

Letter from the Editors, 1
Courtney Lee

The Millennials Challenge: 2
Equalizing the Values
Triad in Professional
Identity Formation,
Deborah L. Borman

Teaching Millennials Legal 5
Skills: A Digital Marketing
Approach,
Renee Nicole Allen

“And Moreover,” Said 8
the Professor at Orienta-
tion,
Elizabeth Z. Stillman

Conformity and Rebellion 11
in Outlining,
Chelsea Baldwin

Using the Billable Hour to 13
Help Shape Law Students’
Time Management Skills,
Kirsha Weyandt Trychta

Problem Solved: How to 16
Incorporate Problem
Solving in Your Course
to Prepare Students for
Practice,
Kathleen Elliott Vinson

Teaching Negotiation to 19
1Ls,
Catherine Martin
Christopher, Shery Kime-
Goodwin, Brie D.
Sherwin, and Robert T.
Sherwin

Creating an Asynchro- 21
nous Distance Learning
Class,
Danielle Bifulci Kocal

The Learning Curve

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Letter from the Editors

Academic support has always been a vital component of legal education, but it is becoming more high-profile as law school entering classes across the nation evolve. Shifts like the economic recession spurred major changes in legal education, from the way prospective students view law as a career path, to reduced numbers of applications, to lower institutional standards for entering credentials. Complicating matters is an often negative view of certain high school and college education policies. Consequently, college graduates are often seen as less equipped for the rigors of law school (see, for example, *Academically Adrift* by Richard Arum and Josipa Roksa).

All of this means that the students sitting in first-year law classrooms today are very different from the students who sat in those same seats only a few years ago. Things are unlikely to revert back to that “old normal,” so law schools must adjust to meet the needs of students in this “new normal” in legal education. Strong academic support programs will play a key part in this successful adjustment.

Much of the research concerning the new normal in

education is pessimistic. Ultimately, however, these changes have the potential to improve legal education dramatically, resulting in better, happier, more well-adjusted attorneys. New normal law students may be different, but they are not necessarily “less able” (despite what the NCBE might suggest).

For instance, the public no longer views law as a failsafe career choice, so fewer people are likely to pursue a J.D. simply because they do not know what else to do with a liberal arts education. Media attention on truthful law school data reporting allows potential law students to make informed decisions regarding both law school and the field in general. Thus, they should matriculate with a clearer picture of what a legal education will provide and what to expect in practice. Law students in the new normal should have a deeper dedication to legal study and a stronger sense of purpose in pursuing the profession.

Further, professors who want their students, programs, and schools to thrive will adjust to their students’ needs in ways that encourage true learning and lead to greater psychological well-being. Perhaps at some schools these seemed

like goals held only by academic support professionals and a handful of faculty, but in the near future they should become much more common. This shift may then lead to greater coordination between departments and a more cohesive educational experience for students. Another positive possibility is that increased focus on academic support may result in more resources allocated for such programs.

Academic support professionals are fortunate to be in an ideal place to help guide their students and schools through the changes necessitated by the new normal, and we hope that the articles in this issue of *The Learning Curve* will at least help begin the discussion. I am so thankful to have had the opportunity to work with such gifted academic support scholars through my involvement with this publication, and I look forward to seeing where the next team of editors takes it in the future. I wish them, and you, all the best as we navigate through this uncharted territory together.

Courtney Lee,

On behalf of the Editors

The Millennials Challenge: Equalizing the Values Triad in Professional Identity Formation

Deborah L. Borman,

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The author presented a version of this paper as a Discussant in a group on the topic of Teaching Professional Identity Formation at the Southeastern Association of Law Schools (SEALS) Annual Meeting at Amelia Island, FL, in August 2014.

Any healthy civil society also depends on adults who are committed to their communities and who, at pivotal times, will put the common good before their own. We don't seem to be preparing large numbers of youth to create this society.

The Millennials Challenge

A frequent inquiry regarding incorporating the teaching of professional identity into the law curriculum is whether “millennials,” or persons reaching young adulthood around the year 2000, are wired in a particular way that requires a deeper understanding by law faculty in order to prompt their professional identity devel-

opment. The combined recent experience of law faculty across the country, based on many years of teaching, an increasing number of publications, and even legal education conferences, suggests that the millennial generation as a student body is atypical from prior generations and requires a thoughtful approach to teaching professional identity.

Imbalances in the Values Triad: Achievement, Happiness, and Care and Concern for Others

One aspect of the millennials that differs significantly from prior generations is a noted shift in their priorities regarding values, along with the discovery that adults are to blame. In the project *Making Caring Common*,

a recent study by the Harvard Graduate School of Education (Harvard Study), the authors surveyed a large and diverse sample of youth, querying the ranking of “achievement,” “happiness,” and “concern for others.” This 2014 study revealed that almost 80% of respondents chose “high achievement” or “happiness,” while only 20% selected “caring for others.”

The authors conclude that youth do not prioritize caring and concern for others over personal success and achievements because *parents are more concerned about achievement or happiness* than caring for others. The authors cite the cause of this unfortunate prioritization as a

“rhetoric/reality gap,” or a gap between what parents or adults say are their top priorities and the *real* messages they convey in their day to day behavior: Parents’ actions do not follow their words.

In a prior study of teachers, the same Harvard researchers found that 93% viewed parents

As legal educators encouraging the development of professional identity, we face the seemingly counterintuitive objective of promoting value-driven ideals concurrent with the contradictory goal of achievement.

The Millennials Challenge (cont'd)

as putting their children's achievement or happiness ahead of concern for others.

The authors noted "selfishness and indifference to others among both children and adults are commonplace," and that this sort of indifference often translates to bullying and disrespect.

Disturbing Examples of Values-Triad Imbalance

By way of example, the authors recount the story of National Football League player Brian Holloway, where teenagers ruined his home during a rage party. Holloway invited the partygoers and their parents to the property and asked them to help with the cleanup but instead the parents threatened to sue Holloway for re-posting photos of their kids destroying his house in social media.

What are some parents teaching and modeling to their children about caring conduct and fairness? There are many more examples of parents modeling behavior to children and young adults that communicates that personal interests take precedence over respecting individuals. These children may become our law students.

Equalizing the Values Triad

When children and young adults learn from their parents an imbalance of values, not prioritizing care and concern for others, they are less motivated to develop social and emotional skills such as empathy. Students who are the product of parents who are demonstrating and encouraging a value imbalance are particularly

troubling to legal educators, as we hope our students will matriculate with the basic socio-emotional skills necessary to be successful in the practice of law.

The practice of law by its very definition requires caring for others vis-à-vis their legal rights. Law practice also involves socio-emotional responsibility; legal advocacy requires understanding the client as a person in her environment as well as the environment of the client's legal claim. Like elementary and secondary schools, law schools must now play a key role in developing ethical, caring students who will become tomorrow's lawyers.

But the value of achievement is equally important, and is not only inherent in the realm of law school; it is a necessity for the practice of law. As legal educators encouraging the development of professional identity, we face the seemingly counterintuitive objective of promoting value-driven ideals concurrent with the contradictory goal of achievement.

Our role as law educators is to equalize the Values Triad.

Promoting care and concern for others alongside achievement is crucial both internally and to obtain the third value of professional happiness as an attorney. In my article *Teaching Professional Identity*, I observed the findings of Stanford researcher Deborah Rhode that "the omission of an integrated morality eventually drives student dissatisfaction during law school and employer complaints later in the workplace."

Our increasingly difficult challenge is to model the caring behavior that

our students' parents may not have modeled. Law educators need to encourage students continually both to "zoom in," listening closely, putting others before their own needs, and to "zoom out," taking in the big picture to consider the multiple perspectives of those who may be invisible, to consider issues of justice in the community and in society.

We must model caring and empathy as part of teaching professional identity. We can accomplish the task of modeling caring for others by incorporating exercises into our standing curriculum that provide students the opportunity for personal reflection, and that result in a complete triad of caring for others, achievement, and happiness in the legal profession.

A Values Triad Primer

The exercises below are designed for legal educators to use with students in cultivating professional identity, as steps to regain a focus on concern for others:

Consider Yourself and Others

Concern for others falls under the morality and character aspects of the practice of law – the personal-ethical engagement – and is not traditionally apparent in the law school curriculum. To integrate concepts of care and concern for others into your education process, begin with the concept of self-reflection.

1. Write Your Unfortunate Story

Before you start law school, write your own "Unfortunate Story." Write a story about something unfortunate that happened to you, what you did about it at the time and if you would do anything differently today. Limit your story to 250 words. Keep your

The Millennials Challenge (cont'd)

story tucked away or share it with your professors. At the end of your first year, re-write your story and see if you note a change in your perspective or problem-solving abilities, or both, after completing one year of law school.

2. Professional Identity Reflection on Your Writing Assignments

Think about the moral and legal obligations and ethical relevance to the assignments you write for your legal analysis class. Write a short reflection paper articulating your personal opinion about the outcome of the case you worked on for the semester, taking into consideration concerns for society as well as the client. Look at the big picture, describe how you *really* feel about your mock client's case, and write down your recommended resolution outside of the considerations of case law.

3. Examples of Life in the Law

Talk to practicing attorneys whenever you can. Seek out both attorneys in private practice and government attorneys. Ask your professors to introduce you to attorneys or to bring them in as guest speakers. Ask practicing professionals questions not only about their work, but also about their lives. Ask them about life-work balance. Exposure to seasoned professionals in the law who have developed their own professional identities assists in the development of your professional identity by example.

4. Visit All Courts and Take Notes on Proceedings

During the second semester of your first year, take some mornings and afternoons to visit state and federal court proceedings. Note everything about your surroundings: Who is in the courtroom? Who are the attorneys? Who are the judges? What are the demographics of the participants in the room? Take notes and write your impressions of the cases, the demeanors of the attorneys and the judges, and the facts, as you understand them. Make sure to visit both trial proceedings and appellate proceedings and note the differences: What made you feel comfortable? What made you uncomfortable? Reflect on the lives of the *real people* affected by the outcomes of the proceedings you witness.

By integrating your legal education into who you are as a person, you will begin to form your own professional identity and become a well-rounded attorney, which is necessary to fulfill the obligations to yourself, to the profession, and to our greater society.

References & Further Reading

Teaching Professional Identity, Deborah L. Borman, *The Law Teacher*, Fall 2013.

The Children We Mean To Raise: The Real Messages Adults Are Sending About Values, Making Caring Common Project, Harvard Graduate School of Education, Weissbourd, *et. al.*

Teaching the Academically Under-Prepared Law Student, *The Fourth Colonial Frontier Legal Writing Conference*, hosted by the Duquesne Univer-

sity School of Law, Pittsburgh, Pennsylvania, Saturday, December 6, 2014.

Civic Enterprises with Peter D. Hart Research Associates (2013) *The missing piece: A national teacher survey on how social and emotional learning can empower children and transform schools*. Washington: Civic Enterprises. Retrieved from <http://www.civicerprises.net/MediaLibrary/Docs/CASEL-Report-low-res-FINAL.pdf>.

National Center for Education Statistics (2013). *Student reports of bullying and cyber-bullying: Results from the 2011 school crime supplement to the national crime victimization* (NCES Publication No. 2013-329). Washington: Author. Retrieved from <http://nces.ed.gov/pubs2013/2013329.pdf>.
<http://minnesota.cbslocal.com/2014/07/22/family-asked-to-leave-sw-plane-after-tweet/>.

Teaching Millennials Legal Skills: A Digital Marketing Approach

Renee Nicole Allen,

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There is much talk about how to hire, employ, parent, and teach Millennials—a generation born between 1980 and 2000 and characterized by their digital upbringing, independence, and diversity.

A recent digital marketing article concerning Millennials entering the job force suggests five things senior marketing executives can learn from Millennials, the “digital natives.” Likewise, law professors can utilize the same principles and core values of the Millennial generation to engage Millennials enrolled in their courses.

(1) Don't neglect the data. Millennials are results driven. They are accustomed to having freedom of choice in everything they do. Because of this, they are not likely to follow an order simply because it comes from the boss. And yes,

professors, this means you too. At the onset of the semester give your students real data about student success in your course and explicitly make the correlation between the tasks they will complete in your class and their success. I give students data regarding bar passage at my institution to demonstrate the value of my course as it relates to success in law school and on the bar exam. Before classes begin, at law school orientation, I explain Bloom's Taxonomy, the self-regulated learning cycle and metacognition to new students to further show the connection between what they will learn in my class and law school success.

In your first class of the semester, consider creating and discussing with students, a chart that shows the relationship between final exam performance and class participation (e.g., assignment submission, class attendance, office

hours, etc.). Finally, do not neglect to include learning goals and objectives in your syllabus and for each individual class or course unit as Millennials will be concerned with how the work they are doing in your class will benefit them.

(2) Embrace your inner socialite. Millennials need lots of feedback and want to feel connected with the people in their lives at all times. By now, you have probably encountered the student who has emailed you at 11pm curious about why you have not answered their first email sent at 7pm. In the world of text messaging, instant chat, Facebook, and Twitter, digital natives are accustomed to instantaneous responses and feedback. Does this mean you need to work around the clock to meet their needs? No. However, there are some things you can do to ensure that your students feel connected with you outside of class. We know

feedback is essential to the law students in the self-regulated learning environment.

In my legal analysis course, I allow students to submit in class exercises via the course TWEN page for individual feedback. However, giving this individual feedback is definitely time consuming. There are many other ways to communicate with our students outside of class to accomplish the same goal. Consider creating a Twitter account that can only be accessed by students enrolled in your class and, in addition to office hours, designating certain times for #askmyprofessor where students can ask questions and get answers instantly about topics covered in class or assignments.

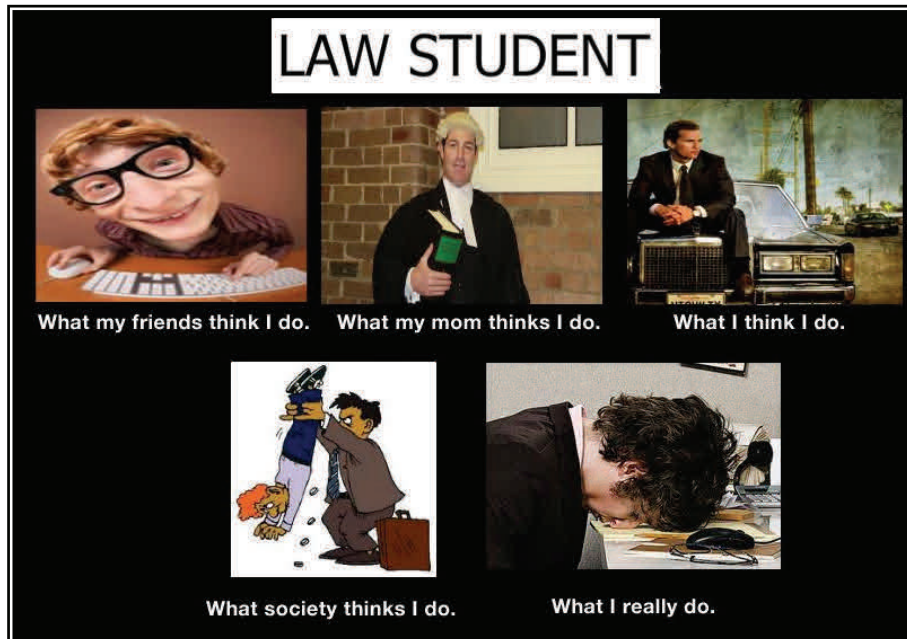
Another way to embrace your inner socialite is to “flip” your classroom. While flipping the classroom first seems like a daunting task, you can

Teaching Millennials Legal Skills (cont'd)

start small by flipping one class each semester. For example: record a short, instructional video regarding a topic covered in your course and release it to students via TWEN or other platform. Require students to watch the video prior to class and complete related reading assignments. Consider enabling a message or discussion board where students will respond to questions about the content prior to class. When class meets again in-person, utilize class time to engage in dialogue about the topic or have your students complete an exercise where they are required to apply what they learned in the “flipped” classroom.

(3) **Become visually astute.** Millennials see life through an Instagram filter. This means we must create images that are visually appealing to our students. It also means it’s probably time to update your PowerPoint Presentations and utilize new templates, graphics, and animations. One way to do this is to include memes (rhymes with “team”) in your class presentations or send to students via email. An internet meme is a **virally-transmitted cultural symbol or social**

idea. Memes are usually humorous and are shared by Millennials via email, text, and social media to quickly convey ideas. Use Google to find law school memes that relate to the subject matter of your course, like this one:



There are many applications designed to help you create memes to fit your course. Meme Factory and Meme Generator are few of many applications you can use to create memes.

(4) **Monitor the pulse of pop culture.** Millennials prefer meaningful work that is occasionally humorous and fun. As the masters of the internet, they are well versed in the current events and pop culture. To make your course more attractive and engaging to the Millennials in your class, consider updating your fact

patterns. We all have that one exercise that we love to use from year to year to demonstrate the application of a challenging rule of law to first-year students. I get excited about using my “light bulb” exercise each fall. However, if your go-to fact

pattern concerns A selling B Blackacre, it may be time to update your facts. A simple change of facts to reflect a recent pop culture occurrence will not affect the integrity of the fact pattern or exercise. In fact, utilizing current events and pop culture may assist Millennials in making the connection between the “real

world” and the law and lawyering skills they are learning in class. Consider the two fact patterns below:

Farmer grows the best apples in town and Trucker has a thriving, new produce delivery business. Recognizing their popularity with locals, the Owner of the Fresh Farmer’s Market contacted Farmer and Trucker about participating at their upcoming Fresh Festival. Farmer and Trucker contracted to share a booth at the Fresh Festival wherein Trucker would exclusively deliver Farmer’s

Teaching Millennials Legal Skills (cont'd)

apples to the Fresh Festival. On the day of the Fresh Festival without notifying Farmer, Trucker decided to make some extra money by delivering Otis' Oranges to the Festival. Discuss Farmer's claims against Trucker.

Robyn and Milo have the number #1 and #2 songs on the pop charts. Recognizing their popularity, MTV contacted both artists about performing on their upcoming award show. Robyn and Milo contracted with each other to share the stage at the annual, MTV music awards and perform snippets of their hit songs during an eight-minute, set wherein each performer would perform their hit song for four minutes with no other artist on the stage during each set. During the award show performance, without notifying Robyn, Milo decided to debut and perform the remix of her hit song featuring a verse rapped by Nicky Barage, including Barage in her live set. Discuss Robyn's claims against Milo.

While both fact patterns require students to resolve the same legal issue, the second describes a pop culture scenario Millennials, whether music lovers or not, are most likely aware. The value of the exercise is not changed by creating a fact pattern that Millennials view as fun or humorous. Before executing your class materials for the next semester,

think about ways you can modify your exercises to make them more engaging to the Millennials in your classroom. These simple changes go a long way for engagement and course evaluations.

(5) **Always be a team player.** Millennials thrive in collaborative working environments. Let's face it—they are the “everyone gets a trophy” generation. In my first-year classroom, I find that the highly competitive nature of law school (a la The Paper Chase) is long gone and that my students actually prefer collaborating on class exercises. There are numerous methods professors can employ to encourage collaboration in the law classroom. My favorite is the “Think, Pair, Share” activity wherein I give students time to complete an exercise individually, then pair with a classmate to share their ideas and determine a collective response before choosing a group representative who is responsible for sharing with the class. Initially, I group students in small working groups of no more than three students based on where they are seated in class. I find that these opportunities to collaborate build confidence in my quiet students and allow every student to be a part of class discussion without necessarily having to speak in front of the whole class. Once students pair up and begin to share, I float from group to group listening as they share their ideas in an effort to resolve the legal issues presented in the class problem. In listening, I find that students are acting much like lawyers in practice. It

reminds me of my days practicing family law and negotiating settlement agreements with opposing counsel. There are often disagreements in groups, but I require that students resolve them internally and come to a collective group response. Keeping control of the room, I ensure that students are not always working with the same partner and, as I learn the personalities of the students in my class, I assign collaborative groups with the goal of balancing the strengths and weaknesses of each student.

Legal education is changing and so are our students. As such, we must also change and adapt. We can add value to our courses by considering the generational values of the students we teach and making adjustments that will enhance the learning of the Millennials we teach.

References & Further Reading

Green, Chloe. Learning from the ‘Digital Natives’: 5 Digital Marketing Skills Millennials Can Teach <http://www.information-age.com/it-management/strategy-and-innovation/123458432/learning-digital-natives-5-digital-marketing-skills-millennials-can-teach> (Posted September 3, 2014)

Gross, T. Scott. The New Millennial Values. <http://www.forbes.com/sites/prospornow/2012/07/05/the-new-millennial-values/> (Posted July 5, 2012)

Gil, Paul. What is a ‘Meme’? What Are Examples of Modern Internet Memes? <http://netforbeginners.about.com/od/weirdwebculture/f/What-Is-an-Internet-Meme.htm>

“And Moreover,” Said the Professor at Orientation

Elizabeth Z. Stillman,

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On my first day of law school orientation, many years ago, one of my professors started his lecture by saying, “Moreover, in the study of law . . .” I was baffled. Had there been some conversation that everyone else had been part of before we walked in that morning? And while there hadn’t been, it made me think that perhaps orientation would have been more helpful if that conversation had happened.

A few years ago, Suffolk University Law School moved the first day of classes to the day after Labor Day (from mid-August) in order to, among other things, save students who were moving into the very expensive Boston real estate market from having to pay for rent for the month of August. While this was a good change in terms of student budgets, it required us to condense our orientation classes to fit into the morning of the day after Labor Day and a weekend day afterwards. This left our Academic Support Program with approximately one and half hours to introduce the court system and teach case briefing — knowledge and skills our students needed to have and utilize later the very same day. We recognized that this meant that these same students might be learning some very funda-

mental concepts of law and how to be a law student on the fly (more as a tangent to their doctrinal classes) throughout the year--maybe. We also noticed that some of these key concepts were not absorbed through classroom learning by the time these same first-year students became second-year students. In fact, our early assessment of students in the required Legal Methods and Analysis class (intended for students on academic warning and/or probation) indicated that these skills were still lacking at the beginning of the second year.

At the same time, we were looking for a better way to capture students who were potentially at-risk very early in the first year. LSAT scores tended to be one dimensional and relatively inaccurate predictors of future academic distress. Knowing that early intervention is the most successful, we wanted to find an assessment tool that could be administered on the first days of law school. However, without any context, this type of assessment would prove equally as inaccurate as LSAT scores.

In response to the timing and assessment context problems, we launched an on-line orientation program for the current academic year designed to supplement what had become a very intense and rushed class we offered on previous early-September Tuesday

mornings. (This was true for our Day division students. Our evening division students had the same amount of class time, but no classes immediately following ours.) Our goal was to make the live, in-class component of orientation a continuation of the conversation rather than the entire dialogue. We also wanted to make the materials accessible to students online so that they could participate from wherever they were during the month of August. The working parameters of this project also meant that we could not change the footprint of the academic calendar or the amount of class time on that first day. With these goals and “rules” in mind, we came up with a list of about eight topics that we thought were foundational for first year law students. Our Academic Support Program faculty — Professors Herbert Ramy, Janet Fisher, Dyane O’Leary and myself — all collaborated to make this possible. These eight topics were: What to Expect in Law School, Introduction to the U.S. Court System, Getting the Most Out of Your Classes, Reading Like a Lawyer, Case Briefing, Post-Class Review (an Intro to Outlining), and Answering a Legal Question/Law School Exams. Each one of these topics was configured as a learning module that included a screencast, PowerPoint slides, supplemental materials and, in some modules, an assess-

“And Moreover” (cont’d)

ment. Our goal was that each module would take no more than approximately 20-25 minutes to complete.

But before we could start imparting our wisdom on-line, we had to learn in order to teach. We were quite fortunate that our university had personnel who were willing to patiently explain our new teaching technology. As a group, we decided on a course management system and software to produce our screencasts (and in one module, a video). We used Blackboard for our course management and Panopto for our screencasts/video production. Once we knew how to make it and where to put it, we added our content to the modules and set up our “class.” We imbedded assessments into three modules and allowed students to move forward only after completing the previous module.

We set the data collection of users and imbedded assessments as a passive tool more for “taking attendance” than anything else. For example, we did not have assessment scores that were deficiently flagged and/or sent to us, nor did we ask Blackboard to generate a list of non-participants, although we could generate a list of those who did participate. First year students were sent emails weekly about the on-line orientation once it went live on August 5, 2014 that indicated that participation was required. We sent students the same email each week so we could be certain to capture newly-admitted students as well as students who were possibly in the process of moving (or just procrastinating). The modules culminated in two things: One was a series of Question and Answer sessions that were conducted live in the week before classes began and the other

was an assignment (Module Nine) to be completed before “live orientation” that would culminate in an in-class assessment when they arrived on campus.

The assignment in preparation for the in-class assessment consisted of reading two cases, briefing one of them and bringing these materials as well as either pen and paper, or a laptop to the orientation class. Our assessment instrument was an exam like hypothetical that could be answered using the cases (although it presented a novel factual issue). The question was narrowed to one issue (from many) because a multi-issue question would have been too difficult for students to organize at this point in time and also to allow students to answer it in twenty minutes (we still didn’t have much time). We were looking to see how well students could frame one issue and use the facts given to answer one question. When students



“And Moreover” (cont’d)

arrived for our live orientation class, they were almost immediately given a copy of the assessment and instructions on how to submit either handwritten or electronic versions of their completed assessments. After that, the remainder of the class dealt with case briefing (as to the second case) and possible ways to answer the assessment question.

ASP faculty members reviewed approximately 100-120 assessment answers each and “scored” them (using a common rubric). The scoring was for internal purposes only. In the course of this review, we flagged students who we felt might need early ASP intervention, that is, those who had major grammatical, analytical or organizational problems, as well as students who appeared to be non-native English speakers. Each of us flagged approximately 15-20% of the students we reviewed and reached out to them within the first week of classes. All students received direct feedback on their assessment and were, of course, offered a chance to meet with a faculty member in our program. No student was required to schedule a meeting and a general invitation to work with our program was extended to every first-year student in the common problem sheet that accompanied the returned assessments. Students who we had preliminarily identified as ESL learners

were also invited (but not required) to work with the university's Center for Learning and Academic Success. We have kept the learning modules available to students and plan to do so for the rest of the academic year.

While we did not, and do not, plan to share the names of the students we identified as in need of early intervention to any faculty member, early anecdotal evidence indicates some success in that a number of the identified students are also being referred to our office by their legal writing professors. I would also note, like any very early assessment tool, it was most likely both under- and over-inclusive. A few students that we met with had been admitted to law school so close to the date of the assessment that they had not had time to complete the on-line orientation modules, or in few instances, students did not read both sides of the assessment sheet in class. I gave those students a chance to rewrite their answers. We may not know if our model has been successful until midterm exam results (in late October), or even finals (either in December or May). At the moment, we are planning on surveying both first-year students and faculty at the end of the year to see if this new program has met the primary goal of helping students prepare for the first year and beyond. Another bonus for us is that the work to produce this on-line orientation class is already done—and

although we may need to make some minor changes if we do use it again next year, it will not be starting from ground zero.

Our dialogue with students is certainly not over but, at least, when we finally met together early in September, the conversation was already well underway.

Conformity and Rebellion in Outlining

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In its simplest form, an outline is a document that shows the organizational structure needed to convey the relationships between ideas. When law students are creating a course review outline they are not just documenting the relationships between doctrine, policy, and factual variances, but they are striving to organize the material in a manner that will help them solve a new-to-them problem under severe time constraints. In teaching these skills, it is difficult to find a good balance between the ASPish message “no one-size-fits-all” and the expert’s un-

derstanding “there is a right way to do this thing.” Further, acknowledging differences in learning style preferences seems to make students want to throw up their hands in frustration and run to the bookstore to buy a canned product off the shelf.

For many of my students who are struggling after first semester grades come out, I set aside the rich possibilities of acknowledging their learning styles and try to help them learn to use tools that will enable them to cut through the linguistic differences of different court opinions and casebook authors in a way that poises them to turn around and produce structured, coherent prose for their professors on final exams. This process is frequently

painful, but forcing students to operate in conformity for a short time seems to result in better execution of dissecting others’ thoughts and communicating their own thoughts after the artificial constraint is lifted.

The exercise begins with a small subtopic in a course, such as the rules relating to found property. I provide the student with a table template based, loosely, on the IRAC paradigm. This gives me the opportunity to discuss with students the difference between the data and metadata of exam answers, and effective use of headings and subheadings. Here is a reproduction of one of these tables:

The contents of this column are meta-data. They are the invisible organizational expectations of a law trained reader.	
Issues (roughly correspond to roman numeral level of a traditional outline)	Who has the best claim to found property? [triggering fact: (Someone) finds a piece of (personal property)]
Rules (roughly corresponds to the capital letter level of a traditional outline)	(A finder) of (lost personal property) is entitled to it against all others but the [true owner], unless it has been found on a person’s land and that person has manifested an intent to exclude others from their land.
Illustrations (roughly corresponds to the Arabic numeral level of an outline)	(chimney sweep) finds (gemstone in chimney); court gives chimney sweep gemstone because as <u>finder</u> his rights are superior to those of the appraising jeweler or his apprentice (<i>Armory v. Delamirie</i>) (pool cleaner) finds (rings on bottom of pool); court gives landowner rings because landowner <u>exercised right to exclude</u> others from land and maintain his dominion over the objects on that land (<i>South Staffordshire Water Co. V. Sharman</i>) (salesman) finds (banknotes on floor of shop); court gives banknotes to salesman over shopkeeper because the banknotes were left in plain sight so finder has right superior to all but the true owner (<i>Bridges v. Hawkesworth</i>) (tenant) finds (broach in rental house window); court gives broach to tenant because the landowner failed to exercise the right to exclude (<i>Hannah v. Peel</i>) (construction workers) find (a jar of coins in soil of home); court gives the coins to the property owner because the jar was “misaid” property rather than “treasure trove” – if court classified it as treasure trove it would undermine the landowner’s right to exclude others from their land and incentivize trespassing (<i>Corliss v. Wenner</i>)

Outlining (cont'd)

The next steps of the exercise are difficult for two main reasons. First, creating a synthesized rule statement from cases is a skill that most of the students I work with have not mastered so I am using a single exercise to teach at least two skills, outlining and rule synthesis. Second, the parallel construction of case descriptions I make them use is unnatural and uncomfortable, and students frequently rebel against the constraints of an actor-act-result recitation of case facts followed by the crux of the court's reasoning.

In spite of these difficulties, I provide the student with an issue and use this as the guiding Roman numeral for the rest of the table segment. In my experience, it is easier for students to understand the different focal lengths that can be used to frame legal issues after they have become comfortable translating cases into the same focal length and synthesizing a rule from multiple cases.

After identifying a topic, we begin re-reading the cases to extract the rules articulated by the court so that we can create a synthesized rule covering the entire subtopic. On several separate pieces of paper the student writes down the "moving pieces" of the rule and then tries to assemble them into a single coherent explanation that uses all of the pieces. Once the student has a rule statement, I instruct her to put paren-

theses around the actors, objects, and acts this rule is meant to cover. I also recommend that the student include a note about whether this is the unified comprehensive rule for this subject as taught by her professor, or if there is a majority/minority approach and another block with a competing rule and set of illustrations below.

After identifying the actors and acts as stated in the rule, the student has to write the case facts in that same order. This forced conformity helps students reframe the cases so that they can perform apples-to-apples comparisons, inasmuch as apples-to-apples comparisons are possible when studying law. At this point, I provide a practice problem on the issue, and the student sees how much easier it is to write out the rule and engage in a methodical and complete analysis that includes case comparisons and distinctions when this much work has been performed in advance.

This forced conformity helps students gain a perspective that they can use to communicate their individual thought processes with others. Once they learn how to do that, then they have baseline knowledge of the "rules" that they can follow or break in the future as required by the subject matter and the audience.

References & Further Reading

Many thanks to Rory Bahadur for sharing the IRAC assembly line exer-

cise at the 2012 AALS Academic Support Program. That's where I got the idea of using a table to constrain the free-radicals of thought that seduce students into following a will-o'-the-wisp instead of a legal argument.

HERBERT N. RAMY, SUCCEEDING IN LAW SCHOOL (2010).

Using the Billable Hour to Help Shape Law Students' Time Management Skills

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Have you ever tried to give a lecture on time management and then watch the students' eyes glaze over? Much like my mother used to hide peas in my macaroni-n-cheese, I quickly learned that you have to package "time management" with something else in order to get the students interested.

I now tell students (as early as Orientation) that attorneys bill in six-minute increments. I explain how important it will be in law practice to be able to account for each minute of the day. For example, if a law firm is billing an attorney at \$200.00 per hour, then a 10-minute Facebook conversation costs the firm \$34. The attorney cannot bill the client for this time, and if the attorney either intentionally or negligently tries to do so, he or she could face disciplinary action. I conclude by advising students that the best way to protect themselves in law practice is to get in the good habit while in law school of accounting for every minute. The students seem to respond to this "how to be a practice ready attorney" suggestion, and become more open to learning about good time

management techniques.

Next, I guide the student through a step-by-step method of accounting for their time. Importantly, this method presents time management in an active learning-by-doing model; the student is engaged throughout



the process and is frequently challenged to evaluate their daily activities and current time management strategies. Throughout the process I strive to subtly teach the student the five key skills outlined by Christine P. Bartholomew in her recent study of "time famine" amongst law students.

Bartholomew found that law students gain the most benefit from "training in Present Orientation, Perceived Control, Goal Setting, Mechanics, and Routine."

"Present Orientation evaluates a person's time perspective, namely if the student focuses on the here and now."

If a student is struggling to manage their time in law school, start off by encouraging the student to list all of the activities they actually do (or intend to do) each week. After the student makes this initial list, run through a list of common activities that they may have forgotten, like Netflix, Facebook, or running errands. (See checklist, *infra*). This initial step requires the student to verbalize all of their current time commitments and confront their present reality.

"Perceived Control refers to a person's perception of having enough time to finish work and meet deadlines."

After the confrontation, the student may feel attacked, irritated, or annoyed. It is critically important now to casually talk with the student and make the student feel comfortable and optimistic. Remind the student that while some of the material in law school is difficult, most of it is

Time Management Skills (cont'd)

digestible. Acknowledge that the biggest challenge any law student faces is juggling the quantity of material. Reassure the student that with the proper planning, there will be enough time to complete everything on their "To Do" list. Reinforce the perception of control.

"The Setting Goals and Prioritizing subscale evaluates whether an individual creates short and long term goals, then prioritizes among them."

After the student feels empowered, ask them to verbalize a list of academic goals and personal goals. The list of academic goals should obviously include attending every class and dedicating a sufficient amount of time to studying. Encourage the student to set aside three hours of study time each week, per credit hour of class. For example, if the student is taking 15 credits in the semester, then they should set aside 45 hours per week to prepare and outline for class. Even an overwhelmed first-year student can quickly understand this firm, fixed formula.

After the academic goals are discussed, ask the student to prioritize their personal goals. Allow the student to include whatever activities they want on their personal list, and make sure to incorporate all the activities men-

tioned in the initial Present Orientation step. The conversation should suggest to the student that the goal setting step is highly individualized. To ensure that you have covered everything, you can follow-up with questions from a checklist:

Time Management Checklist

Class Schedule: Ask the student to provide you with a copy of their class schedule. Advise the student that you will block off time for all of their regularly scheduled classes, and all other weekly events including tutoring sessions, academic support workshops, and legal writing conferences.

Study Habits: Do they prefer to study at school, at home, or at some other location? Do they prefer to study in the mornings or in the evenings? Are they in a study group?

Employment: Does the student have other part-time employment? If so, where? How many hours per week do they work? What does their weekly employment schedule look like? Can they work remotely or must they go into the office? Do they have any business trips or other work obligations?

Personal Time: When do they prefer to wake-up and go to bed? How long does it take them to get ready in the morn-

ing? How much time does it take them to commute to/from school? Do they exercise? When do they prefer to exercise? Do they make their own meals? Do they have any other fixed weekly appointments such as a doctor or counselor? How long does it take them to complete routine household chores like laundry, cleaning, and grocery shopping? Do they have any pets?

Fun Time: Which day do they want to be their scheduled "fun" day? Do they participate in any extracurricular events such as law review, trial advocacy, or student organizations? Do they have any hobbies? Do they frequently watch sporting events, television shows, or Netflix? How often do they access the internet, social media, and email? Do they have any birthdays, weddings, parties, or out-of-town trips this semester? Do they have a significant other that requires some designated quality time? How often do they visit with their family?

Make the student specify when (which day of the week or what time of day) they prefer to engage in each activity, as you will need this information in the Mechanics phase.

End the session with this question—which encourages the student to think of anything else that may consume valuable time: "Is there anything else that you frequently do,

Time Management Skills (cont'd)

even though everyone tells you not to?" Once you have all of the student's information, advise the student that you will email them with the results in a day or two.

"Mechanics are the planning and scheduling skills needed to achieve one's goals."

For the Mechanics section, you take the lead. Using Excel, create a weekly schedule for the student. Start with the student's class schedule, work schedule, and desired waking and sleeping times. (Each year I create a shell template that includes all of the first-year courses.) You should also give exercise a high priority, for obvious reasons. Finally, insert the remaining items from the wish list, being sure to include a few hours of relaxation after dinner on at least one night of the week. Typically, a Friday night works best.

Once all of the wish list items are accounted for, you can count up the remaining hours available for study time. If the total meets or exceeds the goal of 45 hours per week, then the student's proposed schedule is likely workable. Although the student acknowledges and usually agrees to set 45 hours of studying as the goal, it is rarely (if ever) realized in a student's first attempt. Typically the student only has a fraction of the desired study time. This is okay, for now. Simply email the spreadsheet to the student, being sure to highlight how little time is currently avail-

able for studying. End the email by asking the student if there is anything that they would like to change in the proposed schedule.

By confronting the student with raw numbers (instead of abstract advice like "study more"), the student is forced back into the Present Orientation phase. Here, you should encourage and invite the student to reconsider their time allotments and priorities. Usually the student will suggest that something from the wish list (such as visiting the boyfriend every other weekend or sleeping-in until 9:00 a.m.) may no longer be possible. It is important for the student to suggest the areas in which they can make up the needed study hours; the student should be responsible for prioritizing his or her own life.

Once you get the macro allotment of 45 hours of study time, you can invite the student back to repeat the process for the micro dissection of those study hours (e.g. "What classes will you brief from 12-2 on Mondays?" "When will you outline Torts?" "How much time should you set aside for LRW?")

"Structured Routine looks at whether an individual uses planning and routine activity to structure time."

Make sure to follow up with the student in a week or two to see if they have been sticking to the proposed schedule. Remind the student that a consistent routine will lead to good

time-tracking habits. I usually offer the student an analogy about having to break the bad habit of sleeping-in on the weekends or only sporadically going to the gym. During this final phase, you can also encourage the student to start journaling his or her time, just like an attorney. This reinforces the "practice ready" benefit that you promised at the outset.

Although this process can be time-consuming for the academic support professional, the level of individualized attention reinforces for the student how supremely important time management skills are to academic success. Hopefully, by providing tailored time management solutions during law school, we can help students not only succeed in law school but also respond to time famine in practice—as Bartholomew suggests.

References and Further Reading

Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. Cin. L. Rev. 897 (2013).

William J. Trainor, *Law School: A 1L's Perspective*, 80 U. Det. Mercy L. Rev. 541 (2003).

Problem Solved: How to Incorporate Problem Solving in Your Course to Prepare Students for Practice

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Utilizing the problem-solving approach can help bridge the gap between legal education and the legal profession and help prepare students to be “client-ready.” Problem solving can be used in different legal settings, with different legal issues, involving different clients. It can be incorporated in the first year of law school and/or in the upper-level as well as continuing legal education programs. Problem solving can be a stand-alone course or incorporated with doctrinal courses, skills courses, seminars, or competitions. Depending on the way problem solving is utilized, it can be in one class, an intersession week, or an entire semester. It can be graded or pass/fail. Problem solving files exist or can be created for any area of the law.

When constructing your curriculum around problem solving, engage in backwards design. First focus on your broad learning goals (the desired results, i.e. upon successful completion of this course, students will know/understand . . .) and work backwards. Once you have identified your learning goals, set specific learning objectives (upon completion of this course, students will be able to . . .). Then design your assessments.

For example, four goals you may have in a problem solving approach could be that upon successful completion of the course, students will know/understand: a problem solving methodology (the systematic approach and tasks associated with problem solving); how to effectively collaborate with others to solve a legal problem; how to work efficiently under time constraints; and the tenets of professionalism, professional

identity, and emotional intelligence.

An effective problem solving methodology that can be used for most legal issues in different legal settings involves considering six questions: 1) who is the client?; 2) what are the client’s goals?; 3) what are the facts?; 4) what are the legal constraints and opportunities?; 5) what are the legal and ethical options?; and 6) how should the client proceed?

Utilizing a problem solving methodology, students should work on problems lawyers are asked to solve the way lawyers do – under pressure, working with others, and combining knowledge of the law, theory, and practical judgment -- to help their client achieve her goal within the bounds of the law. Students can receive problems in different ways: a voicemail from a senior partner, an email from a client or attorney, a memorandum from a supervisor, a video message, or a file

from a predecessor with notes or a transcript. One problem each day keeps it fast-paced and interesting and allows students to work on numerous types of problems.

Students can be placed in groups/teams/firms at the outset of class. If the course is one week or less, than they can stay in the same group or if the course lasts an entire semester, groups can be changed to allow students the chance to work with different people. Project managers can be assigned to rotate each day/each problem, or leaders can naturally emerge. (I recommend asking each member of a team/group/firm to take turns taking the role of project manager so everyone gets the experience, and it avoids any one person from dominating the group. This rotation also allows groups to experience different leadership styles.)

Professors can design numerous ways to assess students’ learning to help stu-

Problem Solved (cont'd)

dents prepare for the practice of law. For example, assignments can vary depending on their client's problem, but could include: interviewing a client, advising a client regarding a settlement or plea offer, giving an oral report to a supervisor, researching the law, or drafting a client letter, email, or press release. The problems/tasks can get increasingly complex and challenging. Students can be given a problem or task they are familiar with or be asked to transfer what they know to solve new, unfamiliar legal problems or be asked to perform tasks they have no experience with completing. For each problem, students can be given tight time constraints to mimic legal practice; from one hour to one day or more.

Students can engage in self-assessment that helps them develop their professional development and professional identity. For example, at the conclusion of each day or each problem, students can be asked to complete a journal reflection assignment. Each day the questions can be a

different type – questions about the client, the problem, the task, their team, or themselves. (For example, a journal reflection assignment can ask a question related to how the student approached solving that particular client's problem, the student's aversion to risk and whether that affected the advice she gave the client, or something the student has learned that makes her think differently about a lawyer's role when problem solving.) The journals help students self-reflect and help the professor gauge the understanding and progress of the class as well as anticipate any confusion or problems. (After reading the journal reflection questions each day, the next class the professor can start the class by discussing common themes from the reflections or reading quotes or excerpts that were particularly insightful (without identifying any particular student). This feedback from the professor helps students understand the importance and role of the journals (that the professor is reading them and will take

them into account for assessing student work) and could decrease any possible feelings of isolation or anxiety of students when they realize the common ground found in classmates' responses.)

In addition to self-assessment, students should be assessed by others. At the completion of the course, students should complete a peer assessment of each person on their team as well as a self-assessment. A group work assessment rubric should be given to the students at the outset of the course so they understand the expectations. A group work assessment can assess different skills, such as team contributions, communication skills, cooperativeness/adaptability, time management and responsibility, initiative/leadership, and professionalism. Students get the benefit of learning how to give and receive constructive criticism. They also have the opportunity to see how others perceive them and understand perspectives of others. Group assessments can also help faculty assess each stu-

dent's effort and performance in the course.

Finally, bringing in lawyers to give students feedback on their attempt to solve a client's problem has numerous benefits. (Lawyers can be asked to play the role of a client, a supervisor attorney, or someone the student or team has to present their advice or solution.) Students gain experience with receiving and incorporating constructive criticism and are often more receptive to hearing it from an outside expert rather than from their professor. Students and faculty get the benefit of learning from the lawyers' experience and expertise and seeing the connection between law school and legal practice. Potential employers, alumni, and fellow faculty members get the benefit of participating in the class.

In addition to understanding problem solving, students experience how professionalism can be challenged in legal settings. For the course, students can be required to dress professionally as they would in law practice. Also, by facing

Problem Solved (cont'd)

situations where they are confronted with ethical questions and asked to reflect on their decisions, they are developing their professional identity. Finally, by working with others, receiving and giving feedback, and attempting to solve complex client problems, students work on their professional development and emotional intelligence.

In conclusion, due to the differences in expectations and experiences in a problem solving course, as compared to a case method course, it would be beneficial before the class begins to send an email or letter to students giving them some guidance regarding the expectations. (Noting the group work component and professional dress, if required, may be especially important for students to know.) Students and faculty may feel out of their comfort zone at the outset, but the benefits of incorporating a problem solving approach outweigh the challenges. By connecting legal theory, doctrine, and skills through problem solv-

ing, students are better prepared to help clients.

References & Further Reading

Kathleen Elliott Vinson, *What's Your Problem?*, 44 Stetson L. Rev. (forthcoming 2015).

LEGAL EDUCATION, ADR, AND PROBLEM-SOLVING (LEAPS) Project, <http://leaps.uoregon.edu> (hosting a project of the ABA Section of Dispute Resolution's Law School Committee that develops problem solving lessons)

LawMeets, <http://www.lawmeets.com> (utilizing online approach to students' problem solving skills while providing peer and expert review of solutions)

Harvard Law School, The Case Studies, *Problem Solving Workshop*, <http://casestudies.law.harvard.edu/> (allowing faculty to purchase problems used in the Harvard Problem Solving Workshop, a first-year required intersession course).

For guidance in creating problem solving cases, see

Joseph William Singer, *How Law Professor Can Write a Problem Solving Case*, Harvard Law School, The Case Studies Blog, (Sep. 17 2013), <http://blogs.law.harvard.edu/hlscasestudies/2013/08/20/> (offering guidelines).

Although this document focuses on problem solving, the backwards design approach can be utilized for any course. See Grant Wiggins and Jay McTight, *Understanding by Design* (Prentice Hall 2000); see also Center for Teaching and Scholarly Excellence, *Course Design*, Suffolk University, <http://www2.suffolk.edu/offices/47901.html> (last visited January 28, 2014) (discussing backwards design approach to course design).

Harvard Law School, The Case Studies, *Problem Solving Workshop*, <http://casestudies.law.harvard.edu/> (allowing faculty to purchase problems used in the Harvard Problem Solving Workshop, a first-year required intersession course).

Numerous methodologies are used for problem solving but they have similar themes. See E. Scott

Fruehwald, *Think Like a Lawyer*, 210 (ABA 2013). Fruehwald describes that the general model for problem solving may be: "(1) identify the problem, (2) define the problem, (3) form a strategy, (4) organize information, (5) solve the problem (including monitoring your progress), and (6) evaluate the solution."

Groups tend to follow a typical developmental sequence of phases of teamwork: forming, storming, norming, and performing. Bruce W. Tuckman, *Developmental Sequence in Small Groups*, Group Facilitation: A Research and Applications Journal, 63 <http://openvce.net/sites/default/files/Tuckman1965DevelopmentalSequence.pdf> (2001) (citing *Psychological Bulletin* (1965).

Teaching Negotiation to 1Ls

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We often tell our students that practicing law extends beyond the courtroom. In fact, much of what an attorney does every day involves the art and skill of negotiating with others, whether students realize it or not. First-year courses are a perfect place to introduce students to basic concepts of negotiation and alternative dispute resolution (ADR). Texas Tech incorporates experiential negotiation and ADR exercises in its LRW course, but we believe that these exercises can be introduced in other courses as well.

Why teach negotiation and ADR to 1Ls?

The ability to negotiate is an inherent skill that is absolutely essential for all lawyers.

Negotiation and ADR can also be a refreshing change of pace for first-year law students. Students are excited (and sometimes relieved) to learn that advocacy and problem-solving occur outside the courtroom as well as in it. There is a flexible space between face-to-face negotiation and courtroom theatrics, and introducing

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solutions and
tangible working
documents.*

students to ADR teaches them the value of neutral third parties facilitating or adjudicating disputes.

Students are also eager for a variation in the classroom experience. Negotiation and ADR are collaborative processes, which can be a wel-

come change of pace from the cutthroat competition of 1L year. Collaboration and supervision are also norms of a young attorney's life, and introducing this kind of group work can help students prepare for summer clerkships and post-graduate employment.

A variety of skills come into play during negotiation and ADR exercises: oral communication, long-term planning, the ability to see the big picture of a client's situation, and converting abstract concepts into concrete solutions and tangible working documents. ADR exercises, such as negotiating and drafting a settlement agreement, can also help students transition from undergraduate academic writers to practical, formal legal writers. These kinds of projects also help students understand the function of their writing, rather than just writing for a good grade.

Participation in classroom negotiation exercises may also spark a student's interest in advocacy competitions and other skill-building activities. Oftentimes, students come to law school with a deep fear of public speaking; indeed, most surveys reveal "public speaking" as a fear greater than even death itself. But with negotiation exercises—whether they be administered as one student versus another, or in larger teams—students can engage in advocacy exercises without having to stand on their feet or present to an audience.

Almost universally, we find that our students, regardless of how they might assess their own public speaking skills, rate participating in negoti-

Teaching Negotiation to 1Ls (cont'd)

ation exercises among their favorite parts of the first-year curriculum. Students often take the confidence they found through negotiation and then wade into deeper waters, like mock trial and moot court activities. At Texas Tech, we hear this quite often; our strongest moot court and mock trial advocates sheepishly admit that they would never have thought to even *try* such activities had it not been for the introduction to advocacy gained in negotiation exercises.

How to teach?

Certainly, basic concepts of negotiation and the various forms of ADR can be introduced to students via reading assignments and in-class lecture. The concepts can then be brought to life using video clips and role-playing exercises.

Video clips, available on YouTube or elsewhere, allow students to see negotiation techniques in action, and also in combination. Students can view the videos and have group discussions to identify techniques used and assess their effectiveness.

Role-playing exercises can be based on new fact patterns, or can be related to fact patterns used in other course assignments. Students can be grouped in any combination: one-on-one or two-on-two for direct negotiations, groups of three with one student assigned to be a mediator or arbitrator, etc. Work product can vary in formality, too. Students can report their results orally in class or send a brief email describing

the resolution reached. For competitive types, points can be awarded and calculated for resolving different variables in the conflict. More formally, students can be assigned to draft a memorandum of understanding or a contract to address the resolution.

When to fit all this in?

Sure, teaching negotiation and ADR sounds great, but how can this be squeezed into an already full syllabus, with already overwhelmed students? At Texas Tech, our commitment to ADR and negotiation translates to six full weeks of the spring semester devoted to learning and practicing these skills as part of a legal research and writing course. But ADR and negotiation can be meaningfully introduced to students in far shorter periods of time, or woven throughout the semester or year.

Each of these lesson plan building blocks takes 20 or 30 minutes of class time:

- Introduction to the phases of negotiation (preparation/assessment, exchange, bargaining, closing) and negotiation styles (adversarial vs. problem-solving)
- Negotiation techniques (*e.g.*, good cop/bad cop, numerically superior, asymmetrical time pressure)
- View and discuss video examples or live demonstrations
- Negotiation role-playing exercises
- Mediation/Arbitration basics (introducing a third-party neutral)

- Mediation/Arbitration role-playing exercises

These activities can be grouped together for a day (or two or three) devoted to ADR, or they can be tucked into smaller pockets of time throughout the semester. Faculty may want to explore the concept of flipping the classroom, too, and have students watch videos independently and come together for group discussion.

References & Further Reading

RICHARD K. NEUMANN, JR., *TRANSACTIONAL LAWYERING SKILLS* (2013).

CHARLES B. CRAVER, *EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT* (7th ed. 2012) (exercises in the Appendix and the Teacher's Manual).

The Basics of Negotiation Strategies, 25-minute video produced by Texas Tech, available (with teaching materials) at <http://www.law.ttu.edu/acp/programs/legal/negotiationdvd/>.

MovieClips channel on YouTube (we like the negotiation scenes from ERIN BROCKOVITCH, which incorporate tort and civil procedure rules).

Sample negotiation exercises developed by Texas Tech, available at <http://www.law.ttu.edu/acp/programs/legal/>

John Barkai, *Teaching Negotiation and ADR: The Savvy Samurai Meets the Devil*, 75 NEB. L. REV. 704, 711-23 (1996) (the Ugli Orange negotiation).

Creating an Asynchronous Distance Learning Class

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As law schools race to keep up with the changing environment for legal education, technology is playing a larger and larger role. Adding distance classes to the curriculum is one way law schools can meet the needs of their students, by combining quality education with increased flexibility for the student.

When deciding to create a distance education class, the first thing to determine is whether the class will be synchronous (live) or asynchronous (taped). Synchronous classes do have many benefits but are limited by the fact that the students must still adjust their schedules to be available during class time. Asynchronous classes, however, have an inherent flexibility that allows the students to watch the class on their own schedule, which increases their appeal and is a huge value to many students. Asynchronous distance learning works best for classes that are designed to communicate information to the students, primarily in lecture format, rather than classes that rely heavily on discussion and class participation to discern rules from cases and readings.

I have just completed my third semester of teaching an asynchronous bar skills class at Pace Law School. The class is two credits and is offered during the fall semester. I teach a

traditional “in-class” version of this class in the spring. Although my class specifically pertains to bar exam preparation, the techniques I use in my class can be adapted for use with any distance class.

What You’ll Need

ABA Rule 306 sets out certain guidelines for distance learning. With regard to the structure of the class, the rule delineates several requirements that you will need to incorporate into your class.

First, you’ll need a method to verify student identity. My course is administered through a TWEN page. Each student signs in through his or her own account, and uploads all assignments through the drop-box feature. The final exam is administered as a take-home exam and uses students’ unique exam numbers.

Second, the rule states that you will need ample interaction with the instructor and other students and ample monitoring of student effort and accomplishment. There are many ways I monitor the students’ efforts and accomplishments throughout the semester, as well as interact with them on a weekly basis. My course entails weekly assignments – since it is a bar skills class, students submit essays, completed multiple choice questions, and/or MPTs each week. In order to monitor the students’ participation in class (in other words, to make sure they are watching the videos), each class also includes an

“in-class exercise” or a “question of the day” (QOTD). In-class exercises are the same as those I use in my traditional class, the only difference being that I ask the distance students to submit their work as proof of participation while traditionally the work is not submitted. On weeks where there is no in-class exercise, students must answer the QOTD, which is a question about something that happened in the class, either substantive or relating to the actual lecture. (For example, since I record some of the classes at home, my cat sometimes makes an appearance. Some non-substantive QOTD’s have been “What was I talking about when the cat jumped onto the chair?”)

In order to encourage interaction between the students and myself, I hold weekly chats (using the “Live Discussion” feature on TWEN) where I am available for one hour to answer any questions or let the students talk amongst themselves. The chats are not mandatory, and therefore during the first semester that I offered this class, not heavily attended. Since then, to encourage participation, I have had “guest speakers” for certain chats, which motivates the students to attend so that they can pose their questions to someone other than me (I find that the students usually do not save their questions for me for chat time and instead just email me during the week). I am also on campus all the

Distance Learning (cont'd)

time during the semester and available for in-person office hours.

How to Prepare

Teaching an asynchronous distance learning class can greatly lighten one's workload during the semester, but much of the preparation needs to be done before the semester even begins. The first time you teach the class will entail the most work, since you'll need to record a semester's worth of lectures in a short time period. In subsequent semesters, you can use many of the same recordings and just supplement with new recordings as needed.

Since you will be without the benefit of students to call on and discuss things with, you will need to prepare much more material than you would for a traditional class. Remember, you will be the only one doing the talking, so if the class is an hour and a half – you need to be prepared to talk for that long! (or else you will need to supplement the time with in-class exercises, readings, etc.).

Before the semester begins, I make sure to have all of my classes recorded and ready to post. I will record short supplements throughout the semester, either to discuss a specific assignment, or respond to student questions. I don't record the final class until the end of the semester, when I can give a semester recap which incorporates my observations from their assignments.

Pre-recording the semester's worth of classes makes the workload very front-heavy, but enables me to do this when I have more time (in the summer, after the bar exam) and eliminates hours of prep and teaching time during the semester, when my other responsibilities have increased. You do not need to do it this way, but I have found that this is what works best for my schedule, and it allows me to take the most advantage of the flexibility of a distance class.

Technology and Administrative Concerns

A distance class does not have to be out of reach for all those but the most technologically savvy. It can be as high-tech or as low-tech as the professor wants, depending, of course, upon the technology available at the school. At my school, our Educational Media department actually has wonderful technology I could utilize in my class; however, I still chose to do it in the most low-tech way possible because I find it easier and more convenient.

I record all of my classes using a webcam and edit them in Windows Movie Maker. I do this both from my home computer and my office computer. All of my videos are uploaded on to the Echo 360 platform, and I make one video a week visible to my students. The students have from Monday mornings through Sunday nights to watch the class for the week and complete and submit the assignment. They can do this at any point during the week – some of

them prefer to complete everything right away on Monday morning, and some wait until the last minute on Sunday evening. It is up to them.

My course is administered through TWEN. The link to the Echo recordings is on the TWEN page, all course materials are uploaded there, and there is a drop box for every assignment and exercise, for the students to submit their work and for me to return the critiqued versions. This makes grading and calibrating the final grade extremely easy, because everything is in one place.

Adding Value to Your School

In my course evaluations at the end of each semester, my distance students frequently remark on their appreciation of this class, not only for its content but for its convenience. As busy 3Ls with many school, work, and life commitments, they are thankful for a class that allows them to set their own schedule. Distance classes are an easy way for faculty and Academic Support staff to add value to their schools' course offerings while at the same time increasing accessibility to students who might otherwise be prohibited from taking a class.

References & Further Reading

In addition to what is mentioned in this article, there are other ABA requirements that must be adhered to when creating and implementing a distance class. http://www.americanbar.org/groups/legal_education/resources/distance_education.html

Call for Submissions

THE LEARNING CURVE is published twice yearly, once in the summer and once in the winter. We currently are considering articles for the Summer 2015 issue, and we want to hear from you! We encourage both new and seasoned ASP professionals to submit their work.

We are particularly interested in submissions surrounding the issue's theme of using ASP to help train practice-ready attorneys. Where do you think experiential learning fits within ASP? Are you doing something innovative with skills training in your classroom that also will help prepare your students to hit the ground running in the workplace? Do your ASP programs enhance or coordinate directly with your school's clinical programs? Do you have

proven exercises and assessment tools from which your colleagues might benefit?

Please ensure that your articles are applicable to our wide readership. Principles that apply broadly — i.e., to all teaching or support program environments — are especially welcome. While we always want to be supportive of your work, we discourage articles that focus solely on advertising for an individual school's program.

Please send your submission to LearningCurveASP@gmail.com by no later than May 20, 2015. Attach it to your message as a Word file. Please do not send a hard-copy manuscript or paste a manuscript into the body of an email message.

Articles should be 500 to 2,000 words in length, with light references, if appropriate. Our publishing software does not support footnotes that run with text, so please include any references in a "References and Further Reading" list at the end of your manuscript. (Please see the articles in this issue for examples.)

For more information, you may contact Lisa Young at youngl@seattleu.edu. Please do not send inquiries to the Gmail account, as it is not regularly monitored.

We look forward to reading your work and learning from you!

-THE LEARNING CURVE Editors

Don't learn to do, but learn
in doing.
-Samuel Butler



The Learning Curve is...

The Learning Curve is a newsletter reporting on issues and ideas for the Association of American Law Schools Section on Academic Support and the general law school academic support community. It shares teaching ideas and early research projects with a focus on models and learning environments that create positive learning experiences for law students.

For more information about THE LEARNING CURVE, its content, or its editorial and selection processes, write to Lisa Young at youngl@seattleu.edu.

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