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Law’s Arc

by Lawrence Friedman

I spend no small amount of my time as a law professor thinking about metaphors—about ways of describing the law and how law operates in terms that relate the conceptual to the real. Some of this thinking makes itself known in scholarship: we often use readily grasped images and conceits to illustrate new perspectives on the interpretation and application of legal principles. But much of this thinking occurs in the midst of preparation for the classes I regularly teach, constitutional law and civil procedure.

I have found that a phenomenological approach to lawyering is helpful for explaining abstract legal concepts to first-year law students. Utilizing this approach in civil procedure, for instance, I select an anecdote from my practice experience that illustrates the mechanics of a particular procedural maneuver—say a summary judgment motion—and discuss the experience from both the lawyer’s and the judge’s perspective. But such examples take me only so far in illustrating the broader concepts; students are bemused by the war stories but may not fully appreciate the concerns animating the doctrinal rules underlying summary judgment determinations.

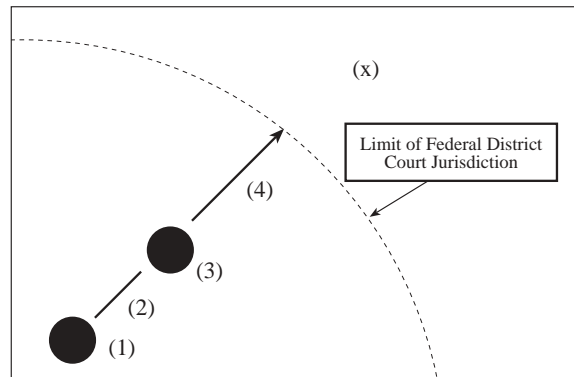
Civil procedure, it turns out, is rife with concepts that students find utterly alien. The idea that formal dispute resolution could be so elaborately systematized is not intuitive. The rules themselves, moreover, represent just one dimension of civil procedure. Many of the subject’s sweeping concepts (personal jurisdiction, subject matter jurisdiction, the *Erie* doctrine) reflect, in addition to a concern for procedural order, considered judgments regarding allocations of authority under the U.S. Constitution—between Congress and the federal courts, on the one hand, and the state legislatures and state courts, on the other.

To fully appreciate civil procedure from a phenomenological perspective, it’s important for students to understand how constitutional allocations of authority inform the application of the rules and related doctrine in a concrete factual situation. And that kind of understanding seems to require a metaphor to capture the imagination of students who are initially uncomfortable with both the notion of rules to govern dispute resolution and the divisions of authority that influence the ways in which the rules operate.

There may be no better place to turn for a phenomenological approach to understanding the operation of complex systems than the work of writers on human physiology and athletics. In *The Sweet Spot in Time* (Breakaway Books,

1998), John Jerome writes about the ability of elite athletes to consistently locate the “sweet spot in time,” that moment, for example, at which a batter’s perfectly timed series of movements of muscle and bone and connecting tissue produces the satisfying crack of bat on ball. An understanding of this phenomenon requires at least some understanding of how the human body works. Jerome explains that all human movement is a series of arcs: “[t]he joint is the fulcrum; the limb, or segment of limb, is the lever. Complicated movements require the arcs to be linked in series, but the arc is the inevitable basic unit, since at least one end of every segment is attached somewhere.” *Id.* at 14.

Now a metaphor begins to present itself. The law’s movement—rules applied to facts—may be seen as a series of arcs. Distinct areas of civil procedure, like subject matter jurisdiction in the federal district courts, can be portrayed as a series of doctrinal levers attached to authorizing fulcra. The sweep of a lever represents the reach of a court’s authority in a given area. Each doctrinal lever is attached to a fulcrum—a source of authority. This system of fulcra and levers can be represented graphically to illustrate, for example, the way in which Article III of the U.S. Constitution and the relevant Congressional statutes, 28 U.S.C. §§ 1331, 1332, and 1367, authorize and limit federal subject matter jurisdiction. Subject matter jurisdiction in the federal courts might look like this:



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The first fulcrum (1) is Article III of the U.S. Constitution, authorizing Congress to allow the federal courts to entertain federal question and diversity cases. The first lever (2) represents the doctrine regarding the extent of Congressional authority to control subject matter jurisdiction, the so-called “arising under jurisdiction” doctrine for example. The second fulcrum (3) is the basic Congressional legislation—28 U.S.C. §§ 1331, 1332, and 1367—enacted to implement constitutional authority. Finally the second lever (4) represents the doctrine implementing those statutory commands, such as the standards for determining the citizenship of individuals and corporations for diversity purposes.

The drawing shows that for a federal district court to have subject matter jurisdiction over an issue, the case must fall within the arc of a doctrinal lever—a defined area that encompasses the “sweet spot” for jurisdictional purposes, to borrow Jerome’s terminology. Any case outside the sweep of the second lever—such as one (X) involving a contracts dispute between citizens of the same state—is simply beyond the jurisdictional authority of the federal district court.

Though the graphic is reductive, it allows students to see that the rules of subject matter jurisdiction are not arbitrary: they flow from discrete allocations of authority.

I sketch this drawing for students after we have completed the basics of federal subject matter jurisdiction. When the drawing is complete I show where the hypothetical cases we have discussed will or will not fall, and that the length of both levers may have to be adjusted as cases call

for new constitutional and statutory interpretations. Though the graphic is reductive, it allows students to see that the rules of subject matter jurisdiction are not arbitrary: they flow from discrete allocations of authority. Further, as in any system of fulcra and levers, the interplay between

authority and rules, and doctrine is not static. When a plaintiff files suit in a federal district court, the court must determine anew whether the case falls within the arc of its subject matter jurisdiction.

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Marking Time: Competing Views on Fairness

by Steve Coughlan

How do you mark exams? More importantly, why do you mark that way? Over a period of a few years, several of us at Dalhousie University adopted what seemed like a relatively consistent approach to marking our midterm and final exams. In fact, there turns out to be differences in the way each of us, as well as colleagues at other law schools, approach the task. I present these issues here, not because I think these ideas are novel or innovative, quite the opposite, I thought they were routine and obvious, and was surprised to discover how much variation in approach there was. Where do you fall on these questions?

To clarify the context, the issue here is marking anonymous exams when the majority of the exam is based on responding to hypotheticals. The remainder of the exam is typically based on short answer questions which test knowledge rather than analytical skills. Occasionally there are essay questions. Some of my colleagues favour essay questions for what seems like the perfectly legitimate reason that they often test a different kind of understanding, probe policy issues more directly, and give students with different types of exam-writing skills a chance to do well on some

portion. Personally I am less fond of essay questions, on the rationale that it is more difficult to be objective, and to demonstrate that objectivity, when marking them. I feel relatively confident that I could satisfy a student about why they got a 72% rather than a 75% on a hypothetical. I am less confident that I could satisfy that student of the same thing on an essay question, or even that the difference would be correct.

When we prepare to mark exams we do up an answer guide. Typically one person will do a first draft (often different people for different questions), and we trade them around. We tend each to make slightly different final versions of the answer guide, giving emphasis to the things that were more important in each of our courses. The guide has a very wide right hand margin to leave space for comments since we mark up and put a copy of the guide with every exam. When the students receive it they can see pretty clearly what they’ve said, what they’ve left out, and what irrelevant things they’ve included. My own notation includes checkmarks for points covered, wavy lines for

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Marking Time

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points hinted at or referred to obliquely, and underlining for points omitted. If there is no notation at all that can also mean the point was omitted, but sometimes it feels better to actively say “how could you leave this out?”!

Of course the guide is not “the” answer in the sense that it is often possible to reach exactly the opposite conclusions to those in the guide, but still produce an A answer. However, it would not be possible to get an A, at least in the Criminal Law courses I normally teach, without discussing these particular issues, no matter what conclusion one reached. As a result, the answer guides sometimes contain checkmarks because the student has said something quite different from the answer guide, but in context the point serves the same function.

One point of disagreement among us is how to divide up the marks within the answer guide. In a question worth twenty-five marks, for example, I would most often divide up them on some basis like five marks for setting out the elements of the offence and the onus of proof, ten marks for discussing whether the elements are proven on the facts, and ten marks for discussing any defenses. The first five are easy marks, because I want students to understand the importance of covering the basics and to be rewarded for doing so. The other sets of ten marks are left fairly open-ended to provide flexibility in marking; this contrasts with the possibility of breaking down those marks, or indeed the entire twenty-five marks, much more precisely. Some guides (though not typically mine) set out one mark for this, three for that, two for this, and so on. The more flexible approach means, for example, that if a student misses one of the two defenses that needed to be discussed, he or she is not automatically going to get five out of ten at best. On the other hand, leaving the flexibility in seems inconsistent with my rationale for preferring not to use essay questions, since the more detailed breakdown is arguably more objective.

Some of my colleagues prefer to mark an entire exam at a time, believing that this approach gives a better sense of the student’s performance. That approach probably makes giving global feedback easier, but I prefer to mark question one on every exam, then question two on every exam, and so on. There are two reasons for this. First it is easier to be

consistent in marking a question when doing the same one over and over again. It is necessary to mark a half-dozen or so at first, assigning tentative numbers as a kind of calibration, in order to get a sense of what points everyone is likely to get, what subtleties will go largely unnoticed, and so on. Having done that, it is much easier to get into a groove, thinking “here’s another one who got the basic idea but missed this issue and didn’t use the facts quite enough — seventy-two percent.”

Second, when I mark question two I don’t look at the mark from question one to avoid being pre-disposed to expect good or bad things from the answer. I also mark question two in a different order from question one. I don’t think it matters whether a paper is marked first or last. Indeed, sometimes I find halfway through that my “calibration” exercise was wrong, and that I will clearly end up with marks that are too low. Nonetheless I continue on the same “too low” standard, and fix it once I’m done. Just in case I am wrong in thinking order doesn’t matter though, I mark the exams in a different (and random) order for each question.

On both of these approaches, however, I have colleagues who differ. Some consciously choose the highest marks from question one and mark those papers first the next time through. Again, they believe that the order of marking doesn’t matter, but they have a different “just in case” reaction: if it *does* matter, it’s most important to give special attention to the papers likely to be the top ones, rather than to the very large group which will probably fall more or less in the middle.

Almost all my colleagues regard marking as the worst part of a great job, a point on which I agree; nonetheless, everyone is careful to do it responsibly and fairly. But as in so much else, there is more than one way to be responsible and fair. What’s your method?

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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. The deadline for articles to be considered for the next issue is December 31, 2006. Send your article via e-mail, if possible. After

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The Nature of Legal Truth

How to teach it to first-year law students - without delving into empiricism or epistemology - and why it matters so much.

by Brady Coleman

Law students want answers. We don't give them many. Instead, we ask them questions and tell ourselves (usually unquestioningly, and rarely with the humility of Socrates) that we are "leading them" to the truth with our careful classroom queries. Who knows, maybe we are, but I will avoid that particular debate here. Instead, my claim is that regardless of one's teaching philosophy and classroom style, law students will benefit from at least a brief and simplified discussion of the nature of legal truth, preferably early on in their legal education.

Most first-year law students come to law school believing that the law has *right* answers. Of course, the law does have confident responses to most of the infinite number of questions it might face (is the speed limit here 65 mph, can a teenager run for president under Article II of the U.S. Constitution?) However, such questions are settled long before they make it to the appellate case reports, and hence into our students' casebooks. On the other hand, we need to explain to our students that the results in many of these appellate cases are not *right* or *wrong* in the traditional sense. If the decisions in cases are neither right nor wrong, then the discussion of many issues in first-year research and writing projects, as well as the analyses students make in exams, may also be commonly neither right nor wrong, although they can be convincing, or weak, or logical, or baseless, or agreeable or just downright ridiculous, naturally.

"BUT!" my 1Ls howl — especially those with undergraduate degrees in geology or Japanese, rather than backgrounds in, say, Dadaism or Derrida — "WHY can't we assert that one party is just simply right, and the other side just plainly wrong? Doesn't the law actually provide legitimate answers?"

So, after a few semesters muttering abstractions about empiricism and epistemology that garnered little comprehension, I have developed (what I hope is) a more straightforward methodology to teach them WHY and HOW legal truth (particularly in the complex cases they study) is special and, significantly, how it differs from the nature of truth in other areas.

Three important caveats precede the discussion:

1. I devote a grand total of thirty minutes of valuable

class time to this enormously complex and hotly disputed subject, so authentic philosophers should ignore everything that follows lest they recoil at the necessary superficiality. (I tell the same thing to those very rare students who have actually read Rorty or Descartes or anyone in between.) I also tell interested students to look up positivism, formalism, and work by various critics if they want more.

2. The face that hard legal questions have no "ultimate" right answers in a jurisprudential sense must never justify an early suspension of research or analysis, or excuse a lack of rhetorical rigor. As an illustration, I remind them that their office memorandum must always contain a very brief one or two

word "answer" at the beginning of their "brief answers." But the fact that there are no *right* answers to complex legal questions does not mean that there are no answers to legal questions! They may write "probably yes" or "almost certainly no" in their very brief *answers* in their

memos; they obviously should not write "who knows" or "I don't have a clue, the law provides no answers!" Other than grabbing a few easy laughs, this distinction between nihilism and skepticism may actually be the best illustration I provide during the entire discussion.

3. Most judges, in most cases, struggle to achieve the most legitimate decision based on a neutral and careful reading of legal text, and as applied to the relevant facts. In this lesson I do not want to buttress the rampant cynicism among contemporary law students about the political nature of judicial decision-making. Then again, if they did not possess such cynicism, I would likely decide to give them some of my own.

After the three caveats, I put the four subheadings below on the board and then call on the students to give me examples, ("give me some examples of questions based on human law, scientific law, etc.") which are usually quickly forthcoming. I use actual student answers as illustrations below.

Whether we realize it or not, we interpret legal rules with an additional element of normative evaluation. Our norms about the law rest on often unstated policies that guide our interpretation of the legal rule, or our understanding of the language used in the legal rule.

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The Nature of Legal Truth

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1. Questions about human laws

Is beheading someone cruel and unusual punishment under the 8th Amendment?

Is a “bicycle” a vehicle for purposes of the statute “no vehicles in the park”?

Is a seeing eye dog an “animal” for purposes of the ordinance, “no animals on the beach”?

2. Questions about scientific laws

At what temperature does water boil?

What is Newton’s Second Law of Thermodynamics?

What is the equation for Einstein’s Special Theory of Relativity?

3. Questions about mathematical or logical laws

Is this equation correct: $2 + 3 = 5$?

What is the value of pi at the millionth decimal?

Does this follow accepted syllogistic logic?

Major premise: All mortal things die.

Minor premise: All men are mortal.

Conclusion: All men die.

4. Questions about factual claims

How fast was the defendant traveling when the accident occurred?

Was the car manufactured in Portland?

Does a beheading cause more suffering than lethal injection?

Then, after reviewing our examples, I tell them (rather than ask them) that all four categories share three qualities, but that questions about difficult legal matters are complicated by an additional quality:

What do all four kinds of questions have in common, at least as possibilities?

1. Uncertainty

Just as we are sometimes uncertain about the answer to legal questions, we can also be uncertain about the answers to difficult questions in the other three categories. (You might elaborate here, depending on the examples provided by your students.)

2. Contingency

The answers to our questions can change with new information. Just as our answers to legal questions change over time, so too do our answers to factual, scientific, and even mathematical questions — if the scientific method or empirical discovery, or logical clarification so necessitates. (You might elaborate, e.g., Ptolemy’s early view of the

cosmos, that the earth was at its center, was replaced by the Copernican view, or some other famous example.)

3. Interpretation

Language describing claims about the world need interpretation: what does “pi” mean in this context? Which Portland are you talking about? How do you measure or define human suffering for purposes of the 8th Amendment?

Then, after convincing them that human laws share the above qualities with the other categories of “laws” or “rules” or “claims,” I tell them that human law has an additional quality that the others do not possess: it is normative.

4. Normative

Norms are values, and they are necessarily political, and they are necessarily human. Because human laws are normative and the others are not, legal questions may contain this extra layer of uncertainty. Whether we realize it or not, we interpret legal rules with an additional element of normative evaluation. Our norms about the law rest on often unstated policies that guide our interpretation of the legal rule, or our understanding of the language used in the legal rule. (We are often unconscious of the implicit norms underlying our linguistic interpretation: “Of course a seeing-eye dog is not an animal,” we say; “who wants to keep blind folks off the beach?”)

The law is created to *prescribe* human action, not to describe natural phenomena (science, fact) or *define* artificial rules (logic, math), so it has this extra sub-question of what SHOULD we do? (Not just what IS the case?) That question is up for grabs in difficult cases, because it is a value-laden question, and we do not agree on the same set of values. Since we will always disagree on what we SHOULD do, then there cannot be a “true” answer to legal questions in the same manner as there can at least theoretically be a “true” answer (even if, for example, it is unknowable under current technology) in these other three areas. In particular, human laws differ from scientific laws in this way, and I suspect it is the comparison to scientific laws that cause students the most conceptual trouble.

The absence of right answers for many legal problems is the cause of much angst — psychological, philosophical, even moral — for new law students. This particular angst serves no useful learning purpose, and a quick lesson in the nature of legal truth is worth adding to a first-year course or even to law school orientation. The vast majority of my students tell me that the simple illustrations I give them make it clear why the law is unique. (Unfortunately, many of them also tell me they now feel like they don’t have to read Rorty or Descartes, or anyone in between.)

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Developing a Student's "Thought Monitor"

by Suzanne Darrow-Kleinhaus

Introduction

Some students find answering multiple choice questions more challenging than writing essay exams; at least there's some leeway with essays. When the questions are multiple choice, you're either right or you're wrong. Because multiple choice questions are such an integral part of the bar exam and have come to figure more prominently in law school exams, students must learn to master them.

Students arrive at the incorrect answer for a number of reasons. The most obvious is that they do not know the law. A superficial or general understanding of a rule is insufficient to distinguish between answer choices. Still, students commit a number of errors that have nothing to do with "knowing the law" and everything to do with answering a question correctly.

- Reading comprehension: Students often misread the question — either the question asked, or the facts in the problem, or both. Sometimes they mischaracterize the facts. These are essentially reading comprehension problems where students do not correctly interpret what they have read.
- Adding facts: Students read into the facts and sometimes add their own which, of course, alters the nature of the problem. Some students do not "add" facts but see implications that have no basis in the facts but which lead them astray in their analysis.
- Failure to identify the issue: Students ignore the specific question they are asked to address in the question stem and then allow all the presented facts in the problem to lead them astray. Since they've failed to identify the "issue" in the problem, they have no means by which to identify the correct answer choice.

It is essential that students learn to detect the errors in their own thinking and reading processes and correct them. I developed a method to help students cultivate this type of self-awareness when I worked with a bar candidate to improve her Multistate Bar Exam performance. She consistently made incorrect answer choices on the MBE yet responded correctly whenever asked a question about the law, so apparently she "knew the rules." I realized that to help her and for her to help herself, we needed to figure out what was leading her astray. We tried an experiment. I asked her to read a sentence and tell me exactly what she thought when she finished reading it. We proceeded sentence by sentence. In this way, I could follow her line of reasoning and detect any flaws — whether she misread a word, made an inappropriate inference, or ignored critical language. I could also tell if something was missing from her analysis.

Happily, this exercise in directed reading led to an immediate improvement in her multiple choice exam taking skills and she passed the bar exam on its next administration.

Once she learned how to monitor what she was thinking, she was in control of the question and not the other way around.

The following is a process you can use to help students cultivate the skill of active reading and self-awareness and thereby improve their exam scores.

The process

Whether we're conscious of it or not, we engage in an internal, ongoing conversation with ourselves when we read. When I work with students on analyzing multiple choice questions, I play the part of the thought police. It happens simply enough: I give the student a problem and ask her to read it. After a minute, I ask, "what were you thinking when you read this sentence?" And that's how I get inside her head.

What follows is a guide to show students how to do it for themselves. I've addressed it directly to the student so it's as if we were sitting and working together.

Let's get started by reading a real problem. An example from a past MBE will work nicely. This is what to do:

1. Begin by reading the interrogatory and proceed to the fact pattern.
2. As you read, pause after each sentence and write down exactly what you think. Don't stop to censor your thoughts; write them as you have them. To borrow an old phrase, "go with the flow."

Note: By committing your thoughts to specific words, you are forced to be aware of what you are thinking. This allows you to backtrack and find the errors in your thought process should you select an incorrect answer choice.

3. After you finish reading the fact pattern, form your own answer in response to the call of the question.
4. Read each of the answer choices and once again write down exactly what you think. Translate your "answer" to fit one of the available answer choices.
5. Now read my thoughts on the problem and compare them to what you've written. Don't expect them to be the same, but your thinking should parallel mine. After all, the same problem should elicit a similar analysis, what I found important, you should have found important, what I questioned, you should have questioned, and how I responded to each of the issues raised in the facts, you should have responded.

Here's the problem:

Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.

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Thought Monitor

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If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin's best defense?

- A. Dorwin did not understand that his act was wrongful.
- B. Dorwin did not desire to cause harm to Peavey.
- C. Dorwin did not know that he was striking a person.
- D. Dorwin thought Peavey was about to attack him.

Here's what I thought as I read this problem, sentence by sentence (my thoughts are in italics in the parentheses):

(First I'll check the interrogatory.) If Peavey asserts a claim against Dorwin based on battery, which of the following, if supported by evidence, will be Dorwin's best defense? *(Since a person is bringing the suit and not the state, it's a civil suit and not a criminal case. I'm looking for Dorwin's best defense to battery, so I'd better keep the rule in mind as I go through this: "a battery is the intent to cause a harmful or offensive contact with the person of another." I'll be looking for something that negates an element of battery or possibly self-defense.)* Peavey was walking peacefully along a public street when he encountered Dorwin, whom he had never seen before. *(Nothing has happened yet, but it may be important that this was a "public" and not a "private" street but maybe not because the question stem tells me that Peavey brought the action against Dorwin in battery so the state is not involved and it's not a constitutional issue. Maybe "peacefully" goes to provocation and since Peavey never saw Dorwin before, there's no past history between them.)* Without provocation or warning, Dorwin picked up a rock and struck Peavey with it. *(Here's the act required for the battery and I was right about the lack of provocation. Now*

the issue is one of intent. The facts say that Dorwin "picked up" a rock. This sounds like he acted with purpose. The intent element is satisfied not only when the actor intends harmful or wrongful behavior, but if he acts with purpose or knowledge to a "substantial certainty." Dorwin need not have understood his act to be "wrongful" to have formed the requisite intent: he need only to know what would be the likely consequence of striking Peavey with a rock.) It was later established that Dorwin was mentally ill and suffered recurrent hallucinations.

(On to the answer choices. I'm looking for Dorwin's best defense to battery. I know the act occurred, so any defense will have to negate the intent element or provide for self-defense, which doesn't seem likely since Dorwin wasn't provoked or even knew Peavey.) Choice A: Dorwin did not

understand that his act was wrongful. *(This one isn't right because Dorwin doesn't have to understand his act to be wrongful to commit battery; he only has to act with purpose or knowledge to a "substantial certainty." He need only know what would be the likely consequence of hitting Peavey with a rock.)* Choice B: Dorwin did not desire to cause harm to Peavey. *(This is just a variation of A. Even though a battery is the intentional, harmful or offensive touching of another, Dorwin need not have intended harm to be found liable in battery.)* Choice C: Dorwin did not know that he was striking a person. *(This sounds funny, but if Dorwin had no idea — no "knowledge" — he was striking a person, then he could not have formed the requisite intent to do the act. This one may be it but I need to read D.)* Choice D: Dorwin thought Peavey was about to attack him. *(This sounds like self-defense, which is a defense, but there's nothing in the facts to lead Dorwin to believe Peavey was about to attack him. Even assuming Dorwin believed he was about to be attacked and needed to defend himself, this answer choice still admits that he committed the battery. The question asks for the "best" defense and that's one that says he never committed the battery. I'll go with C.)*

Choice C is the correct answer.

It probably seems as if it would take a long time to think through this problem, but it really doesn't. Just a couple of minutes. It takes much longer to write it, and for you to read it than it actually takes to do it. That's because what I think as I read is so mechanical it happens automatically. It takes practice, but the process can become automatic for you as well.

I've given you the guidelines and shown you how I go about it. Now you need to practice. I realize it won't be practical to write down your thoughts each time you answer a multiple choice question. But now

that you know what should be going on in your head as you work your way through a problem, your task is to be conscious and deliberate during each step of the process. That way you'll remember what you thought and can go back and revisit it should you arrive at an incorrect answer choice. ***If you make the effort to put your thoughts into some concrete form — even if it's just articulated in your head — you will remember what you thought. Words give form to thoughts. And once there's form, there's something to remember.***

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If you make the effort to put your thoughts into some concrete form — even if it's just articulated in your head — you will remember what you thought. Words give form to thoughts.

Not Just A Study Break: Using *Body Heat*, Kanye West’s “Gold Digger,” and *South Park* To Teach (And Examine!) Wills & Trusts, Family Law, and Property

by Assoc. Prof. Diane J. Klein

Consider the following activities:

- Settling in for a movie evening with the steamy contemporary film noir thriller *Body Heat*.
- Singing along to Kanye West’s recent chart-topping rap R&B hit “Gold Digger.”
- Laughing out loud at a *South Park* cartoon episode about the boys’ attempts to stop an Indian casino from taking over their town.

Three things that sound like fun indulgences for law students taking a little break from studying for their Wills & Trusts, Family Law, or Property exams? Maybe. But these pop culture gems (and many others) can also form the basis for challenging essay exam questions and lively review sessions — that is, if you are one of my students. Using Hollywood creations in the law school classroom is not just for Entertainment Law or Intellectual Property courses. It is also a highly effective way of fusing your students’ pre-existing interest in TV, the movies, and popular music with their nascent understanding of law as a social and cultural production in its own right. Furthermore, as was pointed out quite trenchantly to me many years ago by classics professor Victoria Wohl (back when we were grad students at Berkeley), today’s students’ ability to “read” television and movies as “texts” is probably better-developed than their relationships with printed text. And, of course, it’s fun!

Let’s look at my three current favorites in turn.

“*Body Heat*” is a 1981 film starring Kathleen Turner and William Hurt (and a pre-*Cheers* Ted Danson in a very funny supporting role). It is best remembered for making the sultry Turner an overnight sensation, and for its potent evocation of Hurt’s borderline-incompetent lawyer in thrall to a modern femme fatale. But the film isn’t just an exercise in professional [ir]responsibility (namely, why it’s not a good idea to get caught up in a plot to murder your client’s spouse). In fact, the plot turns on a rather intricate application of the Rule Against Perpetuities in the will-drafting context, and also of a subsidiary (and little-known) doctrine called “infectious invalidity.” (Perhaps unsurprisingly, the screenwriter was a former law student of the late, great Jesse Dukeminier at UCLA!) It is intricate enough, in fact, that I have used a screening of the film as a portion of a Wills & Trusts exam, with great success.

The questions based on the film are simply two:

- (1) Explain the plot of this film, from a Wills & Trusts point of view.
- (2) Could such a plot be carried out in this state?

If you have not seen the film, skip to the star!

Answering question (1) correctly requires recognizing that Turner’s character deliberately induced the drafting of her husband’s will in such a way that a RAP-violating provision

is central to the overall plan; explaining how and why the provision violates RAP; explaining the consequences of the violation (that the provision is stricken); and finally, addressing her use of “infectious invalidity” to produce intestacy, followed by her inheritance of the entire estate as the surviving spouse of a testator leaving no issue.

Answering question (2), whether such a plot could be carried out in the student’s state, requires applying whatever Rule Against Perpetuities reform doctrine has been enacted by the jurisdiction (I have taught in Texas, New York, and California, each of which takes a different approach). Typically, because of widespread reform (as well as the fact that infectious invalidity is not the rule of most U.S. jurisdictions), the answer to this question is “no.” Students are then to explain what would happen if the facts of the case occurred in their home state. This also ought to involve a brief discussion of the “slayer’s statute,” which does not allow someone who kills a testator to inherit from her victim (although here, she manages to get the lawyer convicted and escapes with the loot).

The questions themselves are quite simple and straightforward; this is intended to counteract the sometimes unbalanced reaction of students to such an unconventional exam. I have used this film as the in-class portion of a final exam, airing during the first two hours of a three-hour exam period and giving students one hour to answer the question. (I generally also bring popcorn for everyone.) I have also used it as a take-home exam question, reserving the in-class examination period for a more “conventional” exam. Either way, students find it unforgettable.

★ Kanye West’s song “Gold Digger” (with Jamie Foxx) was ubiquitous in 2005; its second and most legally-dense verse is reproduced below:

“18 years, 18 years
She got one of yo’ kids got you for 18 years
I know somebody payin’ child support for one of his kids
His baby momma’s car and crib is bigger than his
You will see him on TV Any Given Sunday
Win the Superbowl and drive off in a Hyundai
She was s’pose’ to buy ya shorty TYCO with ya money
She went to the doctor, got lipo with ya money
She walkin’ around lookin’ like Michael with ya money
Should of got that insured, GEICO for ya moneeey
If you ain’t no punk, holla “We Want Prenup!”
“WE WANT PRENUP!,” Yeah
It’s something that you need to have
Cause when she leave yo’ ass she gon’ leave with half
18 years, 18 years
And on the 18th birthday, he found out it wasn’t his!”

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That we have reached a point in our history at which a traditional African-American musical device like call-and-response can be used to refer to this premarital planning device as a “prenup,” on the assumption that the entire class of listeners will know what is referred to, is itself quite remarkable. But there’s more here, much more. Some of the family law issues raised by the song include (1) the duration of the child support obligation; (2) the lifestyle standard used to calculate child support (can a pro football player be reduced to driving a Hyundai?); (3) the expenses to which child support can permissibly be applied (“car and crib,” yes, “TYCO” (toys), yes, but “lipo”? no); (4) the relationship between child support and the division of community property during a divorce (“when she leave yo’ ass she gon’ leave with half”); (5) the scope of prenuptial agreements; and (6) the significance of a determination, at the termination of the child support obligation, that the man who paid child support is not the child’s biological father. The song also raises theoretical and policy issues about race, gender and law, gender-based power (a theme running through the entire song which, after all, is called “Gold Digger”), and financial responsibility for nonmarital children. It is a rare family law or community property essay question that can manage to do all this in fewer than 150 words. And unlike any essay question I’ve ever written, my students already know all the words!

Finally, for those of us who teach first-year property out of the Dukeminier casebook, the *South Park* episode entitled “Red Man’s Greed” seems almost tailor-made for the course. The casebook begins with *Johnson v. M’Intosh*, an 1823 U.S. Supreme Court case arising from competing pre-revolutionary claims to land between grantees claiming under a prior grant from the local Native American tribes, the Illinois and the Piankeshaw, and subsequent grantees claiming under the predecessor of the United States Government itself. No sooner are students introduced to one traditional maxim of Anglo-Saxon property law — “first in time is first in right” — than they encounter another, “might makes right,” particularly as it played out on the North American continent. The very end of the Dukeminier casebook focuses on the constitutional doctrine of “takings,” and includes some very recent, headline-grabbing cases like *Kelo v. City of New London*. The *South Park* episode entitled “Red Man’s Greed,” which first aired April 30, 2003, brilliantly and hilariously fuses the two issues.

Matt Stone and Trey Parker create a funny and scathing send-up of the colonization and conquest of North America, by turning the (gaming) tables. This time, it is the casino-operating Native Americans whose greed stimulates a land-grab, even including the destruction of the town of South Park in order to build “a superhighway, built from Denver right to our casino!” To carry out this plan, according to Mayor McDaniels, “[t]he Native Americans have purchased the land out from under us,” and even “bought the bank,”

although they offer the residents “retail values on your homes.” The South Park residents attempt to parlay the \$10,000 they receive in the forced sale into more than \$300,000, the amount needed to buy back the town — but after winning once at roulette, they let the bet ride and lose it all. All that remains is to stand in front of the bulldozers (to the tune of Pat Benatar’s “Love Is A Battlefield”). Much of the political humor of the episode derives from its historical quotations and reversals — the Native Americans maliciously provide the South Park residents with SARS-infected blankets (survival rate of SARS: 98%); Stan Marsh, one of the South Park kids says, “Just because you have a piece of paper saying you own it doesn’t make it yours. We grew up here. Our parents grew up here. We shop at that Wal-Mart, and eat at that Chili’s. We take fish from the streams and bread them and freeze them to make fish sticks. This is not just a town, it is our way of life.”

As is typical of the show, the episode is dense with jokes, allusions, and historical references (as well as, of course, obscenity, profanity, and scatology), which implicate at least the following property-law issues: (1) how is real estate used to secure a line of personal credit? (as Gerald does at the casino); (2) what happens if someone defaults on a loan secured by his family’s home? (Gerald again); (3) do we have preferences among land uses, and how do we embody them in law? (casinos and highways, or homes, Wal-Marts, and Chili’s restaurants?); (4) is the most profitable use of land always its highest and best use? (as Chief Runs With Premise puts it, “if we do not build a superhighway, our casino might stop seeing profits.”); (5) under what circumstances, if any, can people be forced to sell their homes and take what is offered? (as Stan’s father Randy says, “Stanley, we don’t have a choice. The Native Americans own South Park now. We have to take what they’ll give us for our homes.”); (7) how is the price set in a forced sale of real property? (8) what are the limits on the legitimacy of government action respecting property: is it ever proper to resist with force? (Mr. Mackey: “It’s over, Stanley. What else can we do?” Stan: “We can stay. And fight.”)

I can think of at least three different ways to use this cartoon: as an introduction to the course, as part of a year-end review, or as an in-class or take-home essay exam question. As an introduction, the episode might be aired (it runs approximately twenty-two minutes), and students asked to identify as many property law issues as they can. Presented at the end of the course in a review session, during a timed in-class exam, or as part of a take-home examination, students could be asked essentially the same question, but obviously expected to identify more issues, and identify them more precisely, than they could have done months before. Property students at the end of the course can also be invited to comment on the accuracy and subtlety with which the legal issues are handled by the show — i.e., could the

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tribe “purchase the land out from under” the townspeople? Would eminent domain be available? And so on. If desired, students could be provided with a copy of the script.

All three of these popular entertainments — *Body Heat*, “Gold Digger,” and “Red Man’s Greed” — have the power to surprise, delight, and teach your students, and bring a little interdisciplinary flair to your classes. After all, there’s no

business like show business.

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Educating Students about the Critiquing Process in a Lawyering Skills Class

by Joel Atlas

Recently I held a series of twenty-minute appointments during which I diagnosed problems and proposed a treatment plan. No, I am not a physician, and the recipients of this information are not patients. I am a teacher of lawyering skills, and the recipients of the plans are first-year law students to whom I recently returned a memorandum-writing assignment. The range and content of the students’ reactions was fascinating: some seemed perplexed that their work was not among the best I had ever seen; some seemed dismayed that, for the first time, their work had been judged to be merely average; and others seemed delighted that they need not seek a tuition refund. Whatever the reaction though, providing a critical assessment of another’s work is never simple.

Many law students have informed me that prior to law school they rarely, if ever, had their actual writing critiqued extensively. Indeed, for most law students (depending on their undergraduate specialty), their teachers’ past comments were primarily addressed to the substance of the paper, rather than to the words used to present the information. Not only would a stray comma or a misplaced modifier usually go undisturbed, but even the substantive comments were often merely a terse notation in the margin such as “good point.” The extreme performance anxiety of first-year law students along with the alien experience of receiving copious comments on their writing creates a potent, and potentially paralyzing, potion for stress.

With that as a backdrop, lawyering skills teachers ought to educate students about the process of critiquing they will experience in a lawyering skills course. Because of the importance that attorneys be detail-oriented, students need to understand at the outset of the course that they will receive comments that may appear to an untrained learner to

be minutia. It may be helpful for the teacher to give concrete illustrations about how the improper placement of a word within a sentence may obfuscate the meaning of the sentence and may even spawn litigation. It may also be helpful to relate your own experience with receiving feedback. For example, I have reported to students that, when I was a junior attorney, the length of my supervisor’s comments on my work product sometimes rivaled the length

of that product. Also beneficial may be having one’s teaching assistants speak to the students about their own responses to receiving voluminous comments; students can thereby see that successful, upper-class

students have undergone the same process. Finally, students seem comforted to hear that the work of all students in the course, whether strong or weak, will receive thorough comment.

I also ask my students to try to develop a healthy, non-antagonistic relationship with the process of critiquing. As a teacher, I view the uncovering of a student’s writing difficulties as a teaching opportunity, and I encourage students to view these revelations likewise as learning opportunities. After all, both teacher and student would agree it is best that a student’s weaknesses be exposed and addressed during law school rather than when one begins working as an attorney. Of course, to improve the chances that students will appreciate, rather than fight, the critiquing process, a teacher must be sensitive to the cumulative and potentially harmful effect of even constructive criticism and be sure to both note students’ strengths and to praise their improvement.

Joel Atlas teaches at Cornell University, and can be reached at joel-atlas@lawschool.cornell.edu

... I view the uncovering of a student’s writing difficulties as a teaching opportunity, and I encourage students to view these revelations likewise as learning opportunities.

[From] The Learned Hand

1. How do you effectively assess whether students are truly learning and which technique works best for the class as a whole?

I use several strategies and tactics to obtain diagnostic and formative assessments about the students' learning during a course. The success of each technique varies from class to class: (1) Peek. I give a writing assignment and walk around the class, peeking over students' shoulders. I talk to them on the spot about their writing and give each student at least one pointer. In addition to observing how the class is doing with the material, I can communicate with a substantial number of students this way and provide instantaneous and direct feedback. (2) Quiz. I am a fan of the one question, multiple choice item quiz. Even though I do not count the results in the final grade, the application of what students ought to be learning in terms of cognitive sequencing provides a great opportunity for the students and for me. It affords the professor a chance either to introduce or review an area, to explain how to work through a problem in practice, and to obtain feedback about how well students understand an area of law. The students have the chance to cement their learning, practice answering a test-

type question, and obtain instant feedback on what they know and what they don't know. (3) Ask. As I get older, I am much more prone to ask a direct question, rather than being circumspect. So I might ask small groups of students before or after class, "how do you learn best?" At the end of a class, I might ask students to write down, "what did you learn in this class, if anything?" and then have them talk about it briefly in small groups.

*Steve Friedland
Nova Southeastern University
Shepard Broad Law Center*

Ask students to write for a minute, filling in a blank such as "one thing I don't understand is _____," or "the most important thing I learned today is _____." I write the phrase on the board so students only need to write whatever completes the phrase. It takes a very short time to read the student responses, and I get a lot of information in that short time.

*Gail Hammer
Gonzaga University School of Law*

CALL FOR PROPOSALS

The summer conference of the Institute for Law School Teaching will be held June 8 and 9, 2007, at Suffolk University Law School in Boston. It will consist primarily of a number of simultaneous, one-hour workshops on a variety of topics. The conference will have a general teaching theme and many possible topics will be appropriate for workshops. Workshop presenters will receive free registration for the conference.

If you would like to present a workshop, please send your proposals to:

*Susan Bowen: P.O. Box 3528, Spokane, WA 99220-3528
sbowen@lawschool.gonzaga.edu*

by December 31, 2006.

Please include a description of the specific method or methods you intend to use to present the information

(e.g., lecture, small group discussion, Socratic dialogue, viewing film).

Proposals which include active methods of presentation will be favored.

Organizing and Operating a Think-Tank Charity as a Law School Experience

by Bob Whitman

Three years ago I encountered a model of a home for helping individuals in need that struck me as especially workable and worthwhile. That model home is now referred to as a PATH-type home: individually owned, therapeutic homes for mental health and addiction recovery. A unique feature of a PATH-type home is that, once established, the home is able to operate without any state or federal subsidies, because occupants of the homes work and pay rent which supports the home's upkeep.

The Need to Organize

While PATH-type homes have operated in Connecticut for some time, there was no easy way for those in need, or the professionals that helped them, to easily locate a home. People Advocating Therapeutic Homes (PATH) was organized as a non-profit Connecticut corporation. It has subsequently gained 501(c)(3) status, mainly through the efforts of law students.

In order to provide easy access to information, PATH operates a statewide website: www.therapeutichomes.org. The website shows the inventory of PATH-type homes in Connecticut, links to other helpful websites, and carries law student papers dealing with zoning and other legal issues that impede the growth and development of these homes. A law student organization based at the University of Connecticut Law School, Law Students Supporting Path, has been networking with other law schools, hoping to form a nationwide, state-by-state linked group of websites to track PATH-type homes available in each state.

A Proposed Annual Law Student Writing Contest

PATH is also creating an annual law student writing contest to focus on existing legal issues and ways of removing obstacles to the development of PATH-type homes. In Connecticut PATH has assisted home owners in challenging zoning restrictions and other legal issues blocking PATH-type home development. Law student research has been most important in understanding present law and the need for changes. Examples of law student work can be found on the PATH website.

Advantages Gained from PATH-type Homes

PATH-type homes are seen as effective, long-term recovery units providing stable and structured environments for recovery. While each owner of a PATH-type home establishes the rules for the home, occupants are often able to stay at home indefinitely until they are secure in recovery and can make arrangements to leave for other housing. Because occupants of PATH-type homes work and pay rent, once a home is established, no federal or state subsidies are required to support the home. Studies have shown that

PATH-type homes present a most effective means for fostering mental health and addiction recovery.

Law Students Can Play a Leading Role

Perhaps the most interesting feature of developing the PATH organization has been the opportunity to allow law students to be part of the team that created PATH, as well as to serve as active participants in the organization's ongoing efforts to promote the idea of PATH-type homes. Incorporating PATH and obtaining its 501(c)(3) status was largely engineered by law students. Through PATH, they are able to gain satisfaction by helping to encourage recovery, and to obtain practical legal experience. Many occupants of the homes require law student assistance to work out legal issues, and much of the research into PATH's legal issues is performed by law students.

PATH Operates as a Think-Tank

In order to allow PATH to operate efficiently as an all-volunteer organization and to avoid conflicts and insurmountable operational challenges, PATH was organized as a "think-tank." PATH does not own or operate any home. Yet, it stands ready to help and support any would-be owner of a PATH-type home. In cooperation with the state of Connecticut Department of Mental Health and Addiction Services (DMHAS), the University of Connecticut Small Business Development Corporation, and Connecticut Community for Addiction Recovery (CCAR), PATH has been training would-be owners of PATH-type homes. To help in this effort, PATH has also published a book, "Owning and Operating a PATH-type Home for Mental Health and Addiction Recovery." This book is largely a law student effort. PATH also encourages other departments at the University of Connecticut to participate in plans for research into mental health and addiction recovery. Hopefully, this will allow law students to act jointly with other university students.

Thus far, PATH has not been formally integrated into the University of Connecticut Law School program, but this could occur as the benefits of law students working for PATH are recognized.

PATH Represents a Model for Other Law Schools

At other interested law schools, PATH, or some other worthwhile charity, might become the focus of a law school course or a school-wide effort. Law students are often eager to serve the needs of the public, and organizing and operating a charitable organization can allow them to accomplish this goal while interviewing clients, researching legal issues, drafting legislation, etc.

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Conclusion

PATH hopes students at other law schools will join in its efforts. For further information about PATH, please contact: Virginia Lamb, President of PATH, at valambwolf@aol.com. Law students for PATH may be contacted through: jon.sills@uconn.edu. For information on

the law student writing contest contact: lewis.kurlantzick@uconn.edu.

Bob Whitman teaches at the University of Connecticut School of Law, and can be contacted at robert.whitman@uconn.edu.

Book Review of “I am a Tree, I can Bend: Adapting Your Communication Style to Better Suit Your Students’ Needs”

by Stan Cohen, Ed.D, PublishAmerica, Baltimore 2005

by Ronald Benton Brown

Stan Cohen has a checkered past. His doctorate is in psychology. He rose through the ranks in public school education from teacher to school principal to school superintendent. He was a professor of education. Finally, he retired, but when he tired of retirement, he got drawn into a second career—this one in medical education. As a medical school administrator he soon discovered that medical professors needed to know what he had learned in his first career. His point in writing this monograph was to improve the quality of medical education by sharing that wealth of knowledge.

The examples make it abundantly clear that this book was not written for law professors, but they should find it easy to understand and a quick read. More important, they will find it to be an important resource that reveals and demystifies a major obstacle to successful legal education: all students are not the same.

Most of us have heard about the Myers-Briggs indicators, but few of us have any practical way of using those indicators in the educational process. Dr. Cohen provides the way in the simplest possible terms, starting with a method to identify the reader’s teaching style: thinking, feeling, sensing, or intuiting. He also provides his readers with a simple method to identify students’ learning styles. Experience shows that students whose style matches that of the teacher will feel more comfortable in that teacher’s classes, learn more, and perform better on tests.

Dr. Cohen points out that everyone can adapt to the different styles to some degree, but it is far easier for teachers to do so than it is for students. The teachers are the trees, and they can and should bend when that will benefit their students. If a teacher is working one-on-one with a student, then assessing and adapting to that one student would be most effective. But when working with a classroom full of students, it is important for the teacher to reach

as many students as possible by trying to have something for each of them. Dr. Cohen gives simple, concrete examples of how to do this. By making subtle changes, a professor may be able to connect with students who would not be reached by the professor’s natural style. The book contains examples of methods professors can use to reconcile differences between their styles and the different styles of their students. These specific examples for practical action make this book a reference to which a dedicated teacher would go back time and time again.

The greatest value of the book for professors is its suitability for use as a checklist to review what one is doing in class. For example, if your teaching style is thinking, then you should regularly review the list of things that a thinking-style teacher can do to reach students whose style is feeling, sensing, or intuiting. Without that regular review, teachers will instinctively slip back into the behaviors they find most comfortable.

Dr. Cohen also includes a chapter on how important it is for administrators to recognize different styles and to encourage faculty flexibility, rather than insist that teachers’ styles match that of the administration. Excellence in education can only be achieved if the teachers are supported in their efforts to use a variety of styles to reach all of their students. The author also notes that the learning and teaching styles of administrators, faculty, and staff will influence their daily interactions. They will benefit if they apply what they have learned in this book to improving their professional relationships.

Ronald Benton Brown taught at Nova Southeastern University, and can be reached at brownr@nsu.law.nova.edu

Effective Advanced Legal Research Instruction

by M. Anne Stalker

There is general agreement within the academic legal community that it is a challenge to teach legal research to law students. The challenge derives from a number of factors, including the aridity of the subject, the number of different resources available, and the difficulty of assessing research skills. This last is a particular problem in legal research courses because students tend to share research when they have a common exercise, and it is almost impossible for one person to assess the results of research when each student has a different exercise. For all these reasons and more, faculty members tend to shy away from the subject, thus depriving it of champions and further weakening its stature.

As a result, it is often challenging for law schools to offer legal research instruction to all students in the first year, and highly unusual to continue the instruction for all students in the upper years. Even when research instruction is offered after the first year, it is normally structured as a small seminar offered to a select group of interested students. An oft-used alternative is to require a major paper, but this usually leaves the research process hidden.

Yet it is arguable that all law students would derive enormous benefit from continuing their instruction in legal research in the upper years, especially because there is one major disadvantage to teaching legal research in the first year. Legal research does not exist in a vacuum; it is defined by the nature of the legal puzzle being solved. However, first-year students are still learning how to solve legal puzzles and therefore most see legal research in a vacuum. Even such practice as they are able to attain through assignments or essays in first-year subjects is limited by their lack of sophistication in approaching the legal issues with which they are dealing. Most see legal research instruction as a set of steps to take or names of resources they can use that should lead to “the answer,” rather than as a key to a wealth of material they can work with.

In this article, I describe what might be called an experiment in compulsory advanced legal research that I have been engaged in at the University of Calgary in Alberta, Canada. By “advanced” I do not mean that the legal research methodology the student is employing is particularly advanced. Rather, the approach is advanced in that the students’ legal thought process has advanced to the point where they are better able to use the existing resources. The result is a course that, in my opinion, has gone a long way toward making the effective teaching of legal research in the upper years a more achievable and palatable option for law schools.

University of Calgary Advanced Legal Research

I teach a one-credit, compulsory, advanced legal research course during the students’ final term of law school. It was originally conceived of as a tool to assist our students as they headed to graduation and their responsibilities as articling students. (All law students in Canada must

complete a one-year apprenticeship known as “articling” with an experienced lawyer or firm, or with a court, before taking their bar admission tests. This often requires a significant amount of research work.) Many students who had not written papers (and even those who had) were very nervous about their legal research skills as they approached graduation. Therefore, we thought it a good time to engage them in the subject, since they had a natural concern about it.

However, as the course has been offered over the last few years, we have found that many students actually wish to complete it earlier in their law school career, in order to take advantage of what it has to offer throughout law school. As a result, I now allow students who are in their second year to enter the class, and many have taken the opportunity of doing so. Ultimately, my goal would be to allow them to take the course during whatever term best suits them.

Structure of the Course

In this course the students learn their research skills by engaging in a research project of their choice. They are allowed to choose any topic they wish, or multiple topics if necessary to cover all the research processes they must learn about. They are encouraged to use papers, memos, or “moots” they are doing for other courses or for law firms. This increases their interest in the research and reduces their workload, allowing them to focus better on the research methodology. Otherwise, they choose something they are interested in or some work they have done in the past.

Their research is evaluated using a 100% critical pathfinder. The critical pathfinder is a paper describing the student’s research development. In it they must provide feedback on a list of resources and the types of research they are given. For instance, these are the instructions students are given in the critical pathfinder exercise in my course:

“The research that you describe must include searching out relevant material, accessing and reviewing the material, and noting it up, in relation to the following:

1. Canadian case law using both
 - (a) the *Canadian Abridgement* and
 - (b) electronic sources (*Quicklaw*, *Westlaw Law Source*, *CanLII*, plus *Westlaw* or *LexisNexis*);
2. Case law from another jurisdiction (electronic source expected, but paper sources also acceptable);
3. Canadian statutory law using both
 - (a) paper sources and
 - (b) electronic sources (*Quicklaw*, *Westlaw Law Source*, *CanLII*, plus *Westlaw* or *LexisNexis*);
4. Canadian regulatory law using both
 - (a) paper sources and
 - (b) electronic sources (*Quicklaw*, *Westlaw Law Source*, *CanLII*, plus *Westlaw* or *LexisNexis*);
5. Statutory law from another jurisdiction (electronic source expected, but paper sources also acceptable);

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Research Instruction

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6. Journal index (both paper and electronic);
7. Texts, *Canadian Encyclopedic Digest*, and other secondary sources.”

The purpose of this process is to require the students to explore an extensive list of resources, but in relation to topics that they are otherwise responsible for or interested in. Your list could include whatever legal research resources are considered essential by your jurisdiction and law school. The point is that the student must show in their pathfinder that they have used all these resources to perform the functions mentioned.

Moreover, the student must do a critical analysis of both the resources and their use of the resources; I tell them that their pathfinder must include the following:

1. A statement of the issues that you are researching;
2. A plan showing what you wished to find, where you planned to look, and what search terms you planned to use (for search terms, examples showing success, failure, and interesting issues will be sufficient);
3. A statement of how you used the resource, what you found there, whether what you found was adequate, and whether you modified your search as a result (examples from each resource will do—for search terms, examples showing success, failure, and interesting issues will be sufficient); *proper citation is expected for results*;
4. A critical assessment of the various sources that you used, including comparisons among the resources;
5. A statement of how you would approach it differently if you were to do it again.

The point here is to have the student describe their research, or at least representative portions of it, and think about it. Our experience is that after their first year of legal research instruction, they have often fallen into the practice of using one electronic resource exclusively and, moreover, using keyword searches as their main method of accessing material within that resource. This is not an efficient use of most electronic resources and part of this process is trying to break them of the habit by making them think about it, and comparing what they get by using that method with what is available through other methods. The results often surprise them.

The major element of the course materials is a guide to doing legal research that sets out an approach and provides a list of resources for doing the work. The research approach starts with texts or a legal encyclopedia entry covering the issue in order to refine the topic and also to find basic cases, statutes, regulations, and articles that will be useful. The list goes on to include finding and noting up cases, statutes and regulations, and also gives some guidance for work within another jurisdiction since the pathfinder does require some basic research in another jurisdiction of their choice.

The classes in my course are entirely optional and designed solely to support the work the students are doing in

their critical pathfinder. The students are expected to experiment and learn how to research by working on their critical pathfinder, not through the classes. However, I always offer the following to assist or encourage them:

- A session (normally early on) either given by a research lawyer from a large firm, or based on what I have been told by such lawyers, about what the firms are looking for in research, about the kinds of templates they use for their research, and about the fact that normally they will not let their articling students and junior associates even use most of the paid databases because of the expense involved. This of course wakes the students up to the fact that they need to know how to research using something other than the one electronic database they have become accustomed to;
- Library tours (over two-thirds of the students take these, they are designed to show the students how to use the materials, not just what the materials are);
- Vendor sessions with all the major on-line paid databases;
- Sessions offered by our law library staff on various free on-line resources;
- A session on how to put together a research binder to help keep track of their research;
- A session on how to use electronic resources in a generic sense, e.g., the features to look for, how to avoid keyword searches and use noting up techniques instead, and how to work with legislation on electronic databases.

I mark all of their critical pathfinders, most of which are around twenty pages. Obviously, I am not an expert in the fields most of them are researching, but that is not the point. I am grading them on their use of the resources I have assigned, and on their critical assessment of those resources and their own work. The marking is not overwhelming (though it does take a while), and is often interesting.

The students offer many helpful suggestions in their pathfinders, and often appear to have gone through a process of discovery about research in the course of doing the exercise. The feedback I get from them is overwhelmingly positive, and I hear little of the grumbling that I would expect to hear in such a course.

In the end, the course has goals that are seen as valuable by our students and it appears to be achieving those goals. I hope that others can make use of it and provide me with feedback on their efforts.

M. Anne Stalker teaches at University of Calgary in Calgary, Canada, and can be reached at astalker@ucalgary.ca.

Why do you teach?

We are interested in knowing why you teach. Please tell us your story in 450 words or less. Send your story to the Institute at ilst@lawschool.gonzaga.edu.

Why I Teach

by Danne L. Johnson

I teach because I am a teacher, a student, and a believer in the textures of life.

I have spent most of my adult life teaching—teaching others about women, race, class, culture, syntax, working hard, perseverance, and overcoming. These life lessons and experiences, which I continue to learn, are among my tools for the classroom. These tools and my experience in legal practice enable me to contextualize legal education for all students.

Before joining the academy, I was an ad hoc teacher. Classes, in the form of talk shows, were held in the car, on the subway, and in the kitchen. My listeners were friends and colleagues, and often strangers passing by my heated discussions. My husband titled the broadcast “Sisters with Views,” and the name has stuck. In addition to my “broadcasts,” I supervised attorneys in the area of securities regulation. I was called upon to teach young attorneys history, writing, organization, public speaking, and ethics, among other topics relevant to the practice of law at the U.S. Securities and Exchange Commission. As a result, I have a practice-based view of teaching and learning.

I insert the discussion of alternative dispute resolution, drafting (including grammar), ethics, current events, and client interviewing into my courses. These are tools which transcend the substantive law, and their use allows for distinctions to be drawn between excellent and mediocre attorneys.

I approach legal education from a holistic point of view, recognizing that legal theory and history are the underpinnings of the doctrines we teach, and that the intersection of these topics with the common use of the law, is the end result of our educational process. Students must be able to see the law from its foundation to its ultimate use.

So what do I get out of it? I get to see the faces of students as they grasp the subtle nuances between doctrine and practice. I learn and grow through each class. I get a warm feeling knowing that my students are prepared to get their cases before a judge and to keep them there, or to use the art of negotiation to avoid litigation. I look forward to the one or two students who come back from a summer experience and proudly report that, “I had to teach them civil procedure” or “I had to explain that this instrument was a security.” These students recognize that learning has taken place.

I teach for fulfillment as a teacher, a student, and a believer in the textures of life.

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