

# AALS Section on Teaching Methods

Winter 2011-12



Association of American  
Law Schools

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## Message From the Chair

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

As many of you are aware from the list serve notices, this year we were required to shuffle our executive committee leadership due to AALS regulations. Our Chair Rachel Croskery-Roberts, formerly Associate Director of the Legal Practice Program at the University of Michigan Law School, accepted a position as a professor at the University of California – Irvine Law School. Although UCI has provisional ABA accreditation, it is not eligible for AALS membership yet. Under AALS regulations, Rachel was required to step down from the chair.

Rachel has been an outstanding leader of the section, giving direction and energy to the section's structure and programs. UCI is extremely fortunate to have her and the section is unquestionably poorer for the necessity of her premature retirement from the leadership positions.

Our section's by-laws, direct that:

If an officer or other member of the Executive Committee resigns, becomes ineligible to serve or dies, the position shall be promptly filled. If the position of Chair becomes vacant, the Chair-elect becomes the Chair. If the position of chair-elect becomes vacant, the Secretary shall succeed to the office of Chair-elect. If the position of secretary becomes vacant, the Treasurer shall succeed to the office of Secretary. If the position of treasurer becomes vacant, the Chair, with the advice and consent of the other members of the Executive Committee, shall appoint a person to serve as Treasurer until the next annual meeting of the AALS.

Given that the bylaws operate automatically on this matter, our new section officers look like this:

Chair: Barbara Glesner Fines, University of Missouri Kansas City Law School,  
Chair Elect: Michael Hunter Schwartz, Washburn Law School,  
Secretary: Lisa Mazzie, Marquette Law School,

The executive committee then selected Louis Sirico, Villanova Law School, to complete the term of treasurer left vacant by this shuffle. Melissa Weresh, Drake Law School, continued as a member of the executive committee.

All of this attention to the structure of the leadership of the section, led the new executive committee to take a look at the structure of our executive committee. Section 1.1(c) of the AALS Executive Committee Regulations provides that a section shall have an executive committee of “at least five members.” Section 2(a) of our section’s by-laws provides that “The Executive Committee of the section is the Chair of the Section, Chair-elect, the Secretary, the Treasurer and the immediate past Chair” thus providing the necessary five members. However, other AALS sections have substantially larger executive committees. The executive committee considered this a good model, providing greater opportunities for involvement, representation, and institutional support for attending meetings. Accordingly the executive committee will propose the following amendment to our by-laws at the January business meeting:

Section 2(a) of the by-laws shall be amended to provide that: “The Executive Committee of the section is the Chair of the Section, Chair-elect, the Secretary, the Treasurer, the immediate past Chair, and four additional members to be elected from the membership at the annual business meeting.” We suggest that we adopt the general policy of having the chairs of each of the committees be nominated as those members of the executive committee.

Our nominations/awards committee has received nominations for these positions for the coming year and will be presenting a slate of candidates for consideration by the membership at the business meeting. We were pleased by the enthusiastic response to the call for nominations and look forward to a great new year of Teaching Methods activities.

As you can see from this newsletter, the section is active with exciting programs and excellent scholarship of teaching. I look forward to seeing all of you at the annual meeting!

## AALS Annual Meeting Items of Interest for Teaching Methods Fans

**Melissa H. Weresh, Immediate Past Chair**

The AALS Annual Meeting schedule is full of exciting events for law faculty interested in teaching methods. The section's two programs, described below, focus on engaging student learners and developing the talents of new law professors. There are also a number of other workshops and programs that feature teaching innovations and applications. On behalf of the executive committee of the Section on Teaching Methods, we look forward to seeing you at the AALS Annual Meeting.

### **Must-Attend Events for True Teaching Methods Fans**

**Friday, January 6 - 4:00 pm - 5:45 pm**

**Teaching Methods [5430]**

*Teaching Professional Values Across the Curriculum:  
Engaging Student Learners in the Process of Becoming Lawyers*

#### Session Details:

Although students must begin to adopt standards of professionalism in law school that they will carry with them when they become lawyers, the traditional law school curriculum has not heavily focused on teaching professional values. The purpose of this panel is to describe, demonstrate, and engage participants in a variety of techniques for teaching professional values across the curriculum. Presenters will discuss several key issues, including (1) building partnerships between legal educators and practicing attorneys that help inform curricular innovations which incorporate professionalism training; (2) incorporating professional values into the law school curriculum; and (3) addressing the difficulties in (and advantages of) requiring professional behavior and the practice of professional values in law students.

Presenters will also show a series of short films to be used in teaching law students about various concepts of professionalism (including the responsible use of technology, the importance of timeliness, and the duty of candor). The film vignettes will be made available to participants after the presentation. Finally, panelists will demonstrate teaching techniques pertaining to classroom dynamics and management; assignments; and forums outside the classroom. Many of these teaching techniques make students responsible for contributing to the professionalism curriculum and incorporate active learning methods.

Teaching Methods Section Business Meeting at Program Conclusion.

**Saturday, January 7 - 3:30 pm - 5:15 pm**

**New Law Professors, Co-Sponsored by Section on Teaching Methods [6370]**

*Teaching How We Teach: Lessons from the Classroom for New Law Professors*

## Session Details:

Some of the thorniest issues that new law professors encounter in the classroom are those that we didn't anticipate in advance. For all the time we spend discussing how to select the right casebook, how to structure a syllabus, how to think about our pedagogical approach to our classes, or how to write (and grade) exams, we devote surprisingly little attention to more specific issues like how to deal with obstreperous students; how to manage conversations about politically sensitive and/or emotionally fraught topics; or a host of other recurring problems in graduate school classrooms. Although these lessons are usually learned over time, new law professors don't have the luxury of that experience. Thus, this panel hopes to bridge that gap by bringing together a cross-section of scholars from a variety of backgrounds, all of whom have been recognized for their exceptional teaching. Each of the panelists will offer their own views on particular issues they've confronted in their teaching careers, how they've handled them, and what lessons they'd pass along to their colleagues going forward.

**Other Items of Interest:**

Thursday, January 5

8:45 am - 5:00 pm

AALS Workshop on the Future of the Legal Profession and Legal Education: *Changes in Law Practice: Implications for Legal Education* [4040]

Particular items of interest include: Changes in Legal Profession and Regulation; Teaching Innovations; Technological Innovation in Practice and Education; Innovation in Delivering Legal and Law Related Services; Organizing and Financing Legal Education; Innovations at the Intersection of Scholarship, Teaching and Practice; Regulation of the Legal Profession and Academy.

9:00 am - 5:00 pm

Institutional Advancement [4070]

*Meeting the Needs of Our Stakeholders in the Midst of a Changing Legal Landscape*

Particular items of interest include: Adapting to a Changing Profession; Partnering with Law Firms for Fun and Profit; New Realities of the Practicing Bar; Blogs and Social Media.

9:00 am - 4:30 pm

Student Services [4090]

*The Duty to Develop Our Students: Enrollment to Endowment*

Particular items of interest include Orientation: Creating Order Out of Chaos; Positive Partnering, Communication and Collaboration Across the Administration; Outcomes, Measures, and Reflections: Moving Student Services Toward the Continuous Improvement Ideal.

9:00 am - 12:00 pm

Women in Legal Education [4160]

*Speed Mentoring and New Voices in Gender*

Friday, January 6

7:00 am - 8:30 am

Special Meeting and Continental Breakfast for Beginning Law School Teachers [5040]

8:30 am - 10:15 am

Balance in Legal Education [5090]

*Effective Faculty/Student Collaborations and Student Initiatives: Working Together to Enhance Students' Professional Identity and Personal Integrity*

8:30 am - 10:15 am

Pro Bono and Public Service Opportunities [5160]

*Teaching and Learning in Pro Bono and Service Learning Programs*

10:30 am - 12:15 pm

Law and the Humanities [5220]

*Excavating and Integrating Law and Humanities in the Core Curriculum*

10:30 am - 12:15 pm

Legal Writing, Reasoning and Research [5230]

*In the New Millennium, What Are the Best Practices in Legal Writing, Reasoning and Research*

4:00 pm - 5:45 pm

AALS Committee on Bar Admission and Lawyer Performance Program [5320]

*Unplanned Interactions: Practical, Ethical and Legal Guidance for Faculty Working With Students in Distress*

4:00 pm - 5:45 pm

Law and Interpretation, Co-Sponsored by Section on Legal Writing Reasoning and Research [5380] *Law as a Discourse Community: Critical Perspectives on Legal Discourse*

Saturday, January 7

8:30 am - 12:15 pm

International Association of Law Schools Program [6050]

*Enriching Legal Education Globally – Curriculum, Legal Methodology and Public Service Prototype Innovations*

8:45 am - 5:00 pm

AALS Workshop on Academic Support [6040]

*Got ASP?: Leveraging Academic Support Principles and Programs to Meet Strategic Institutional Goals*

1:30 pm - 3:15 pm

International Legal Exchange [6350]

*Theory into Practice: The Globalization of Legal Education to Address the Changing Realities of Legal Practice*

3:30 pm - 5:15 pm

Graduate Programs for Non-U.S. Lawyers, Co-Sponsored by Section on Legal Writing, Reasoning, and Research [6420]

*Teaching Legal Writing and Reasoning to Non-U.S. Lawyers*

3:30 pm - 5:15 pm

Law and the Social Sciences [6460]

*Evidence-Based Approaches to Clinical Education and Legal Aid*

3:30 pm - 5:15 pm

Law and the Social Sciences [6480]

*Evidence-Based Approaches to Clinical Education and Legal Aid*

6:30 pm - 7:30 pm

AALS Reception for Legal Educators from Law Schools Outside the United States [6500]

8:00 pm

AALS Inaugural Law and Film Series [6520]

Sunday, January 8

9:00 am - 10:45 am

Law Libraries [7070]

*Assessing the Effectiveness of Legal Research Instruction: Are Our Students Learning What We Teach?*

9:00 am - 12:00 pm

Legal Writing, Reasoning and Research [7040]

*Legal Writing in the 21st Century: Practical Teaching Tips for Legal Skills Professors*

### **Poster Presentations**

Look for Teaching Methods Posters at the AALS Annual Meeting. Posters selected for this year's meeting are:

- ✓ Professor Kimberly Y.W. Holst, Arizona State University, Sandra Day O'Connor College of Law: *The One Click Classroom Makeover*
- ✓ Professor Jonathan Rosenbloom, Drake University Law School: *Combining Experiential Learning & Formative Evaluation in Teaching Sustainability*
- ✓ Professor Melissa H. Weresh, Drake University: *Curriculum Mapping – Charting the Course for the Archetypal Law Graduate*
- ✓ Professor Marcia Levy, New York Law School: *"Becoming Vinny" or Teaching 1Ls to Think, Act and Describe Themselves through the Language of Competencies*
- ✓ Professor Deborah Zalesne and David Nadvorney, City University of New York: *Explicitly Integrating Academic and Legal Reasoning Skill Instruction into Doctrinal Courses*

Thanks to the Poster Committee – Chair Lisa Penland, Drake University Law School; Ann Graham, Hamline University School of Law; Samantha Moppet, Suffolk University Law School; Michael Richmond, Nova Southeastern University Shepard Broad Law Center; Kathryn Sampson, University of Arkansas School of Law; and Gabriel Teninbaum, Suffolk University Law School for its work!

## Become Involved in the Section

Consider becoming involved in the section as a member of a committee or an officer in the section. Teaching Methods committees include:

### **Poster Committee**

The Poster Committee reviews the academic posters submitted to the AALS Section on Teaching Methods and select posters to recommend to Executive Committee for presentation at the 2012 AALS Annual Meeting.

### **Program Committee**

The Executive Committee selects potential topics and sends out a call for proposals. The program committee reviews the proposals as they come in and recommends the top three programs to the Executive Committee in a written recommendation. Once the program has been selected, members of the Program Committee will work closely with presenters to develop the presentation and keep the Executive Committee updated about the program. If we also co-sponsor a program, members of this committee may be asked to work with additional programs.

### **Outreach Committee**

This Committee may contact other sections about whether they might need teaching and learning experts for their sections' programs, consider and develop new ways to publicize the Teaching Methods program at AALS, and develop new ways to publicize and promote the innovative ideas of section members to those outside the Teaching Methods Section. The Committee can also consider whether to develop a proposal for a mid-year AALS Teaching Methods conference.

# Teaching Methods Essays

## Helping Students “Chart” Their Course Through Law School



By Linda C. Fowler<sup>1</sup>

Charting cases and creating T-charts to analyze case hypothetical facts and arguments add additional analytical tools for law students. Charting cases is especially helpful for law students in briefing, analyzing, and comparing cases on a particular legal issue. Using charts is especially helpful to visual and tactile learners, who learn best by seeing materials and writing or using them.<sup>2</sup> Charts can be used for simple or complex areas of law. Below is an example of a chart for a relatively simple area of tort law. The chart contains two cases concerning the Louisiana bystander mental anguish law<sup>3</sup> requirement that the emotional distress suffered by the bystander be severe and debilitating:

### CASE CHART FOR BYSTANDER MENTAL ANGUISH:

#### Severe, Debilitating, and Foreseeable Emotional Distress

| Case Name  | Result | Event   | Facts re Mental Anguish  | Reasoning re Mental Anguish  |
|--|--------|---|--|--|
| <u>Blair</u> <sup>4</sup><br>Husband was plaintiff | Yes    | Wife (W) hit and killed by truck when Husband (H) and W crossed a street – H saw W hit and killed | Prior to accident, H had active life and good employment; H hadn't worked in 3 years since accident; withdrawn and introverted; no medical diagnosis | H proved his mental distress was severe and debilitating; no medical diagnosis is necessary under the <u>Lejeune</u> <sup>5</sup> case |

<sup>1</sup> Southern University Law Center, P.O. Box 9294, Baton Rouge, Louisiana 70813 [lfowler@sulc.edu](mailto:lfowler@sulc.edu), (225) 769-8732

<sup>2</sup> Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 228-31 (1998).

<sup>3</sup> Louisiana Civil Code article 2315.6, bystander mental anguish, provides for recovery of damages for severe and debilitating emotional distress caused by witnessing or coming upon the scene of an event causing injury to certain enumerated relatives.

<sup>4</sup> *Blair v. Tynes*, 621 So. 2d 591 (La. 1993).

<sup>5</sup> *Lejeune v. Rayne Branch Hosp.*, 556 So.2d 559 (La. 1990).

|  |           |  |  |  |
|--|-----------|--|--|--|
| <p><u>Norred</u><sup>6</sup><br/><br/>Wife was plaintiff</p> | <p>No</p> | <p>Armed robbery in hotel room; Wife (W) came in later; saw tape on floor and Husband's (H) hands where it had been; H very "shook up;" they didn't sleep well in the room</p> | <p>They haven't returned to New Orleans; H sleeps with a gun under mattress; affects W because affects H; W is more cautious; went to psychologist for H (she said she didn't need therapy); W - no bad dreams</p> | <p>Facts do not support bystander mental anguish recovery for W – not severe and debilitating; her visit to the psychologist was mostly for H's benefit; she has had no bad dreams, just more cautious</p> |
|--|-----------|--|--|--|

T-charts, on the other hand, aid the student to categorize hypothetical facts and weigh arguments by organizing them in a table. They are called T-charts because the students construct them by simply writing a "T" on a sheet of paper; the issue appears above the T, and the facts supporting a "yes" answer appear on the left side of the T, and the facts indicating a "no" answer for the legal issue appear on the right side of the T. An example of a T-chart for hypothetical facts for the issue concerning the cases charted above appears below:

**BYSTANDER MENTAL ANGUISH ISSUE:  
Severe, Debilitating, and Foreseeable Emotional Distress  
T-CHART FOR HYPOTHETICAL CLIENT'S FACTS**

| <p><b>Facts that Indicate YES, Severe Emotional Distress is Present</b></p>  | <p><b>Facts that Indicate NO Severe Emotional Distress is Present</b></p>  |
|--|--|
| <p>~Robin saw her husband lying in a pool of blood after having been shot by a "nut" opposed to her husband's views on birds</p> <p>~She has nightmares and crying spells weekly since seeing her husband shot</p> <p>~She is anxious all the time now – before she didn't have anxiety</p> <p>~She used to relax by bird watching with her husband on weekends, but they don't do that any more</p> <p>~She no longer travels with her husband, as she is fearful another "nut" may shoot him</p> | <p>~Robin missed only one week of work after the shooting, while she was caring for her husband</p> <p>~She continues in the same position at work as manager of public relations</p> <p>~She goes to church every Sunday</p> <p>~She visited a psychiatrist only once, at the urging of her attorney and refuses to obtain additional medical treatment</p> <p>~She refuses to take her anti-anxiety medication because it "makes her sleepy"</p> <p>~She continues to enjoy her cooking club</p> |

<sup>6</sup> *Norred v. Radisson Hotel Corp.*, 95-0748 (La. App. 1st Cir. 12/15/95).

Charting cases is especially helpful with legal issues requiring several prongs or elements to be proven. An example of a three-pronged legal issue is the Brunner<sup>7</sup> test used by most federal courts to determine whether a debtor may discharge a student loan in bankruptcy. Congress passed 11 U.S.C. § 523(a)(8) to except certain government-insured loans from bankruptcy unless the debtor can prove he or she has satisfied the “undue hardship” test. The Brunner test interpreting that statute requires that the debtor prove: (1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans (some of the factors include the debtor’s education, work history, physical and mental health, prognosis, and number of dependents); and (3) that the debtor has made good faith efforts to repay the loans (includes examination of payments made on the loan, requests for deferrals, participation in loan payment reduction plans, and whether debtor has maximized income and minimized expenses).

A chart analyzing two student loan bankruptcy cases that used the three-prong Brunner test to determine whether a student loan should be discharged under the “undue hardship” requirement is below:

#### CASE CHART FOR THREE-PRONG BRUNNER TEST

| Case Citation   | Discharge Granted? | Prong 1: Is a minimum standard of living possible if loan repaid?   | Prong 2: Is situation likely to persist?  | Prong 3: Good faith efforts made to repay loan? |
|---|--------------------|---|---|---|
| <u>Salyer v. Sallie Mae Serv. Corp.</u> , 348 B.R. 66 (M.D. La. 2006) | No                 | <b>FAILED:</b><br>~Couple had premature triplets, then 14 mos. old<br>~\$4,700/mo. income for family, expenses \$5,200~Significant discretionary expenses: \$113 in one mo. for movie rentals and fast food; \$146 for digital cable and internet; \$230 for cell and land line long distance service | <b>N/A:</b><br>~Court discussed Prongs 2 and 3, saying debtors failed<br>~However, since failed Prong 1, end of inquiry, so that is dicta |   |

<sup>7</sup> *Brunner v. N.Y. St. Higher Educ. Servs. Corp.*, 831 F.2d 395 (2d Cir.1987).

|   |            |   |  |  |
|---|------------|---|--|--|
| <p><u>Kettler v. Great Lakes Higher Educ. Serv. Corp.</u>, 256 B.R. 719 (Bankr. S.D. Tex. 2001)</p> | <p>Yes</p> | <p><b>PASSED:</b></p> <ul style="list-style-type: none"> <li>~Owed student loans - \$19.4K</li> <li>~Used loans for nursing degree</li> <li>~Monthly income - \$700 from working at book store; expenses - \$796</li> </ul> | <p><b>PASSED:</b></p> <ul style="list-style-type: none"> <li>~Debtor had cervical strain (due to auto accident) &amp; post-traumatic stress syndrome</li> <li>~Neck &amp; spinal injuries are degenerative &amp; chronic</li> <li>~Limited to "light" work, which prevents her being a nurse</li> <li>~Was 60 years old</li> </ul> | <p><b>PASSED:</b></p> <ul style="list-style-type: none"> <li>~Made payments for 3 years</li> <li>~Has exhausted all possibilities to increase income</li> <li>~Moved in with adult son to decrease expenses</li> <li><i>Has made an effort to maximize income and minimize expenses</i></li> </ul> |
|---|------------|---|--|--|

An example of a T-chart for a set of hypothetical facts for a student loan bankruptcy problem concerning the first prong of the Brunner test is below:

**Hypothetical Debtor’s Facts for Prong 1:**

**Whether a Minimum Standard of Living Can be Maintained if Forced to Repay the Loan**

| Facts that say YES, Prong 1 Satisfied  | Facts that say NO, Prong 1 Not Met  |
|--|---|
| <ul style="list-style-type: none"> <li>~Monthly income for debtor is \$1,100</li> <li>~Debtor’s monthly expenses are \$1,500</li> <li>~Debtor’s rent for one-bedroom apartment for her and her daughter is \$550, average for her area</li> <li>~Land line phone monthly cost is \$50; no cellphones</li> <li>~Utilities are \$150 per month</li> <li>~Food for debtor and child is \$400</li> </ul> | <ul style="list-style-type: none"> <li>~Debtor pays \$50 for her piano lessons</li> <li>~Debtor’s child is in private school at cost of \$200 per month</li> <li>~TV cable costs \$100 per month</li> </ul> |

Charting cases and writing T-charts provide frameworks for analyzing elements of a cause of action or legal issue and hypothetical facts and arguments. These charts can be used by students for research and writing projects in law school, as well as in studying for and taking law

school exams and bar exams. While charts are especially helpful for visual and tactile learners,<sup>8</sup> all students can benefit from charting as it provides a checklist for requirements of a legal issue, an analysis of court decisions on each factor or element, and identification of relevant facts in a hypothetical created for a legal issue. Charts assist law professors in varying their teaching methods and assignments, while helping students “chart” their way through law school.

### Creating Law Firms in Large Classes to Motivate Class Participation



*By Lynn A. Epstein<sup>9</sup>*

Getting students to participate in class discussions in large classes (more than 40 students) has always been a hurdle for law teachers. The Socratic Method of calling on students randomly, and with intense scrutiny, instills mostly dread and fear in students and except for being a rite of passage, accomplishes little to actually reflect the practice of law. While future lawyers may encounter a gruff judge or an obstreperous senior partner, the encounter will not be random or scrutinized by a classroom of similarly situated individuals, worried they are next in line.

With a students' knowledge of technology outpacing law professors' technological understanding, clever law students can surreptitiously help fellow students without their teacher's knowledge or approval. For example, it is somewhat standard for a student to text or email a student who is stuck in the midst of a professor's Socratic encounter, with a plausible answer. Similarly, students can keep intricate records of who the professor has called on, and much like card readers in blackjack, these prescient students are able to predict with some accuracy when their turn is next. Therefore, professors may believe they are effectively administering the Socratic format when in essence they are being “duped.”

Because of the numerous problems associated with the Socratic Method, many teachers become tired of the time wasted in implementing the Socratic Method. Instead, they simply turn to a volunteer method of participation or a transparent method of participation, like calling on students in alphabetical order. Yet these methods tend to exclude most of the class, if students are not the volunteer types or if the professor is calling on students by starting with the beginning of the alphabet and working down in a descending fashion. In a large classroom setting, it is likely that Arnie Able will be much more attentive than Zoe Zable.

There is a better system that incorporates both accountability and participation. I call it the “law firm” participation method. Here is how it works. A row of students becomes a law firm.

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<sup>9</sup> Nova Southeastern University

Or if a row of students is not practical, students are placed into groups of at least five. They become a “law firm”, with naming rights optional. The firm participates in one of two ways:

First option: “Collaborative law firm.” Placing students in groups and calling the group a law firm is hardly a novel concept and has been used by professors for years. In the typical group law firm class setting, the professor throws out a question to the first person in the group. For the next question, the professor calls on another student in the “law firm.” This is simply implementing the Socratic Method under the guise of a law firm.

In the collaborative law firm approach, the professor may call on a student to get the ball rolling for the first question, but then that student selects a student from his firm who wishes to answer the next question, and the process continues until all students in the group have answered. Or, the professor throws out a question to the law firm group. Any student in the group may answer. If that student’s answer is insufficient, another law firm student must answer, and the process continues for subsequent questions throughout the duration of the class. In order to reinforce the collaborative aspect of this approach, the professor should permit students in the firm to freely help out a student who is struggling to answer. Additionally, the professor can remain on the same group for the entire class or go to as many law firms as time will allow.

Second option: “Collaborative and co-counsel option.” The professor throws out a question with the first option. If no one in the row or group answers sufficiently, any member of the group can pass the question to someone else in the class in a different law firm. In the co-counseling approach, if the student outside the group answers sufficiently, the co-counsel becomes exempt from one question when his group is up. While this option requires some record keeping by the professor, it helps to encourage participation outside of the law firm group and keeps all students engaged in the current discussion.

There are many benefits if you choose to use these options. First, students in the law firm group have a sense that “we are all in this together” when they are called upon. The teamwork aspect encourages camaraderie by helping out your fellow associate/classmate, much like the practice of law in a “real” firm. Second, slackers are appropriately embarrassed if they don’t pull their weight. If one person in the firm is not prepared, he is ultimately requiring other associates to perform an inordinate share of work. Much like the practice of law, attorneys who are ill-prepared and cannot participate effectively are quite noticeable. Knowing they will be letting the firm down if they are unprepared tends to spur the associate on to become prepared. Third, it encourages attendance. It is quite noticeable when a law firm member is absent from the firm. Groups of six now become groups of five and more responsibility is assessed in the absence of a member. The resulting peer pressure tends to press students to show up.

If you don’t want to take the time to create law firms, there is another alternative method that still encompasses a law firm model. I call it the “sole practitioner law firm on-the-go.” For this option, the professor does not need to group students into law firms in advance. The professor randomly calls on a student in class to participate in the usual manner. However, if that student fails to respond or responds inadequately, the professor tells the student to choose a co-counsel to help him out. The student then picks a fellow classmate to answer. If the classmate answers effectively, the co-counsel partnership is successful and the “non-

responsive” student is off the hook. It is up to the professor as to when to return to the “non-responsive” student, since a complete pass to that student would lead many students to choose this method. I suggest a pass for the day but a return to that student within the next few classes. Of course, the non-responsive student may be chosen by a fellow student to co-counsel in a subsequent class for a different question on a different day and thus the tables are turned on that student.

This option is effective because it avoids a student simply saying “I pass” if they do not know an answer. It is also a method that the professor can choose to implement on the spot, and in classes of his choosing. However, its main benefit is in allowing a student to answer and help out his fellow student; much like an attorney would do in practice as a sole practitioner. It is also good practice for the student to learn to choose a co-counsel with expertise; also an important aspect of law practice. Of course, in a real law practice, the actual co-counsel arrangement is usually accompanied by a joint fee agreement! Perhaps in the classroom arrangement, the grateful student rescued by his co-counsel would treat him to lunch.

If you give it a try, you can expect a lot of positive feedback but of course, some students will not be fans. I have had students “request” a change in law firms, because members of their group were not prepared, and they were carrying the burden of answering questions. Conversely, I have had students want to fire a student from their firm group, not for poor performance, but for wanting to answer every questions and hogging the limelight. The answers to these dilemmas are simple-this is your firm, deal with it. And be sure to tell your students that in this economy, they should be thankful they found a “firm” that would employ them (albeit fictional), so they should do their part and stop looking to make a change!

### Insight Pods



*By Jim Hilbert (left)<sup>10</sup> and Gregory M. Duhl (right)<sup>11</sup>*

We teach a new class we designed at William Mitchell College of Law called Transactions and Settlements. The students counsel clients and negotiate and draft transactions and

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<sup>10</sup> Professor Hilbert is Executive Director of the Center for Negotiation and Justice. He teaches Negotiation and Advanced ADR in addition to Transactions and Settlements. He is also Vice President of Professional Services of Alignor, an international negotiation firm. He thanks Jaelyn Millner and Vanessa Denis, two Center Fellows and adjuncts, whose humor and enthusiasm for teaching helped enable us to create insight pods.

<sup>11</sup> Professor Duhl is an Associate Professor at the William Mitchell College of Law, Managing Director of the Center for Negotiation and Justice, Chair of the Curriculum Committee, Chair of the First-Year Pilot Implementation Committee, and Director of Adjunct Faculty. He teaches commercial law in addition to Transactions and Settlements.

settlement agreements. We created the course to complement Advocacy, the mandatory trial skills course that students primarily take in their second year at Mitchell.

Our course was hands-on from the start, with students interviewing the professor-clients in pods, and negotiating and drafting with other students one-on-one or in pairs. Students work through realistic simulations that include mock e-mails, memos, and other documents that closely resemble the types of materials lawyers review in advance of negotiating a deal or resolving a dispute. The students generate a wide range of work product, including everything from preparation memos in advance of negotiations to final agreements with signatures from their clients.

The course also involves a considerable amount of collaborative learning, where students work in groups. We began calling the “groups” of four students “pods” because we found that students who had an aversion to “group work” had enthusiasm for working in “pods.” The name change seemed to energize the students (and faculty). Of course, groups of three students are triads and groups of five students are quintets. We both use “pods” in our other classes, and students planning for classes each semester often now ask which classes contain “pod work.”

After teaching together for more than a year, we have realized that the students often learn the core skills of interviewing, counseling, negotiating, and drafting better from each other than from either of us. We stopped assigning formal readings, in one case when we were teaching in England and the books did not arrive until after the last day of class. We stopped lecturing, because the students were not always engaged and could quickly find their way to electronic or other distraction. In fact, we have instituted new time regiments where neither of us can speak for more than three minutes without student participation.

Taking the benefits of students learning from each other to the next level, we now use a special kind of pod for students to analyze these skills with one another. We named them “insight pods.” After we finish a large exercise or a discrete part of a course, students meet in pods assigned to them and draw insights about the activity in which they recently engaged.

For example, in Transactions and Settlements, we had students negotiate an international distributorship agreement over the course of a prior three-hour class. We as professors played the clients, whom the students interviewed in pods a week before the negotiation. The week after the negotiation, we assigned them to insight pods and asked them to identify three effective strategies they experienced or witnessed in the negotiation and three ineffective strategies they experienced or witnessed in the negotiation. No student was in an insight pod with the person with whom he or she negotiated so the students could talk freely.

As we walked around the room, we heard the students realizing for themselves and discussing with one another the strategies that make lawyers effective negotiators. We heard the stronger students teaching the weaker students. We heard the students who struggled recognizing many of their own mistakes.

After about fifteen minutes, we brought the class back together, and then called on pods each to give an example of a successful strategy that they discussed. We commented on each

insight (for no more than three minutes), often expanding on the insight or giving an example of a student who capitalized on that strategy.

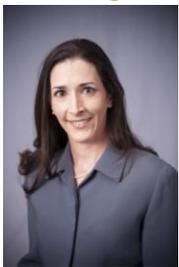
We then went around the room and asked pods to identify a strategy that they witnessed or used that that was not effective. They identified their errors, and we provided concise examples of how to approach certain situations differently. Often the pods suggested how to turn ineffective strategies into more effective ones.

At the end of the class, we handed out individual rubrics to students on their negotiation performance from the previous week. Many students were disappointed with how they performed. But many students also commented on how they were not surprised with their scores after the insight pod discussion that we had at the beginning of the class.

We also used insight pods at the conclusion of the end of a four-day, twelve-hour academic preparation workshop that one of us organized for incoming students. We asked the students in pods to come up with three insights that the students discovered during the week. The student insights ranged from insights about IRAC and case briefing, to insights about self-regulated learning, to insights about law school stressors, to insights about the legal profession. During our discussion, the students heard the array of what they learned in the twelve-hour workshop, and we had immediate feedback about the benefits of the workshop to the students.

Students can teach each other, even fundamental principles related to core skills, law school learning, or doctrine. They draw their own insights. They understand the value of collaborative learning and group work, and they like “insight pods.” They blog, tweet, and post on Facebook about them. We always look forward to insight pods, and the students do as well.

### Picking Participants without Picking on Students



By Kara K. Hatfield<sup>12</sup>

“Pick a card, any card.” That’s my new opener to class discussion of cases.

Last year, my first year in teaching, I taught Civil Procedure to two groups: one with 41 students and the other with 68 students. In class I sometimes lectured and mostly used



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a modified Socratic approach, posing questions about the cases to the students. I sometimes asked students to provide a response to a hypothetical contained in the textbook, and I sometimes asked students to read a new problem on a PowerPoint slide on the screen and answer the “insta-hypo.” I struggled with how to choose which student to select to participate. There were some students who raised their hand to answer any and every question I asked, and others who never made eye contact, let alone raised a hand or even an eyebrow. I experienced a little inner joy every time someone other than “the usual suspects” raised his or her hand, and I usually called on the fresh volunteer to reward that student for making the effort and to keep the class discussion infused with new voices and perspectives. Sometimes I followed the “volunteers first, victims second” method of choosing participants, selecting a student who hadn’t yet participated when no one was willing to answer the question. And, on occasion, I called on students who looked like they were daydreaming or likely IMing (typing while no one was talking), just to bring them back into the conversation they seemed to have checked out of.

At the end of the fall semester, the students’ course evaluations contained criticism that I played favorites (giving the “easy” questions to students the evaluators believed I liked) and picked on students (calling on people the evaluators supposed I didn’t like just for the purpose of making them look foolish). The student evaluations gave me far too much credit for being intentional in my choices; my assessment of the semester was that I had not been proactive in my choices. I had only been reactive, responding to the class participation options presented to me by the students.

In the spring semester, I changed my selection methods only slightly; for all the criticism the students had about how class participation was being managed, no one offered any alternatives.

One afternoon I was visiting my friend Max, a professional magician, and I saw some blank playing cards on his table. I asked him what they were for, and he explained a card trick where an audience member writes her name on one of the blank cards, puts it in the deck with the other standard playing cards, and later in the show her card is produced as the result of some other trick. And I said, “I wish I could magically produce a playing card with a student’s name on it to make them answer my questions . . . .”

Max said he could teach me how. But I declined, stating it had taken me a long time to learn how to be a lawyer, and I felt I was challenged enough learning how to be a professor that I didn’t also need to try to become a magician. But I thought of what magicians say as they fan a deck of cards in front of some audience member: pick a card . . . , any card.

I bought some decks of blank cards from Max and at the start of this school year, I wrote each of my new students’ names on a card. I again have two groups: one with 60 students and the other with 90 students. For my morning class, I have a deck with red backs (all 60 cards in one box), and for my afternoon class I have blue backs (split into two boxes with 45 cards in each). For the first two weeks of classes, I relied on the volunteer method of getting participation. However, I informed the students that I would soon change the method, after

people had time to see the pattern of questions and answers and understand what was expected.

At week three, I came to class with my decks of cards. As we went through some of the preliminaries and administrative things about class, I stood at the front of class, shuffling the deck. Rather than the common look of concern or angst on my students' faces, I saw curiosity and interest. I told the students we were going to discuss a particular case and to open their books. Finally, I walked into the "crowd" and approached a student, fanned the deck, face down, and said, "Pick a card, any card." The student selected a card, turned it over, and announced, surprised, a student's name. I told the selected student that he would be answering a few questions. And we went to work. After some time, I approached another student, fanned the deck, and gave the same instruction. The selected student answered a few questions, then I approached another student to draw another card, and finally another. Sometimes I asked "opinion" questions to the entire class, and allowed volunteers to contribute their thoughts to the discussion, to try to keep the entire class engaged.

After class I emailed the four students whose cards had been drawn and thanked them for their participation. I told them their cards would be kept out of the deck for the next class meeting, but that they were free to volunteer that day. Their cards would go back in the next the following class. One of the students emailed me back saying that he thought the cards were a great idea and that he would like the opportunity to draw a card at the next class, and repay the "favor" to someone else. Now I keep a running list of the students who have had their cards chosen and in the order in which they were drawn, they get to select the next card/participant.

Several fun and funny moments have come out of the cards. One day, a student whose card was drawn hollered across the room at the student who had drawn him, "Hey, I thought we were friends!" The other student responded, "Hey man, don't hate the player, hate the game." We all had a good laugh. And I was grateful that, it seemed, at least they didn't hate ME.

The next week, a student's card was drawn and the woman next to him blurted out, "I TOLD you!" as those around them giggled. Shocked at the disruption, I looked at her and she explained that earlier in the morning she had predicted that student's card would be drawn, and that she had accurately predicted another student's card would be drawn the class before. I now call her The Oracle of Blackmun (the name the school has for that section of students). At the next class, I told her that our card game was like pool: it only counts if you call your shot beforehand. I asked her to predict who would be drawn that day, and I told her that I had two passes to a local comedy club I would give her if she was right. I asked for four names and wrote them on the board. Then I told her that if she was wrong, those four students would be in a drawing and one of them would receive the tickets. That day, everyone was paying attention. But The Oracle was not accurate and one of her failed predictions received the tickets.

A student made a spoof video about midterm exams, and the cards got a humorous mention: <http://www.youtube.com/watch?v=oB0ucp1UciU>

A student came during office hours to review some material and he shared that he likes the deck of cards. He said that he prepared more thoroughly for Civil Procedure class than for his

other classes because in CivPro, he knew he was at risk of being called on every day, whereas in his other classes, professors mostly called on students who raised their hands and he could be less prepared and rely on the usual volunteers to answer all the questions.

I am pleased that the students seem to be enjoying this “game” a little bit, and that it might be encouraging better preparation for class. I am also satisfied that I am not perceived as being blame-worthy for the class participation; I cannot be said to be playing favorites or picking on anyone. It’s all in the luck of the draw.

Blank playing cards can be purchased at many online retailers, but also at [www.maxkrause.com](http://www.maxkrause.com) under “merchandise.”

### Editing: More than Just the Icing on the Cake



*By Shailini J. George<sup>13</sup>*

Since I began teaching legal writing eight years ago, I try to teach students to recognize the importance of good editing, and to view it as more than just the icing on the cake of their memoranda. I try, sometimes in vain, to get them to appreciate that readers might not even want to taste their cake if it’s not iced perfectly.

Typically, I lecture on the importance of editing, telling students that employers would make judgments about their legal skills based on what they viewed as minor “typos”: errors in format, spelling, punctuation and citation. Their heads would be nodding, or eyes rolling, as I told them something they found so obvious. Most of my students look at me as though I am from a bygone era, where people did not have spell check or proofreading programs and were forced to edit while walking uphill to school shoeless. They are confident in their ability to get it down right the first time. That is, until they receive a grade lower than what they expected or were used to, and read my comments, pointing out flaws in their analysis, misuse of words and commas, incorrect citation form, and more. Students would sometimes comment to me that what I as looking for was all there. So what if there were a few (in their eyes) small mistakes such as incorrect spelling, punctuation or citation? In essence, if they used all the right ingredients, did it matter if the cake wasn’t perfectly iced? In short, yes, it matters, and I’ve worked hard to get them to appreciate this.

Over the years, I have begun to develop editing exercises keeping in mind why students may arrive in law school without the necessary editing skills. Some experts believe that parents, teachers, and coaches have coddled the “millennials” currently in higher education. Students are regularly rewarded with a pat on the back just for trying, an “A” for putting words on paper, regardless of the quality of the words, or a trophy just for being on the team. I

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remember a number of years ago arriving home from a conference where this theory was discussed and promptly told my children that while there were certainly special to me, their mere existence did not, in and of itself, make them special in the grand scheme of things. Most of these millennial students arrive at law school never having been seriously critiqued or challenged, and struggle when asked to assess their own analysis or writing in depth.

Others suggest that “helicopter” parents have been editing or even writing for their children for years, robbing those children of the chance to learn to proofread or perfect their own writing. In fact, I know many parents who either write or edit their children’s college entrance essay. Still others believe that the focus on improving standardized test scores in middle and high school has taken time away from writing instruction, which is necessarily time consuming when done correctly. When there is talk about teacher security being tied to students’ ability to perform on these standardized tests, it is no surprise that writing may fall on the wayside.

Whatever the reason, the writing is on the wall: students need to learn to turn a critical eye to their own writing. They need to learn to follow a recipe to bake a perfect cake, let the cake cool and then frost it beautifully. That’s where these exercises come in.

Sometime after an assignment is handed in, I use class time to have the students practice the editing process. I hand them a clean copy of their own work (a small portion if it is a multi-page assignment or the whole thing if it was a quick turn around short assignment) to edit in class. The point is, they likely haven’t looked at it or considered it since they turned it in.

During class, I walk them through the stages of the editing process they should have performed themselves, one stage at a time, with a lot of direction. So, for example, I might ask them to identify the topic of a paragraph and note that in the margin. They would next consider the quality of their topic sentence (assuming they had one). If the paragraph were explaining law, they would evaluate whether they had chosen the best cases to explain that topic of law and explained it in the way a legal reader would expect.

After satisfying themselves with the substance, they would then read each sentence one at a time to consider whether it was constructed well. Had they chosen the right words to express the intended meaning? Was the punctuation correct? Were the sentences too long or too choppy? Was the citation perfect, down to every abbreviation and space? I emphasize that if they tried to edit for both substance and these technical issues at the same time, they likely would not do either well.

Each of these stages is discussed separately in class before moving on to the next stage to emphasize their ability to find very specific errors by narrowing the focus of their review. Inevitably, students will comment that they “can’t believe” they failed to see some of these errors before handing in the assignment. At that point, we discuss that they must find a way to edit with that fresh eye: as though they are seeing it for the first time. They have to let their cake cool before they frost it.

I have used versions of this exercise many times, sometimes having them work in groups, pairs, or individually to review different parts of their own writing projects. There are two major

benefits. First, students are able to self-critique more effectively and less defensively at this point than when they are in the midst of completing the assignment. Second, it prepares the students to receive my critique, again, more effectively and less defensively than they may otherwise have.

Of course, the key to editing in this fashion is finishing the assignment with enough time to allow stage-by-stage editing. That means finishing the “draft” early and then revising, revising and revising. Once students buy in to this idea, I have to make the point that the editing must end at some point, too. While one could continue editing forever (I’m sure if I looked back at this article, I would happily edit away), there is a point where an assignment must be done, a deadline met, or an article submitted. If it was edited well, it would be clear, concise, with no mistakes. That would be the icing on the cake.

### **Allied Learning Experiences: Multidisciplinary Internship Collaborations**

*By Ken Strutin<sup>14</sup>*

Law students are preparing to enter a legal environment that increasingly relies on the knowledge and resources of professionals outside the law. They will need to learn to work with and make the best use of paralegals, investigators, law librarians and support staff. In preparing litigation, they will inevitably have to consult with experts in science and other areas of forensics. Early exposure to professionals from other disciplines is an excellent way to round out a student's education before they embark on their legal careers. They can learn to interact with people who are working towards the same ends but using a different skill set and knowledge base. It will enlarge their view of the lawyer's role and their need to work cooperatively with non-lawyers and how to supervise their work to reach the best outcome for the client. One approach to this early alliance of professionals can be undertaken effectively through legal internship program placements.

The constellation of people who work within the legal field, but are not lawyers, continues to grow. And these professionals as part of their training are frequently involved in internships. Sometimes a law student intern might find herself working in an office that is also hosting a library or paralegal intern. Often their interaction is unplanned. Yet, when these parallel internship experiences are coordinated, the students' interplay can provide insights into each other's roles as professionals.

For example, the law intern is assigned a case that requires her to obtain certain state agency documents. She consults with the library student on the best approach to getting them. The latter investigates all possible sources for this particular government publication, some of which are totally unfamiliar to the law student, and determines that the document is solely in the possession of the issuing agency. The law student surmises it will be necessary to file a Freedom of Information request, and with the assistance of the library intern she will be able to make an intelligent application. Together, they can lay the ground work for litigation later on should the request be denied.

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The law student already has had exposure to working with experienced law school librarians; however, a novice librarian who finds herself interning in a law office is honing her skills. This peer-to-peer grouping of students from different schools allows them to cross-collaborate and educate each other in a safe environment--under the scrutiny of their internship supervisor.

A seemingly simple assignment, such as uncovering case records or investigating an expert witness, can quickly escalate into subpoenas, FOIL requests and discovery motions, as well as a broad range of non-legal research tools and techniques. The advantage of collaborative efforts in this kind of assignment helps educate these students about the limits of their knowledge and the benefits of different approaches to a problem. This scheme can be applied to broad swath of issues that a law intern might work on, such as: (1) background research on new scientific evidence—an intern from a library, medical or science program would be invaluable in conducting a literature search, uncovering information about an expert or scouring databases for retractions and contrary authority; (2) investigating a wrongful conviction case—journalism students and investigator trainees are ideal and law students would benefit from brainstorming techniques using legal and non-legal sources; and (3) analyzing evidence in a civil matter that involves business transactions and tax records—a business major or a computer science student, who might create a database or program to analyze large amounts of data, again would play an important role in viewing the issues from a non-legal vantage point. What might seem obvious to an accounting student or information science major will often fall outside the precincts of legal reasoning.

A large law firm or government office will usually be in the best position to serve host to interns from several disciplines at the same time, and then could foster this cross-collaboration conveniently. Nonetheless, the law school can facilitate these opportunities by outreach with nearby graduate schools in the appropriate disciplines. The internship coordinators from all the schools would have to network placements, but little else would be required. The schools' individual program requirements would not have to be changed, whether it mandated students to keep a log of hours, write a paper or do a semester length project. The work involved would fit into just about any situation. The only criterion for the non-law graduate schools is finding students interested in areas of work related to law, e.g., government documents, forensic accounting, legal journalism, etc.

The value of internships is to engage law students in real world cases. With a broadened view and cooperative placement sites, it might be possible to enlarge their experience working with novices from other disciplines. While this alliance of learning can be best implemented through existing internship programs, there might be avenues that can be created within clinic programs.

There is no shortage of cases where pro bono lawyers could benefit from the assistance of students in law, librarianship, accounting, forensics or a dozen other areas depending on the nature of the litigation. Frankly, many private lawyers might be encouraged to accept pro bono matters if they could be assured of receiving some kind of support. Post-conviction motions, civil rights complaints, and many other types of litigation where no right to counsel exists or legal

services organizations are overwhelmed provide fertile ground for finding the right kind of case. Existing law school clinic programs could apply their experience in handling such matters to the work of outside counsel recruited to handle pro bono matters or in conjunction with local bar association or court sponsored pro bono panels.

It has been my observation in supervising law student and non-law interns that when given the chance to work together, learners from different disciplines will embrace their budding professionalism and enrich their internship experiences.

### Logic And Legal Writing



*By Mark R. Strickland<sup>15</sup>*

This article promotes teaching deductive logic to law students as a tool for research and argument. While deductive logic certainly does not address every concern or solve every problem of the advocate, it is an effective tool for use towards those ends. The method described below not only confirms that you are right, it also explains why you are right.

For the past few years, I have used James A. Gardner, *Legal Argument: The Structure and Language of Effective Advocacy* (2007) as a required text in my advanced legal writing course. This text instructs students on a method of using categorical syllogisms to form legal arguments. My (albeit limited) knowledge also comes from Ruggero J. Aldisert, *Logic for Lawyers: A Guide to Clear Legal Thinking* (1997) and an undergraduate course in formal logic in which the required text was Patrick J. Hurley, *A Concise Introduction to Logic* (2008). (Judge Aldisert also co-wrote an article on logic, Ruggero J. Aldisert, et al., *Logic for Law Students: How to Think like a Lawyer*, 69 U. Pitt. L. Rev. 1 (2008)).

Teaching the practical application of formal deductive logic to law students will aid them in their efforts to read, comprehend, and apply the law. In particular, it will help them construct legal arguments and identify weaknesses in opposing arguments.

As set forth in the Hurley text, a categorical syllogism is composed of a major premise, a minor premise, and a conclusion; the premises drive the conclusion. The following example shows the structure of a categorical syllogism:

Major premise: [Quantifier] [major term or middle term] are [major term or middle term].  
Minor premise: [Quantifier] [minor term or middle term] are [minor term or middle term].  
Conclusion: [Quantifier] [minor term] are [major term].

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The major term appears in the major premise and is the predicate of the conclusion. The minor term appears in the minor premise and is the subject of the conclusion. The middle term appears in both premises, but does not appear in the conclusion. For example:

All humans are mortal.  
All lawyers are human.  
Therefore, all lawyers are mortal.

Students (and practicing attorneys) can use the categorical syllogism to construct legal arguments, such as:

All natural born citizens of the United States are eligible to be President of the United States.  
All persons born in Hawaii are natural born citizens of the United States.  
Therefore, all persons born in Hawaii are eligible to be President of the United States.

This example (and the ones that follow) excludes other requirements for the presidency, but illustrates the method nevertheless.

One could also employ other forms of logical calculus. Propositional logic would render something similar to the following argument:

If born in Hawaii, then a natural born citizen of the United States.  
If a natural born citizen of the United States, then eligible to be President of the United States.  
Therefore, if born in Hawaii, then eligible to be President of the United States.

Predicate logic expresses arguments using symbols in place of words. Such an argument would (probably) look like this:

$$Hb > Uc / Hb // Uc$$

In this equation, H = "Hawaii," b = "born," U = "United States," c = "natural born citizen," and > means "implies." Literally, the equation says: "Born in Hawaii implies natural born citizen of the United States; born in Hawaii; therefore, natural born citizen of the United States."

Professor Gardner applies syllogisms practically to construct legal arguments; Judge Aldisert does much the same. The theory behind the method is:

If this premise is true;  
And this premise is true;  
Then this conclusion MUST be true.

The major and minor premises drive the conclusion, and are "grounded" (supported) by either (1) sources of authority, such as law or facts from the record, or (2) subsequent syllogisms, similarly grounded. Professor Gardner's method is less formal and doctrinaire than the classic categorical syllogism, and is easier to work with. (In fact, his syllogisms resemble

the verbal statements of predicate calculus.) It is an excellent method for constructing a legal argument. The syllogism consists of three parts:

- The Major Premise (usually a statement or assertion of law) grounded by citation to authority;
- The Minor Premise (usually a statement or assertion of fact) grounded by evidence or facts from the record, or by subsequent syllogism; and
- The Conclusion which must follow if the major and minor premises are correct.

Without regard for absolute structural formality, one could construct the following argument:

Only a natural born citizen of the United States is eligible to be President of the United States. U.S. Const., Art. II, Sec. 1, para. 5.

Barack Obama is a natural born citizen of the United States. {Ground with a subsequent syllogism, namely, 4/5/6.}

Therefore, Barack Obama is eligible to be President of the United States. {This first conclusion, #3, should state the holding you need to prevail on the contested issue.}

A person is a natural born citizen of the United States if born in the United States. 8 U.S.C. 1401(a) & (e).

Barack Obama was born in the United States. {Ground with syllogism 7/8/9.}

Therefore, Barack Obama is a natural born citizen of the United States. {This is #2, above.}

A person is born in the United States if born in Hawaii. 8 U.S.C. 1405.

Barack Obama was born in Hawaii. Long form birth certificate. {This constitutes evidence from the record. This grounding effectively “closes the loop.”}

Therefore, Barack Obama was born in the United States. {This is #5, above.}

Again, the above example excludes other requirements for the presidency, but still illustrates the method. Also, one could ground #5 with the long form birth certificate and be finished, but syllogism 7/8/9 adds one more layer of strength to the argument.

To ensure validity, work backwards through the conclusions: Barack Obama was born in the United States (#9); therefore, he is a natural born citizen of the United States (#6); and, therefore, he is eligible to be President of the United States (#3). Ultimately, if the court believes #3, you win. There are other ways to construct this argument, of course, but this example works.

Deductive logic, as set forth in syllogisms, has its limits, especially when one needs inductive logic or public policy (or simple common sense) to resolve a legal issue. However, it is a useful research tool for students and lawyers alike. This method helps students organize the results of their research and construct a legal argument that is more likely to withstand scrutiny from both the court and opposing counsel. In addition, it illustrates not simply that you are right, but why you are right.

## Academic Success Does What?



By *Rebecca Flanagan*<sup>16</sup> (left) and *Louis Schulze*<sup>17</sup> (right)

Within the legal academy, most people know who their Academic Success (or Support, or Achievement) professionals are. But, perhaps not as many know what they do. Academic Success is an area that varies widely depending on the student population, the history of the school, and the philosophy of the law school administration. ASP can provide support through counseling, workshops, peer-based methods, or courses for students struggling academically; it can be a part of bar preparation; it can offer support for incoming students through orientation and workshops; it can offer courses and summer programs to students admitted through alternative admissions programs. A growing area for many ASPs is pipeline or undergraduate initiatives, with ASP faculty teaching pre-law students at their affiliated undergraduate university or through a summer program. Some ASPs provide all these services (and do so generally with programs requiring several professionals), and some provide only one or two of these services. A handful of faculty at every school know all of the services and opportunities offered to students through ASP, but few faculty know what ASP does to achieve success for students, or the mechanics of providing academic support to students.

### **1) Our focus is on teaching and learning in law school as an area of study, just like Contracts, Family Law, or Business Associations.**

There is a substantial and growing body of research on how to teach law students so they learn. Some of this research is empirical, such as the work of Leah Christenson, and some of it is based on the expertise of seasoned teachers with many years of training and experience. This is the area of study for ASP professionals. While the job requirements of ASP professionals may vary, as well as institutional support for research and writing, our area of expertise is learning about how law students learn. Many in ASP have advanced training in education (an informal study found close to 1/5 of ASP professionals hold advanced teaching or education degrees) and many more are self-taught experts in the area who regularly publish and present their research. In an increasingly competitive field, the standards for ASP professionals rise each year, and with it, the body of research on how to teach law students.

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<sup>16</sup> University of Connecticut School of Law

<sup>17</sup> New England Law

**2) We are a resource for all students.**

One of the most frequent misconceptions is that “ASP is just for \_\_\_\_\_ students” (fill-in-the-blank). ASP is not only a resource for struggling students, but for any type of student who wants to learn more from their reading and class discussions, learn how to work more efficiently, reach their personal best on exams through effective study techniques, and make connections between doctrinal classes, exams, legal writing, and preparation for the bar examination. A growing methodological tendency is to offer weekly classes for all 1L students on the “basics” of law school success. Some such classes report astounding levels of attendance despite their voluntary nature. One way in which ASP is quite different than doctrinal subject areas is that ASP is not “siloes”—we cut across all types of students, with all types of questions about learning and the law. As a resource for all students, we are also a resource for all faculty.

**3) ASP professionals are not tutoring your students.**

Some doctrinal faculty may be concerned about, and opposed to, ASP professionals tutoring their students. Nuances in doctrine and in emphasis are such that “re-teaching” the material could detrimentally impact students. The good news is this: the ASP community is strongly opposed to “tutoring” as a methodology. Instead, thanks to scholarship in the field, the general consensus is that we best serve students when we teach them how to teach themselves. As such, and seeking to foster “self-regulated learners,” the academic support cannon suggests that ASP professionals should help students diagnose and understand their weakness and strengths, assist with the development of strengths and improvement of weaknesses, and inculcate skills for the self-monitoring of improvement and success.

**4) There is no one method for delivering academic support to students.**

A logical corollary of the concepts discussed in Point Three is that diverse challenges require diverse solutions. Thus, the hope for a “one-size-fits-all” model of law school academic support was abandoned in the 1990s. The result is that ASP professionals must be prepared for and knowledgeable about a multitude of root-causes of underperformance. Often, a student’s self-disclosed academic problem is merely the overt symptom of a more challenging underlying cause. Therefore, in addition to competency in general legal education pedagogy, ASP professionals require training in counseling theory, educational psychology, crisis management, learning styles theory, positive psychology, and a whole host of additional background material. A solution that works for one student might actually be affirmatively detrimental to another, and ASP professionals must develop a keen sensitivity for appreciating the necessity of individualized academic support.

Just as the academic struggles of students may require multiple types of support, delivery of ASP services can come in a variety of packages. ASP is not “only” workshops, or one-on-one counseling. A comprehensive ASP includes courses (sometimes for-credit and graded) for students struggling with in-class learning, one-on-one counseling for students with unique issues or issues of a personal nature, and workshops on basic skills for large groups of students.

### 5) Beware the belief in the “ASP magic wand.”

Once a doctrinal faculty member or student is onboard with the project of academic support, there is a tendency to think that one quick trip to the office of the ASP professional will be an instant cure for whatever academic malaise may have befallen the wayward student. This simply is not so, and both students and referring faculty should understand that improvement takes time and effort. Usually, ASP pedagogy involves methods that require an initial determination of underlying causes, then a plan to redress those problems, followed by the long-term implementation and monitoring of the plan. Each of these stages may include initial missteps and recalculations, but a student willing to persevere through challenges ultimately will benefit from the process of becoming a “self-regulated learner” rather than one dependent on the instructor.

## In the News

Professor **Charles Calleros**, Arizona State University, has published an electronics Contracts casebook (pdf or Kindle compatible), through Carolina Academic Press, tailored to the needs of students and faculty in several ways. First, the book is available for permanent download at \$25/student, helping to combat the high cost of casebooks (Calleros is waiving royalties for his class). Second, the book is "open source" in the sense that Calleros invites other faculty to become co-authors by tailoring the text to their courses, favorite cases, and teaching styles, thus permitting the book to be used in optimal form in each class. Finally, the book presents material in the fashion in which new associates typically address an assignment in a law office: they (1) consult a secondary source or an expert within the firm for general background information and to identify issues and authority (Calleros's book provides treatise-style background information on most topics before diving into the main cases); (2) they then study specific decisions on point in the relevant jurisdiction (the book presents plenty of case law, as is customary with any "casebook"); and (3) they apply their newly synthesized knowledge of the law to the facts of a new dispute or other problem presented to them (it provides many more exercises and practice exams than the standard casebook, including a fair number of drafting exercises). The book thus includes the written equivalent of a combination of introductory lecture, case method, and problem method. Students can also print the book to create a loose-leaf version, allowing them to carry a chapter at a time in a small binder. For a pdf review copy, email Calleros at law.asu.edu.

“Let’s Use Forms for Teaching” authored by Assistant Professor **Jalae Ulicki** of Phoenix School of Law will be published in the Institute for Law Teaching and Learning’s fall issue of *The Law Teacher*. The article is a prelude to the forthcoming series of law review articles on “How to Use Forms Effectively for Teaching” currently in progress.

Professor **Olympia Duhart**, Shepard Broad Law Center at Nova Southeastern University, was a co-presenter with Professors **Gerald Hess**, **Michael Hunter Schwartz**, and **Sophie Sparrow** in March 2011 at the Salmon P. Chase College of Law at Northern Kentucky University for a one-day conference on “Course (Re)Design.” Co-sponsored by the Institute for Law Teaching and Learning, the conference offered participants the chance to design or redesign a course from start to finish. It included hands-on instruction on course objectives, teaching methods,

teaching materials and assessments tools. Professor Duhart also presented with Professor **Anthony Niedwiecki** in June 2011 at the Summer Conference of the Institute for Law Teaching and Learning at New York Law School. The two presented a workshop on “Self-Assessment, Metacognition and Portfolios.” In addition, Professor Duhart wrote an article about the teaching conference, *Teachers as Students, How to Make it Work*, for the blog of the Society of American Law Teachers. The post is available at: <http://www.saltlaw.org/blog/2011/06/11/teachers-as-students-how-to-make-it-work/>.

**Sarah Ricks**, Rutgers-Camden, published *Current Issues in Constitutional Litigation: A Context and Practice and Casebook* (Carolina Academic Press 2011) (724 pages), which employs a wide range of teaching methods that integrate the teaching of skills and doctrine. The companion website offers links to useful websites, videos, and other teaching material. The Teachers Manual is 444 pages and has sample exams, exercises, multiple choice questions, and teaching notes. Ricks also has a book chapter, Constitutional Research, to be included in *Federal Legal Research* (Suzanne Rowe, Editor, Carolina Academic Press, forthcoming 2011). She also has eight short pieces appearing in *Teaching the Law School Curriculum, Vol. 2* (Steven Friedland & Gerald Hess, editors, Carolina Academic Press 2011).

**Barbara Blumenfeld**, University of New Mexico Law School has published the following two pieces: *Legal Writing is a Creative Endeavor*, New Mexico Lawyer, Vol 6, No. 3 (August 2011) 8-11 and *Can Havruta Style Learning Be a Best Practice in Law School?*, 18 Willamette J. Int'l L. & Disp. Resol. 109 (2010). She also presented “Engaging Students With Havruta Style Learning” at the Institute for Law Teaching and Learning Summer Conference on Engaging and Assessing Students in June 2011. Materials available at <http://lawteaching.org/conferences/2011/handouts/2b-EngagingStudentswithHavruta.pdf>

In August 2011, New York Law School launched its new first-year skills program, Legal Practice, offering a comprehensive year-long introduction to lawyering skills, including legal research and writing, analytical reasoning, client interviewing, fact-gathering, negotiation, and counseling. The new Legal Practice Program faculty includes: **Jodi S. Balsam**, Associate Professor of Law, who joined NYLS after serving as an Acting Assistant Professor of Lawyering at New York University School of Law; **Melynda H. Barnhart**, Associate Professor of Law, who joined NYLS after serving as an Abraham Freedman Teaching Fellow at the Beasley School of Law at Temple University; **Heidi K. Brown**, Associate Professor of Law, who joined NYLS from the Chapman University School of Law faculty; **Kirk D. Burkhalter** '04, Associate Professor of Law, who joined NYLS from the Hofstra School of Law faculty; **David M. Epstein**, Associate Professor of Law, who has been a faculty member at NYLS since 1991 and was the Law School's research specialist.; **Mercer (“Monte”) Givhan**, Associate Professor of Law, who joined NYLS after teaching clinics for three years at CUNY Law School and Fordham Law School; **Anne Goldstein**, Professor of Law, and Director, Legal Practice Program, who joined NYLS from the University of Connecticut School of Law faculty; **Kim Hawkins**, Associate Professor of Law, who joined NYLS after serving as the Director of the Peter Cicchino Youth Project of the Urban Justice Center; **Cynara Hermes** '03, Associate Professor of Law, who joined NYLS after serving as an adjunct professor of law at St. John's University School of Law and as a fellow in the Ronald H. Brown Center; **Chaumtoli Huq**, Associate Professor of Law,

who joined NYLS after serving as Director of Litigation at Manhattan Legal Services and as an adjunct professor at City College of New York and Rutgers University; **Marcia Levy**, Professor of Law, who joined NYLS after serving most recently as Special Counsel for Pro Bono and Director of Professional Development at Sullivan & Cromwell LLP; **Lynnise E. Pantin**, Associate Professor of Law, who joined NYLS from Debevoise & Plimpton, LLP, and also serving as an adjunct instructor at Brooklyn Law School; **Lynn Boepple Su**, Associate Professor of Law, who joined the Legal Practice Program after serving for many years as Co-Director of the NYLS Writing Program; **Parisa Dehghani-Tafti**, Associate Professor of Law, who joined NYLS after serving as a staff attorney in the Special Litigation and Parole divisions at the Public Defender Service for the District of Columbia; **Daniel A. Warshawsky**, Associate Professor of Law, who joined NYLS after 15 years at the Office of the Appellate Defender (OAD); **Erika L. Wood**, Associate Professor of Law, who joined NYLS after serving as Deputy Director at the Brennan Center for Justice and as an adjunct clinical professor at New York University School of Law.

**Adrienne Brungess, Kathleen Friedrich, Maureen Moran, and Jeff Proske** presented at Pacific McGeorge School of Law's one-day *Essential Lawyering Skills* conference for law clerks and practitioners in May 2011.

**Adrienne Brungess** from Pacific McGeorge School of Law presented "Teaching Legal Research, Writing, and Negotiations Skills with Upper-Division Students" at the August 2011 Western Regional Legal Writing Conference and the September 2011 7th Biennial Central States Legal Writing Conference.

**Gretchen Franz** from Pacific McGeorge School presented "Inspire, Motivate, and Appreciate" at the March 2011 Rocky Mountain Legal Writing Conference.

**Maureen Moran** from Pacific McGeorge School had her article, *The Growing Legal Implications of Tasers: A Primer on the Development, Uses, and Consequences of Tasers*, published in the July 2011 issue of *AALL Spectrum*.

**Jenny Darlington-Person** from Pacific McGeorge School presented "Using Professionalism to Conquer the Fear of Public Speaking" at the August 2011 Western Regional Legal Writing Conference. She also presented "What Can the West Wing Teach Students about Using Negative Authority?" at the March 2011 Rocky Mountain Legal Writing Conference.

**Stephanie Thompson** from Pacific McGeorge School presented "Teaching Professional and Ethical Conduct in Lawyering Skills Courses" at the August 2011 Western Regional Legal Writing Conference.

**Pacific McGeorge** hosted the ALWD Conference: Leadership for the Second Wave in June 2011.

**William Slomanson**, Thomas Jefferson School of Law, published *Pouring Skills Content into Doctrinal Bottles*, 61 *Journal of Legal Education* \_\_ (2011). Online SSRN version & abstract: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1754629](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1754629)

Professor **Angela Mae Kupenda**, Mississippi College School of Law, and co-author **Dr. Michelle D. Deardorff**, Professor of Political Science, Jackson State University, recently had an article, *Negotiating Social Mobility and Critical Citizenship: Institutions at a Crossroads* selected for publication in a forthcoming special issue on race of the University of Florida Journal of Law and Public Policy. In the spring of 2012, the works will be featured in a panel discussion co-sponsored by the University of Florida Center for the Study of Race and Race Relations. Earlier drafts of their paper were presented at the 2011 American Political Science Association Teaching and Learning Conference, Albuquerque, New Mexico, in February 2011, and at the Southwest/Southeast/Midwest People of Color Legal Scholarship Conference, Fort Lauderdale, Florida, in April 2011. The co-authors also participated as scholarship writing coaches at the 2011 summer writing retreats of JSUAdvance, a grant funded by the National Science Foundation to improve the climate for the advancement of women at historically black colleges and universities.

**Constance Fain**, Earl Carl Professor of Law at Texas Southern University Thurgood Marshall School of Law, published *A Methodology for Teaching Constitutional Law*, 21 Seattle University Law Review 807 (1998). Professor Fain has been teaching constitutional law for many years and says her method shows “good results.”

**Sandra L. Simpson**, Gonzaga University Law School, has an article on rubric creation and usage, titled “*Riding the Carousel: Making Assessment a Learning Loop through the Continuous Use of Grading Rubrics*,” appearing in the 2011 edition of the Canadian Legal Education Annual Review, a peer edited journal.

**Deborah J. Merritt** and **Ric Simmons**, both from The Ohio State University Moritz College of Law, have just finished the second edition of their “uncasebook” on evidence. The book, called *Learning Evidence*, teaches evidence through examples, rule explanations, trial transcripts, and other methods. It has no judicial opinions! The teacher’s manual and website offer lots of in-class problems and simulations, as well as writing exercises and other pedagogic tools. Since publishing the first edition in late 2008, Professors Merritt and Simmons have gotten lots of positive feedback from students and teachers about this uncasedbook method. West Publishing has started a new series, the “Learning Series,” that uses this template. Professor Merritt says, “In addition to helping students master evidence, we hope that the book will help professors in other subjects envision innovative ways to teach basic law school courses.” Professors interested in their approach can find materials at [merrittevidence.com](http://merrittevidence.com).

**Mark Osbeck**, University of Michigan, has published *What is “Good legal Writing” and Why Does it Matter*, 4 Drexel L. Rev. \_\_\_\_ (Spring 2012) (forthcoming). The SSRN link is <http://ssrn.com/abstract=1932902>. The article, which stems from one of the annual LWI grants, explores the theoretical underpinnings of legal writing and what it is that legal readers value in writing.

**Andi Curcio**, Georgia State University School of Law, and **Carol S. Sargent** and I have a forthcoming article in the Feb. 2012 Journal of Legal Education that discusses a study the two did on whether formative assessments, combined with self-reflective exercises, had an impact on students’ final exam performance. The short answer is that the formative assessments and

accompanying self-reflective exercises made a significant difference for two-thirds of the students on a short answer/short essay final evidence exam. The paper, *Empirical Evidence that Formative Assessments Improve Law Students' Final Exam Performance* is available on SSRN at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1939964](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1939964).

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