

By James McGoldrick, Pepperdine University School of Law

As another term comes to a close and a new one begins, I’m rushing about trying to get my exams graded before the official deadline becomes as distant as the limits on my post-vacation Visa card.

Thankfully, the penalty for missing the deadline is the threat of a scolding call from the Dean—a threat that diminishes with each day he fails to meet his own deadline. In any event, our dean seems to have the capacity to be nice to even the most undeserving. Speak softly and carry a big carrot seems to be his rallying cry to the faculty. Even though I’m

perpetually late with my own exams, I’m of the opinion that some more serious penalty ought to attach to faculty members who miss the deadline for turning exams in. At the very least, our screen-savers ought to be reprogrammed to blink perpetually “12:00” to remind us that the exam clock has expired.

As an aside, many new professors do not realize the importance of counting in grading exams. First, ten blue books should be counted out. One is graded. The number still to be graded is then counted; in this instance, nine remain. The second is graded. Now the process gets more complicated. The number graded must now be counted, that would be two, and then again the number still to be graded is counted which in our hypothetical would now be eight. As the stack of ten diminishes, it is sometimes necessary to count several times to confirm the number that still remain to be graded. This process continues until all ten are graded. Some professors recount the whole stack after each exam is graded, but I believe that this is a

waste of time that could be better spent reading blue books.

As I count my stack of ten booklets again just on the wild hope that some have graded themselves, I’m grateful about now for the half dozen students who dropped my course just before the finals. The one thing that tempers my gratefulness is the knowledge that those dropping students inevitably reappear in the same course in subsequent semesters. Why they would listen to me all term and not at least have “gotten him out of the way,” which is usually the highest praise I receive for a course, is beyond

“[T]he harm caused by late drops is fairly obvious to everyone.... The student, of course, has done most of the work and received no credit.... Taking the same class a second time not only gives the repeating student an advantage in responding to class hypotheticals, it must surely give them some significant edge in exam performance.”

my imagination which is admittedly a small spectrum. In fact, I actually cannot believe that the attractive yellow spread is not butter.

I’ve noticed that students dropping courses just before finals is not limited to my classes. Although no one would ever allow me access to this kind of information, it appears that at least in the Fall close to 10% of upper division students drop course within two weeks of finals. Because graduating seniors have been boxed into a corner, the percentage dropping in the Spring may be less. While some of these last minute drops may be defensible, many of them appear to be of the panic driven variety. Such a high percentage of late semester drops is a remarkable phenomenon of recent origin at Pepperdine Law School.

While such drops are a not unfamiliar pattern at some undergraduate schools, contributing to the five years the average undergraduate now takes to complete a four year degree, law school is such a concentrated lock-step program that late drops have historically been rare.

I believe that my law school’s discontinuation of the “W” for Withdrawal on the law school transcript is the principal reason for one in every 10 upper division students throwing back units that they have already substantially completed. (I also believe that for every drop of rain that falls, a flower blooms.) A few years ago, some students complained about the recording of a “W” for drops after the two-week add drop period and, thinking of no good reason not to accommodate the

students, the faculty voted to abandon the use of the “W” for any purpose. The logic of the faculty was unassailable: unless there were overwhelming extenuating factors, why would any sane person spend the money, do the work, sit in one class wishing they were having as much

fun as the class next door, and then just before the units were in the credit column bale big time. But mistaking the logic of sane persons and that of law students has led many a person much astray.

What was the stigma that attached to the “W” on transcripts that helped control the tendency of a significant number of students to drop units practically earned? In the past with the threat of the Damocles “W” hanging over their head, they swallowed their panic, borrowed another outline, limited their TV time to Seinfeld reruns, and somehow managed to pull it off. It was as though they were afraid that a “W” on the transcript would reveal to the world the panic in their heart that led to the drop. In every interview with a prospective employer,

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The Scarlet “W”

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they just knew that the “W” would beat louder and louder, the Tell Tale “W.” Then, without the threat of the Scarlet “W” on the transcript—oh, how I love to mix clichés—they opted for a second semester of my recycled dronings.

And the harm caused by late drops is fairly obvious to everyone. The student, of course, has done most of the work and received no credit. In some instances, students have even taken the same course in summer school at substantial additional cost.

But there is harm to the institution as well. The student will often take the same class from the same professor. While I know that some professors have new material each time a course is taught, I’m lucky to have new material for each day and the thought of a student sitting through exactly the same extemporaneous comments and jokes is a little off putting. Yes, I know that my jokes are so old that students with used books have them written in the margins, but I still like to live with the delusion that all in the class will think that I have at least one original thought.

Taking the same class a second time not only gives the repeating student an advantage in responding to class hypotheticals, it must surely give them some significant edge in exam performance. Even one of my lectures, if heard enough times, might be, if not memorable, at least rememberable.

In many classes, there is a wait list for students wanting to take the class. While none of my classes have ever achieved such popularity, it does seem somewhat unfair for a half dozen students to be denied the class only to have a different half dozen drop it at the end without completing it, only to compete for the prized seat the next time the course is offered. Some students actually enroll in more courses than they plan to complete, scheduling in a late strategic bailout, which aggravates the problem of “closed” classes.

Another problem is the apparent reason for the strategic bailout. Some students at the end of the course make a calculation as to the comparative difficulty of their various courses and jettison the course that is most likely going to threaten their grade point average. Whether any advantage they gain is offset by the semester preparation for an additional course is debatable, but at best the practice seems questionable.

I suspect that at least subconsciously the availability of a late drop affects the level of preparations of students throughout the semester. Students who know that they may abandon ship at the end are not as likely to protect the seaworthiness of the craft during the long journey through the syllabus as are students committed to staying the course. (I am aware that my gift for shaping the perfect analogy cannot be taught.)

The possible remedies are many. One thought is to do nothing since students who dig their own graves ought to be allowed to lie in them. Another thought is to try to get students to behave in ways that are in their best interest and in the best interest of the school. That could be done through draconian measures such as forbidding late drops, or assigning grades of “fail” for late drops, but it may be possible to redirect behavior with something as simple as the Scarlet “W.” If a person needs to drop a single course for meritorious reasons, little real harm is done to the person’s academic record, but a pattern of manipulative drops would soon be apparent to anyone reading the transcript. And the threat of being revealed as a person who panics, as a grade manipulator, or just as someone who has trouble finishing what they started may be enough.

I could go on, but I have bluebooks that need to be counted.

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Save the Date:

September 2009
Conference on Assessment

Legal Education
at the Crossroads III
“A Comprehensive Examination
of Assessment: Institutional,
Formative, Summative, and
Teaching Effectiveness”

September 11-13, 2009;
University of Denver
Sturm College of Law
Denver, Colorado

The University of Denver Sturm College of Law has announced plans to hold the next in a series of conferences focusing on implementing CLEA’S BEST PRACTICES FOR LEGAL EDUCATION (2007) and the Carnegie Foundation’S EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW (2007).

The conference will take a broad look at the many and challenging issues revolving around assessment in legal education, including assessment of institutional effectiveness, formative and summative assessment, and assessment of teaching, including student evaluations.

The conference will begin with a keynote speaker and dinner on Friday, September 11, include a full slate of assessment-focused sessions on Saturday, September 12, and conclude with a half-day of sessions on Sunday September 12.

Look for a formal **Call for Proposals** in the coming months. In particular, the conference planning committee will be looking for proposals from faculty and deans currently engaged in assessing curricula, programs, or courses.

Book Review: Law professor takes readers on 1L of A RIDE

By Mary Pat Treuthart, Gonzaga University School of Law

Professor Andrew J. McClurg's new book, *1L OF A RIDE: A WELL-TRAVELED PROFESSOR'S ROADMAP TO SUCCESS IN THE FIRST YEAR OF LAW SCHOOL* (Thomson West 2009) (420 pages), uses a metaphorical road trip to inform students about the 1L law school experience. The book is touted as "a candid step-by-step roadmap to both academic and emotional success in law school's crucial first year" and delivers on that promise.

One thing is clear from the beginning: McClurg has a unique passion for teaching and learning. He's certainly done it enough. McClurg, the Herbert Herff Chair of Excellence in Law at the Cecil C. Humphreys School of Law at the University of Memphis, has taught at six different law schools, garnering a number of teaching awards over his two-decade career. Thousands of law students from coast-to-coast have taken his first-year torts course. McClurg's keen powers of observation have allowed him to assess what works for students and teachers both in and out of the classroom.

Many of you will recognize McClurg's name from his teaching tips in *THE LAW TEACHER* or from his extensive body of scholarly work. Perhaps your familiarity with McClurg stems from his standing as the foremost legal humorist in the United States. Author for several years of the "Harmless Error" column in the *A.B.A. Journal*, McClurg entertained his readers with wacky takes on legal practice and legal education. His website www.lawhaha.com follows in the same vein.

Thus, it's no surprise that *1L OF A RIDE* is penned in a witty and easy-to-read style. At the same time, it incorporates the strengths of McClurg's scholarly work: it's meticulously researched, provocative, and creative. Written mostly in the first person, *1L OF A RIDE* is full of anecdotes and insightful suggestions based on empirical studies of educational theory and practice.

More important, this book makes liberal and effective use of student commentary throughout, which likely will be instructional and cathartic for student readers. For legal educators, these student voices are a reminder of the "fear and loathing" that can be so much a part of the first-year law school experience. Their stories, particularly the first-year recap in the final chapter, should help law professors remember the stress and struggles faced by first-year law students.

The book holds many highlights for professors such as McClurg's description of the 20 law student types. What faculty member won't recognize such archetypes as The Slacker, The Star of Rumor Central, The Earnest Hardworker, The Overconfident without Cause, The Lightning Rod? McClurg warns students to be prepared for the likes of us as well by suggesting that most law professors are somewhat "quirky" (albeit of "extremely high caliber"), and emphasizes the importance of students recognizing the "different teaching styles, different preferences, and different expectations" of their professors.

One strength of *1L OF A RIDE* is its emphasis on Legal Research and Writing. McClurg devotes an entire chapter to the topic, which includes an in-depth interview with five veteran legal writing professors. The book also appraises the benefits and detriments of 21st Century technology in the classroom, a debate that continues to resonate throughout the academy.

The book focuses on practical advice, incorporating authentic samples of case-briefs, Socratic dialogue, and exam questions and answers. Representative of this approach is the chapter on note-taking, in which McClurg evaluates the class notes of a top student and of an average one in a side-by-side comparison with commentary.

Although McClurg concedes that other professors might reframe some items on his list of "The Fifteen Most Common Law School Essay Exam Mistakes," there likely would be general agreement with his conclusion that most students "make the exact same mistakes." Maybe his suggestions will save some students from that fate, which should serve to make a few exam graders a little cheerier as well.

Without sounding overly preachy or parentalistic, McClurg includes a chapter on "Maintaining Well-Being" in the face of extensive research showing that law students suffer disproportionately from psychological distress. Although directed at students, there are undoubtedly folks on the other side of the podium who could also benefit from his practical suggestions.

Who is the anticipated readership for *1L OF A RIDE*? Certainly, the book is ideal for its target audience of incoming law students who want to make the most of their law school experience. (Perhaps it will replace Dr. Seuss' *OH, THE PLACES YOU'LL GO!* as the college graduation gift book of choice for the pre-law society crowd.) But friends and family members of future lawyers might benefit just as much from McClurg's inside look at the 1L experience. Admissions staff should sneak a peek before the law school recruitment process kicks into high gear and orientation planners should place this book on their recommended summer reading lists. Academic support resource personnel and tutors will find it to be an invaluable guide, because it covers every essential skill from case-briefing to outlining. Finally, law professors who seek their own GPS device to maximize learning opportunities for millennial generation students can benefit from having fellow-traveler Andrew McClurg as their enlightened and enthusiastic guide.

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The “Live Write” — An Alternative Approach to the Scribe and PowerPoint Pit

By Olympia Duhart, Nova Southeastern University, Shepard Broad Law Center

Computers in the classroom scare me. No matter how many experts extol the virtues of incorporating technology into the 21st century law school classroom, I confess that my mind tends to go in two directions when I think of computers in the classroom. And neither path is perfect.

On one hand I imagine students aimlessly pecking away on laptops, either working assiduously as the eternal scribe or, worse, taking breaks to ride the waves of cyberspace.

On the other hand I see the image of the PowerPoint Pit, where even those of us with the best intentions can inadvertently lull students into a state of passivity through the overuse of PowerPoint slides. This format is so efficient at conveying information that it essentially squeezes all of the “Soc” out of the Socratic Method.

With so many computers in so many hands, do the benefits of bringing computers into the learning environment truly offset the costs?

As a professor at a law school proud of its extensive use of computers in the classroom, I am constantly challenged to effectively integrate technology. My goal is to explore innovative methods to help students incorporate computers into the classroom and boost the analytical process.

One method I’ve employed with success is the use of what I dub the “live write.” Utilizing a Smart Podium and projector,

I have used technology to facilitate an active classroom environment. By using the “live write” process, I am able to take advantage of the technology available in my classroom while maintaining the involvement needed on both sides of the podium.

Before class, I turn on the Smart Podium, activate the screen, and open a word program. As the class progresses, I ask the students to formulate a sentence. In my doctrinal class, it may be the students’ best effort at articulating a rule of law. In my writing class, it may be an attempt at a thesis sentence or part of a synthesized rule. Once the students are given time to write a near-perfect sentence on their own, I take the next step: I call on someone.

This student, usually a volunteer or a student “gently encouraged” by me, is prompted to read to the class what he or she has just written. As the student reads, I type the student’s response into the computer on the podium, projecting the sentence onto the screen at the front of the room for all to see. Next, I ask other students whether the sentence can be improved. I then incorporate editing suggestions. Highlighting and other formatting changes allow me to make immediate improvements. Finally, I go back to the original student to ask what he or she thinks of the editing suggestions, and I incorporate those comments on to the screen as well. The result is usually a good sentence produced through group effort.

Although the risk of technical problems looms whenever a lesson relies on technology, this threat is easily addressed through the use of the whiteboard as back up. Further, the benefits of the “live write” method readily outweigh any risks.

The “live write” method encourages students to be risk-takers, and it contributes to the community of learners by allowing students to feed on the collaborative energy of their peers. Further, it serves as a formative assessment by allowing the instructor to get a quick snapshot of student progress and make immediate adjustments in material coverage. The “live write” method has clear advantages over the whiteboard or overhead: responses can be displayed all at once, or flipped back and forth, or juxtaposed in myriad combinations. Additionally, the results can be saved and distributed electronically for subsequent review. Finally, allowing students to see their work take shape on the screen encourages students to be active learners, and discourages the instructor from falling into lecture mode. We are all involved, and we are all making good use of the computers in the classroom.

In the constant struggle to challenge and engage students, I believe my classes have benefited from the “live write.” And I’ve learned that computers in the classroom don’t have to be so scary after all.

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TEACHING AND LEARNING NUGGET

After you ask a question in class, try counting to ten before you select a student to answer the question. Not only will you almost certainly get more volunteers, but also you will allow more students to be mentally ready to follow the ensuing discussion.

Seeking Your Contributions to TECHNIQUES FOR TEACHING LAW 2

Do you have practical ideas and classroom-tested methods that enhance your teaching and your students' learning? We are confident that you do. Please submit contributions to our forthcoming book, *TECHNIQUES FOR TEACHING LAW 2*.

What is TECHNIQUES FOR TEACHING LAW 2?

This book is designed for legal educators who want to improve their teaching and their students' learning. Each chapter will contain two types of text: (1) a four- to six-page introduction summarizing basic principles that underlie the topic and (2) practical ideas, exercises, material, and methods (one to two pages each) contributed by the co-authors and other legal educators. The co-authors are Steve Friedland (Elon), Gerald Hess (Gonzaga), Michael Hunter Schwartz (Washburn), and Sophie Sparrow (Franklin Pierce).

What topics will TECHNIQUES FOR TEACHING LAW 2 include?

1. Basics on teaching and learning – across all domains
2. Audience perspectives: deans; students; and alumni
3. Materials: texts, supplements, resources, handouts, props
4. Using technology in teaching: PowerPoint, clickers, laptops
5. Classroom dynamics and learning culture
6. Learning outside the classroom
7. Questioning and discussion techniques
8. Collaborative, cooperative, group, and team learning techniques
9. Experiential and service learning – relating law school to practice
10. Writing across the curriculum

11. Professional skills across the curriculum
12. Professional values and identity
13. Feedback to students during the course
14. Evaluating students
15. Faculty development and inspiration
16. Favorite resources

How can you contribute to TECHNIQUES FOR TEACHING LAW 2?

We are seeking contributions of 300-1000 words that fit any of the topics above, broadly interpreted. Each contribution should briefly describe the idea, exercise, method, or material. For example, many of the articles from this issue of *THE LAW TEACHER* would be appropriate contributions, including (but certainly not limited to):

- Harriet Katz's *Personal Assessment* article (Chapter 12: Professional values and identity);
- Stephen Coughlan's *Why I Teach* (Chapter 15: Faculty development and inspiration); and
- Olympia Duhart's *Live Write* (Chapter 4: Using technology in teaching: PowerPoint, clickers, laptops)

Send potential contributions to Robbie McMillian, the Program Coordinator for the Institute for Law Teaching and Learning at rmcmillian@lawschool.gonzaga.edu.

When is the deadline for contributions?

We will be working on *TECHNIQUES FOR TEACHING LAW 2* over the next year. We'd love to receive your contributions by the end of June 2009.

Questions?

Each of the co-authors would be happy to discuss the book or your potential contributions. You can reach us at:

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Why I Teach

By Amanda L. Smith, Widener University School of Law

I knew that I wanted to be a lawyer after I read *To Kill a Mockingbird* in the ninth grade. The judge appointed Atticus Finch to represent Tom Robinson, an African American accused of raping a Caucasian woman in Alabama in the 1930s. The judge picked Atticus based upon Atticus' reputation. Despite threats to himself, his client, and his family, Atticus remained a lawyer of integrity, who did his job even when it was not easy. I have always aspired to be a lawyer like Atticus Finch and expect other lawyers to be the same.

When I entered practice, I had a wonderful mentor who taught me the importance of reputation in legal practice. In navigating sometimes murky ethical waters, I knew my mentor would not always direct me toward the easiest or quickest route, but I knew he would

steer me toward an ethically sound course that would best serve my clients. I came to value my reputation as an attorney of integrity.

I teach because I want our profession to be infused with integrity. I want my students to learn to use professionalism as the everyday lenses through which they view their legal practices, rather than to compartmentalize ethics into just another class or bar exam topic. I model the behavior that I want them to carry into practice: I deliver on promises that I make; I show up on time; I promptly respond to emails and voicemails; and I treat everyone with respect. Fortunately, I also teach as part of a writing program that has incorporated professionalism as part of students' grades. Students are expected to act like the professionals that they are training to become and, like in

the real world, there are penalties for the failure to do so.

Out in practice, my students will face tremendous pressures to win. I teach because I want my students to win like Atticus Finch did in *To Kill a Mockingbird*. While Atticus lost the case, Tom Robinson's friends and family stood to show their respect and gratitude as Atticus walked out of the courtroom after the verdict. I teach because I want my students to win their cases in a similar way, by representing their clients to the best of their abilities and with the utmost of integrity. I teach so that our profession will never lose its professionalism.

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Why I Teach

By Steve Coughlan, Dalhousie Law School

You can see it in the faces of a choir, when they've sounded that perfect bell-like tone, and they should all be marvelling at how they've achieved something together that no one person could achieve independently, except that they are too enraptured by the music itself to bother forming such a thought.

You can see it in the closed eyes of a musician, saxophone or flute or harmonica in hand, when the music flows like a breeze that could carry you away, and you know that she's not taming this song, isn't wrestling it to the ground, but is just caught up in it like anyone else, not making the music, simply listening to it wash over her as it washes over everyone.

You can see it in the movements of an athlete, a basketball player driving to

the net or a figure skater about to do a jump, when he isn't calculating, he isn't planning, he isn't estimating his opponent's likely responses or precisely how much force to push off with, he has simply seen the next few seconds of the future and knows, with crystal clarity, that THIS will work.

You can see it, once you know you should be looking, in the actions of a juggler, when the balls or clubs or rings are flying, twisting and spinning, and they aren't going everywhere, they are going there - and there - and there, just as they should, and objects and hands arrive naturally at the same place and same time, with no seeming need for conscious action, like the gears in some predestined clockwork mechanism.

I don't sing or play an instrument. I'm not a professional athlete, and I don't

even juggle as often as I'd like. And I can't tell you what "it" is.

But I do teach. And sometimes, when good questions are being asked, and good responses are begin given, and the discussion flows lie a raging river, wild and uncontrolled yet following its natural course, and I am a leaf in that river riding it to its end, amazed at the blossoming understanding that is palpable in the air well. In those moments, though I still can't define it, can't describe it, can't put it in words - in those moments I come as close as I get to knowing what "it" is.

And that's why I teach.

Steve Coughlan teaches at Dalhousie Law School. He can be reached at Stephen.Coughlan@Dal.Ca.