

Perspectives

Teaching Legal Research and Writing

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This Article advocates for embracing pathos as an integral component of teaching and contributing to students' development as lawyers and offers concrete ways to infuse pathos into the legal research and writing classroom. The Authors use the term "pathos" in a broad sense to refer to engaging more compassionately and emotionally with students, recognizing the fullness of the student experience, and responding to students from a place of empathy.

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We pursued scholarship in less-traveled paths and then infused the material into our respective LRW classrooms. Ultimately, we gained a wider understanding of the legal profession and experienced a broader sense of purpose.

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This Article touches upon some of the features that the Author found makes Canvas the superior LMS to TWEN for teaching legal research and writing courses and has turned the Author into a wholly committed Canvas user.

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Perspectives: Teaching Legal Research and Writing is published in the fall and spring of each year by Thomson Reuters.

Why Write for *Perspectives*?

Perspectives is for anyone who teaches legal research or legal writing, broadly defined to include the first-year and advanced LRW courses, transactional drafting courses, academic support methodologies, and courses on the American Legal system for international lawyers—in law schools, libraries, courts, and law offices. *Perspectives* articles are short, readable, and explore a broad array of teaching theories, techniques, and tools. The idea can be large or small but if it provides a fresh and creative way to teach or learn about legal research or legal writing skills, *Perspectives* editors would like to publish it. Writing for *Perspectives* allows you to add to your resume and get published quickly while reaching the people who share your passion for this area of the law.

Perspectives appears twice yearly. Most articles average between 4,000 and 7,000 words and are lightly footnoted and highly readable. They may focus on curricular design, goals, teaching methods, assessments, etc.

[Author Guidelines](#)

In Our Next Issue

The next issue will be published in 2023, as volume 30, issue 1. If you have ideas about how to teach either legal writing, broadly defined to include most types of law school writing, or legal research, broadly defined to include both introductory and advanced classes, please consider turning those ideas into an article for *Perspectives* that can be shared with our readers.

Published by Thomson Reuters as a service to the legal community.

From the Editor in Chief

By Judith A. Rosenbaum

Professor Judith A. Rosenbaum is a Clinical Professor of Law at Northwestern University Pritzker School of Law.

This is my last column as Editor in Chief. My term ended in May. It has been both a pleasure and an honor to serve this publication and its authors and reader and to guide it through the challenges of the pandemic. *Perspectives* is now in the capable hands of its new Editor in Chief Robin Boyle-Laisure. Robin has been the Assistant Editor in Chief during my term as Editor in Chief and has and has walked with me through every step of the editing and publishing process. I know the transition will be seamless.

I would like to thank our extraordinary Editorial Board members for their diligence and service during my term: Brooke J. Bowman, Professor of Law and Director, Moot Court Board at Stetson University College of Law; Robin Boyle-Laisure, Professor of Legal Writing at St. John's University School of Law; Nicole Downing, Clinical Associate Professor of Law and Head of Reference Services at the University of North Carolina School of Law; Catherine M. Dunn, Associate Dean of Law Library and Information Science & Professor of the Practice of Law at the University of Denver Sturm College of Law; Jonathan Franklin, Associate Dean for Library and Information Systems at the University of Washington School of Law; Jessica Hynes, Assistant Professor of Legal Skills at Quinnipiac University School of Law; Joe Regalia, Associate Professor of Law at the William S. Boyd School of Law, University of Nevada, Las Vegas; and Michael Whiteman, Associate Dean of Library Services and Director of the Robert S. Marx Law Library at the University of Cincinnati College of Law. As this list shows, *Perspectives* is a unique publication in the

legal research and writing field because its Editorial Board is composed of LRW faculty law librarians. This year is our 30th anniversary and we are hoping *Perspectives* continues strong for another 30 years.

I would also like to add a special thank you to Catherine Dunn, who rotated off the Board this past May. Before I became Editor in Chief, I served on a review team with Catherine. With every article our team reviewed, Catherine's perspective as a law librarian was a little different than mine from the field of Legal Writing and I always learned something unique from her about the topic of the articles and the ways that our law librarian readers might see those articles.

As mentioned, Robin Boyle-Laisure is now the Editor in Chief of *Perspectives*. Nicole Downing is the new Assistant Editor in Chief, working with Robin to produce each issue. Our amazing Managing Editor Brooke Bowman has graciously agreed to serve another term in that position. During my time on the Board, Brooke has really been the engine that has kept *Perspectives* chugging along, and I am thrilled that she will continue to serve in that capacity. We also welcome one new Editorial Board member, Shannon Roddy, Student Services Librarian and Adjunct Professor at American University Washington College of Law. I will return to the Editorial Board, resuming my role as a member of one of the teams reviewing submitted articles.

Finally, I want to thank all of you—our subscribers, readers, and authors—for your interest in and loyalty to *Perspectives*. Quite simply, the enthusiastic participation of our audience and authors is our *raison d'être*. Happy reading.

“Finally, I want to thank all of you—our subscribers, readers, and authors—for your interest in and loyalty to *Perspectives*.”

Cite as: Karin Mika, *Obergefell v. Hodges—and the Use of Oral Argument and Storytelling to Reinforce Competencies in the Legal Writing Classroom*, 29 PERSP. 36 (2022).

Obergefell v. Hodges—and the Use of Oral Argument and Storytelling to Reinforce Competencies in the Legal Writing Classroom

By Karin Mika

Karin Mika is a Senior Professor of Legal Writing and Research at the Cleveland-Marshall College of Law.

Student engagement is always an issue in the legal writing classroom. Most of the first semester is spent teaching the basics of legal analysis, as well as the structure of legal writing (along with research and citation).¹ Consequently, the level of discourse one is able to have in the classroom is often frustrating. Students come in with great passion, but legal writing professors often must diminish that passion in favor of teaching students how to look at cases from both sides, anticipate opposing arguments, and structure writing in an extremely technical way that is often unfamiliar to first-year students.² This writing often reads mechanically, and students respond by regarding legal writing as mechanical rather than as a vehicle for advocacy.³

All of us aspire to construct fact patterns that engage students in the art of legal writing and that evoke passion. However, we must often trade that aspiration for fact patterns that evoke competency skills in legal writing.⁴ This often means that we will assign straightforward fact situations with distinct elements (such as a tort or a basic criminal law statute).⁵ We will often assign research that enables the

student to find very concrete answers, or cases that have very limited issues with a very clear application of the law. Our object is, for the most part, to teach students how to use specific research tools and to construct cogent legal analysis rather than to strategize about how to advocate for a particular client through the research process or the written presentation.⁶

The second semester brings the opportunity to get into some of the weightier issues, but by that time, legal writing professors are often confronted with two realities: First, students have often become too literal in learning legal structure. They have often gone from thinking about cases in terms of what they feel to thinking only about finding the “right” cases to plug into a sequence of paragraphs we have taught them. Students tend to stop thinking about the law as being about people seeking justice, and instead start thinking about it as precedent and how it fits into the structure of legal analysis. A second reality that legal writing professors confront is that we begin to run out of time to bring the course full circle—to teach the students how the structure of legal analysis is used to develop or change law for a more humane society.

Jim Obergefell’s case and the quest to legalize same-sex marriage presents an opportunity to engage the students on various levels while also reinforcing the skills they learn throughout the first year. Most students entering law school today do not give same-sex relationships a second thought, and many are unaware that the right for same sex couples to marry is relatively new.⁷ Most do not appreciate the legal background of *Obergefell* and how it reached the highest court

1 Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 98–99 (1994).

2 Miriam E. Felsenberg & Laura P. Graham, *Beginning Legal Writers in Their Own Words: Why the First Weeks of Legal Writing Are So Tough and What We Can Do About It*, 19 LEGAL WRITING 223, 258–60 (2010).

3 Andrea McArdle, *Teaching Writing in Clinical, Lawyering, and Legal Writing Courses: Negotiating Professional and Personal Voice*, 12 CLINICAL L. REV. 501, 502–03 (2006).

4 Shelley Kierstead & Erika Abner, *Textwork as Identity Work for Legal Writers: How Writing Texts Contribute to the Construction of a Professional Identity*, 9 LEGAL COMM’N & RHETORIC 327, 332–35 (2012).

5 Suzanne Rowe, *Gaining Lawyering Skills: Legal Research, Legal Writing, Legal Analysis: Putting Law School into Practice*, 29 STETSON L. REV. 1193, 1202 (2010); see also Lucia Ann Silecchia, *Designing and Teaching Advanced Legal Research and Writing Courses*, 33 DUQ. L. REV. 203, 229 n.81 (1995).

6 See Sherri L. Keene, *Are We There Yet? Aligning the Expectations and Realities of Gaining Competency in Legal Writing*, 53 DUQ. L. REV. 99, 100–01 (2015).

7 *Obergefell* was decided on June 26, 2015.

“All of us aspire to construct fact patterns that engage students in the art of legal writing and that evoke passion.”

because of the conflict between federalism and states' rights.⁸ Most students do not appreciate the level of advocacy necessary to have achieved the milestone, and most are unaware of an integral part—the stories, and especially Jim Obergefell's story—that brought all of the legal components together.⁹

Various materials related to the *Obergefell* case are available to better assist students in understanding quality advocacy. Many of these are traditional materials. There are close to 400 filings available for students to see, including numerous amicus briefs filed on behalf of both parties. Nonetheless, there are also two nonstandard sources that can connect the students to the bigger picture.

The first is not so much a nonstandard source, but is material not frequently used in our first year advocacy courses. It is using the Obergefell oral argument before the Supreme Court, part of which students can listen to using Oyez database.^{10 11} The second source is the personal story of Jim Obergefell as told on *The Moth Radio Hour* podcast.¹²

The Oyez database dates back to 1955 and includes recorded oral arguments from the Supreme Court. It includes information about the justices, the cases, and the breakdown of who sided with

whom in an opinion. As the recording of the arguments plays, the site provides a rolling transcript and highlights which justices are speaking.

The Supreme Court arguments not only provide a primer for how to do oral argument, but they also provide another research tool for students to access. By listening to the advocates talk about the cases they have researched, the students are better able to understand how their research translates into the arguments they are trying to make rather than being a class exercise about finding the “right” cases. The arguments also provide an opportunity to hear about how the advocates use cases in ways students might not have considered. The arguments also allow students to understand how justices view the nature of the case and the questions they would like the advocates to address.

But the *Obergefell* oral argument presents an even greater opportunity to understand the intertwined nature of the law and see the application of the skills learned throughout the year. The case itself was about changing a culture that had been the norm since the creation of the country. That culture was then consistently solidified and maintained as the legal norm. The advocates on behalf of change needed something more than cases that supported them; in fact, other than the decision in *Windsor* in 2013, no case law supported the advocates seeking change.

By listening to the oral argument, students can understand the passion that the attorneys for the petitioners brought to the matter, and how that passion was used to explain why, legally, the prohibition against same-sex marriage could not be maintained. By comparing what the petitioners' counsel argues with what the respondents' counsel argues, the students can begin to judge for themselves what distinguishes an argument that is both believable and well-supported from one that is flawed both legally and practically. The students are better able to see how all the pieces of their own learning can and should ultimately come together.

The second nonstandard tool available to learn about the backdrop of the *Obergefell* case is through Jim Obergefell's own story, which he published

“But the *Obergefell* oral argument presents an even greater opportunity to understand the intertwined nature of the law and see the application of the skills learned throughout the year.”

⁸ Congress enacted the Defense of Marriage Act (DOMA) in 1996 (1 U.S.C. § 7), which provided,

In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word “marriage” means only a legal union between one man and one woman as husband and wife, and the word “spouse” refers only to a person of the opposite sex who is a husband or a wife.

The Defense of Marriage Act was passed in response to the trend of various states to allow for same-sex marriage while other states did not. It enabled states that did not recognize same-sex unions to discriminate against those legally married elsewhere.

⁹ Elizabeth Windsor's story is also compelling and led to the decision in *United States v. Windsor*, 570 U.S. 744 (2013), which invalidated one portion of the Defense Against Marriage Act. Windsor and her spouse (Thea Spyer) married in Canada and lived in New York. *Id.* at 749-50. The litigation arose when Spyer passed away, and Windsor attempted to claim the federal estate tax exemption for surviving spouses; however, she was barred from doing by the Defense of Marriage Act. *Id.* at 750-51. *Windsor* set the stage for the complete invalidation of DOMA.

¹⁰ The Oyez database is located at <https://www.oyez.org/>.

¹¹ The *Obergefell* case is located at <https://www.oyez.org/cases/2014/14-556>.

¹² Jim Obergefell, *Love Wins*, THE MOTHS (2018), <https://themoth.org/stories/love-wins>.

on *The Moth Radio Hour* in 2018.¹³ The story is an emotional one, in which Obergefell explains what brought him to court in the first place. He describes the procedural aspects of the case from a layperson's perspective and how the law as it stood had very real-life consequences for his own life. Obergefell's story is the linchpin for bringing everything full circle—it enables students to return to their original mindset and should reinforce the reasons they came to law school in the first place. Both the oral argument and the background story in Obergefell's own words put all the pieces in place—how the law is constructed, and what must be achieved through advocacy to move society toward justice and equality.

Legal writing professors struggle with trying to balance learning skills with the bigger picture of learning that law is ultimately about having the power to change lives. Often, learning the skills becomes completely separated from the human aspect of the law. Although we all work toward unifying the two concepts, it is not always done by having discussions about the bigger issues, or even having the students look at more traditional sources such as briefs or even law review articles. Oyez and the oral tradition of storytelling presented by radio (or other similar resources) have the potential of more fully connecting students to their passion while also enabling them to see the bigger picture of legal structure and legal argument. The case of Jim Obergefell in particular provides the opportunity to access resources that help students understand how the various aspects of what we teach in Legal Writing connect together.

“Both the oral argument and the background story in Obergefell's own words put all the pieces in place—how the law is constructed, and what must be achieved through advocacy to move society toward justice and equality.”

¹³ *Id.*

Cite as: Steven Johansen, “And Then My Brain Falls Out”: Rethinking How I Teach Oral Advocacy, 29 PERSPS. 39 (2022).

“And Then My Brain Falls Out”: Rethinking How I Teach Oral Advocacy

By Steven Johansen

Steven Johansen is a Professor and Director of Lawyering at Lewis and Clark Law School.

Several years ago, I had a student, let’s call her Maggie, who was terrified of our upcoming oral argument event. In one sense, this was surprising, because she was a brilliant writer and student. But she was very quiet and rarely spoke in class unless called upon. You probably have had students like this—great students, but really frightened by public speaking. And so I agreed to work with her. We would practice. A lot. She got to where she could get to, “May it please the court,” but it was a real challenge after that. She would stumble to find the words. She seemed unable to answer to questions that were cogently answered in her brief. As she explained, “Before we practice, I go over all the arguments, plan everything I’m going to say, feel ready to do this. And then I stand up and my brain falls out.” As the big night approached, she was still struggling. Finally I told her, “Look, you know this stuff better than anyone in the class. You can do this. But you also don’t ever have to go to court again. This is 15 minutes. The judges will be very understanding if you struggle. Just get through it and the rest of your career is going to be just fine.” Imagine my surprise when, at the end of the night, the judges announced the Best Oralist—and it was Maggie!

I would like to think that all the practice and extra help that I offered her paid off. But the more I thought about it, the more I became convinced that Maggie succeeded despite my efforts, not because of them. This led me to reconsider my understanding of oral advocacy and how I teach it. I abandoned my prior emphasis on the performative aspects of oral advocacy—what I call the “Toastmaster skills” to focus almost exclusively on the substance of argument. I started by thinking about the essential skills of oral advocacy and then designing lessons to develop those skills. This reflection led me to simplify how I teach oral advocacy. This essay suggests that there are only two rules of oral advocacy and

offers a few specific in-class exercises to help students keep their brains from falling out when they stand up.

The Only Two Rules of Oral Advocacy.

There is a rich catalogue of scholarship on legal oral advocacy that offers a wealth of information about its history and valuable advice on many details of contemporary practices.¹ These resources are thoughtful, well-researched, and provide many concrete and detailed suggestions for improving one’s oral advocacy skills. However, in the end, there are only two rules of good oral advocacy, and if an advocate does those two things well, everything else will take care of itself. Those two rules are:

1. Know your stuff; and
2. Help your audience.

That’s all there is.

Of course, rules as broadly stated as these are not self-executing. They require a bit more explanation. Let’s start with what we mean by “knowing your stuff.”

1. Knowing Your Stuff: The Three Storylines of Every Legal Dispute.

It is not news to anyone that to be an effective advocate, one must thoroughly understand the case at issue. Thus, “know your stuff” is

¹ See, e.g., Louis J. Sirico, Jr., *A Proposal for Improving Argument Before the United States Supreme Court*, 42 PEPP. L. REV. 195 (2015); Stephanie A. Vaughn, *Experiential Learning: Moving Forward in Teaching Oral Advocacy Skills By Looking Back At the Origins of Rhetoric*, 59 S. TX. L. REV. 121 (2017); Susie Salmon, *Reconstructing the Voice of Authority*, 51 AKRON L. REV. 143 (2017); Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C. L. REV. 567 (1999); John G. Roberts, Jr., *Oral Advocacy and the Re-emergence of a Supreme Court Bar*, 30 J. SUP. CT. HIST. 68 (2005); Michael Vitiello, *Teaching Oral Advocacy: Creating More Opportunities for an Essential Skill*, 45 SETON HALL L. REV. 1031 (2015); Joy Kanwar, *Avatars, Acting, and Imagination: Bringing New Techniques into the Legal Classroom*, 43 J. LEGAL PROFESSION 1 (2018); Mark R. Kravitz, *Written and Oral Persuasion in the United States Courts: A District Judge’s Perspective on Their History, Function, and Future*, 10 J. APP. PRAC. & PROCESS 247 (2009).

“However, in the end, there are only two rules of good advocacy, and if an advocate does those two things well, everything else will take care of itself.”

“To help students understand just what it is that they need to understand, I frame the ‘stuff’ of a case in terms of storytelling.”

hardly a revolutionary concept.² But I’ve found students often don’t know what “stuff” they need to know, at least not in sufficient detail to be a good advocate. Of course, understanding the case is also necessary in written advocacy, but long before they concern themselves about oral advocacy, students need to have a thorough understanding of just what stuff they need to know.

To help students understand just what it is that they need to understand, I frame the “stuff” of a case in terms of storytelling. This is important because, as a form of persuasion, we know that oral advocacy, like all advocacy, is about telling the right story. So what stories do we need to know? There are three storylines for every lawsuit.

The three storylines in every lawsuit are the story of the parties, the story of the law, and the story of the lawsuit itself.³ Each story has a different hero, a different conflict, and a different goal. Often, the resolution of the legal dispute depends on the intersection of two, or even all three, of these storylines. So, as an oral advocate, we need to know the details of all three storylines.

First, the story of the parties: this is what most students think of when we talk about legal storytelling. It’s the facts that led to the dispute—who did what to whom?⁴ In a lawsuit, that story lies in the record. And the hero is (almost always) our client.

The story of the law is different. It’s the story of the legal rules, standards, and policies that govern the specific dispute arising in the story of the parties.⁵ Obviously, we need to know what the law is. But we also need to think about the story

behind the law. The heroes of the story of the law are the lawmakers—the legislature in the case of statutes, judges in the case of the common law. Lawmakers have a goal when they create law—to overcome a perceived problem so that society is a better place. Laws are not abstractions; they are the specific vehicles that lawmakers use to solve future problems. When we think about the hero of the story of the law, it becomes natural to connect the express terms of the law with the underlying policy. And that makes the legal argument both more memorable and more compelling. Understanding what problem a legislature was trying to solve, and what solution it created to solve that problem, deepens our understanding of the lawmakers’ purpose and, consequently, the scope of the law.

Finally, there is the story of the lawsuit—the procedural story that led this litigation to this court and to this specific point in the litigation.⁶ If a student is going to overlook one of the three storylines in a lawsuit, it is probably this one. Students often struggle to understand, or even consider, concepts like preservation of error, admissibility of evidence, and the standard of review. But a person’s substantive rights are only as good as her procedural rights. Thus, it is critical for students to understand the potential procedural issues, even when they are writing solely on a substantive issue.

To know our stuff is to know all three storylines: the record, the applicable law, and the procedural posture. Developing that breadth of knowledge takes some time and guidance. Much of that development will come in the process of creating the written advocacy. However, the development continues once we focus the students’ attention toward oral advocacy.

2. Help Your Audience: Oral Advocates as Officers of the Court.

An oral argument is not for the advocate. It is for the court. A good way to think about oral argument is to remember that lawyers are always both advocates for their clients and officers of the court.⁷ Sometimes those roles conflict, but they

² See e.g., SAMUEL R. MAIZEL & JESSICA D. GABEL, *ABI’S BANKRUPTCY APPEALS MANUAL: WINNING YOUR BANKRUPTCY APPEAL* 141 (2d ed. 2010) [<https://perma.cc/QJ3B-5SXT>] (“Nothing is more undermining to an oral argument than an inability to be able to deal with the facts of the case in response to a question”); Vaughan, *supra* note 1, at 138–139 (explaining that advocates must know the record and relevant cases to be effectively flexible in responding to questions from the court.)

³ RUTH ANNE ROBBINS ET AL., *YOUR CLIENT’S STORY* 61 (2d ed. 2019)

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See MODEL R. PROF’L CONDUCT 3.3, cmt. 2 (AM. BAR. ASS’N 2021).

are both always present. In written advocacy, the role of the advocate is primary. We are compelled to argue zealously on our clients' behalf, limited only by our ethical and professional guardrails and our sense of effective persuasion.

In oral argument though, our role as an officer of the court dominates. This is so for a couple of reasons. To begin with, oral advocacy is not a beginning. Most oral advocacy, whether on a trial court motion or an issue on appeal, is preceded by written advocacy. Before oral advocacy begins, the court already has the benefit of our written brief. Before we ever enter the courtroom, the court knows the facts, understands the issues and the procedural posture, and most likely is already leaning in favor of one side or the other. Once we get to this point, most of the advocacy may be done.

Our role as officers of the court dominates oral advocacy because of the very purpose of oral advocacy. An oral argument is primarily a chance to clarify any uncertainties the court may have about the three storylines addressed in our written advocacy. While this process may not change the court's decision, it will often shape the court's opinion.⁸ And more importantly, if the court has misconstrued the facts or how the law applies to those facts, oral argument allows us to correct those errors to ensure the court reaches the correct result. We offer oral argument as an aid to the court. This is our chance to help the court understand how the three storylines fit together, to explain the nuance that might not come through on the written page. Of course, we don't abandon our advocacy, but we should approach oral argument as primarily an opportunity to assist the court. It is our chance to share our expertise with the court to ensure that it fully and correctly understands the facts, the law, and the procedural posture of the case so that it will reach the correct result and our client will prevail.

The very nature of an oral argument reflects its primary purpose of helping the court. We all know that an oral argument isn't an argument at all. Neither

is it a presentation. Rather it is a conversation between the advocate and the court.⁹ Admittedly, part of an oral argument is a "presentation" in the sense that the advocate usually gets to present his ideas until the court starts asking questions—then the presentation stops and the conversation begins. However, that "presentation" is surprisingly short. For example, in the 2019-20 U.S. Supreme Court term, advocates spoke for an average of 57 seconds before getting their first question, and then the conversation began. This conversation is somewhat peculiar in that one party is only asking questions and the other party is answering them, but that's the point: the court asks questions because it wants the advocate to fill in the gaps the court sees in her written advocacy. The question and answer design of oral arguments reveals its primary purpose is to help the court better understand the case.

There may be an additional benefit to approaching oral advocacy as an opportunity to help the court. Some experts posit that fear of public speaking is lessened when the speaker perceives herself as helping the listener.¹⁰ Sarah Gershman posits that when speakers turn their focus away from themselves and toward helping their listeners, they decrease their amygdala activity, leading the speakers to feel calmer and less stressed.¹¹ Thus, perceiving our role as primarily officers of the court may lessen the fear of public speaking that besets so many of our students.

Because oral advocacy consists of having a conversation that helps the court rather than merely displaying one's flair for presentation, as we prepare our students for oral advocacy, we should develop their conversation skills and worry far less about their acting chops. Part Three provides some techniques I have used to shift my students' training away from presentation skills and toward effective conversation practice.

“Because oral advocacy consists of having a conversation that helps the court rather than merely displaying one's flair for presentation, as we prepare our students for oral advocacy, we should develop their conversation skills and worry far less about their acting chops.”

⁹ ROBBINS ET AL., *supra* note 3, at 425–26.

¹⁰ Sarah Gershman, *To Overcome Your Fear of Speaking, Stop Thinking About Yourself*, HARV. BUS. REV. (Sept. 17, 2019), <https://hbr.org/2019/09/to-overcome-your-fear-of-public-speaking-stop-thinking-about-yourself>.

¹¹ *Id.*

⁸ Although, oral argument may cause a court to change its mind more often than we think. See Sirico, *supra* note 1, at 213–15.

“But there is a difference between what students do in class and what they will do in court.”

3. Helping Students Master the Art of Legal Conversation.

I share the two rules of oral advocacy (know your stuff; help the court) with my students at the very beginning of our second semester, even though they will not be doing actual oral arguments until the end of the course. I do this in part to reassure them that they can and will succeed in oral advocacy. But I also introduce these basics of oral advocacy early on because we will spend the entire semester practicing our oral advocacy, i.e. our conversational skills. We begin with one of aspect of legal conversation that differs from other conversations—standing up.

A. All Courts Require Standing.

As noted above, the oral argument conversation is peculiar in that it consists primarily of the court asking questions and the advocate answering them. This is not the way most conversations happen in real life. But by the second semester of law school, students are very familiar with this kind of conversation. Their casebook professors call it the Socratic method and students practice it every day. But there is a difference between what students do in class and what they will do in court. In class, students respond from the comfort of their seat. In court, advocates engage in the Socratic dialogue while standing on their feet. As my student Maggie noted, for those of us with little practice in speaking on our feet, the very act of standing seems to freeze our ability to think clearly.

Fortunately, the fear and anxiety that comes with trying to stand and talk at the same time can be overcome, or at least lessened, with practice. So, on our first day of class, I inform my students that we will practice this skill. Every day in class, the first time a student speaks, he must first stand up, introduce himself to the “court” (“May it please the court, my name is...”), and then proceed with whatever he wishes to say. Every additional time the student speaks that day, he can dispense with the introduction but must stand up before speaking.

I introduce this new rule in a light-hearted way and explain that this is practice for when we do our oral arguments at the end of the semester. At first, students stumble a bit over introducing themselves, and some need a gentle reminder

to stand. But very quickly students adapt to the standing rule and, over the course of the semester, become better at thinking on their feet.

B. Stand; Talk; Repeat.

As the semester progresses and students start working on their appellate briefs, we incorporate another exercise that requires them to get on their feet: the Standing Conversation.

To help students become more adept at thinking on their feet, and to actually understand all the potential aspects of their case, I have students practice by doing Standing Conversation exercises throughout the semester. At least four or five times throughout the semester I put students in pairs or small groups and give them a prompt to discuss. Early in the semester, the prompt might be something fairly simple: “The result in Case A favors the plaintiff; the result in Case B favors the defendant. Reconcile these cases and create a rule explanation that favors your client.” I then have each group of students have a standing conversation about the prompt. For a few minutes, the class turns into a cocktail party,¹² humming with conversation punctuated by occasional laughter or howls of protest. After the Standing Conversations, if times allows, we will debrief about what we learned or I will have students write a short reflection on the experience.

Later in the semester, students will have a better understanding of the law, but often their understanding of the opposing side is fairly weak. At that point, I might give them the prompt, “Explain your opponent’s strongest argument and why that argument will not carry the day.” Near the end of the semester, when we are directly preparing for Oral Argument, I will assign them to bring to class three questions that they hope the court will ask them and two questions that they hope the court will not ask them. Once in class, we will do a Standing Conversation about the two questions they hope they don’t get asked.

For some conversations, students will talk with students on the same side of the issue. For others, they will converse with students on the opposite side.

¹² Well, without the cocktails.

Sometimes the exercise will last five minutes, other times as long as fifteen minutes. On occasion, usually toward the end of the semester, they will have the conversation off-brief—addressing the problem from their opponent’s perspective. Often, the discussion will go in a different direction than suggested by the prompt. But always, students must converse standing up and always, they have to talk about the problem. This never gets old. With each Standing Conversation, students are exposed to ideas about the problem they hadn’t considered, become more adept at connecting unanticipated questions to the theory of their case, and get more comfortable thinking on their feet. Each time students practice standing conversations in class, they become better prepared for when they have those conversations for real.

There are additional benefits to these exercises. For example, because these exercises are short, we can do several throughout the semester. Short frequent opportunities for public speaking increases student confidence in their own speaking skills.¹³ Furthermore, students discover that some ideas that seem great on paper suddenly lose force when said out loud. Gaps in reasoning, or factual assumptions, become more apparent when ideas are forced out of the comfortable confines of one’s mind and exposed through the shared starkness of the spoken word. Standing Conversations also lead to further discussions outside of class. I encourage students to talk about their case with anyone who will listen—classmates, spouses, pets, whoever. Talking out loud necessarily improves their understanding of the case. Having conversations exposes students to both sides of an argument and raises questions that take them beyond the tidy, but often incomplete, analysis they have created on their own.

Another, practical, advantage of the Standing Conversations exercise is that it can be dropped into virtually any lesson. Though some conversations are certainly incorporated into a particular lesson plan, we also can fill the last five minutes of a class with

a quick Standing Conversation. This allows me to do several Standing Conversations in a semester without having to make difficult choices about what to cut out of the already overcrowded curriculum. Because they can be short exercises, and are not necessarily tied to a particular lesson plan, we have the flexibility to do them wherever they may fit in.

C. Substance Is the Best Style.

For many years, I would spend considerable class time teaching students about making eye contact with the court, minimizing throat-clearing distractions like saying “um,”¹⁴ and controlling one’s hands during oral argument. However, I have come to question the usefulness of such advice. First, I noticed that when I talked with real judges about oral advocacy, the judges rarely, if ever, mentioned an advocate’s polish or style. Instead, judges seemed much more interested in an advocate’s preparedness, knowledge, and responsiveness to questions. Judges cared little about whether a lawyer was animated or reserved, jocular or serious, polished or a bit rough around the edges. This should not be surprising. Judges are not looking to be entertained at oral argument. They are looking for clarity and insight. Those advocates who can provide that clarity and insight are given wide latitude in their style of conversation. The two rules of oral advocacy are about substance, not style, because substance is what judges care about. And oral argument is for the judges.

There is another reason to minimize our emphasis on style when training novice advocates. Advocates, just like judges, must get by with human minds. Listening to and interpreting substantive questions is challenging. It is difficult for an advocate to think critically about the substance of a legal issue while simultaneously thinking about not introducing every answer with “I believe . . .” The human mind is very bad at multitasking.¹⁵ Multitasking is

“First, I noticed that when I talked with real judges about oral advocacy, the judges rarely, if ever, mentioned an advocate’s polish or style.”

¹³ Paul D. Heideman & Jessica E. Laury, *Ultra-Short Presentations with Immediate in-Class Public Feedback to Enhance Skill Development with Low Class Time and Instructor Time*, COLLEGE TEACHING (May 7, 2021), <https://www.tandfonline.com/doi/full/10.1080/87567555.2021.1913395>.

¹⁴ There is considerable linguistic evidence that the use of “um” or “uh” is necessary to explain complex ideas and actually increases the listener’s comprehension. See Barbara K. Gotthelf, *The Lawyer’s Guide to Um*, 11 LEGAL COMM. & RHETORIC 1, 13. (2014).

¹⁵ Laura P. Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. LITTLE ROCK L. REV. 29, 53–54 (2018).

especially difficult for a novice who is trying to learn something new.¹⁶ If an advocate, especially a novice advocate, is concentrating on what her hands are doing, she cannot also concentrate and think about the judges' questions. At best, she may flip back and forth between thinking about the substance and thinking about the style of the "performance."

A couple of years ago, I decided to put this idea to the test by streamlining what I taught about oral advocacy. In the run-up to our moot court competition, I consciously provided no instruction on style beyond a few instructions about conventions—e.g., stand up when talking to the court, begin with "May it please the court," stop when you run out of time. I purposely didn't talk about other ideas relating to speaking style. And come the big night, I suddenly panicked. I was sure some student was going to start swearing at the judges or mumble all the way through the argument or spend the whole argument pointing a pen at the judges. But none of that happened. In fact, the lawyers and judges who volunteered to judge the competition consistently remarked that the students were better prepared and more polished than any group of students they had judged in prior years. And in the years since, I have continued to hear similar comments after every competition.

All of this is not to say that a polished style is a bad thing. Surely we want our students to appear knowledgeable, to appear confident, to appear trustworthy. But the best way to appear knowledgeable is to be knowledgeable about your case. The best way to appear confident is to be confident that you understand the issues before the court. The best way to appear trustworthy is to be the expert and help the court to understand the case while honoring your ethical and professional obligations. In other words, know your stuff and help the audience. When we get the substance right, the style will take care of itself.

Conclusion

Perhaps it is possible to teach an old dog new tricks after all. For over 25 years, I taught oral advocacy in a fairly traditional way. I lectured students about eye contact and projecting their voices. I gave them tips like not having a pen in their hand when they went to the podium. And then we would practice oral arguments, where I would sometimes keep track of every time they said "um." We still do formal practice arguments. But not before we have spent a semester practicing thinking and speaking on our feet. And not before the students have spent weeks thinking about the substance of their legal issue and how the three storylines of their case intersect to form their legal theory. By the time we get to our actual oral arguments, the students know what they need to know and understand that their job is to help the judges understand the case as well as they do. And they know they can do that without their brains falling out.

“Perhaps it is possible to teach an old dog new tricks after all.”

¹⁶ *Id.*

Cite as: Barbara Hoffman, *Effective Analogies Make Lightbulb Moments*, 29 PERSPS. 45 (2022).

Effective Analogies Make Lightbulb Moments

By Barbara Hoffman*

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Analogies¹ have long been a favorite technique of attorneys to persuasively compare the object of the attorney’s argument with a reference the audience would readily understand. Although most students learn what an analogy is by high school, law students often do not understand how to use analogies effectively. This article discusses the value of analogies in legal writing and how to teach law students to use them successfully.

I. Learning from Legal Analogy Masters

Some arguments can be enhanced by a simple analogy—the comparison of one thing with another thing—that a law student can easily mimic. For example, in a 2013 dissent that remains timely today, Justice Ruth Bader Ginsburg argued that the preclearance provisions of the Voting Rights Act were both relevant and essential decades after the Act’s passage because states continued to erect barriers to equal voting access. “Throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet,” she said.²

Similarly, Chief Justice John Roberts pitched this classic analogy comparing a justice with a baseball umpire during his 2005 confirmation hearing to serve on the Supreme Court. “Judges are like

umpires. Umpires don’t make the rules, they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules, but it is a limited role. Nobody ever went to a ball game to see the umpire,” he said.³

Roberts earned his reputation as a skillful architect of legal analogies while in private practice. In a brief for the State of Alaska, Roberts asserted that the State—and not the Environmental Protection Agency—had the authority under the Clean Air Act to determine the “best available control technology (BACT)” to address air pollution.⁴ Roberts argued that determining the “best available control technology . . . is a discretionary judgment based on the case-by-case weighing of the applicable statutory factors” and thus, “there is no single, objectively ‘correct’ technology” to control every source of air pollution.⁵ Because few people understand what makes one air pollution technology better than another, Roberts drew an analogy with how people shop for an automobile:

Determining the “best” control technology is like asking different people to pick the “best” car. Mario Andretti may select a Ferrari; a college student may choose a Volkswagen Beetle; a family of six a mini-van. A Minnesotan’s choice will doubtless have four-wheel drive; a Floridian’s might well be a convertible. The choices would turn on how the decisionmaker weighed competing priorities such as cost, mileage, safety, cargo space, speed, handling, and so on. Substituting one decisionmaker for another may yield a different result, but not in any sense a more

“Umpires don’t make the rules, they apply them. The role of an umpire and a judge is critical.”

* The Author is grateful to Amy H. Soled, Clinical Professor of Law, Rutgers Law School, for her invaluable comments and suggestions.

¹ “An analogy is a non-identical or non-literal similarity comparison between two things, with a resulting predictive or explanatory effect.” Jacob M. Carpenter, *Persuading with Precedent: Understanding and Improving Analogies in Legal Argument*, 44 CAP. UNIV. L. REV. 461, 464 (2016).

² *Shelby Cty., Ala. v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting).

³ *Confirmation Hearing on the Nomination of John G. Roberts, Jr. to e Chief Justice of the United States, Hearing before the Committee on Judiciary United States Senate*, 109th Cong. 55 (2005), <https://www.judiciary.senate.gov/imo/media/doc/GPO-CHRG-ROBERTS.pdf> (statement of John G. Roberts, Jr.).

⁴ *Alaska Dep’t of Env’t Conservation v. U.S. E.P.A.*, 540 U.S. 461 (2004).

⁵ *Petitioner’s Brief, Alaska Dep’t of Env’t Conservation v. U.S. E.P.A.*, 540 U.S. 461 (2004) (No. 02-658), 2003 WL 2010655, at *23.

“Teaching students how to use analogies effectively in legal writing is challenging.”

“correct” one. So too here. Because there is no “correct” BACT determination for any particular source, the EPA cannot conclude that a State failed to include the “correct” BACT limitation.⁶

Roberts deliberately chose an analogy with which any reader could relate; everyone has a personal idea of what makes the “best” car and has weighed factors such as cost and mileage before purchasing a car.

Analogies are typically introduced in the first semester of legal writing and analysis courses to teach students the role of precedent. Many first-year legal writing textbooks discuss the use of analogies in predictive and persuasive writing.⁷ Class discussions and exercises on analogies help students form connections between rules and outcomes by building “on a familiar network of knowledge, making the learning more comfortable and the material more accessible.”⁸

Few law students, of course, write with the elegance of Justice Ginsburg or Justice Roberts. Many first-year students struggle with formulating all but the most straightforward analogies.⁹ Teaching students how to use analogies effectively in legal writing is challenging.¹⁰ As Linda Edwards explains, “Discerning similarities and differences is essentially a matter of categorization—choosing

the categories you will work with and then sorting situations according to those categories.”¹¹

So how do we help students choose effective categories on which to craft analogies—ones that provide the reader with the lightbulb moment? First, students should identify the purpose of the analogy. What is the conclusion they want the reader to reach? Second, students should select categories with which most readers would be familiar, so readers can readily understand the relationship between the analogy and the author’s point.¹² For example, to explain complex legal arguments, Justices Roberts and Ginsburg chose common mundane activities—buying a car and carrying an umbrella. Third, students should identify categories that describe a logical, predictable outcome, such as getting wet in a rainstorm without an umbrella.

II. Analogy Exercises for Law Students

We can help students consider effective classifications for analogies by adapting a typical tool for synthesizing a rule from caselaw—a comparative case chart. Just like case charts help students visualize the common rules and holdings from numerous cases, a simple chart that identifies instructive classifications can show the relationship between the analogy and the author’s argument. Here are two exercises to help students understand how to support their arguments with analogies of common experiences with which all readers can identify.

Statutory Law Example: Students are assigned to write an argument on behalf of a client who experienced domestic abuse.

Facts: Your client seeks a court order to protect her from abuse by her ex-husband. For ten days in a row, her ex-husband sat in a car outside her house and watched her walk from her front door to her car to drive to work. Each day, he shouted to her from his car, “I love you. I will never leave you.” Each day, she responded, “Please leave me alone. You are upsetting

⁶ *Id.* at *24.

⁷ See, e.g., RICHARD K. NEUMANN, JR. & KRISTEN K. TISCIONE, *LEGAL REASONING AND LEGAL WRITING* 117 (7th ed. 2013) (“An analogy shows that two situations are so similar that the reasoning that justified the decision in one should do the same in the other.”); LINDA H. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 106 (5th ed. 2010) (“Analogical and counter-analogical reasoning are essential to most rule application sections.”); CHARLES CALLEROS, *LEGAL METHOD AND WRITING* 128 (5th ed. 2006) (“The process of using inductive reasoning to predict the outcome of a specific case by comparing it to other cases is one of analogy.”).

⁸ Patricia Montana, *The Cognitive Power of Analogies in the Legal Writing Classroom*, 45 S. ILL. U. L.J. 311, 317 (2021) (explaining why analogies are an effective pedagogical tool to teach legal analysis because they help students understand context and relationships).

⁹ See Carpenter, *supra* note 1, at 505 (noting that “novice attorneys may fail to find and select the most helpful cases, properly set up their analogies, recognize and focus on the most important information, and format their comparisons effectively”).

¹⁰ See Dan Hunter, *Teaching and Using Analogy in Law*, 2 J. ALWD 151, 152 (2004) (“Many lawyers fail to recognize that induction requires the generalization of a rule from prior experience, whereas analogy is a one-to-one similarity comparison that requires no generalization to operate effectively.”).

¹¹ EDWARDS, *supra* note 7, at 107.

¹² As Justice Breyer cautioned, “reliance on an analogy only works when we compare things that are actually analogous.” *Cummings v. Premier Rehab Keller*, P.L.L.C., No. 20-219, 2022 WL 1243658, at *14 (U.S. Apr. 28, 2022) (Breyer, J., dissenting).

me.” After ten days of the ex-husband’s repeated behavior, the ex-wife asks you to obtain a protection from abuse order.

Law: The Protection from Abuse statute defines abuse as: “Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, ... under circumstances which place the person in reasonable fear of bodily injury.”

Step One: Identify the purpose of the analogy: The ex-husband will argue that he did not understand that his behavior was causing his ex-wife to fear him until she sought a protection from abuse order. He will argue that he will voluntarily stop sitting outside his ex-wife’s home, and thus, the court need not issue an order to restrain him. The ex-wife will argue that a court order is necessary to change the ex-husband’s behavior, as he will not likely cease his behavior voluntarily. The analogy should illustrate why the ex-husband is unlikely to change his behavior absent a court order.

Step Two: Identify familiar categories in a comparative chart: common situations where people promise to stop habitual behavior but seldom succeed in doing so.

Categories that Illustrate When a Person Is Unlikely to Change Habitual Behavior	Constructive Knowledge of Expected Behavior
A person who eats one bag of potato chips every night opens a new bag of potato chips and promises to eat only one potato chip instead of the entire bag.	Snack-food junkies will eat more than one potato chip; they will likely eat the entire bag.
A chain-smoker who smokes four packs of cigarettes a day opens a new pack of cigarettes and promises to smoke only one cigarette and throw away the rest of the pack.	Chain-smokers will smoke more than one cigarette; they will likely smoke every cigarette in the pack.
A person who spends more than one hour every day shopping for clothes online promises to search for clothes for no more than five minutes per day.	Habitual shoppers will spend far more than five minutes per day shopping for clothes online .

Step Three: Imply a logical, predictable outcome: People who engage in habitual behaviors seldom stop doing those behaviors without intervention, such as education, therapy, or court orders. This analogy supports the ex-wife’s argument that her ex-husband would unlikely voluntarily likely stop sitting outside her house and shouting at her, as he continued this behavior nine times after she asked him to stop. Like a snack-food junkie, chain-smoker, and habitual online shopper, the ex-husband engaged in a repeated behavior without self-restraint. Thus, without a protection from abuse order, he would be unlikely to voluntarily stop his repeated unwanted behavior against his ex-wife.

Common Law Example: Students are assigned to write an argument on behalf of parents of a three-year-old child who sue a store for failing to protect her from harm resulting from her fall from a store display.

Facts: Three-year-old P accompanied her parents to a Costco that sold backyard playground equipment. The store had a display of a colorful playset that included a ladder that led to a platform eight feet above the floor. A sign was posted on the front and back of the playset that read: *FOR DISPLAY ONLY*. No barriers prevented access to the display and no employees monitored the display. When P noticed the display, she ran from her parents’ side and started to climb the ladder. Her parents almost caught up with her as soon as she reached the top of the ladder, but P fell before they could reach her. P broke her leg when she fell to the floor.

“Analogies are effective legal writing tools because they connect an argument to a story that the reader can readily understand.”

Law: To prevail in a negligence suit against Costco, P must prove that Costco had actual or constructive knowledge of the hazard posed by the playset display to young children who accompanied their parents to the store.

Step One: Identify the purpose of the analogy: P must demonstrate that Costco had actual or constructive knowledge that children who frequent Costco would be tempted to play on a toy store display that resembled familiar playground equipment and that young children would have little appreciation of the hazard posed by the display.

Step Two: Identify familiar categories in a comparative chart: common situations where people and animals, like children, reach for temptation without appreciating imminent danger.

Categories that Illustrate Common Temptations with Risks	Constructive Knowledge of Expected Behavior
Metal tray of fresh baked cookies straight out of hot oven	Child would reach for a fresh cookie without regard for risk of being burned by touching the metal tray.
Cheese in a mousetrap	Mouse would attempt to eat cheese without regard for risk of being crushed by the trap.
Tennis ball thrown into a field of rose bushes	Dog would chase a tennis ball into the field of rose bushes without regard for risk of being stuck with thorns.

Step Three: Imply a logical, predictable outcome: People and animals who may be unable to appreciate an imminent danger, and thus, yield to temptation despite foreseeable risks, are often injured by their failure to resist temptation.

This analogy persuasively supports P’s argument that Costco had constructive knowledge that a three-year-old child would bolt from her parents’ side, be unable to read a warning sign, and attempt to climb (and potentially fall from) a colorful display of a backyard playset. Costco knows that parents often have little choice but to bring their children with them when they shop. When children accompany their parents to a situation that displays a fun activity, typical three-year-old children are not dissuaded solely by a warning sign that they likely cannot read. Like a child reaching for a hot cookie, a mouse biting cheese, and a dog chasing a tennis ball, most three-year-old children would be tempted to climb an appealing playset without regard for the risk posed by falling on a hard store floor. Thus, Costco could reasonably expect that small children would attempt to climb on a display of a backyard playset.

Conclusion

Analogies are effective legal writing tools because they connect an argument to a story that the reader can readily understand. The best analogies are persuasive, clever, and even entertaining. Analogies organized by familiar and logical classifications can draw the reader into the author’s narrative. By encouraging students to visualize categories through charts, we can help them formulate and test persuasive analogies that will provide their readers lightbulb moments.

Cite as: Jennifer Kindred Mitchell, *Teaching to Neurodiverse Law Students*, 29 PERSPS. 49 (2022).

Teaching to Neurodiverse Law Students

By Jennifer Kindred Mitchell

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The student who asks the most nuanced but insightful questions; the student who seems aloof; the student who is incredibly detailed; the student who sees a writing problem from a completely different angle, or sees the smallest hole in the problem; the student who does not like making eye contact; the student who has trouble focusing. Most teachers recall a student with one or more of these traits. Perhaps the student had a diagnosis for a neurological disorder, or was undiagnosed, and as an educator you were left wondering. Was the student autistic? Do they have ADHD or dyslexia? Does the potential diagnosis matter? Whether the student was diagnosed or undiagnosed, what is important to realize is that behavior differences, heightened sensory perception, and innovative thinking are neurological differences that naturally occur within the human genome, and people who exhibit these differences are neurodiverse.

According to the U.S. Centers for Disease Control and Prevention, in 2016, about 1 in 54 children had been diagnosed with autism. Moreover, 1 in 6 (17 percent) of children were diagnosed with a developmental disability to include autism (2.5 percent) and attention-deficit/hyperactivity disorder (9.5 percent).¹ Autism is a spectrum disorder because its core features vary widely from person to person, and can even vary throughout a person's life. Because of the widely variable features of autism and other neurological differences, little agreement exists on what constitutes autism. Enter the idea of neurodiversity. Neurodiversity is a term first coined by sociologist Judy Singer and refers to variations in the human brain that create neurological differences like autism,

ADHD, dyslexia, dyspraxia, and others resulting from natural variations in the human genome.² Because of these variations, neurodivergent people process information and often experience the world differently than neurotypical people. A neurodiverse person may have several neurodivergent conditions, but their symptoms for each condition may vary. We often form images in our minds of people with neurodevelopment disorders and autism as disabled individuals who may be unable to fully participate in society. People come in all ways; a person may exhibit some autistic traits and may not exhibit other traits—this is what makes someone neurodiverse.

This Article is meant to increase awareness of the neurodiversity movement and suggest ways to assist neurodiverse law students develop their legal writing and research skills. Legal writing and research are complex, process driven skills that students develop through practice. For some neurodiverse students, the task of taking a fact scenario, researching it, and then writing a brief or memo on the issue can be daunting. One way to address challenges unique to neurodiverse students is to employ the strengths-based approach,³ which is preferred by many in the neurodiversity movement.⁴ It focuses on a person's strengths and abilities as a foundation for learning, unlike the deficit-based approach, which stems from the medical model that focuses on correcting a person's disability or deficit.⁵ This shift in thinking diverts our pedagogical efforts from a

“This Article is meant to increase awareness of the neurodiversity movement and suggest ways to assist neurodiverse law students develop their legal writing and research skills.”

² Robert D. Austin & Gary P. Pisano, *Neurodiversity as a Competitive Advantage: Why You Should Embrace It in Your Workforce*, HARV. BUS. REV. (May–June 2017), <https://hbr.org/2017/05/neurodiversity-as-a-competitive-advantage>.

³ Ludmila Praslova, *Autistic Strengths, Human Value, and Human Uniqueness: Untangling the Strengths-Based Approach from Stereotypes and Simplifications*, SPECIALISTERNE (Oct. 15, 2021), <https://www.us.specialisterne.com/category/insights-and-white-papers/>.

⁴ *Id.*

⁵ *Id.*

¹ See Ctrs. for Disease Control & Prevention, *Data & Statistics on Autism Spectrum Disorder*, CDC (Mar. 2, 2022), <https://www.cdc.gov/ncbddd/autism/data.html>.

“The neurodiversity movement wants to shift the conversation from disability to possibility and discuss the unique ways that neurologically diverse people experience the world and problem-solve.”

myopic focus on fixing a deficit to emphasizing strengths to address a challenge. In legal writing and research, where the onus is ultimately on the student to develop the methods and processes that work for them, using the strengths-based approach to teach neurodiverse students is invaluable.

I. The Neurodiversity Movement

Neurodiversity is a movement and paradigm preferred by many in the autistic community because it better encapsulates their experiences as opposed to the more narrowly focused neurodevelopment disorder diagnoses. The Autistic Self Advocacy Network (ASAN) is a well-established advocacy group led by autistic individuals who support the neurodiversity movement and promote acceptance of those with autism and other neurological differences.⁶ The neurodiversity movement views neurological differences as a natural part of human diversity and believes that the disability should not be necessarily cured but accommodated.⁷ Importantly, groups like ASAN battle stereotypes of autistic and neurodiverse people in the media, such as the boy who is disruptive and has difficulties communicating or is a savant. These stereotypes, like most “typing,” erase the voices and experiences of thousands of people and promulgate an idea that autistic people make life more difficult for neurotypicals.⁸

The neurodiversity movement conflicts with those who see autism and other neurological disorders as something to be cured.⁹ In particular, many families with autistic children who suffer from profound functional limitations see autism as a disease that needs treatment. Autism Speaks, founded in 2005, is one of the most well-known and established advocacy groups. It works to increase autism awareness, support, and research into causes and

treatments for autism.¹⁰ Although on its website Autism Speaks provides a voluminous amount of information to help support families and those diagnosed with autism, its fundraising and funding dollars predominately go to research to find a cure for autism. Its fundraising efforts have been successful; private funding raised by Autism Speaks for autism research was \$15 million in 2005 and increased to \$142.5 million by 2014.¹¹ Those experiencing more severe symptoms of autism, such as acute functional limitations, communication difficulties, and extreme sensory perception sensitivities need extra support and therapies to better participate in family and civic life. For caregivers seeking cures, medications, and therapies to help their loved ones better experience the world, autism symptoms are viewed as disabilities in need of a cure.

The neurodiversity movement wants to shift the conversation from disability to possibility and discuss the unique ways that neurologically diverse people experience the world and problem-solve.¹² This creates opportunity in legal pedagogy to see neurodiverse students as innovative thinkers who can bring a unique and valuable perspective to the classroom and may very well change how we view legal points and entire areas of the law. Perhaps our legal writing style makes no sense to someone with a neurodiverse mind, and slight—or significant—changes could enhance our analysis. As with any neurological disorder, a person can be affected in ways that make them less or more able to function in society. Neurodiverse law students are high functioning individuals who are academically accomplished and interested in committing their talents to a legal education. As educators, our challenge is to acknowledge and teach to a variety of students, including those who are neurodiverse.

⁶ ASAN Autistic Self Advocacy Network, *About ASAN*, ASAN, <https://autisticadvocacy.org/about-asan/> (last visited Apr. 3, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ Andrew Solomon, *The Autism Rights Movement*, N.Y. MAG. (May 23, 2008), <https://nymag.com/news/features/47225/>.

¹⁰ ASAN, *supra* note 6.

¹¹ Kevin Barry, *Gray Matters: Autism, Impairment, and the End of Binaries*, 49 SAN DIEGO L. REV. 161, 178 (2012).

¹² HALEY MOSS, GREAT MINDS THINK DIFFERENTLY: NEURODIVERSITY FOR LAWYERS AND OTHER PROFESSIONALS 20, 48 (2021).

II. Neurodiverse Law Students

Awareness is a key component to working with neurodiverse law students and the place to start. If you are still reading, step one—awareness—accomplished. Well, almost. Understanding neurodiversity as an overall concept is necessary, but awareness also encompasses individual students. Some students may be very direct and clear about their neurological differences and explain where they may encounter challenges in your class or law school due to these differences. Then there are students who mention in passing that they are diagnosed with ADHD or say nothing, which leaves questions about a student's reaction or difficulties with specific legal skills. Once awareness sets in, the next piece is approach. How do you adjust your teaching style or address individually a student's concerns related to their neurological difference?

As mentioned above, the neurodiversity movement stresses the strengths-based approach, which centers on the idea that “[f]or all people, developing strengths is a more effective path toward personal and professional development than trying to remedy deficits.”¹³ This is not meant to be the only way to address challenges related to neurological differences but to refocus how we approach neurodiverse students in general. Haley Moss is the first openly autistic member of the Florida Bar Association, and in November 2020 she gave an interview to the ABA's Law Practice Magazine, in which she described her early experiences as an attorney.¹⁴ She specifically discussed her struggle with a motion drafting assignment and how it felt overwhelming at first, but then after working with her boss, she found ways to break out of the writing process and to focus on piecemeal deadlines. This resulted in a final draft.¹⁵

Creating processes and helping students identify how to tackle writing assignments is an important piece of the legal writing curriculum. Working

with neurodiverse students requires an individualized approach, but using the strengths-based model can result in students better understanding the assignment and increasing their own productivity. These are two examples that the strengths-based approach can take when working with neurodiverse students.

Legal Writing: A student who is diagnosed with autistic spectrum disorder (ASD) can only see the forest and few trees when approaching their final legal writing memo problem of the fall semester. The writing structure is confusing, let alone trying to figure out what facts are relevant. The student understands the law and has formed their thesis but is having trouble organizing their thoughts and time. This student's strengths lie in understanding the legal issue but not seeing how to communicate it through writing. Using the strengths-based approach, break out a memo problem with a focus on the student's strong understanding of the law and research into small pieces with internal due dates.¹⁶ Task 1: Start by working on the shortest issue with the fewest facts and drafting the thesis or issue statement, which is what the student understands most. Task 2: Rely on the student's understanding of the legal issue by identifying one or two of the most germane cases and have the student pull the rule and key facts from those cases. Task 3: Identify legally significant facts from the problem. Task 4: Think through any counter analysis and identify weak points in the thesis. Task 5: Review memo samples of only rule and rule application sections. This step is helpful for the student to conceptualize how their analysis section should flow. Task 6: Draft the rule and rule application section for the shortest issue. Task 7: Draft the conclusion or thesis restatement. The tasks may result in a detailed outline, or a memo section written in prose; how the student formulates these steps in their writing may vary but the steps are meant to break down the problem into manageable parts, resulting in the whole. The student must complete these tasks by a deadline

“Creating processes and helping students identify how to tackle writing assignments is an important piece of the legal writing curriculum.”

¹³ Praslova, *supra* note 3.

¹⁴ M. Suzanne Harness & John D. Bowers, *Neurodiversity in the Practice of Law: Great Minds Don't Always Think Alike*, ABA L. PRAC. MAG. (Nov. 1, 2020), https://www.americanbar.org/groups/law_practice/publications/law_practice_magazine/2020/nd20200/nd20hartnessbowers/.

¹⁵ *Id.*

¹⁶ Robin Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 JOHN MARSHALL L. REV. 349, 374 (2006).

“The process of breaking writing assignments into small tasks, can be applied to class management as well.”

and then move onto the next memo section using the same technique of breaking the writing into small tasks specific to that memo section, starting with the part that the student understands best.

Breaking the writing structure up early in the student’s writing journey lays the groundwork for the student to develop effective processes to analyze and draft legal writing problems, regardless of their complexity. Strong mentorship and support from the professor and teaching assistant is crucial to helping students develop their own strengths-based approach to legal writing.

Project Management: The process of breaking writing assignments into small tasks, can be applied to class management as well. A student with ADHD has trouble focusing long enough to write the appellate brief. Instead of seeing the lack of focus as a deficit, further inquiry into the student’s study habits will help identify ways to help with longer writing projects. If the student prefers to read a case for torts, take a break, then read a case for contracts, take a break, and then work on job applications, the student can complete tasks differently from those who would sit and read all of their torts cases and then tackle contracts, etc. A strengths-based approach would be to advise the student to break the legal writing tasks out into time intervals that work for the student and then decide where to insert these pieces into overall legal studying strategy that works backward from the project’s due date.¹⁷ To a neurotypical person this may seem like time consuming madness, but to a neurodiverse person this strategy may work for their brain and allow them to increase their productivity.

Social Situations/Client Relations: A student who is diagnosed with autism is extremely bright and has strong legal analysis but has trouble contributing to group discussions and cringes at the idea of client meetings. Perhaps the student does not make strong eye contact and/or does not pick up on social cues, making the student feel uncomfortable in group settings and with new people. Using the strengths-based approach, focus on the student’s strong legal analysis and writing ability. Help the student see that they clearly understand the subject area and communicate it well through written work. Talk through techniques that will help the student communicate orally with clients. For virtual meetings, perhaps place a picture of something that makes the student happy at the top of the computer screen for them to look at without looking straight at the camera and the client. For in-person meetings, help the student see how prepared they are and coach them in mock meetings with teaching assistants to increase their comfort level.

Sensory processing can also vary for neurodiverse people. Sensory processing issues refer to difficulties with organizing and responding to information that comes in through the senses and can range from hypersensitivity, where the sensory input is overwhelming, to sensory seeking, where more sensory inputs are desired.¹⁸ Adjusting the student’s environment to address either sensory avoidance or seeking can help with social interactions. Encouraging the student to use a squeeze ball or other sensory object to control social anxiety during a meeting can help the student focus on their legal analysis and not as much on external stimulations.

¹⁷ See Chad Noreuil, *The Zen of Overcoming Procrastination*, 33 SECOND DRAFT 1, 9, 10 (2020).

¹⁸ The Understood Team, *Understanding Sensory Processing Issues*, UNDERSTOOD, <https://www.understood.org/articles/en/understanding-sensory-processing-issues> (last visited Apr. 3, 2022).

Conclusion

Neurodiverse students bring new perspectives to education and law school. Raising neurodiversity awareness and focusing on students' strengths are excellent starting points to better attract and integrate neurodiverse people into the legal profession. The neurodiversity concept has certainly turned my view of learning disabilities on its head. Steve Silberman, in his book "Neurotribes," states, "We have to learn to think more intelligently about people who think differently."¹⁹ Understanding neurodiversity requires thinking about the brain as an adept and adaptive organism that maximizes success from limitations, in other words it makes lemonade from lemons, and not all aspects of an atypical brain are limited. Silberman summarizes neurodiversity well and challenges us to think from the perspective of neurodiverse people:

By autistic standards, the normal brain is easily distractible, is obsessively social, and suffers from a deficit of attention to detail and routine. Thus, people on the spectrum experience the neurotypical world as relentlessly unpredictable and chaotic, perpetually turned up too loud, and full of people who have little respect for personal space.²⁰

As legal educators it is our responsibility to champion awareness for neurodiversity and to identify ways to help neurodiverse students succeed in our classes and law school. Above all, we want neurodiverse law students to succeed in meaningful, self-fulfilling legal careers.²¹

“As legal educators it is our responsibility to champion awareness for neurodiversity and to identify ways to help neurodiverse students succeed in our classes and in law school.”

²⁰ *Id.*

²¹ This Article is meant to be the first of a series that focuses on neurodiversity in the law. For additional resources on neurodiversity, in addition to the pieces cited in this Article, I recommend Neurodiversity in the Law's website, available at <http://neurodiversityinlaw.co.uk>, and NPR's 1A segment, *From Awareness to Acceptance: Changing How We Understand Autism*, <https://www.npr.org/2021/05/05/993945791/from-awareness-to-acceptance-changing-how-we-understand-autism>. This segment is how I first learned about the neurodiversity movement.

¹⁹ STEVE SILBERMAN, *NEUROTRIBES: THE LEGACY OF AUTISM AND THE FUTURE OF NEURODIVERSITY* 359 (2015).

Cite as: Ariel Newman, *Behind the Mask: Teaching Gen Z as One of Its Own*, 29 PERSPS. 54 (2022).

Behind the Mask: Teaching Gen Z as One of Its Own

By Ariel Newman

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Unlike my colleagues, there is one key characteristic I share with incoming students who are members of Generation Z:¹ I am one of them. As a new law librarian and legal research professor, the Fall 2021 semester was my first time teaching Introduction to Legal Research. While developing content for the course was demanding for someone in my position, my ability to understand and connect with students greatly aided this process. While I recognize that some of these challenges are not new,² the reactions to these issues—such as methods of addressing different relationships with technology and life experiences—may require additional reflection based on the unique characteristics of Gen Z.³ After my experience teaching Gen Z as a member of that same generation, I want to share some advice with my colleagues who are also pioneering an environment of students from this generation.

Rule #1: Emphasize (and then emphasize again) the process. There is a phrase I included in my syllabus (in bold) that I belabored during class: “Think of the legal research process as a circle.” Despite this, the most common question asked throughout the course was, “Am I doing this right?” In their daily lives,

members of Gen Z appreciate imagination, creativity, and ingenuity. In the classroom, Gen Z students demand structure, rules, and clarity.

While I informed my students that some research methods are more effective than others, I routinely reminded them that there is no single “right” way to conduct legal research. Gen Z students are often focused on the results, not the process.⁴ This generation is a highly competitive one,⁵ especially in the law school environment. Students are so focused on getting the “right” answer that they ignore the importance of the process and the skills they are meant to develop. My advice to my multi-generational colleagues is to recognize this barrier and seize it as a teaching opportunity. Encourage your Gen Z students to embrace individuality through their research methods. I told every one of my students, “Your research process looks different from mine, and that’s okay.” It’s important to remind students that they have the freedom to mold their research process into something that is uniquely their own.

Rule #2: Use technology to your advantage. Gen Z grew up with technology and social media.⁶ In many ways, using legal research databases comes as second nature to its members. Students equate the search bar to Google (even though we know it’s not the same), and they know how to use filters the same way they shop for shoes on Amazon. Members of Gen Z are comfortable using technology and willing to learn new skills, but it is also important to recognize that this experience does not translate

¹ Members of Generation Z, a group identifier commonly shortened to “Gen Z,” were born between 1997–2012. Michael Dimock, *Defining Generations: Where Millennials End and Generation Z Begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/fact-tank/2019/01/17/where-millennials-end-and-generation-z-begins>.

² See generally Joan Catherine Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the “MTV/Google” Generation*, 54 LOY. L. REV. 775 (2008).

³ Gen Z students are comfortable with technology and independent learning. They appreciate structure and stability, but also desire flexibility and authenticity. Samantha McLaren, *6 Gen Z Traits You Need to Know to Attract, Hire, and Retain Them*, LINKEDIN (Oct. 8, 2019), <https://www.linkedin.com/business/talent/blog/talent-acquisition/how-to-hire-and-retain-generation-z>.

⁴ Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME. L. REV. 163, 169 (2013).

⁵ McLaren, *supra* note 3.

⁶ Brian Mastroianni, *How Generation Z Is Changing the Tech World*, CBS NEWS (Mar. 10, 2016), <https://www.cbsnews.com/news/social-media-fuels-a-change-in-generations-with-the-rise-of-gen-z>.

“Gen Z students are often focused on the results, not the process.”

into technological fluency.⁷ Do not expect Gen Z students to be masters of all technology; most students still struggle to create a table of contents in a Word document. These students will generally be quick learners, but it is crucial to be aware that they are not proficient from the beginning simply because they were raised on tablets and smartphones.⁸

There are also different platforms that can be used to supplement the databases we are helping them navigate. For example, I made a point to use Mentimeter, a popular software that allows speakers to display a presentation and receive responses to questions and polls in real time.⁹ I used this software not only to help teach legal research concepts but also to allow students to provide feedback and ask questions with anonymity. Gen Z users are accustomed to online public forums that allow the safety and comfort of asking questions without being identified.¹⁰ Mentimeter allows them to ask questions and state concerns without the professor or other students being aware of their identity, which encourages them to address any issues they have without fear of judgment.

I also made a point to use technology in a way that allowed me to connect with my students. Rather than the traditional style of going around the room on the first day of class asking students to introduce themselves, I created a discussion board thread that allowed them to do so online. Aside from relieving students of the nerve-wracking experience of coming up with a “fun fact” on the spot, students were more than happy to post pictures

of their pets and share their backgrounds. I plan to use this method of introduction in the future, because it allows me to get to know my students in a casual, online setting with no pressure or rush. Law school is stressful, and there is no harm in alleviating some of that anxiety by stepping back and finding ways to help students be more comfortable expressing their thoughts and opinions (and yes, I refused to cold-call my students).

Rule #3: Stop trying to put Gen Z in a box.

It’s easy to generalize generations. Regardless of whether you are trying to relate to students or criticize their generation, these comments are uninvited and often do more harm than good. The two most common behaviors I see are (1) trying too hard to relate to Gen Z and (2) criticizing Gen Z for characteristics unique to that generation. As to the first point, a common offense is including decade-old memes and expecting students to laugh (looking at you, “Brace yourself: exams are coming” Game of Thrones memes). These comments are often out of sync with who the members of Gen Z are, because they do not keep up with trends and generational shifts.¹¹ There is no need to try so hard to fit in and appeal to students, especially when your cultural references are more appropriate for our millennial predecessors. Members of Gen Z appreciate humor and creativity, but value authenticity above all else.¹²

Additionally, completely discounting Gen Z’s intelligence and capabilities is also not the right way to go about things. In my own experience, I have had a member of Generation X ask me if I knew what a looseleaf was and if I had ever seen one (I have). Similarly, it is harmful when members of other generations use phrases like “kids these days.” We are talking about students at a graduate institution who are developing a professional identity—even if that professional

“Members of Gen Z appreciate humor and creativity, but value authenticity above all else.”

⁷ Shena Williams, *Generation Z: Computer Experts or Not?*, WOLTERS KLUWER (Aug. 31, 2020), <https://www.wolterskluwer.com/en/expert-insights/gen-z-computer-experts-or-not>.

⁸ *The Smartphone Generation Needs Computer Help*, ATLANTIC RETHINK, <https://www.theatlantic.com/sponsored/grow-google-2019/smartphone-generation-computer-help/3127/> (last visited Apr. 3, 2022).

⁹ On its face, Mentimeter is much like Microsoft PowerPoint because it allows you to create a presentation for class. However, Mentimeter allows you to embed polls in the presentation and generates a unique code for participants to join remotely. There are a variety of poll structures to select from, helping you to create an engaging and interactive presentation. You also have the ability to export data from a presentation for review. For more information, please see <https://www.mentimeter.com/features>.

¹⁰ Charlotte Alter, *Oversharenting Victims Rebel: The Quest for Online Anonymity*, TIME (Jan. 17, 2014), <https://time.com/1150/oversharenting-backlash-gen-zs-quest-for-online-anonymity/>.

¹¹ *The Whys and Hows of Generations Research*, PEW RSCH. CTR. (Sept. 3, 2015), <https://www.pewresearch.org/politics/2015/09/03/the-whys-and-hows-of-generations-research/#:~:text=The%20Whys%20and%20Hows%20of%20Generations%20Research%20At.common%20predictors%20of%20differences%20in%20attitudes%20and%20behaviors.>

¹² McLaren, *supra* note 3.

“Little acts of kindness go a long way, and my students have greatly appreciated these small gestures.”

identity looks different from what you are accustomed to. I have witnessed colleagues express frustration at the amount of clarification questions current law students ask with respect to legal research assignments. The practice of regularly using rubrics as an assessment tool was implemented in the 1990s and early 2000s,¹³ with Gen Z entering elementary school at the tail end of that movement. These students grew up with the structure and specificity found in rubrics, which suggests that creating detailed rubrics in law school courses would be an effective way to address this issue. While we understand that Gen Z is unlike other generations in many ways, these phrases and accusations do nothing to foster a safe and effective learning environment. An “us versus them” mentality has no place in the classroom, and I encourage my colleagues to be more mindful of that going forward. Every generation blames and shames the others before and after it,¹⁴ but our goal as educators should be to avoid these harmful remarks. Gen Z students in particular are especially affected by these criticisms, because they are so invested in individualism,¹⁵ which heightens the need for removing comments about generational stereotypes from the law school environment.

Rule #4: Be patient and supportive. Gen Z is beginning law school in a recovering post-pandemic society on the brink of a predicted recession. While the average GPA has continued to rise over the years,¹⁶ so have rates of mental illness.¹⁷ Many of these students were valedictorians in their hometowns, completing

dual enrollment courses while still in high school. They went on to college, excelling in their studies and earning 4.0 GPAs. When they come to law school, the reality sets in as students begin to realize that they are the same as almost all their peers. I know—I was one of them.

To say “law school is hard, move on” completely discounts the struggles and experiences of Gen Z. We already recognize that law school is no walk in the park; there is no need to remind us. In a profession with high suicide rates and a widespread substance abuse problem, we should be much more responsive to these issues. When I taught a class on administrative law research, I asked my students to send in pictures of something they believe is regulated. Out of fifteen responses, two photos were of alcohol, two of nicotine, and two of extra-strength Tylenol. I joked in class while displaying the pictures and threw in, “At this point, I have to ask: are you guys okay?” Although they were laughing, many said “no,” and I knew there was truth behind it. It is important to let students know that you are there for them, beyond just helping them understand how to conduct legal research or understand the law. I made a point to bring in snacks throughout the semester and even used treats as motivation for in-class competitions. I also went out of my way to stock up snacks in my office for my students to drop by and refuel on exam days. Little acts of kindness go a long way, and my students have greatly appreciated these small gestures.

Rule #5: Ask Gen Z students what they want. I do not purport to be the spokesperson of my generation, but I feel it necessary to urge my colleagues from other generations to listen to what we have to say. Our upbringings, learning styles, and attitudes require legal research professors to modify how they approach the material and students. Legal research professors need to be comfortable giving students the power to choose how they learn. We may be young and inexperienced, but we know what learning methods will work best for us. My generation has been deeply influenced by pedagogical innovations surrounding digital technologies

¹³ Clara Nkhoma et. al., *The Role of Rubrics in Learning and Implementation of Authentic Assessment: A Literature Review*, INFORMING SCIENCE INSTITUTE 237 (2020).

¹⁴ Ted Sheinman, *The Psychology Behind Generational Conflict*, SMITHSONIAN MAG. (Jan. 2020), <https://www.smithsonianmag.com/sicnece-nature/psychology-behind-generation-gap-180973731/>.

¹⁵ Shaun Pichler et al., *DITTO for Gen Z: A Framework for Leveraging the Uniqueness of the New Generation*, 64 BUSINESS HORIZONS, Sept.–Oct. 2021, at 599, 601.

¹⁶ Elizabeth Redden, *The Grade Inflation-College Completion Connection*, INSIDE HIGHER ED (Nov. 9, 2021), <https://www.insidehighered.com/news/2021/11/09/research-links-rise-college-completion-grade-inflation>.

¹⁷ Sophie Bethune, *Gen Z More Likely to Report Mental Health Concerns*, AM. PSYCH. ASS’N (Jan. 2019), <https://www.apa.org/monitor/2019/01/gen-z>.

and changing teaching methods.¹⁸ The way we learn is not necessarily the way legal research professors have always taught, which should be regarded as a learning opportunity rather than an insurmountable miscommunication.

If you have been teaching a particular legal topic in the same manner for years, but this new generation of students “just isn’t getting it,” perhaps it is necessary to do some reflection about why that may be. While imparting information is important, it is even more critical to deliver that information in a way that can be received. Give Gen Z the benefit of the doubt. These students are trying to understand the concepts you are teaching them, even if you get frustrated and do not believe that is the case. Maybe it is time to rethink the message (but don’t shoot the messenger). Those of us teaching law students have a great deal of knowledge to pass on to our Gen Z students, but we also have so much to learn from them if we would only ask.

Final Thoughts

It has been an interesting experience standing at the front of the classroom, looking out at members of my own generation as my students. Although they were wearing masks, I recognized them as my own people—I saw myself in them. I have been able to connect with my students because I was just like them: an overachieving student, bulldozing through law school during a pandemic. I can relate to them on a much more personal level than my multigenerational colleagues. Despite the difficulties I faced as a first-time legal research professor, this was an incredibly rewarding experience. While I have no basis for comparison between teaching millennials versus teaching Gen Zers, I feel confident that I know what type of learning style the latter are comfortable with.

A common jab at members of Gen Z is to call them “snowflakes,” connotating fragility.¹⁹ I recognize that this is the general banter commonplace among generations, and Gen Z is not innocent in these exchanges. However, I still find myself asking: what’s so wrong with being a snowflake? Snowflakes are remarkably unique, evolving and traveling a path unlike any other—just like our students. I make this point not to be defensive but to emphasize how individualism has such a strong hold on Gen Z. Although we will continue teaching Gen Z students for a couple more decades, no two students will ever be exactly alike.

Similarly, their learning styles and backgrounds will continue to change. We must be able to adapt to these new students, rather than employ the same teaching methods that have been used in the past. I encourage my colleagues to open their minds and hearts to Gen Z. We have a lot of opinions, and we hope you will take the time to listen. As a member of Gen Z and a legal research professor, I will continue to empower my students to embrace their individuality through the legal research process. I hope that lesson will transfer into other aspects of their lives, allowing them to blossom as able and competent people.

“I encourage my colleagues to open their minds and hearts to Gen Z.”

¹⁸ See generally Amy Chasteen Miller & Brooklyn Mills, “If They Don’t Care, I Don’t Care”: Millennial and Generation Z Students and the Impact of Faculty Caring, 19 J. SCHOLARSHIP OF TEACHING & LEARNING, Oct. 2019, at 78; Deep Shah, Evolving Pedagogy, LINKEDIN (2020), <https://www.linkedin.com/pulse/evolving-pedagogy-deep-shah/>.

¹⁹ Older generations use the term “snowflakes” to suggest that members of Gen Z are sensitive, entitled, and coddled. Bobby Duffy, *The Bunk of Generational Talk*, WALL STREET J. (Oct. 22, 2021), <https://www.wsj.com/articles/the-bunk-of-generational-talk-11634914564>.

Cite as: Jessica Lynn Wherry & Frances DeLaurentis, *A Pathos-Infused Approach to Teaching Legal Research and Writing: A Lesson to Carry Forward from the Pandemic*, 29 PERSPS. 58 (2022).

A Pathos-Infused Approach to Teaching Legal Research and Writing: A Lesson to Carry Forward from the Pandemic

By Jessica Lynn Wherry and Frances DeLaurentis

Both Jessica Lynn Wherry and Frances DeLaurentis are Professors of Law and Legal Practice at Georgetown University Law Center.

Introduction

When the pandemic shut down schools in March 2020, the shift to emergency remote teaching created an indelible mark in time. As law faculty teaching a first-year legal research and writing course, we were forced to adapt quickly to get through the 2020 spring semester. We then devoted considerable energy to learning how to teach legal research and writing effectively in a virtual or hybrid environment as we prepared for the 2020 fall semester.¹ With the full year of pandemic teaching behind us, we now wonder what lessons we and other faculty will bring with us as we return to the in-person classroom. Will we return to the teaching methods, policies, and lesson plans utilized pre-pandemic? Will we abandon the abundance of compassion and concern for student wellbeing that were hallmarks of our pandemic teaching? Or will we seize this moment in time to continue the practice of being intentional about our teaching, to embrace some of the lessons learned from virtual teaching, and to rethink the role of pathos in our teaching?

¹ A number of universities tasked faculty committees with developing best practices for online teaching. For example, Georgetown Law created an online pedagogy group that developed best practices and other guidance for faculty. Conferences (held virtually) were devoted entirely to online pedagogy. See, e.g., *William & Mary Law School's Conference for Excellence in Online Teaching Legal Research & Writing* (June 18–19, 2020), <https://scholarship.law.wm.edu/excellence-online-teaching/>. Affinity groups, such as Inside Higher Ed, the Association of American Law Schools, and the Legal Writing Institute, created, collected, and published materials on teaching virtually. See Doug Lederman, *Building High-Quality Online Learning*, INSIDE HIGHER ED (Feb. 22, 2021), <https://www.insidehighered.com/content/building-high-quality-online-learning>; Legal Education in the Time of COVID-19, AM. ASS'N L. SChs., <https://www.aals.org/covid19/> (last visited Apr. 3, 2022); Materials for Teaching Online, LEGAL WRITING INST., <https://www.lwionline.org/materials-teaching-online> (last visited Apr. 3, 2022).

This Article contributes to the widespread and ongoing conversation and literature addressing lessons learned from virtual teaching.² As educational institutions prepared for students' and faculty's return to campuses, they have rightfully prioritized health protocols including masking, vaccine mandates, and social distancing. But as we return to the physical classroom, we may be less equipped to respond to and teach in light of mental health issues our students may be experiencing due to the pandemic.³ In this Article, we seek to provide some guidance for how to begin to address the ongoing trauma our students (and we) may be experiencing by infusing pathos into our legal research and writing courses. First, we advocate for embracing pathos as an integral component of our teaching and our students' development as lawyers. Second, we offer some concrete ways to infuse pathos into our classroom teaching that will allow us to continue to grow as teachers and enhance the classroom experience for our students.

I. Embracing Pathos as an Integral Component of Teaching

As legal education abruptly shifted to online learning at the start of the pandemic, faculty were encouraged to be gentle with students, to give them extensions as needed, and to recognize that they may be caring for ill family members, while also working toward academic goals. In other words, faculty sought to be compassionate and rigorous at the same time, preparing students for the inevitable end-of-semester exams and their future as practicing lawyers. Faculty

² See, e.g., Eun Hee Han & Sherri Lee Keene, *Community Building for Better Outcomes: Our Silver Lining from Teaching in a Pandemic*, 34 SECOND DRAFT 1 (2021), <https://www.lwionline.org/sites/default/files/2021-04/Han%20Keene%20LWI.pdf>.

³ See Sarah Brown, *'Trauma Informed' Return to Campus*, CHRON. HIGHER EDUC. (July 27, 2021), https://www.chronicle.com/article/a-trauma-informed-return-to-campus?utm_source=iterable&utm_medium=email&utm_campaign=campaign_2647863_nl_Academe-Today_date_20210728&cid=at&source=&sourceId=&cid2=gen_login_refresh.

“In this Article, we seek to provide some guidance for how to begin to address the ongoing trauma our students (and we) may be experiencing by infusing pathos into our legal research and writing courses.”

also confronted in stark terms the differences among our students as online teaching revealed students' varied living conditions. We observed differences made apparent on Zoom screens as to the physical location from which students would participate in class, the reliability of their internet connection, and the presence of others in their combined school and living space. Perhaps more than any prior time, faculty were asked to recognize student differences and validate their perspectives.

Historically, law teaching is logos based. Courses are taught with legal principles as the headlines and bottom lines. Traditionally, legal research and writing courses introduce Aristotle's three rhetorical appeals—logos, pathos, and ethos—in the specific context of persuasive writing.⁴ Pathos in particular is taught as a tool of persuasion in brief writing that can be used to appeal to a judge's emotions in favor of a client's desired outcome, but legal research and writing faculty may not think about pathos in a broader teaching context. The Greek word pathos means suffering, experience, or emotion. For purposes of this Article, we use pathos in a broad sense to refer to engaging more compassionately and emotionally with our students, to recognizing the fullness of the student experience, and to responding to students from a place of empathy.

In pandemic teaching, pathos became central to effective teaching because it was simply not possible to pretend that everything was fine. Pandemic teaching created a need—and space—for infusing pathos into the classroom. This did not mean that faculty suddenly abandoned all expectations or eliminated all deadlines, but it did mean that we rethought our expectations, reconsidered the strictness of deadlines, and reevaluated our teaching goals.

Infusing pathos also meant thinking more about the students as individuals to nurture and support rather than as a classroom full of bodies to teach. Such nurturing and supporting was demanded not only by the pandemic but also by the significant

and, at times, violent events that occurred during 2020-21. From the reckoning with racial injustice to the riots at the U.S. Capitol, faculty were forced to grapple with their own and students' emotions, reactions, questions, fears, and need for justice as social unrest and the pandemic swept the country.

As we return in person to the classroom, we recognize that a number of the issues that challenged us during the pandemic remain. Both faculty and students continue to grapple with numerous emotions and reactions to a plethora of social justice issues, and the pandemic continues to evolve. We are thus suggesting that faculty consider infusing pathos into teaching by embracing pathos as a mind shift in how to approach teaching legal research and writing, rather than the more limited view of pathos as a rhetorical tool for a specific skill. In doing so, we are asking faculty to play more of the "believing game" instead of merely the "doubting game" that dominates the critical thinking mindset in society.⁵ We are asking faculty to use both our heads and our hearts in teaching.⁶

We have reaped the benefits of infusing pathos into our teaching this past year. Such benefits include building strong relationships with students despite never meeting them in person, giving ourselves grace in not trying to do too much, and taking time to reflect on our priorities. Finally, empathy and emotional intelligence are critical skills for lawyers, especially highly effective lawyers.⁷ Faculty can model and help develop these skills through an infusion of pathos into our teaching.

II. Ways to Infuse Pathos into the Legal Research and Writing Course

In embracing pathos as a critical component of our teaching, faculty should consider broad conceptual

“Both faculty and students continue to grapple with numerous emotions and reactions to a plethora of social justice issues, and the pandemic continues to evolve.”

⁴ See Peter Elbow, *The Believing Game or Methodological Believing*, 1 J. ASSEMBLY EXPANDED PERSPS. LEARNING 1, 2 (2009), https://scholarworks.umass.edu/eng_faculty_pubs/13/.

⁵ See Phebe E. Poydras, *Developing Legal Information Literate Law Students: That Dog Will Hunt*, 32 LEGAL REFERENCE SERVS. Q. 183, 192 (2013).

⁶ See, e.g., Am. Bar Ass'n, *How Emotional Intelligence Makes You a Better Lawyer*, YOUR ABA (Oct. 2017), <https://www.americanbar.org/news/abanews/publications/youraba/2017/october-2017/how-successful-lawyers-use-emotional-intelligence-to-their-advan/>; Polly Botsford & Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173 (1999).

⁴ See, e.g., KRISTEN KONRAD TISCIONE, *LEGAL WRITING: FROM ADVICE TO ADVOCACY, A CONTEMPORARY APPROACH* 83 (2021).

“These and other intentional efforts to build community—both inside and outside the classroom—should not be abandoned as we return to in-person teaching.”

shifts as well as develop specific ways to infuse pathos into the classroom. At a broader level, we suggest a pathos-infused approach to community building and reimagining participation. We then focus on the classroom and discuss how to manage time and technology through a pathos lens.

A. Community Building

The virtual learning environment created obvious challenges to developing traditional law student and faculty relationships for all classes, even those where strong student-faculty relationships normally develop. For example, in the legal research and writing classroom with its smaller class sizes, interactive classroom activities, and regular feedback, students not only get to know their professors but they also often develop strong relationships with classmates. Although these characteristics of legal research and writing courses likely remained the same in the virtual learning environment, legal research and writing classes still required some intentional community building to replace the more natural opportunities for relationships to develop in the in-person classroom experience.

As faculty teaching during the pandemic, we engaged in more intentional community building. Many of us required students to create and share video introductions as a replacement for chatting before class with the student sitting next to them. Other opportunities for community building included using Zoom breakout rooms, both for small group casual conversations and for small group class work. Faculty arrived early or stayed late in the Zoom classroom for casual chatting with students before or after class. Whether in person or via Zoom, faculty can be intentional in their lesson planning to allocate more time to class discussions to encourage students who take time to think through their answers or to allow a more in-depth conversation when appropriate. In the context of community building, this intentional expansion of time devoted to a discussion could create opportunities for additional voices to contribute to the conversation, potentially reinforcing those students' place in the community and connecting with classmates who had similar, if unspoken, ideas.

Outside the classroom, faculty also created opportunities for social interactions among students. For example, virtual happy hours or trivia nights gave students a chance to interact with their classmates and professor in a more casual environment. Unlike the perhaps typical one-time semester party hosted by a professor, the virtual nature of these events made it easier to hold multiple events over the course of a semester. The virtual nature also made it possible to easily include upper-level students or recent graduates to widen the students' circle of contacts.

These and other intentional efforts to build community—both inside and outside the classroom—should not be abandoned as we return to in-person teaching. If anything, they should be further developed to do even more community building among students. With the experience of the pandemic, we recognized that we may have been making false assumptions, thinking that physical proximity to each other in a classroom was enough for community building to occur naturally. Also, the assumption that the randomness of students sitting near each other in a law school classroom is enough to kickstart friendships or study groups seems somewhat naïve in hindsight. Upon reflecting, we realized that many students may find it challenging to seek and find their people even within the physical law school classroom, and faculty can create a framework that facilitates students getting to know each other and finding common ground. For example, even though icebreakers and other seemingly juvenile classroom activities may seem to be a waste of time in an already-limited class period, using five to ten minutes of a few classes to create opportunities for students to get to know each other may be worthwhile. Faculty can also discuss the purposes of these community building activities, giving students a sense of responsibility and interest in the joint venture.⁸

⁸ Doing so also allows students to develop relationships with other students, their professor, and the material. Meaningful relationships with experiences and material are remembered and applied more than others. According to Dr. James Comer, “no significant learning can occur without a significant relationship.” Rita F. Pierson, *Every Kid Needs a Champion*, TED TALKS EDUC. (May 2013), https://www.ted.com/talks/rita_pierson_every_kid_needs_a_champion?utm_campaign=tedsread&utm_medium=referral&utm_source=tedcomshare.

Faculty can be creative in thinking about how to approach these interactions, seeking to accommodate both introverts and extroverts. Some of the virtual community building activities could work just as well with the return to in-person learning. For example, faculty can have students introduce themselves in a video introduction that is posted on the class course management page. Likewise, faculty can ask students to complete an informational sheet or survey prior to the start of a semester with questions designed to find commonalities among students that faculty could use in assigning small groups, creating opportunities not only for course-related collaboration but also personal connections. For example, the surveys could obtain demographical information such as where students are from, prior work experience, or the type of law they wish to practice. Additionally, the surveys could ask students to share their favorite book or artist, special interests, or what they like to do in their free time.

Community building can also occur during class discussions, whether virtual or in person. When a student shares a particular perspective, the faculty member can acknowledge and legitimize the student's view—not necessarily the content of the view. Faculty can teach students how to amplify each other⁹ and how to share conflicting views professionally without attacking each other personally. Of course, these skills are not just helpful in community building; they are essential to good lawyering. Thus, faculty can place community building efforts within the broader context of a law school course to add meaning.

As we return to the in-person classroom, faculty should also consider additional ways to connect with our students outside of the classroom. Recognizing that an in-person return may be unsettling for some students, we are considering ways to connect outdoors. Perhaps we can hold some office hours outdoors. Or, we can have “Walks with Professor X” in which a small group of students accompany the professor on short walks on campus or, for those of us in an urban environment, around the surrounding neighborhood. Conversations during

the walks can include academic, professional, and personal topics. Other options include afternoon coffee or tea breaks. These opportunities to meet with students outside of class need not be burdensome to faculty or require an extensive time commitment. A half-hour coffee break or walk once a week may be sufficient to send the message to students that you value them as individuals and want to get to know them. Such interactions will allow students to connect with faculty in ways that were quite challenging, if not impossible, during the pandemic year. And as we may face future intermittent periods of lockdown or other limitations on gathering in person, we can continue to reap benefits from creativity and intentionality in community building.

B. Reimagining Participation

Unlike in the traditional physical classroom where all students attend class in the same environment, during the pandemic students found themselves participating in classes from a variety of locations, different time zones, diverse environments, and differing levels of reliable internet connectivity. These variables raised concerns among students, faculty, and deans, and forced some rethinking about how—or even whether—to assess participation.

These concerns about measuring participation in the virtual learning environment were in addition to the more traditional problems with assessing participation. Many faculty members rely on their own recall and memory over extended periods of time to determine a participation grade. Other faculty keep attendance, record whether assignments are timely submitted, and/or count the number of times a student contributes to a class discussion. Although the record-keeping method may appear to be more objective, both methods still rely to some extent on the professor's subjective assessment and memory. Such assessment is more likely to be influenced by bias, conscious or unconscious. For example, professors are more likely to remember the contributions of students they know well or like compared to students they do not know or dislike. Students also wonder whether faculty are more likely to

“Community building can also occur during class discussions, whether virtual or in person.”

⁹ Tiffany D. Atkins, *Amplifying Diverse Voices: Strategies for Promoting Inclusion in the Law School Classroom*, 31 SECOND DRAFT 10 (2018).

view favorably students who hold similar views to the faculty as opposed to contrary views.

In addition to the challenges of measuring participation no matter the classroom medium, the virtual classroom offered both different methods and challenges for participating in class. In terms of methodology, students participated by speaking out, physically raising their hands, utilizing the raised hand icon on Zoom, or utilizing the chat function. Participation was more challenging given the tendency of students to speak over each other, as well as the delay between unmuting and answering the posed question. Additionally, it was sometimes difficult for a faculty member to scan the computer screen to see all of the raised hands or to navigate to the participants list to see those who had utilized the raised hand icon. Likewise, some faculty struggled to teach the class and monitor the chat at the same time. These differing environments, methods, and challenges affected students' ability to participate in a virtual class.

Assessing student participation was equally challenging. In thinking about what counts as participation, new questions arose that had no equivalent in the pre-pandemic classroom. For example, how do faculty measure the attendance of a student who was present for the virtual class but had turned off her video? Similarly, it was often difficult for faculty to assess the participation of students in Zoom breakout rooms when faculty could not be present in multiple breakout rooms at the same time and breakout room discussions are not recorded on Zoom. In response to these challenges, as well as to student concerns about how the virtual classroom would affect both their ability to participate and their participation grades, many faculty adjusted their expectations with respect to class participation and their metrics for evaluating it. Adjustments ranged from the elimination of any grade for participation to expanding participation beyond traditional measures.

As faculty return to in-person teaching, we should not automatically return to our pre-pandemic participation expectations and grading metrics. We should not think of participation as students meeting metrics faculty arbitrarily set without recognition of student differences. Rather, faculty

should reimagine participation as a broader concept and skill set to be developed. We should continue to think about how to redefine participation in a way that recognizes the increasing diversity of our student audience, encourages students to view participation as a skill to develop, and adjusts for weaknesses in the professor's past grading practices. Doing so is critically important because scholarship consistently shows that participating in class increases student learning.¹⁰ Doing so also reflects an infusion of pathos into our teaching.

Even when all students attend class in the same classroom, they bring different experiences that affect their participation ability and comfort level. Research shows that social class, race, gender, and educational experience all contribute to developing behaviors in the classroom necessary to participate.¹¹ The ability to participate requires that a student has sufficient experience developing their perspective, feels sufficiently comfortable sharing that perspective, feels sufficiently respected by other students and the professor, and is prepared with the course material. Socialization and structural opportunities have provided our students with different access to these skills needed to participate in class.¹² Some students have been socialized to believe that their personality types, whether they are extroverts or introverts, shapes their ability to participate. Students from schools where teachers were forced to "teach to the test" often had less opportunity to engage in free-flowing discussion and develop their own perspectives; whereas students who attended schools that were not subjected to stringent standardized testing requirements often had greater opportunities to engage in robust discussions. Though these structural differences may not appear significant in elementary or high school, those who have not been socialized to develop their own views and ask questions or have not been given the opportunities to engage in rigorous discussions are often at a disadvantage in the college or graduate classroom. Thus, students may be entering law

“Even when all students attend class in the same classroom, they bring different experiences that affect their participation ability and comfort level.”

¹⁰ See Alanna Gillis, *Reconceptualizing Participation Grading as Skill Building*, 47 TEACHING SOC. 10, 10 (2018).

¹¹ See *id.* at 12.

¹² *Id.*

school with a vastly different understanding of and experience with participating in class.

By redefining participation beyond the traditional measures of attending class, speaking in class, and submitting assignments, faculty can help students conceptualize participation as a skill that they can develop, and faculty can provide students from diverse backgrounds with a more equitable way to be successful class participants. Faculty can redefine participation to include related activities outside the classroom. For example, participation can include attending class, preparing for class, discussing course materials outside of class with classmates, participating in large and small group discussions utilizing the chat function in virtual classes, posting on a class blog, responding to discussion board posts or prompts, posing questions at the end of the class session when only the professor and student or small group of students are present, or attending office hours. Each of these measures demonstrates a student's engagement with the class and participation in the learning process. Moreover, these additional measures provide different students with different methods for demonstrating their participation, contributing to classroom inclusivity.

Another tool for reconceptualizing participation is to have students set participation goals at the start of the semester and self-assess throughout the semester.¹³ Faculty can survey students to determine the frequency with which students have participated in the past and their comfort level in participating. For example, using a scale (such as often, regularly, occasionally, not often, rarely) faculty could ask students to rate how often they have volunteered in class, asked or answered questions in class, or attended office hours. Then using such survey as a base, students can set goals. The student who has rarely participated can set a goal of participating in class once a month or a week, or posting on a discussion board at least once a month. The student who generally does not go to office hours can set a goal of attending office hours at least once during the semester. Alternatively, faculty can use the student surveys to set participation benchmarks for the class that tie participation points to specific actions or

conduct. In their assessments, students can set out the participation grades which they believe they earned and explain why. As part of the rationale, students can note whether and how they met their goals or the faculty benchmarks. Faculty can accept, question, or verify student self-assessments. By having students set goals and self-assess or meet specific benchmarks, faculty encourage students to develop growth mindsets with respect to participation and provide incentives for students to develop the skill of participation. By doing so, faculty incorporate pathos into their teaching by demonstrating that they value their students as individuals with different strengths and needs.

At the same time, faculty can implement participation grading metrics that are communicated effectively to students and that do not rely on faulty memory or bias. Pre-pandemic, course policies were often vague with respect to participation grading. Some faculty did not fully explain what constituted participation or how faculty would assess participation. During virtual teaching, many faculty provided more explicit guidance in course policies to address the new medium.¹⁴ To the extent that faculty

“Faculty can redefine participation to include related activities outside the classroom.”

¹⁴ For example,

Engaged participation in class is essential to your mastery of legal research, analysis, and communication, and thus, a requirement to pass the course. All students should actively engage in the class. In terms of grading, students begin the semester with a score of 3 (out of 4) for class participation on the assumption that students will participate. Engaged participation includes completing the assigned readings in advance of class, engaging with group members during group projects or breakout sessions, focusing on the class discussion, responding when called upon in class, (at least) occasionally volunteering to answer questions or offer comments in class, and being respectful of others in the class. Participation points will be deducted for numerous unexcused absences, lack of engaged participation, and failure to submit timely and complete assignments. Outstanding (in terms of quality, not sheer quantity) participation may result in an addition of points.

Participation with Video On: Although there may be occasions when a student needs to mute video during class for short periods of time, engaged participation requires that students generally make video available unless specifically directed to do otherwise. Please contact me if you anticipate a problem with participating in class with video on.

Participation via Zoom: We will typically use the Raise Hand feature in Zoom to indicate a desire to respond to a question, or to ask a question or share a comment. Students should carefully monitor their raised hand and lower it after participating. We will typically not use the Chat feature in Zoom, but there may be times when we use it in class to generate discussion or to provide short answers. When we discuss sample writing excerpts in class, we will use thumbs up/down to gauge general reactions to which sample is stronger when we are comparing samples. We may also use thumbs up/down to gauge general comfort level with the class content. Within breakout rooms, students can participate organically as part of the conversation or may physically raise their hands because the groups will be small enough (4-5 students) that students can see each other at the same time. When a Law Fellow is leading or interacting

¹³ *Id.* at 14.

effectively communicate and follow detailed participation metrics, involve students in self-assessing participation, or both, faculty have a way to reduce bias or correct faulty memory.

As we continue to reconceptualize participation, even with in-person teaching, faculty can help students view participation as a skill to be developed. Faculty can redefine participation as a skill that will help students grow as lawyers capable of navigating various independent and collaborative projects with an understanding of their role and responsibilities.

C. Managing Time and Technology in the Classroom Through a Pathos Lens

As we adapted to virtual teaching, we may not have considered the role of pre-pandemic weaknesses in classroom management and use of technology. With this reflection in mind, we discuss two aspects of teaching—time and technology—that could benefit from rethinking through a pathos lens.

1. Classroom Time

The way in which we manage our classroom and design our lesson plans allows faculty to embrace pathos in our teaching. Such embrace can affect the nature or manner of classroom discussion, the scope of lesson plans, the use of class time, or the time and place of class. During the past year, faculty acknowledgment of current events and the various feelings students may have been experiencing helped to validate students' perspectives, even if the perspectives were not discussed in class. Faculty who ignored any acknowledgement or discussion of current events risked alienating

students, especially Gen Z students.¹⁵ If there was room in the syllabus, faculty could create space for students to discuss current events with some ground rules rooted in inclusivity and respectfulness. Moving forward, faculty need to continue to think about how current events may affect class discussion. Even if faculty do not intend to devote class time to a conversation about current events (a legitimate decision), faculty need to consider how the subject matter of the class might be viewed in light of current events, anticipate such a discussion, or be prepared to respond to student comments and questions. Anticipating how events such as a pandemic, a racial justice reckoning, a rise in hate crime, or a mass shooting might affect a student, affect different students differently, color a student's view of certain subject matter, or contribute to class discussion are all ways to infuse pathos into teaching.

In the virtual classroom, we learned that students had limited capacity to sit and listen. We devised more active learning activities, utilized breakout rooms to encourage greater student participation, created asynchronous content to decrease live Zoom time, and sought opportunities for engagement and community building within the class. We realized that we had to think more consciously about the sequencing of our class instruction because transitions were more marked in the virtual medium. For example, we had to consider how we transitioned from a classroom discussion to a breakout room and back to the main room. Many of us also realized that we had less actual instruction time in a virtual classroom where students were engaging in active learning activities and that we had to scale back the amount of information covered in class. Relatedly, we learned the importance of providing clear agendas and roadmaps at the beginning of each virtual class so that students could stay on track as Zoom fatigue set in.

with a breakout group, the Law Fellow may decide to use a Zoom participation feature and will notify students accordingly.

Participation via Canvas Discussion Board: Throughout the year, I will ask you to participate in class by contributing to a thread on the Discussion Board. You may be required to post and to reply to other students' posts. When replying to a classmate's comment, strive to choose a comment that has not received a reply. Your comments are not measured by length, but rather by substantive quality. Add something to the conversation. A simple "I agree" or "good job" statement is not substantive and will not count as satisfying a Discussion Board assignment. Remember to practice the principles of inclusion in replying to other students' posts. For example, disagree without being disagreeable. Challenge ideas, not individuals. Be inclusive and seek to amplify classmates' voices.

Jessica Lynn Wherry, *Legal Practice: Writing & Analysis Course Policies & Procedures* (Fall 2020) (on file with Authors).

¹⁵ See, e.g., Laura Graham, *Generation Z Goes to Law School: Teaching and Reaching Law Students in the Post-Millennial Generation*, 41 U. ARK. L. REV. 29, 40 (2018) ("Gen Z's diversity makes it incumbent on educators at all levels to foster within their institutions an environment where this diversity is celebrated and where inclusion is the norm."); Annie E. Casey Foundation, *Social Issues That Matter to Generation Z* (Feb. 14, 2021), <https://www.aecf.org/blog/generation-z-social-issues> ("Members of Generation Z are passionate about advocating for social change.")

“Even if faculty do not intend to devote class time to a conversation about current events (a legitimate decision), faculty need to consider how the subject matter of the class might be viewed in light of current events, anticipate such a discussion, or be prepared to respond to student comments and questions.”

We should take these lessons with us as we return to the classroom. We should think about the overall course objectives and how we use each class session towards meeting those objectives. We should revisit lesson plans to see if we are trying to do too much in a class session; for example, consider discussing two samples instead of three. We should think about the sequencing of our class exercises and how we can signal a change in topic or activity in the in-person classroom. We should continue to set and clearly communicate goals at the beginning of class; such clear agendas or roadmaps can be particularly helpful for Gen Z students who often do not know how to sift effectively through and evaluate information or make connections implied in syllabi.¹⁶

On a more mundane level, faculty infused pathos into the classroom by considering the material needs of their students. For example, class breaks were critical during the pandemic, both because of Zoom fatigue and the heaviness of living—and attending law school—through a pandemic and a period of significant social unrest. Faculty were encouraged to give more breaks, to understand the significance of breaks for students, and to let go of the need to (selfishly) use every minute of class time. Giving breaks is pathos-based because it responds to the emotional toll of the pandemic, of attending law school while quarantining, and of the general feelings of malaise that can set in after a certain amount of time on Zoom. Giving breaks recognized students as not just receptacles of the professor's knowledge, but as active members of the classroom environment who needed breaks to process new information and return engaged and refreshed. Simply stated, breaks demonstrated a sincere respect for the students.

Yet, the idea that students need breaks during class is not limited to the online learning environment. Indeed, a physical return to the classroom after more than a year of virtual classes will require some adjustment from both faculty and students. Faculty may want to bring the off-camera or stretch break equivalent to the classroom. For example, faculty could give students the option to leave the classroom for a short time, perhaps to read a handout in advance of a discussion or to meet as a small group outside the classroom. Faculty can also mark shifts in class topics by asking students to stand up, move around a bit, and then sit back down to continue class. The idea of including physical movement to avoid fatigue is just as valuable in in-person classes as over Zoom, and it has the dual benefit of infusing pathos into the classroom.

2. Intentional Technology

Just as we can embrace pathos in managing classroom time, our use of technology to hold virtual office hours, deliver instructions, and assess student progress also allows for a more pathos-based classroom. During the pandemic, technology presented opportunities to improve teaching, engagement, and participation. Bringing forward some of these techniques will allow faculty to incorporate more pathos into our teaching. For example, virtual office hours offer flexibility to both students and faculty. Although virtual office hours, whether by phone or videoconference, are not new, the extent to which faculty and students relied on virtual office hours this past year was new. Maintaining some virtual office hours in addition to in-person office hours will likely facilitate greater faculty-student interaction.

“Simply stated, breaks demonstrated a sincere respect for the students.”

¹⁶ Graham, *supra* note 15, at 73–74.

“Outside the stress and pressure of pandemic teaching that forced innovation, faculty should make intentional choices about what technology to use in the classroom.”

For some students, the stress of meeting in person can be mitigated via Zoom or other online platform, and some students may find it more convenient to attend office hours if offered virtually. Faculty may be able to offer virtual office hours at times more convenient for students and less burdensome for faculty who need not worry about being physically present on campus. The flexibility and lower-stress environment may increase student participation in office hours. Additionally, it is possible to record Zoom office hours; in a meeting to discuss a student’s writing, for example, a student might find it helpful to have the recording to consult later rather than only their notes and memory. Thus, with a return to in-person teaching, faculty should consider offering both virtual and in-person office hours, rather than look to virtual office hours as a backup or ad hoc method.

Outside the stress and pressure of pandemic teaching that forced innovation, faculty should make intentional choices about what technology to use in the classroom. This intentionality requires identifying objectives, planning how to meet them, and assessing effectiveness. For example, in thinking about a particular classroom activity that requires students to work in breakout groups, the virtual environment required more logistical support than perhaps the norm for in-person breakout rooms. In an in-person classroom, the professor gives directions for the breakout group activity, and then is there to observe, ask questions, and guide students as needed. In the virtual environment, the professor cannot be with all the breakout groups at the same time, and so there is less of an opportunity to guide students to make sure they are doing the “right” activity. To remedy this problem, faculty wrote explicit directions and shared them with students in a way that gave them access to the directions while they were in the breakout room (e.g., Google Slide). Students were able to consult

the directions as they worked through the assigned activity. Similarly, professors lost the ability to track progress of the groups when they were in virtual breakout rooms. One technique for tracking group progress was to have students complete a shared document as they go. For example, if there were three questions to answer in the breakout room activity, students tracked their progress using a shared document—either writing out the answer or checking off each question as they finished. Faculty could then gauge whether more or less time was needed. Faculty could also decide which group to join based on off-track answers or lack of progress.

Even though all of the challenges of group work in the virtual classroom are not present in person, faculty can utilize technology to improve in-person group work. The loss of direction or confusion about what to do is just as likely to happen in the in-person classroom. Having directions on the screen, board, or course page gives students a tangible guide and renders our teaching more accessible to visual learners or students with certain learning challenges. Writing the directions in advance also forces the professor to be intentional about the group activity—to develop a clear plan, purpose, and outcome for the group work. In terms of managing the groups, though it is possible for a professor to walk around and interact with or just listen to the student groups in person, it can be challenging to get a sense of the various rates of progress among the groups. Using a real time reporting tool such as questions in a shared document or comments in a course discussion thread can be just as useful in the in-person classroom. The professor can see at a glance each group’s progress as well as begin to think about the post-group-work class discussion.

Related to reimagining participation, the benefits of the online chat and Q&A functions of Zoom are also worth bringing forward. Some students

are more comfortable chatting a question or comment than raising their hand. To support these students and encourage participation, faculty could consider alternatives that serve the same purpose. For example, Canvas has a chat feature students could use to pose questions or make comments. A discussion board on Canvas or other course management platform could be used in a similar way, for example by setting up a chat or discussion thread for each class or perhaps for the entire semester, depending on how active the thread is. Faculty could monitor the chat, Q&A, or discussion board during class, periodically check them at natural “any questions?” moments in class, or review them outside of class, offering responses or comments in the next class. This inclusive and pathos-based approach would model to students how to offer a variety of communication methods in working with clients, colleagues, and supervisors as they develop their professional identity as future lawyers.

Conclusion

Just as we want our students to take the lessons we teach and transfer them to new situations,

we should take the lessons we learned teaching virtually and transfer them intentionally to the in-person classroom. One of the most important lessons we learned from our pandemic teaching was the value of pathos as a component of our teaching. Embracing pathos allowed us to be more effective teachers during a challenging academic year, to connect with our students even though we had never met them in person, and to help our students develop their professional identity. As we think about infusing pathos to benefit our students’ experience, we recognize that faculty can also benefit from some of these pathos-based techniques, such as setting reasonable goals for each class and recognizing the value of breaks.

As we return to in-person teaching, we should continue to infuse pathos into our teaching. Doing so benefits both faculty and students in terms of mental wellbeing and professional development. Doing so better prepares us to teach a diverse student population in a changing world. Doing so enables us to better respond to the next significant shift in the world.

“Just as we want our students to take the lessons we teach and transfer them to new situations, we should take the lessons we learned teaching virtually and transfer them intentionally to the in-person classroom.”

Cite as: Laurel Simmons & Christopher Soper, *Building International Communities in Law Schools: Benefits to and Strategies for Integrating International and Domestic Law Students*, 29 PERSPS. 68 (2022).

Building International Communities in Law Schools: Benefits to and Strategies for Integrating International and Domestic Law Students

By Laurel Simmons and Christopher Soper

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I. Introduction

Law school communities are global communities. Over the last few decades, the number of international law students in the United States, both as J.D.s and as LL.M.s, has increased significantly.² Opportunities to focus on international study within American law schools have also increased. Although exact numbers of international J.D. students are hard to measure,³ the increase of both types of international law students matches the direction of the profession: most U.S. lawyers will eventually incorporate some aspect of international law or cross-border legal activity in their practices.⁴

¹ We both teach international students: one of us primarily teaches all-LM legal research and writing (LRW) classes, and the other teaches LRW to classes of J.D.s that include international J.D. students. We nevertheless found numerous common philosophies, challenges, and shared strategies, which inspired us to write this piece. We were also inspired by our participation on the Legal Writing Institute (LWI) Global Legal Skills Committee, whose charge is “[t]o develop resources to improve global legal skills education of international law students studying in the United States and promote global legal skills in U.S. legal education.” We thank that Committee for its expertise and tireless commitment to promoting global legal skills. We thank Brandon Crawford, Dylan Weber, and Ashley Arrington for their excellent research and editorial assistance.

² See Swethaa S. Ballakrishnen & Carole Silver, *A New Minority? International J.D. Students in Law Schools*, 44 L. & SOC. INQUIRY 647, 652–53 (2019) (internal citations omitted) (“Law schools are not required to report the proportion of students in LL.M. and other non-J.D. programs who are international, but evidence indicates that international law graduates may comprise as many as three-quarters of all applicants to US law school LL.M. programs. . . . Although a much smaller proportion of the J.D. population is international, international J.D. students represent an important and growing demographic of new entrants.”).

³ Although every law school is different, for a general point of reference, 4 percent of the 233 students in the J.D. class of 2024 at the University of Minnesota Law School are international students. In the four years prior, that percentage was 4 percent (class of 2023), 7 percent (2022), 8 percent (2021), and 9 percent (2020).

⁴ Rosa Kim, *Globalizing the Law Curriculum for Twenty-First Century Lawyering*, 67 J. LEGAL EDUC. 905, 908–09 (2018); Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 FORDHAM INT’L L.J. 1039, 1039–40 (2002).

Unfortunately, in many cases, international law students are not fully integrated with their domestic counterparts in classes or even within the same class, including in our (often more welcoming) legal writing classes. Worse yet, international students in particular are often left feeling isolated from the school at large.⁵

This failure to integrate international students not only harms them, it also deprives domestic J.D. students of a valuable opportunity to learn lawyering skills and cultural competency from international students. Whether in all-LL.M. legal writing classes or J.D. legal writing classes with a handful of international students, faculty should focus on effectively integrating international students into our classrooms and law school communities.

This Article will discuss the following: (1) the benefits of integration and teaching international competency to both international and U.S. students; (2) a simple “priming” survey and other classroom strategies to help increase all students’ cultural awareness; and (3) modest proposals that institutions can adopt to further integration among the entire student body.

II. Legal Culture as Global Culture: The Benefit to All Students

Teaching legal writing necessarily requires us to teach “culture,” generally defined as “a system of shared beliefs, values, customs, behaviors, and artifacts that members of a society use to cope with their world and with one another, and that is transmitted from generation to generation through learning.”⁶ We teach primarily “legal culture,”

⁵ Ballakrishnen & Silver, *supra* note 2, at 674.

⁶ Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 367, 371 (2017) (quoting DANIEL G. BATES & FRED PLOG, *HUMAN ADAPTIVE STRATEGIES* 3 (1991)); see also Christina A. Zawisza, *Teaching Cross-Cultural Competence*, 17 FLA. COASTAL L. REV. 185, 193 (2016).

“This failure to integrate intentional students not only harms them, it also deprives domestic J.D. students of a valuable opportunity to learn lawyering skills and cultural competency from international students.”

which generally refers to society's attitudes and values about courts and lawyers.⁷ Within legal culture is a focus on legal actors and their roles in legal institutions. Specifically within our legal writing field, legal culture includes the nature of different legal documents and suggestions for how to write for different legal audiences, such as judge, senior attorney, client, and opposing counsel.⁸ Legal writing culture also includes IRAC, the organizational paradigm that the legal reader expects so the writer's message is easier to understand.⁹

In our legal writing classes, as we integrate students into American legal culture, we have delighted in helping students climb the steep learning curve that all new law students face. But even after mastering IRAC, the typical domestic law student would benefit from cultural studies to learn international legal cultural competency and humility¹⁰ more consciously. Cultural competency goes beyond helping students succeed in law school; it helps them succeed in law practice as well. We try to train them not simply how to “think like a lawyer” (or the stereotypical “break students down to build them up!”) or how to “write like a lawyer,” but how to be a lawyer. And being a lawyer today is an international job.

Domestic U.S. law students are generally not prepared for the global nature of legal practice.

Some of these students come to law school as insulated and isolated citizens. Compared to many parts of the world, where international travel is geographically easier and more common, U.S. law students do not study abroad as often.¹¹ And although undergraduate study abroad programs or undergraduate studies in foreign languages or culture certainly help to some degree, immersion in a foreign professional culture is fundamentally different from traipsing around Florence and Paris and visiting art museums.

However, learning how to communicate with clients of different cultures is a crucial skill for any lawyer.¹² The world is becoming increasingly connected, and the legal world is no exception. Law is a client-based profession, so cultural understanding is crucial in serving clients.¹³ And cultural competency extends beyond sensitivity to the culture of an individual client to appreciating the legal culture of a foreign country. Typical domestic law students, while learning internal U.S. legal culture, must expand their cultural horizons to account for the increasingly global practice of law.

Now picture the non-U.S. law student. Many international students often suffer from “academic culture shock” when starting their U.S. law studies.¹⁴ Many of them have left behind spouses, children, and families to get their degrees. They may have just faced and overcome visa challenges. They may have to deal with other new challenges, from identifying stores that sell items they need, to finding doctors and dentists, to facing allergies in a new climate. If they drive, they may have to deal with new rules of the road, and if they take

“Law is a client-based profession, so cultural understanding is crucial in serving clients.”

⁷ Zawisza, *supra* note 6, at 224.

⁸ Mark E. Wojcik & Diane Penneys Edelman, *Overcoming Challenges in the Global Classroom: Teaching Legal Research and Writing to International Law Students and Law Graduates*, 3 LEGAL WRITING 127, 132–33, 135 (1997); Zawisza, *supra* note 3, at 224–25.

⁹ See generally Sheila Simon, *Order What Are Your Words In? How Foreign Languages Can Help You Teach the Structure of Legal Writing*, 10 PERSPS. 124, 125 (2002).

¹⁰ Throughout this Article, we use the phrase “cultural competency and humility.” We acknowledge the view that cultural competency suggests an endpoint, whereas cultural humility suggests an ongoing, dynamic process involving self-reflection. See, e.g., Josepha Campinha-Bacote, *Cultural Competemility: A Paradigm Shift in the Cultural Competence versus Cultural Humility Debate—Part I*, 24 ONLINE J. OF ISSUES IN NURSING (Dec. 4, 2018), <http://ojin.nursingworld.org/MainMenuCategories/ANAMarketplace/ANAPeriodicals/OJIN/TableofContents/Vol-24-2019/No1-Jan-2019/Articles-Previous-Topics/Cultural-Competemility-A-Paradigm-Shift.html>. We declined the portmanteau “cultural competemility” even though it's quite fun to say.

¹¹ Gillian Dutton, *International Experiences: A Path to Critical Legal Skills, Values, and Innovation for American Law Students*, 27 CLINICAL L. REV. 1, 5 (2020). Law professors can also consider opportunities to study abroad. See, e.g., Jo Ellen D. Lewis, *Legal Writing Programs in Korean Law Schools: Possible Structure and Resources*, 9 J. KOREAN L. 381 (2010).

¹² As recognized by the ABA, in its list of potential learning outcomes. AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2021–2022 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS r. 302-1 (2021); see also Farida Ali, *Globalizing the U.S. Law School Curriculum: How Should Legal Educators Respond?*, 41 INT'L J. LEGAL INFO. 249, 253–58 (2013).

¹³ Zawisza, *supra* note 6, at 199.

¹⁴ Wojcik & Edelman, *supra* note 8, at 132–33.

“Understanding international culture helps domestic law students see their own culture more clearly and watch for any biases or blind spots they may bring with them.”

public transportation, they may have to adjust to local custom in waiting for and boarding trains and buses. Their culture shock can include language barriers, which make communicating with fellow students or professors difficult both inside and outside of class. It can include unfamiliarity with American academic norms: for example, the concepts of class participation, group work, peer review, note-taking, or interacting with the professor outside of class. And it can include unfamiliarity with a law school's particular culture: “bar” reviews at the local watering hole, law student/faculty talent shows with pop culture parodies, and the customs of various student organizations.

The non-U.S. law student, then, is distinctly aware of learning two different cultures: not only U.S. culture broadly, but also U.S. legal culture (and more specifically to us, U.S. legal writing culture). This type of student “is also a second culture learner and requires the same depth of explanation about cultural patterns as he does about language patterns.”¹⁵ In addition to learning new cultures, international students bring their own unique culture, both legal and non-legal, with them to the classroom. That culture has a large role to play in teaching our domestic students how to recognize and understand other cultures—which, in turn, will help domestic students better understand the legal profession so they can be better lawyers.

The culture international students bring to a law school helps domestic law students to see culture as a phenomenon that impacts their chosen profession and is worth studying. Understanding international culture helps domestic law students see their own culture more clearly and watch for any biases or blind spots they may bring with them. Recognizing a foreign culture helps domestic J.D.s recognize their own preconceived notions about U.S. legal culture, more generally, and legal writing culture, more specifically. For example, students often come to realize that good lawyers write very carefully, paying close attention to every

word and every sentence. They learn that lawyers have a different way of citing to authority. Although lawyers have a different vocabulary, students also learn that as legal writers they should try to write in plain English when possible. By framing these concepts as basic learning of legal writing culture, we hope international students will gain a sense of curiosity and exploration, rather than frustration and a sense of “why don’t I know this,” or “why do they do it that way.” So, by acknowledging international perspectives, all students get a better sense of the new “language of the law” that we teach.¹⁶ Focusing on foreign cultures in the law school classroom is a tremendous opportunity for our J.D. students to learn not only about other cultures, but to facilitate their learning of our own legal culture. We waste that opportunity if we do not encourage J.D.s and international students to interact and learn from one another as much as possible.

Moreover, with more cultural awareness comes better relations with classmates, professors, supervisors, and clients.¹⁷ There are at least four reasons for these better relations. First, cultural awareness can help avoid communication misunderstandings. For example, in some cultures, one “breaks the ice” at a meeting by chatting for a few minutes; other cultures get straight to business. In some cultures, seating position around a table is important; in others, not so much. Some cultures rely heavily on body language and what is left unsaid; others are more forthright. Second, most of the legal profession explicitly values diversity. Achieving better cultural awareness will further that goal. Third, culture can affect legal relations. For example, in the immigration context, cross-cultural misunderstandings can make presenting accurate asylum claims more difficult. Indeed, in any attorney-client relationship, proper cultural understanding is important for the attorney to set the client’s expectations of the representation,

¹⁵ Debra Parker, *Why Vladimir Can’t IRAC: Cultural Impediments of Legal Discourse for Second Language Learners*, 12 SECOND DRAFT 23, 25 (1997).

¹⁶ See Simon, *supra* note 9; Sarah Ricks, *Student to Lawyer: Teaching the Culture(s) of Law Practice*, 21 SECOND DRAFT 4 (2006); Elizabeth R. Baldwin, *Beyond Contrastive Rhetoric: Helping International Lawyers Use Cohesive Devices in U.S. Legal Writing*, 26 FLA. J. INT’L. L. 399, 399–400 (2014).

¹⁷ Jessie Grearson, *Cultural Influences on Learning: Insights from International Students*, 11 SECOND DRAFT 8 (1997); Zawisza, *supra* note 6, at 198–99.

to understand the client's desired outcome, and to help the client make legally significant decisions.

Finally—and also critically—developing cultural awareness helps all students develop their awareness of bias.¹⁸ The entire legal profession is grappling with both implicit and explicit bias and its negative effect on creating a more equitable legal profession.¹⁹ Law students in particular often cannot see their own biases; many come to law school thinking that exposure to rational legal training will immunize them from cultural bias.²⁰ Moreover, better understanding of foreign cultures can help law students understand how the law contributes to broader issues of fairness and justice across borders.²¹ In fact, culture matters in law because “neutral legal principles that pretend to disregard culture in fact privilege the dominant cultural norms.”²² To the extent we can help all law students see culture more clearly, we can help them improve the justice systems, both here and internationally. Spending valuable time and energy to integrate international students in the legal writing classroom and the broader law school community is pedagogically sound and important for all students.

III. Maximizing Integration in Our Classrooms

While increased cultural awareness will occur within classrooms due to students' exposure to each other, professors also can and should set up our classrooms to maximize cross-cultural integration.

A. Pre-Semester Survey

Many legal writing professors have used the “priming” effect to help new law students embrace cultural differences and accept diverse viewpoints in their legal education. Briefly, “priming” is a

technique in which participants are provided content, procedures, or goals, which in turn cue the participants to carry forward the content, procedures, or goals into new tasks.²³ Psychologists have researched cultural priming, in particular the question of whether an “individualist” cultural view can trigger a more “collectivist” view, and vice versa.²⁴ The short answer is yes: “[c]ulture-specific attitudes are not hardwired into our brains,” and “individuals can acquire multiple sets of cultural knowledge.”²⁵ Of course, law professors also have engaged with this research and how it can affect academic performance of students from diverse groups.²⁶ One conclusion is that “priming students to be receptive to [a diverse] education builds the foundation for realizing the full benefits that can flow from a diverse educational environment.”²⁷

We propose that priming all law students—both international and domestic—to recognize the multicultural makeup of their law school class through embracing the presence of international students will help cue law students to better understand legal culture, legal writing culture, and foreign cultures. We propose a fairly simple tool to prime J.D. students for

“Moreover, better understanding of foreign cultures can help law students understand how the law contributes to broader issues of fairness and justice across borders.”

²³ Daphna Oyserman & Spike W. S. Lee, *Does Culture Influence What and How We Think? Effects of Priming Individualism and Collectivism*, 134 *PSYCHOL. BULL.* 311, 313 (2008). For example, psychologists have studied “priming” individuals to think individualistically—that is, to focus on self-interest—and to think collectively—that is, to focus on the good of the group—by reading either an advertisement focused on either personal aspects or family-orientated aspects of a product, respectively. *Id.* at 316–17.

²⁴ Arzu Aydinli & Michael Bender, *Cultural Priming as a Tool to Understand Multiculturalism and Culture*, 2 *ONLINE READINGS IN PSYCHOL. & CULTURE* 7 (Aug. 1, 2015), https://www.researchgate.net/publication/281269869_Cultural_Priming_as_a_Tool_to_Understand_Multiculturalism_and_Culture; Gennady G. Knyazev et al., *Effect of Cultural Priming on Social Behavior and EEG Correlates of Self-Processing*, 12 *FRONTIERS BEHAV. NEUROSCIENCE* 2 (Oct. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6186948/pdf/fnbeh-12-00236.pdf>; Daphna Oyserman, *What Does a Priming Perspective Reveal About Culture: Culture-as-Situated Cognition*, *CURRENT OPINION IN PSYCHOLOGY* 1, 8–10 (Oct. 2016), https://www.researchgate.net/publication/308919926_What_does_a_priming_perspective_reveal_about_culture_Culture-as-situated_cognition.

²⁵ Knyazev et al., *supra* note 24, at 2.

²⁶ See, e.g., Chris Chambers Goodman, *Retaining Diversity in the Classroom: Strategies for Maximizing the Benefits That Flow from a Diverse Student Body*, 35 *PEPP. L. REV.* 663, 674–75 (2008).

²⁷ *Id.*

¹⁸ Zawisza, *supra* note 6, at 198–99.

¹⁹ See, e.g., ABA COMM'N ON WOMEN IN THE PROFESSION & MINORITY CORPORATE COUNSEL ASS'N, *YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL AND GENDER BIAS IN THE LEGAL PROFESSION* (2018).

²⁰ Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility Learning: Lessons from Social Cognition Theory*, 15 *NEV. L.J.* 537, 540 (2015).

²¹ Ali, *supra* note 12, at 261–62.

²² Zawisza, *supra* note 6, at 195 (internal quotation and citation omitted).

“We suggest priming J.D. students with a survey that asks them to reflect on their prior writing experience and their prior experience with foreign language.”

accepting immersion into legal writing culture and foreign culture: the pre-semester survey.

We are not the first to conduct such a survey: that honor likely goes to Mark Wojcik and Diane Edelman.²⁸ But we may be the first to link the use of a survey to “priming” technique for both writing and cultural immersion. We suggest priming J.D. students with a survey that asks them to reflect on their prior writing experience and their prior experience with foreign languages.

By asking students to reflect on their prior writing experiences, we hope to prepare students to accept the writing-focused nature of legal practice and to recognize that they have probably done more writing before law school than they realize. For example, when we ask students to list the last course “that focused on writing,” the responses vary widely. Students realize that their history course, philosophy course, or political thought course involved writing as a major component of the grade. Some students even describe lab reports written for a chemistry course.

We also ask students to describe both their strengths and challenges as writers. By asking about strengths, we want students to understand that they are all writers in some sense—all of them have written hundreds of pages over the course of their education so far. We want them to reflect on that experience so they can start their legal writing career from a place of confidence. By asking about challenges, we want them to think about how their legal writing class might be different from their prior experiences with writing and to reflect on their (sometimes incorrect) expectations about legal writing culture. For example, many students explain that they expect to find writing concisely to be a challenge. Or they worry about learning to write in the voice that lawyers typically use.

The next portion of the survey asks students about their English proficiency and their foreign language experience.²⁹ First, we ask students where they

learned English (e.g., inside the United States as a first language, or some other option) and whether English is the language in which their writing skills are strongest. Approximately 90% of domestic law students will answer “yes” to the second question and acknowledge that they learned English in the United States as their first language. So why bother asking if we generally know the answer? Just asking students the question primes them to realize that some of their classmates, and many in their newly chosen profession, will answer the question differently. That question should also begin to open their minds to learning new cultures, which we prime next.

The survey then asks students to share their experience with other languages they have studied. Almost every student entering law school has at least studied another language at some point in their education. Even if the last course they took was high school French, asking students to name that course, and to explain their level of language proficiency gained from that course, will help them think about foreign culture.

In our experience, nearly every language course includes some element of cultural education. By priming students to reflect on the cultural awareness they already have, we are preparing them to recognize the importance of continuing that learning in law school. We also think this priming helps our domestic J.D.s understand and appreciate what international law students experience when they arrive to study here. The question also primes all students to recognize that they are learning a new language: “the language of the law.” Finally, we think this question helps build community among law students by encouraging them to focus on the similarities they share with one another—writing experience, but not legal writing experience, and foreign language experience, but not legal language experience.

The survey is attached as an appendix. We have also attached as a second appendix a similar survey that can be used in all-LL.M. classes. While we are not priming foreign LL.M. students in the exact same

²⁸ See generally Wojcik & Edelman, *supra* note 8.

²⁹ See also Sue Liemer, *How to Support International ELL Students When You Only Have a Few of Them*, 26 PERSPS. 55 (2018) (discussing the importance

of early assessments to provide additional needed writing support)

way, we can still obtain information from the LL.M. survey that helps us with our knowledge of each student and our efforts at community building.

B. Other Classroom Strategies for Integrating International Students

First, professors should do their best to foster interactions among domestic and international students. These interactions do not always happen organically. The more intimate experience of the legal writing class is an ideal setting for students to be able to interact with each other when they might not otherwise do so. Professors can arrange for opportunities for students to interact with each other in office hours meetings that include both international and domestic students.

One simple and fun exercise for classes with international J.D. students involves having students write a basic sentence on the board in multiple languages, followed by a literal translation to English, which illustrates how the order of words in a sentence can be different in different languages.³⁰ Another effective exercise in an all-foreign LL.M. class (in which most students have already worked as lawyers) requires students, once they learn about IRAC, to present a short presentation with an Issue, Rule, Analysis, and Conclusion for a case from their legal career (or if they have not yet practiced, a notable case in their home country). Not only does this exercise make IRAC come alive to them, but the students become much more alive to each other and begin to build an appreciation for the incredible range of experiences and expertise among the group. These foreign LL.M. students make connections early in the semester that they would not have made otherwise, see differences and similarities in legal systems more clearly, and begin connection and community building right away.

Other ideas, some of which professors have had the opportunity to hone during pandemic teaching, include the following:

- **Take advantage of online discussion.** Have students communicate in discussion groups in the class's online platform: Blackboard (via Pronto),

Lexis Classroom, Canvas, etc. Using VoiceThread, a video discussion tool for discussions and other assignments, is also useful. Students are used to deep engagement in Facebook and Instagram comments. The professor can post a question after each class and require responses. Assign students to start conversations, which can expand in unexpected directions. Students likely need no encouragement from the professor to do so, but some of our classes have formed their own WhatsApp groups, where they can chat (and vent!) about classes and connect further. Such online interaction provides an easily understandable baseline for students from different countries.

- **Have students post short introductory videos on the class website.** Both the students and the professor can post short introductory videos on the class website. The professor can post one as well. Along with the surveys, the videos provide a great deal of information useful both for the student and for the professor, from work history to name pronunciation. Flipgrid is a useful video tool for student introductions posted asynchronously.
- **Maximize cross-cultural interaction in breakout groups.** Having breakout groups, whether in person or online, is an excellent way to make sure the students are getting exposed to each other in a smaller and less intimidating setting. Provide an assignment or discussion topic in the breakout groups and then have the students come back to share with the broader group. Engage the quieter students to speak first. We also find that in groups of more than two, it is helpful to assign roles (scribe, moderator, etc.) so people do not have confusion about who should speak. These groups also facilitate students getting to know each other and work toward building class community. Do not be afraid to have short one- to two-minute breakout groups during class, as well—they give the students an opportunity to interact with more people, and they keep students actively engaged with the class. Encouraging student interaction in small groups will maximize cross-cultural interaction.

“First, professors should do their best to foster interactions among domestic and international students.”

³⁰ See generally Simon, *supra* note 9.

“Our role as writing instructors includes this opportunity to teach them about U.S. culture in addition to legal writing—and ideally, to help provide opportunities to learn from domestic J.D.s as well.”

- **Commemorate the semester.** To cap off the semester, we usually have an in-person celebration where each person brings a small part of his or her culture. In pre-pandemic times, we liked to host potlucks where all the students brought a dish from their own countries. During the pandemic, we instead compiled a shared online cookbook of recipes. Professors could also create a different type of compilation: for example, favorite books from or travel destinations in the students’ home countries.

Professors should also remember that, while we are teaching familiar U.S. legal writing standards, “what is appropriate, expected and familiar in one culture may seem strange—sometimes even insulting—in another.”³¹ International students can remind us that we need to explain not just what our conventions are, but why we have these conventions and how they fit within the context of our American legal system.³² For example, students from other cultures might not want to share personal information. They might be used to flowing, flamboyant sentences, or they might be used to, in a culture with different responsibilities for the reader, saving the conclusion for the very end of the piece.³³ So “we must consider how our students’ previous writing backgrounds influence their ideas about writing if we are to help them adapt to the customs of the [U.S.] legal writing community.”³⁴ Our role as writing instructors includes this opportunity to teach them about U.S. culture in addition to legal writing—and ideally, to help provide opportunities to learn from domestic J.D.s as well.

Finally, we should always “show, in class, that [we] are aware of the constraints and problems that law students are facing . . . that [we] should show, sometimes quite subtly, that [we] understand and are sympathetic to the problems they are having even if you yourself are now an expert who no

longer has these problems.”³⁵ Legal writing professors have written before about how learning from their own challenging experiences going back to school as students helped them increase their empathy. For example, Dawn Barker Anderson, a new Ph.D. student at the age of forty-two, struggled to learn a new citation style.³⁶ Professor Suzanne Rowe described the difficulty of learning in a new country and new culture—especially when the teacher was “not [] interested in me, or my mastery of his native language, or my understanding of his native culture”:

[b]eing a student again deepened my empathy for new law students. My experience mirrored theirs—arriving in a new city, seeking relationships during orientation, feeling overwhelmed in classes, struggling to transfer prior knowledge, and learning the culture of law school. My sabbatical experience increased my commitment to easing their transition.³⁷

To this point, a good “teacher knows the names and faces of all her students, and constantly lets the students know that by calling them by name inside and outside class. . . . A classroom in which students feel they are anonymous is a classroom where students feel they can fade in and out without anyone’s knowing or caring.”³⁸ A classroom where all students are known by the professor will also help facilitate the student’s knowledge of and connection with each other.

IV. Institutional Strategies for Integrating International Students

Just as our students must not be “anonymous” in our classrooms, neither must they be anonymous in other classes or our institutions. We have seen several ideas for institutional support in our schools and in other schools as well. International students appreciate these types of support, and

³⁵ Kent D. Syervud, *Taking Students Seriously: A Guide for New Law Teachers*, J. LEGAL EDUC. 247, 250 (1993).

³⁶ See generally Dawn Barker Anderson, *Life as a Teacher—Life as a Student—Life as a Teacher*, 33 SECOND DRAFT 1 (2020).

³⁷ Suzanne Rowe, *Montevideo: Una Estudiante Otra Vez (A Student Once Again)*, 33 SECOND DRAFT 10, 11 (2020).

³⁸ Syervud, *supra* note 35, at 248-49.

³¹ Jessie Grearson, *Cultural Influences on Learning: Insights from International Students*, 11 SECOND DRAFT 8, 8 (1997).

³² *Id.* at 8-9.

³³ *Id.* at 9.

³⁴ *Id.* at 8.

often they have even requested that we implement some of the ideas. Those ideas include:

- Arrange panels of recent international J.D. and/or foreign LL.M. graduates—perhaps even with no faculty or staff present— so that international students can participate in candid discussions on how to navigate law school. Zoom could be a helpful format to acknowledge the reality of location and time differences.
- Pair international J.D. students and LL.M. students with a domestic J.D. “buddy” and/or a designated mentor professor. This match will help the international students adjust to U.S. cultural norms and help prime the domestic students for increased cultural competency and humility.
- Arrange for regular, informal “lunch chat” meetings, whether on Zoom or in person, for casual drop-ins hosted by LL.M. students or other administration personnel to talk about any challenges students are facing and to enable them to receive advice in a low-key setting.
- Invite guest speakers to class, including international lawyers who obtained a J.D. or foreign LL.M.s, to talk about their work (whether in person or over Zoom).
- Hold pre-classes on writing and language to get students ready for a new legal system and style of learning, as well as help them build connections before classes begin.
- Provide LL.M. students full access to all school resources J.D.s have, including outlines and prior professor evaluations.

Students have shared that these types of programs help instill confidence in them and provide them a vision of life beyond the degree—critical parts of their law school experience.

V. Conclusion

Integrating international students well into our classrooms and schools benefits not just them, but our domestic J.D. students, and those benefits will redound to benefit the profession. Our hope is that this Article prompts renewed commitment to this goal and new strategies for doing so.

Appendix

1L Legal Writing Questionnaire (for classes with J.D.s and International Students)³⁹

Sharing this information with your instructors will provide you with more effective and tailored instruction. Please answer all questions to the best of your ability.

1. Your name:
2. What was your last class that focused on writing, if any? Please include when and where you took this class.
3. What do you think your biggest challenges will be in legal writing?
4. How do you think the legal writing instructors could help you overcome these challenges?
5. What are your strengths as a writer?
6. Where did you learn English? E.g., inside the United States as my first language, inside the United States as my second or later language, outside the United States as my first language, or outside the United States as my second or later language.
7. Is English the language in which your writing skills are strongest?
8. What languages have you studied, other than English? Please indicate your proficiency in each language (e.g., fluent, conversational, or basic reading skills), and indicate when and where you last studied a language other than English.
9. What is your work history?
10. Is there anything else you would like your legal writing instructors to know about you and/or your learning style?

³⁹ Note this survey can be sent to all students from the department before school starts, or it can be sent by individual teachers on their first contact with students.

Legal Writing Questionnaire
(for all-LL.M. Classes)

Sharing this information with your instructors will provide you with more effective and tailored instruction. Please answer all questions to the best of your ability.

1. Your name:
2. Where are you from?
3. What is your education experience?
4. What is your work experience?
5. What is your plan for after you obtain the LL.M.? Do you plan to take a Bar?
6. What was your last class that focused on writing, if any? Please include when and where you took this class.
7. What do you think your biggest challenges will be in legal writing?
8. How do you think the legal writing instructors could help you overcome these challenges?
9. What are your strengths as a writer?
10. Where and when did you learn English? E.g., inside the United States as my first language, inside the United States as my second or later language, outside the United States as my first language, or outside the United States as my second or later language.
11. Is English the language in which your writing skills are strongest?
12. What languages do you speak, other than English? Please indicate your proficiency in each language (e.g., fluent, conversational, or basic reading skills), and indicate when and where you last studied a language other than English.
13. Is there anything else you would like your legal writing instructors to know about you and/or your learning style?

Cite as: Robin Boyle-Laisure & Stephen Paskey, *Swimming with Broad Strokes: Publishing and Presenting Beyond the LW Discipline*, 29 PERSPS. 77 (2022).

Swimming with Broad Strokes: Publishing and Presenting Beyond the LW Discipline

By Robin Boyle-Laisure and Stephen Paskey*

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In our greater skills community, we share ideas, borrow and tweak theories from other disciplines, and create new approaches. It is understandable how our community may expand pedagogy to the brim of legal writing or explore topics outside of the field. Skills professors are, by nature, a creative collective who teach from the heart and enjoy writing and thinking. Our publishing pursuits can be boundless.

Both Authors of this Article share mutual experiences of dipping our toes in a pond beyond the legal writing continent. Our writing experiences have influenced our teaching, bringing these broader perspectives to our legal writing pedagogy. Part I provides our research and publication fields that we have individually explored and suggests why writing beyond the LRW curriculum could be beneficial. Part II gives examples of how our research has created synergies with our legal writing assignments and classroom exercises. Part III recommends resources readily available to our legal writing community for researching and writing on broader topics.

I. Our Research, Writing, and Presentation Experiences Beyond the Legal Writing Discipline

Each of us working independently explored topics beyond the traditional syllabus of a first-year legal research and writing course. These explorations benefitted our classroom assignments and our professional growth.

Since the start of Robin's career, she has written articles in parallel universes—learning styles and legal writing pedagogy in one sphere¹ and legal

remedies for abusive high control groups, such as cults,² in another. What did these spheres have in common? Nothing at first glance. But Robin felt thoroughly immersed writing in both camps and soon learned to adapt these outside research opportunities into classroom assignments. Her research and published articles opened the door for Robin to present on topics such as human trafficking, undue influence, the recent criminal prosecution against the NXIVM cult, and the intersection of cults and immigration. She found herself presenting at international conferences and before a Harvard think tank.³ More recently, Robin contributed a chapter for a book about generations, and her paper explored comparisons of the civil rights movement with the climate movement.⁴ It has certainly been an interesting path. Along the way, Robin feels she's learned a lot about law

“Skills professors are, by nature, a creative collective who teach from the heart and enjoy writing and thinking.”

Strokes; Publishing and Presenting on Non-Legal Writing Topics,” hosted by New York Law School. Thank you to Amy Widman for her contributions to this Article.

Robin thanks her school for its generous support of her scholarship in the fields expressed in the Article and her faculty colleagues, particularly the skills faculty; she also thanks the International Cultic Studies Association. Stephen thanks his colleagues for their support of and interest in his work.

1 See, e.g., Robin Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213 (1998) (empirical study concluding that law students have diverse learning styles); Robin Boyle, *Law Students with Attention Deficit Disorder: How to Reach Them, How to Teach Them*, 39 J. MARSHALL L. REV. 349 (2006) (addressing pedagogical approaches (“ADD”).

2 See, e.g., Robin Boyle, *Preventing Predatory Alienation by High-Control Groups: The Application of Human Trafficking Laws to Groups Popularly Known as “Cults,” and Proposed Changes to Laws Regarding Federal Immigration, State Child Marriage, & Undue Influence*, 1 INT'L. J. COERCION, ABUSE, & MANIPULATION 27 (2021) (peer-reviewed); Robin Boyle, *Employing Trafficking Laws to Capture Elusive Leaders of Destructive Cults*, 17 OR. REV. INT'L L. 205 (2016); Robin Boyle Laisure & Andrea Laisure, *Staying Safe: Observing Warning Signs of a Dangerous Liaison*, 8(3) ICSA TODAY 6 (2017) (peer-reviewed).

3 Robin Boyle, Presenter, Program at the Harv. Med. Sch., Prog. In Psychiatry & L., Boston, Mass., *Litigating Against Cults: Avoiding Undue Influence Conundrum* (Sept. 2019) (invited).

4 Robin Boyle-Laisure, *The Times They are a Changin': Lessons Imparted from the 1960s Civil Rights Movement and the Current-Day Climate Movement*, in GENERATIONS IN AMERICAN POLITICS (forthcoming Univ. Mich. Press, Sally Friedman & David Schulz eds., 2023) (invited).

*Inspiration for this Article came from the Authors' presentation at the virtual 2021 Empire State Legal Writing Biennial Conference, “Swimming with Broad

“Trust yourself
and your
interests.”

practice by listening to practitioners, who shared courtroom tips of cases they have tried domestically and in other countries, and to conference speakers, who often shared victims’ perspectives.

Like many scholars in our community, **Stephen** has a deep interest in storytelling in the context of law. His work is unique, however, in that he has often pursued that interest outside the legal academy. While writing a law review article about the challenges faced by trauma survivors who must tell their story in the process of seeking political asylum,⁵ Stephen became fascinated with literary narrative theory, and particularly with the ways that scholarship on the structure of stories can deepen our understanding of what the law is and how it operates.

To deepen his understanding of narrative theory, Stephen began attending and presenting at the annual conferences of the International Society for the Study of Narrative (ISSN). He also attended two weeklong programs aimed at Ph.D. students working in narratology—one in Denmark, and the other held virtually. The fruit of that work has been scholarship that is deeply interdisciplinary and sometimes unconventional. In May 2021, the journal *Narrative*—a leading journal of literary theory—published Stephen’s essay on narrative, rhetoric, and the structure of legal rules⁶ as part of a special issue on “narrative in the public sphere.” And in the legal academy, Stephen recently published an 1,100-word fable—literally a fable—illustrating the relationship between law and storytelling.⁷

Why write beyond the legal writing discipline?

Several reasons. First, do it because you find it interesting. Two decades ago, Robin met with a big law partner who was litigating against a cult in upstate New York, and he warned her that it would be hard to leave behind the subject area of coercive control once she dug into researching

cases. And he was right—she finds it fascinating and 20 years later she is still presenting and writing about the topic. Trust yourself and your interests.

Second, do it because your school values publications. Check your university statutes, your school’s standards for promotion, and the inclination of the faculty personnel committee. It may be impressive that the journals where you’ve placed your articles are peer-reviewed. Our profession is unusual in that student-run journals hold sway. If you are applying for promotion, it could be an opportune time to make the argument that bar journals and specialty journals should count because they are peer-reviewed. Co-authorship is also on the rise in legal academia; make sure you know how your institution values co-authored articles and do not discount the value that co-authoring can bring to your work and the methods available to you. For example, empirical methods lend themselves well to co-authorship.

A caveat—not all writing qualifies as promotion-worthy at every school, which is why we recommend checking your school’s rules. Your institution might require that you publish in your teaching discipline in order to have your scholarship count towards promotion. However, given recent developments in the news and in academic scholarship, schools are more likely to embrace topics such as Black Lives Matter, the #MeToo movement, reproductive rights, and the climate movement.

Robin’s portfolio for promotion in her earlier days of teaching included a mix of articles on learning styles and pedagogy,⁸ as well as articles written in peer-review journals on topics of remedies for cult victims (Violence Against Women’s Act,⁹ laws pertaining to stalking, rape, and legal emancipation¹⁰). Over the years, as the legal

⁸ See e.g., Boyle & Dunn, *supra* note 1; Boyle, ADD, *supra* note 1; Robin Boyle & Joanne Ingham, *Generation X in Law School: How These Law Students Are Different from Those Who Teach Them*, 56 J. LEGAL EDUC. 281 (2006) (peer-reviewed).

⁹ Robin Boyle, *Women, the Law, and Cults: Three Avenues of Legal Recourse—New Rape Laws, VAWA, and Anti-Stalking Laws*, 15 CULTIC STUD. J. 1 (1998) (peer-reviewed).

¹⁰ Robin Boyle, *How Children in Cults May Use Emancipation Laws to Free Themselves*, 16 CULTIC STUD. J. 1 (1999) (peer-reviewed).

⁵ Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457 (2016).

⁶ Stephen Paskey, *Reframing Law’s Domain: Narrative, Rhetoric, and the Forms of Legal Rules*, 29 NARRATIVE 178 (May 2021).

⁷ Stephen Paskey, *On Justice: An Origin Story*, 68 BUFF. L. REV. 1515 (2020).

writing faculty gained in status at her school, her publications were supported by summer research stipends. Her school has supported her travel to conferences domestically and internationally to present on topics pertaining to cults and laws in the United States. Thus, she has not experienced any negative consequence to writing or presenting on topics broader than LRW curriculum.

Third, do it because your work might make a difference in this world. It takes a certain individual to have the patience to teach skills and to believe, wholeheartedly, that skills can level a playing field. If you are teaching skills, then you already have a concern for others.

Finally, challenging yourself to develop new skills can bring a fresh perspective to your teaching as well, both in the substantive area that you are researching and writing on as well as pedagogically. Putting yourself in the role of beginner again can provide new insights and empathy for how that feels that can carry over into how you work with students beginning legal studies. Stephen literally put himself in the roles of both a student and an “outsider” by attending workshops aimed at students in another academic discipline.

II. Infusing Broader Perspectives into Legal Writing Pedagogy

There are synergies between all types of scholarship and teaching, and perhaps even more so in a legal writing classroom. Because legal writing assignments and exercises can encompass so many topics, what we write about can find their way into our legal writing materials.

Robin’s scholarship and legal writing assignments have dovetailed on topics pertaining to immigration, human trafficking, and undue influence. In the earlier days of her scholarship and teaching, her empirical research on pedagogy informed her teaching methods.

For example, as an objective memorandum writing assignment, Robin provided a closed universe packet of cases and statutes on immigration law. Students explored the issue of whether a hypothetical undocumented immigrant met

one of the asylum criteria for “social group.” In the persuasive writing part of the first-year legal writing course, Robin on occasion has provided a hypothetical Appellate Record for students to find cases about social group and to write briefs on whether an individual met the asylum criteria.

A question regarding cults was infused in Robin’s objective memorandum assignment recently. The assignment was based upon cases in which undue influence was raised by plaintiffs in contexts where defendant churches or individuals exerted control over them. The issue of undue influence could be transformed into a motion brief or appellate brief assignment as well. The topic of undue influence is typically heavily fact-based and ripe for legal writing assignments.

Robin’s research on human trafficking statutes parlayed into questions used for her LRW class for formative assessment purposes. For a lesson on statutory interpretation, Robin created multiple choice questions involving the trafficking statutes¹¹ to test students’ careful reading of the textual language. For example, students were asked to interpret and apply the statutory phrase “anything of value.”¹²

Similarly, Stephen’s work on the relationship between storytelling and legal rules has informed the way he teaches both legal analysis and legal drafting. Before the fall semester begins, Stephen asks his first-year students to read his fable, which suggests that one might conceive of law and the courts as a mechanism for changing the ending of certain categories of real-life stories—or simply letting them be. In the context of legal analysis, Stephen stresses that his students must tell a story. He then asks them to think carefully about the stock story embedded in each rule;

11 ROBIN BOYLE-LAISURE ET AL., *BECOMING A LEGAL WRITER: A WORKBOOK WITH EXPLANATIONS TO DEVELOP OBJECTIVE LEGAL ANALYSIS AND WRITING SKILLS* (2019) (formative assessment questions accompany this book on the Core Knowledge platform of Caroline Academic Press). The human trafficking statute was used in chapter 8.1.

12 18 U.S.C. § 1591(a) (2018). The statute reads,

(a) Whoever knowingly—(1) in or affecting interstate or foreign commerce . . . recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1). *Id.* (emphasis added).

“Putting yourself in the role of beginner again can provide new insights and empathy for how that feels that can carry over into how you work with students beginning legal studies.”

“If you are looking for topic ideas, our legal writing community has provided us with bibliographies and conferences to help you explore.”

what sort of story they must tell if their client will prevail; what alternate stories one might construct from the same set of facts; and what different or additional facts might change the story’s legal ending. Anecdotally, the upshot of this approach is an increased level of engagement and insight from students who might otherwise struggle with a more logic-oriented approach to legal rules and analysis.

That strategy seems especially salient in areas of the law where some version of the reasonable person standard is at play. For instance, under Fourth Amendment jurisprudence, a person has been seized by law enforcement when, considering a totality of the circumstances, a reasonable person in the individual’s position is compelled to believe she is not free to leave, “decline the officers’ request, or otherwise terminate the encounter.”¹³ Several years ago, Stephen created a brief problem in which a Black man is arrested for drug possession after being questioned and searched by police on the doorstep of his home, and students must litigate whether relations between police and the Black community (including police shootings of unarmed Black men) should be considered as part of the reasonable person calculus.¹⁴ Students representing the Black defendant invariably tell a distinctly different story about the encounter than those representing the prosecution, and the differences between the stories compel the students to think more critically about the policy issues involved, and how the story they tell aligns with the purposes of the law.

In the context of contract drafting, Stephen asks his students to engage in a kind of “speculative” fiction—to imagine how the story *should* play out between the parties; what actions or happenings might derail the desired story; and how the story should proceed if something

unexpected or undesirable happens. Tina Stark’s discussion of “endgame provisions” in contracts nicely illustrates the idea—especially with regard to unfriendly termination:

Again, the question is, *what if?* *What if* the author wants to publish other books under a pseudonym? *What if* the parent company files for bankruptcy? *What if* a natural disaster prevents deliver of time-critical construction material? *What if* a competitor wants to open a store in the same shopping mall? *What if* the play closes and two months later the producer wants to reopen in the same city but at a different theater?¹⁵

Because our students (like all of us) are so often immersed in stories, both real and imagined, framing the parties to a contract as characters in a story helps students imagine both the unexpected twists the story might take, and the various ways things could end badly and not as the parties hoped or intended.

III. Our Robust Legal Writing Community Provides Ample Resources

If you are looking for topic ideas, our legal writing community has provided us with bibliographies and conferences to help you explore. Here are a few places to look for topics:

Feminist theory has been explored by many members in our community. For instance, *Feminist Judgments: Rewritten Opinions of the United States Supreme Court*¹⁶ is a compilation with an expansive view of legal writing scholarship. The project involves hundreds of feminist law professors, many of whom are professors of legal research, legal writing, and lawyering.¹⁷

Race and social justice scholarship continues to develop. For instance, Leslie Patrice Culver

¹³ Florida v. Bostick, 501 U.S. 429, 439 (1991)

¹⁴ Somewhat surprisingly, only a few federal court decisions have addressed the issue, and the courts have reached opposite results. In *United States v. Washington*, 490 F.3d 765, 773–74 (9th Cir. 2007), for instance, the court’s decision that a Black defendant had been seized by police was heavily influenced by recent incidences of police shooting (and in one instance, killing) unarmed Black citizens. Conversely, in *United States v. Easley*, 911 F.3d 1074, 1082 (10th Cir. 2018), the court refused to consider race under the reasonable person test because, it concluded, the life experiences of Black citizens are not uniform, and to consider race would undermine the benefits of an “objective” test.

¹⁵ TINA STARK, DRAFTING CONTRACTS: HOW AND WHY LAWYERS DO WHAT THEY DO 197 (2d ed. 2014) (footnote omitted).

¹⁶ KATHRYN STANCHI ET AL., FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT (2016).

¹⁷ For more information about United States Feminist Judgments Project, go to <https://www.law.unlv.edu/us-feminist-judgments/series-projects>.

has written on the topic of identity.¹⁸ She has also written other articles on race and gender.¹⁹ Relatively new to legal writing, but not new to teaching, is Renee Nicole Allen, who is writing about race, gender, and academy.²⁰

Eight storytelling conferences have spawned a wealth of scholarship. Bibliographies²¹ can direct you to articles on the use of stories—and of storytelling or narrative elements—in law practice, in law school pedagogy, and within the law generally. And there are other communities—such as Global Legal Skills, which has hosted international conferences and has inspired articles.²²

Members of our community have written books on a range of topics. For instance, Heidi Brown has written about introverted lawyers.²³ Pam Jenoff has written historical fiction, with her books appearing on *The New York Times* Best Sellers list.²⁴

Members of our community have also engaged in empirical studies. Twenty-five years ago, Robin conducted the first empirical study of learning styles in a law school classroom.²⁵ Stephen's work includes an analysis of 369 federal decisions in which political asylum was denied.²⁶ The Association of American Law Schools (AALS) has a section on Empirical Study of Legal Education and the Legal Profession. That section held a webinar in the summer of 2021 for beginning empiricists.²⁷ A virtual national reading group, called "Research Methods in Legal Communication," offered training modules. To date, these sessions have provided guidance on reading statistics in empirical research, developing research questions, and using cluster analysis.²⁸

We hope we have encouraged you to explore and write about topics that interest you and that are in your heart.

“Members of our community have written books on a range of topics.”

¹⁸ Leslie Patrice Culver, *(Un)Wicked Analytical Frameworks and the Cry for Identity*, 21 NEV. L.J. 655 (2021).

¹⁹ *Conscious Identity Performance*, 55 San Diego L. Rev. 577 (2018); *The Rise of Self Sidelining*, 39 WOMEN'S RTS. L. REP. 173 (2018); *White Doors, Black Footsteps: Leveraging White Privilege to Benefit Law Students of Color*, 21 J. GENDER, RACE & JUSTICE 37 (2017).

²⁰ *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364 (2021).

²¹ A bibliography was included in the issue of Fall 2015 *Legal Communication & Rhetoric*. There is a more recent bibliography being assembled by Chris Rideout. The Applied Legal Storytelling movement is largely associated with a series of biennial academic conferences that began in 2007; the majority of the entries in this bibliography originated with presentations at one of those conferences.

²² Contacts for Global Legal Skills are Mark Wojcik and David Austin.

²³ HEIDI K. BROWN, *THE INTROVERTED LAWYER: A SEVEN-STEP JOURNEY TOWARD AUTHENTICALLY EMPOWERED ADVOCACY* (2017). See also HEIDI K. BROWN, *UNTANGLING FEAR IN LAWYERING: A FOUR-STEP JOURNEY TOWARD POWERFUL ADVOCACY* (2019); HEIDI K. BROWN, *Healthy Hives: Can Replacing Hierarchies with Intergroup Teams Transform Our Profession?*, 107 ABA J., Apr.–May 2021, at 28.

²⁴ See, e.g., PAM JENOFF, *THE ORPHAN'S TALE* (2017).

²⁵ Boyle & Dunn, *supra* note 1. Other empirical studies include the following: Robin Boyle & Lynne Dolle, *Providing Structure to Law Students—Introducing the Programmed Learning Sequences as an Instructional Tool*, 8 LEGAL WRITING 59 (2002) (peer-reviewed); Robin Boyle et al., *Presenting a New Instructional Tool for Teaching Law-Related Courses: A Contract Activity Package for Motivated and Independent Learners*, 38 Gonzaga L. Rev. 1 (2002–2003); see also Robin Boyle & Joanne Ingham, *Suggestions on How to Conduct Empirical Research; A Behind-the-Scenes View*, 15 PERSPS, 176 (2007) (peer-reviewed).

²⁶ See generally Paskey, *supra* note 5.

²⁷ For a webinar for beginning empiricists, see <https://www.aals.org/qa-for-beginner-empiricists>.

²⁸ For more information, contact Brian Larson at brian.lwic@members.mobilize.io.

Cite as: Melissa J. Marlow, *Time for Teaching: Thoughts for Today's Busy LRW Professors*, 29 PERSPS. 82 (2022).

Time for Teaching: Thoughts for Today's Busy LRW Professors

By Melissa J. Marlow

Melissa J. Marlow is a Clinical Professor of Law at the Southern Illinois University School of Law.

I. When I Had a Lot of Time

Staring down a medical situation that would require me to remain on bed rest for five months, I pondered how I would meet my obligations as a legal writing teacher, scholar, and service contributor. After a full day of ceiling gazing and prayer, advice from colleagues started pouring in. One recommended I find an adjustable desk to work for periods of time on my laptop. Another offered use of Skype for student conferences (this was pre-Zoom of course). The best advice came from a colleague¹ who always thought of the “big picture,” and it went something like this: just focus on the core functions of your job in order to get through this period successfully. What I found in focusing on those core functions was how much more I enjoyed actually teaching legal writing, and how much I was able to improve my teaching, and even scholarly agenda, in that short period of time.

As the years of academic work unfold, our commitments to various organizations and causes increase. And that is all good and necessary to our mission. But, in the ever-expanding list of committees, meetings, functions, fundraisers, conference presentations, coffees, brown bag lunches, and panels, we can sometimes find ourselves leaving just a few minutes each week for our development as skills teachers. This is particularly troubling, given the fact that those who teach legal research and writing are often the faculty who care most in their respective schools about effective student learning and outcomes.

I originally set out to write an empirical piece specifically measuring how little time we were spending improving our teaching versus engaging in scholarship and other service activities. During the semester of focusing on core responsibilities, I began to pause and wonder how much drift legal research and writing (LRW) professors have experienced over the last two to three decades in how we use our time. As more schools have improved status of LRW faculty through use of long-term contracts and some form of tenure, when scholarship has truly become the “coin of the realm” for those in our field (similar to our casebook colleagues), and our service obligations are four-fold (law school, university, legal profession, subject-matter specialty), then how much time are we able to devote to our professional development as teachers, attending to our students’ needs, and reflecting on our teaching?

I was gathering ideas on how to craft a survey measuring use of time by faculty (with a particular focus on skills faculty) when, in a forum with my colleagues, our associate dean bravely asked, “This is embarrassing, but if we had more time for improving our teaching, how would we use it?” I had previously thought this was something we knew how to do, but simply did not have the time or space to pursue with all our other commitments. Over the many weeks following that faculty forum, I learned from talking to colleagues that it is not only a question of time for improving teaching, but rather what to do with that time once it is freed up. Again, I learned I was not writing the article that I had planned to write—the one quantifying the lack of teacher development time for overextended LRW faculty—but rather putting together a piece that the busy skills professor can pick up and use for teaching improvement.

¹ Thank you to longtime colleague and friend, Professor Sue Liemer, as well as my children, Vincent, Arden, and Greer for the sheer joy they bring, inspiring my teaching.

“But, in the ever-expanding list of committees, meetings, functions, fundraisers, conference presentations, coffees, brown bag lunches, and panels, we can sometimes find ourselves leaving just a few minutes each week for our development as skills teachers.”

LRW faculty are the very definition of people spread too thin, and most do not have time to delve into the vast literature on teaching improvement in any depth. So think of this piece as the *Reader's Digest* condensed version of that collective work. This Article is for those who always pick up a magazine at the checkout and read the article on ten easy ways to improve core strength, or five tips for having a cleaner home. This Article is intended to be a helpful way for readers to quickly absorb some of the relevant information on the topic.

This Article seeks to briefly summarize existing literature in legal education on teacher improvement, as well as to look to education scholarship generally for information relevant to law teachers in their professional development. It will focus on less well-known strategies that law faculty might not have encountered in legal education literature. Additionally, this Article will present some unconventional approaches to bettering our teaching, since often the way we “let our lives speak”² makes us stronger teachers.

II. How to Use the Extra Time to Improve Teaching

Let's assume the tough decisions on how to free up some time for teaching improvement have been made. Whether it be putting off service on a university committee for a year, or passing the baton to lead the local bar association, or declining to organize yet another program or event, then returning to core functions, and teaching development, is possible.

A. Thoughts from the Legal Academy

There is a growing body of literature in legal education focusing on teacher improvement. In the spring 2018 *Journal of Legal Education* issue, Professors Gerald Hess, Michael Schwartz, and Nancy Levit published “Fifty Ways to Promote Teaching and Learning.”³ These newer pieces

challenge all law professors to move beyond the most common methods of professional development most teachers use—such as updating syllabi and teaching notes, reviewing goals versus actual class experience, and paying attention to student evaluation feedback—to explore more reflective and individual strategies for improving teaching.

Specifically, law professors are currently being encouraged by their peers to self-assess through teaching inventories, video review of classes, teaching portfolios, and a host of other reflective techniques, including journaling and strengths assessments.⁴ Additionally, the range of teaching evaluation tools is expanding to include non-evaluative peer review.⁵

LRW faculty should be aware of the increased avenues for locating articles on teaching improvement, whether that be through the more standard sources (*Journal of Legal Education*, *clinical law journals*, *Legal Writing: The Journal of the Legal Writing Institute*, *Legal Communication & Rhetoric: JALWD*, and *Perspectives: Teaching Legal Research and Writing*), law reviews with a scholarship or teaching focus (*Gonzaga Law Review* and *Washburn Law Journal*), or the host of online newsletters or bulletins featuring articles on teacher development (such as through AALS sections, as well as *The Second Draft*, *The Learning Curve* and *The Law Teacher*). In fact, entire law review articles have been devoted to exploring specific teacher development strategies. For example, Professor Hess thoughtfully detailed how law faculty could engage in reflective journaling in his 2002 piece in the *Gonzaga Law Review*.⁶ Also, extensive and comprehensive research on effective law teaching is occurring, as evidenced in *What the Best Law Teachers*

“There is a growing body of literature in legal education focusing on teacher improvement.”

² See generally PARKER PALMER, LET YOUR LIFE SPEAK (1999).

³ Gerald Hess et al., *Fifty Ways to Promote Teaching and Learning*, 67 J. LEGAL EDUC. 696, 700–01 (2018) (exploring ways in which law schools can promote teacher improvement institutionally, as well as thoughts for law teachers on reflective practices).

⁴ *Id.* at 725–30.

⁵ See generally MICHAEL H. SCHWARTZ ET AL., WHAT THE BEST LAW TEACHERS DO (PRESS 2013).

⁶ Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 GONZ. L. REV. 129 (2002).

Do, which reported on twenty-six faculty who had been identified as master teachers.⁷

B. Recommendations from Educational Literature

Since law professors, for the most part, are not teacher trained and do not have the luxury of spending hours (or a happy year or two for me in writing this) poring over the educational literature on teacher improvement, this section seeks to offer a sampling of strategies most relevant to LRW teaching that experts in the field of teaching development cite as impacting professional growth (realizing that many of the suggestions are the subject of entire books). This sampling merely skims the surface of the educational literature on teaching improvement, and LRW faculty can find additional rich and extensive coverage of this topic in education publications.

Teacher reflection groups: These could be the assembling of legal writing faculty, research faculty, clinicians, faculty who are engaged in team-based learning, flipped classrooms, or whatever common denominator would unite skills teachers in discussion. Our former academic support director was a proponent of these, and those semester gatherings went a long way toward identifying common issues in learning and student climate. The experience was therapeutic in the sense that we realized we were not the only ones experiencing a certain dynamic or dealing with a particular problem. Often as we share “critical events in our practice, we start to realize the individual crises are collectively experienced dilemmas.”⁸

Law faculty—and LRW faculty are no exception to this—view themselves as independent contractors, and not as part of a community of teachers. Sharing struggles (whether those be professional or personal) is not part of faculty culture, except in the individual friendships that form with colleagues. The larger gatherings of teachers to

share reflectively are not commonplace and could go a long way toward improving our teaching.

Learning Conversations: A prerequisite to have a learning conversation is having a critical friend or small circle of critical friends.⁹ Learning conversations with critical friends are a step beyond teacher reflection groups, as these experiences allow teachers to reveal their own thinking effectively and make that thinking open to input from others. Regularly participating in learning conversations has the potential to deepen one’s thinking about teaching practice through discussion of specific learning episodes, as the most critical ingredient for making sense of our teaching is having a reliable professional relationship with a colleague. The greatest benefit, of course, is that it puts us as faculty in the position of learners.¹⁰

While not even realizing what was occurring until writing this Article, I spent close to two decades of my teaching career in a “learning conversation” with my colleagues in our lawyering skills program. Each week the team faithfully met to plan the upcoming week of course coverage, but we always started those meetings with at least twenty minutes of sharing about the previous week’s teaching: what went well, what did not go as planned, how were students performing on the building block we were covering that particular week, what obstacles were getting in the way of learning, what problematic interactions we had with students, what could we have done differently, and what successes were we observing. We also explored all the “other” factors impacting our teaching, such as interactions with other colleagues, student sentiment, law school climate, happenings on the main campus, events in our state, as well as personal events shaping our teaching (including births and raising children, balancing work and personal lives, hobbies, religious celebrations, etc.). The sharing among three colleagues who taught on the lawyering skills team resulted in precisely what educational experts say critical friends allow us to do: share concerns and

⁷ See generally SCHWARTZ ET AL., *supra* note 5.

⁸ STEPHEN BROOKFIELD, *BECOMING A CRITICALLY REFLECTIVE TEACHER* 31 (1995).

⁹ Sandra Schuck et al., *Enhancing Teacher Education Practice Through Professional Learning Conversations*, 31 EUR. J. TEACHER EDUC. 215 (2008).

¹⁰ *Id.*

“[T]his section seeks to offer a sampling of strategies most relevant to LRW teaching that experts in the field of teaching development cite as impacting professional growth”

figure out challenges in our teaching (we could have even taken it a step further and viewed videotapes of our teaching together). If after reading this article, you make the decision to only try a single strategy outlined herein, pick a critical LRW friend and engage in learning conversations, as there is no replacement for exploring the complexity of teaching.

Conference learning logs: Legal writing conferences have always been a source of strength, emotional anchoring, and excitement. However, I always had this nagging feeling that attending conferences had little influence on my teaching. Sure, I might add a new exercise or change the way I think about assessing something, but by and large conferences did not tend to deliver the expected impact for the investment of time (and the school's money, I might add). Perhaps if I had stumbled upon the concept of "conference learning logs" early in my career, that would have made a difference. Keeping a daily conference learning log involves recording anything significant, and reacting to what lessons this idea, exchange, or event has on your teaching practice.¹¹ It is almost akin to asking students to outline a course, where they have to take the various ideas and concepts and fit them into a framework that is useful to them and uniquely theirs. Once back at your home institution, take an hour to look back to those daily learning logs from the conference experience, and draft an action plan for how the presentations and discussion will impact your teaching. During the height of the pandemic, I was fortunate to attend the Legal Writing Institute national conference virtually and put the conference learning log technique into practice. I found it to be an invaluable tool in improving my teaching this past academic year, as I spent time reflecting and referring back to the notes and reactions recorded in my log after each session.

Autobiographical analysis of teaching: One trend in teacher education in recent years is the use of autobiographical narrative, allowing for autobiographical analysis to explore fundamental beliefs and philosophies. Teacher educators have "recognized the importance of the individual lived experience" as critical to the development

of what individual teachers will bring to their classrooms.¹² As such, the life histories of teachers are now used as part of teacher training programs' coverage of teaching knowledge.

Teachers-in-training are asked to, after writing, make explicit those perceived connections between lived experience and current behavior, and to look for "implications for teaching that emerged from the analysis."¹³ It is easy to see how LRW faculty could use this teacher-training tool as a method of professional development, writing autobiographical narratives on such topics as "Remembering Legal Research" or "Profile of Self as Writer." One of the goals of this Article is to help LRW faculty see that the precious few moments we are able to devote to professional development due to all the "other" that creeps in, leaves us little ability to do more than "just tinker with teaching." Writing an autobiographical profile could be done in as little as an hour or two, but the impact on our teaching could be significant, and lasting for the entirety of our careers.

Teacher learning audits: An innovator in the field of teaching improvement, Stephen Brookfield suggests a way to gauge development as a teacher is by taking part in periodic audits.¹⁴ Brookfield recommends asking yourself a series of questions beginning with "Compared with this time last year, I am now able to . . ." After responding to these queries, then ask what led to the development or learning. Personal audits may be especially useful for mid- to end-of-career skills teachers, as this type of reflection "leads educators to see themselves as adult learners about teaching, enhances their self-awareness as teachers, and shows them how much they have changed over time, all of which enables them to remain engaged in their work."¹⁵

“One of the goals of this Article is to help LRW faculty see that the precious few moments we are able to devote to professional development due to all the ‘other’ that creeps in, leaves us little ability to do more than ‘just tinker with teaching.’”

12 Lynne Alvine, *Shaping the Teaching Self Through Autobiographical Narrative*, 84 HIGH SCHOOL J. 5 (2001); see also Michele Genor & A. Lin Goodwin, *Confronting Ourselves: Using Autobiographical Analysis in Teacher Education*, 1 NEW EDUCATOR 311 (2006).

13 *Id.* at 7.

14 See generally BROOKFIELD, *supra* note 8.

15 Giovanni Badia, *Combining Critical Reflection and Action Research to Improve Pedagogy*, 17 LIBRS. & ACAD. 695, 699 (2017).

11 See BROOKFIELD, *supra* note 8, at 55–57.

“Sometimes getting outside the law school to study others teaching can even be as simple as watching your children take a class from a skilled teacher.”

Role model profiles: These profiles are a professional development exercise in which teachers reflect on the peer teachers they would like to emulate.¹⁶ In writing these profiles, teachers are encouraged to specifically describe the teaching and personality traits of the “role model” teacher and consider how they might pattern these practices in their own teaching. Focusing a teacher reflection group session as a “pair and share” of the role model profiles could be both engaging and enlightening, and the field of legal research and writing has an abundance of riches from which to choose from in selecting a role model.

Survival advice memos: A “survival advice letter gives guidance to an imagined successor about how to succeed in the role,” and should include descriptions of examples or events that support the advice being given.¹⁷ At the close of an academic year, asking students to reflect on their experiences in LRW and writing a survival advice memo to future students in the course can be a real window into so many aspects, including how they perceived a teacher’s approach, what problems they encountered, and how they overcame those challenges. In the summer season of preparing for another academic year, reviewing those survival advice memos offers much in terms of reflective work for us as teachers, that could ultimately influence planning decisions for future classes and students. Exercises like these offer those rare opportunities to get inside students’ heads and delve into how they, at that point in time, individually and collectively navigated a learning experience.

Microteaching within our specialty: LRW teachers can take part in microteaching sessions (ten-to-fifteen-minute segments of teaching) and then “[p]eers are asked to put themselves in the place of learners and communicate the impact of the microteaching on their own learning, the extent to which they attained the intended learning outcome, and what might have helped them learn better. An aspect of receiving

feedback . . . is to be open to all comments, even those that may seem completely idiosyncratic.”¹⁸

And while participant teachers are asked to explain the thought processes behind their actions, they are encouraged not to try and justify their actions in response to critique. Those who specialize in this form of teacher development stress that feedback is only “food for thought,” and whether specific feedback is incorporated in a subsequent teaching episode is left entirely up to the presenter. The benefits of microteaching are significant; unfortunately, there has been resistance to this type of developmental work since most feedback from students and colleagues is “long on judgment and short on helpful advice.”¹⁹ As LRW faculty, we have a built-in team that gives us the luxury of getting feedback on our teaching in a safe space.

C. Some Outside-the-Box Approaches

Law schools and legal education are unique in higher education on so many levels, including culture, teaching style, collegiality, and teacher-student interaction. Sometimes, the only way we break outside the mold or challenge ourselves, is to literally get outside the law school and observe good teaching in other disciplines. If your school is attached to a university, the faculty who teach methods courses in education oftentimes are models of teaching excellence. They would be understanding of the desire to improve teaching through observing teaching in other contexts. What better way to describe in an annual activity report that you took steps to improve your teaching than by working with a colleague across campus, to learn and grow in your skills. Those partnerships are the essence of university life.

Sometimes getting outside the law school to study others teaching can even be as simple as watching your children take a class from a skilled teacher. One such teacher who had a profound impact on my teaching was a swimming instructor who taught

¹⁶ See BROOKFIELD, *supra* note 8, at 77–78.

¹⁷ Badia, *supra* note 15, at 699.

¹⁸ ALENOUSH SAROYAN & CHERYL AMUNDSEN, *RETHINKING TEACHING IN HIGHER EDUCATION* 125 (2004).

¹⁹ PATRICIA CRANTON, *PROFESSIONAL DEVELOPMENT AS TRANSFORMATIVE LEARNING* 43 (1996).

my son. I watched in awe how this particular swim teacher got the students to achieve far more than any other teachers in the pool, and so careful reflection and comparison with other classes (which were occurring simultaneously in the large, connected pools) revealed there were several traits she possessed, which had good transfer to all teaching. She cared deeply about the students; it was critically important to her that these students passed the intermediate swim goals. She did not talk about how to execute the swim strokes, she demonstrated them, and actually stood alongside the students with her hands over the top of theirs, creating the muscle memory they needed to cement the concepts. Expectations were high, but the rewards for full effort or mastery were worth it. Praise was a common thread, both with verbal comments and an excited cheering, and it worked in that situation. Teaching success mattered to her, and she made that clear. Those same teaching traits can be observed in music instruction, sports coaching, new language learning, and a host of other easily observable (and outside the law school) teaching observation opportunities.

The world we and our students live in is best described as “information overload,” filled with distraction and constant communication. The use of social media and the pursuit of the trivial has become supreme. Few are able to rise above the noise of modern living. Bettering our teaching requires us to step back and reflect, ponder, rethink, and converse with others in our teaching community. The advice we give our students to avoid distractions when studying we could easily apply to ourselves. Teaching improvement can occur in two- to three-minute segments, but giant steps forward are made through concentrated spaces of time and attention, similar to the blocks of time we use as scholars. “Write-ins” have become popular in legal education, where refreshments and comfortable surroundings encourage us to turn off everything else in our work lives and write for a half-day. That same logic could apply to teaching improvement, where we schedule time and space for engaging in teacher reflections or other methods outlined in this Article.

At the risk of sounding like a therapist, deepening relationships in our life will improve our teaching.

Some will immediately resist this suggestion for the images or stereotypes of how to live it conjures up. But, especially as the law teachers who work most closely with students, we have chosen a craft where relationships matter. When our personal relationships are stronger, generally the better our work is as teachers, given the relational aspect of what we do. We are not engaged in independent work. We are in a business where who we are, and how we interact matters deeply. The stronger our personal relationships, the more skilled we are in areas of trust, nurture, and forgiveness.²⁰

In the same vein, learning to “love our students” is an important part of professional development. Having written on authenticity, I can say this without worrying about the criticism. A few years ago, the basketball coach at our university gave the law school commencement address. Talking with many graduates and their families following the ceremony, I learned the aspect from the address that really spoke to them centered on love. Coach Hinson said he wanted his basketball players to do well on the court and in school because he loved them. Then the coach gestured to the law faculty sitting on the stage and said these teachers felt the same about their law students. It was a truly touching moment, and a reminder that the student-teacher relationship is like no other, and worth working on each year we teach.

And while you are getting outside the law school to observe good teaching in other areas, and deepening those relationships, literally “get outside” as well. Academic life allows us to engage in teaching improvement and reflection while taking a walk around the campus, sitting outside on the law school patio, or taking a trek through your favorite nature destination. When we take time to develop our personal life through time spent in the outdoors as one example (there are so many other venues for personal development), we can make discoveries that relate to our teaching. Take the Swiss engineer George de Mestral, who developed “Velcro,” and trace the origins of that discovery to nature walks with his dog and trying to pick the burdock

“Those same teaching traits can be observed in music instruction, sports coaching, new language learning, and a host of other easily observable (and outside the law school) teaching observation opportunities.”

²⁰ See generally Schuck et al., *supra* note 9.

seeds off of the dog's fur. The problem leading to the invention of Velcro shows how looking at the world from different angles can influence and inform our lives, and thus our teaching.

Before anyone condemns me as stepping past the line, humans are hard-wired to be spiritual beings. Whatever your beliefs or non-beliefs, it would be difficult to discount the wide-ranging and lasting influence of educational expert Parker Palmer on the field of teaching. Many have read his groundbreaking book *The Courage to Teach*,²¹ but fewer have delved into who Palmer is personally. The text that informs us how Palmer reached many of his revelations about teaching improvement is entitled, *Let Your Life Speak* and it is fascinating to learn how faith molded and shaped Palmer as a teacher and scholar. Palmer spent many years in a Quaker community as an adult, and he learned “if people skimp on their inner work, their outer work will suffer as well.”²² Examples Palmer gave of “inner work” were journaling, reflective reading, spiritual friendship, meditation, and prayer. Developing and deepening your spiritual life will add a new dimension to the way you teach, interact with students, communicate with colleagues, and reflect on your work.

Finally, do remember laughter is healing. Reading a set of student evaluations can be depressing, even when the negative voices are merely outliers to an otherwise glowing set of evaluations. Interacting with colleagues, the bench and bar, and law school administrators can create stress. Laughter and fun are key to releasing negative emotion and tension, allowing the next set of students to start a semester with a “fresh start,” and dispensing of the emotional baggage from a semester gone awry.

²¹ PARKER J. PALMER, *THE COURAGE TO TEACH: THE INNER LANDSCAPE OF A TEACHER'S LIFE* (1998).

²² PALMER, *supra* note 2, at 91.

III. Using the Time for Teaching Matters

There are vivid memories from my childhood of a young Methodist minister who spoke often about how we use our time. He said how we choose to spend our time is a true reflection of the abundance of our hearts, and an indication of what matters most to us (as our time goes, so do our hearts).

Legal education is currently experiencing more challenges than ever before in terms of student ability level for law school and interest in becoming legal professionals. We, as those who teach the all-important professional communication aspect of lawyering, need to be spending as much time as possible bringing those students along for the betterment of the profession and society. These students will need more, not less, of our time than students a generation ago. Part of that involves a shift in what is valued among law faculty, and a shift toward devoting more time to improving our teaching.²³ LRW faculty have always led the way in terms of teaching innovation, so it makes sense that we would also be the pioneers in professional development in our respective law schools.

My own experience tells me that when I was solely focused on teaching my students in legal writing well and finishing a scholarly piece, I was so much better at both. All the other things we do as LRW educators are worthy of our attention, and we do important work that benefits so many, but when those additional commitments completely squeeze out critical time from teaching improvement²⁴ and professional development as educators, they become distractions to the core functions we were assigned to do, and the call to teach we chose to answer.

²³ CRANTON, *supra* note 19, at 8 (noting “professional development in the universities is usually voluntary”).

²⁴ LRW Professor Heidi Brown noted this problem:

Busy law professors moving from one class to the subsequent one, or racing to the next faculty or committee meeting, often do not have time to reflect back upon the emotional tenor of a classroom experience. Perhaps calendaring a weekly time slot for personal reflection or journaling on the EI [emotional intelligence] quotient in that week's classes will cultivate inner awareness, and help professors strategize on how to handle classroom events more effectively the next time similar interactions occur.

Heidi Brown, *The Emotionally Intelligent Law Professor: A Lesson from the Breakfast Club*, 36 U. ARK. LITTLE ROCK L. REV. 273, 308–09 (2016).

“We, as those who teach the all-important professional communication aspect of lawyering, need to be spending as much time as possible bringing those students along for the betterment of the profession and society.”

Teachers who take the idea of vocation as the organizing concept for their professional lives may start to think of any day on which they don't come home exhausted as a day wasted- or at least a day when they have not been 'all they can be' Thus what seems on the surface to be a politically neutral idea on which all could agree- that teaching is a vocation calling for dedication and hard work- may be interpreted by teachers as meaning that they should squeeze the work of two or three jobs into the space where one can sit comfortably.²⁵

If I had never had a personal situation that required five months confined to my home sealed away from the outside world, I would probably have spent the last decade running breathless from one additional service obligation to the next in my work. The time apart from the structures and contours of physically being in the building, allowed me to step back and see the choices in my work, relationships, and life were not centered on core functions, but rather of trying to fit the mold of the "busy academic."

It bears repeating that this Article is not meant to suggest that being "busy" in our work is not a good thing, because it is. Let's also be "busy" about teaching improvement, and each academic year challenge ourselves to control, and possibly even limit slightly, other commitments in our workday that take away time from that high calling of training the next generation of lawyers to be the most effective legal researchers and writers.

“Let’s also be
‘busy’ about
teaching
improvement,....”

²⁵ BROOKFIELD, *supra* note 8, at 16.

Cite as: Delores Korb Mayer, *Painting with “Canvas”*, 29 PERSPS. 90 (2022).

Painting with “Canvas”

By Delores Korb Mayer

Delores Korb Mayer is a Legal Writing Specialist and Adjunct Professor at Wayne State University Law School.

Near the start of pandemic teaching, I switched from The West Education Network (TWEN) to Canvas as the Learning Management System (LMS) for my Employment Discrimination and Employment Law classes. The experience was so overwhelmingly positive that I subsequently made the switch in the other class I teach—Legal Research and Writing. I am now a wholly committed Canvas user and, in this brief article, will explain a few of the reasons why I think the Canvas system is superior and especially suited for legal research and writing classes.

As law professors know, TWEN is an LMS that was created exclusively for law schools. TWEN allows law professors to share syllabi and course materials, email students and post announcements, create and manage discussion forums, and grade assignments. TWEN’s most noteworthy feature for law school pedagogy is that it provides automatic hyperlinking to resources on Westlaw. This means if your syllabus lists primary sources or secondary sources, hyperlinks into Westlaw will magically appear once the syllabus is uploaded.

Canvas, on the other hand, is the fastest-growing, open-sourced LMS used worldwide at all levels of education, including the majority of the top colleges and universities in the country. While I was unable to find statistics as to how many law schools have replaced TWEN with Canvas, I suspect that most do what my institution does, which is permit law professors to use either Canvas or TWEN if the institution subscribes to Canvas.

Although Canvas has been available to me for as long as I have been teaching law, I initially had serious reservations about using it, especially since

TWEN had started feeling like a comfortable old shoe. Canvas, with its many more bells and whistles, felt overwhelming and not at all comfortable at first. Plus, I questioned how many of those bells and whistles were actually needed and how long it would take this computer dinosaur to learn a new LMS.

But switch to Canvas I did, and here are a few of the reasons I am glad:

1. Canvas provides many features that improve the grading process.

As we all know, commenting and grading is an important part of our existence. It can also be the bane of our existence, consuming so much of our time and requiring much effort to provide effective, constructive feedback. In addition, research confirms “[h]ow . . . feedback is provided is just as important as the feedback itself.”¹ While I cannot say that grading on Canvas is significantly less time consuming, I can say that Canvas has made grading and commenting easier and, in my opinion, more effective because of the host of grading features and tools it offers for the “how” of providing feedback.

For starters, Canvas has an intuitive and easy-to-use tool called Speed Grader. Speed Grader, which displays assignment submissions on the left-hand side of the page, allows me to leave comments directly in the text in a number of different formats, such as highlighting, hand-drawn or written notes, points of interest, or floating text. Canvas entirely eliminates the need for downloading submissions, commenting, and then uploading. Canvas, however, also allows for downloading the submission as a Word document for those who prefer—and are more familiar with—making comments in Word and then uploading the edited text.

“But switch to Canvas I did, and here are a few of the reasons I am glad:”

¹ Amy B. Levin & Joe Regalia, *The Feedback Feeding Frenzy: Some Thoughts on Doing Feedback Differently*, 27 PERSPS. 60, 60 (2019).

On the right-hand side of the page, I can leave general comments in either written, audio, or visual form. As Professors Levin and Regalia document, audio feedback is an especially valuable tool for “crafting feedback that will better resonate with our students” and offers “many of the benefits of an in-person meeting without some of the drawbacks.”² I have become very appreciative of the ability to easily provide audio feedback on Canvas, especially for those complex issues that can be hard to explain in writing. In addition, no matter how hard I try to phrase written comments in a kind and gentle way, they can nevertheless come across as cold, harsh, or unfeeling. For these reasons, I use audio feedback for detailed and explanatory “wrap-up” comments that enables students to hear my positive tone of voice and realize, hopefully, that I am being encouraging and not hypercritical. Audio comments also provide me with the additional opportunity to have more “face” time with my students and make another positive, personal connection.

Since I always use rubrics for my main assignments, the rubric function in Speed Grader is also nothing short of amazing. After I add my rubric into Speed Grader, it will automatically record the points I give in each category and then assign the letter/point grade to each student. No more adding up points and double-checking them for accuracy before manually recording. If you use rubrics for grading, you will find this feature is definitely a time-saver.

Canvas also makes it easy to edit assignments. If I change the due date or points, it will automatically update the calendar, syllabus, and learning modules. And lastly, the mobile app on Speed Grader allows me to grade while waiting for an appointment, or anytime I find myself with a few extra minutes while I am away from my computer.

One last point: Canvas, like TWEN, allows for anonymous submission.

2. Canvas has easy-to-use features that promote collaboration and communication.

Canvas was designed with collaboration in mind and has a number of very strong and diverse features that promote cooperation, communication, and interaction between students and instructors. These features include email, chat options, discussion boards, and various ways to set up groups and allow them to work collaboratively on assignments. TWEN also has some of these features, but I have found that the design of Canvas is much more streamlined and user friendly, making these features easier for both me and my students to use.

The discussion board feature became a particularly important addition to my classes during our many months of forced pandemic isolation and remote learning in that it provided students with opportunities to interact and create a community with each other. So, in addition to posting regular discussion boards for students to communicate on classroom topics or assignments, I also used discussion boards to provide a space for students just to “talk” to each other and attempt to create some semblance of the kind of community they might have been able to form had class been meeting in person.

Once, for example, I shared with my students that I was feeling particularly joyful that week because my mom was recovering from a serious illness. I ended the posting by simply asking my students what brought them joy that week. The responses were remarkable and heart-warming, ranging from one student sharing the simple pleasure of walking along the Detroit River Walk and watching the freighters going by to another student sharing (along with a gorgeous photo) that his baby had just been released from the NICU. Many more photos were subsequently posted of children, dogs, and other happy moments. Other subsequent conversations took

“Canvas also makes it easy to edit assignments.”

² *Id.* at 61–62.

lighthearted or philosophical turns. My students reported that they appreciated these opportunities to share in ways that helped them get to know and feel connected with others, especially during these times of uncertainty and disruption.

Although we are now kind-of, sort-of back to being in person, with strict social distancing and mask requirements, the opportunities for students to interact both in and outside of class still remain quite limited. Therefore, I continue to use these non-graded discussion boards to provide students with additional opportunities to communicate and show care and concern for one another.

3. Canvas provides more effective methods to design a course.

Canvas provides many design features, starting with the homepage, that make it easier for students to locate all of the important components of the course.

Since I have set up my courses through a weekly module-based organization, the modules listing is included on the home page and provides students with a “course at-a-glance.” Students can click on any module from the home page or from the modules tab where they will find direct and easy-to-locate links to the weekly assignments, readings, any materials related to assignments such as power points or handouts, links to relevant discussions,

embedded materials from external links and so on. Canvas provides a whole host of user-friendly viewing options that are easy to navigate and that minimize unnecessary clicks and confusion.

Finally, Canvas Commons, which provides a catalogue of sample courses and other easily importable learning resources related to just about every subject, helped me with the design of my course.

4. Canvas just flat out looks better than TWEN.

Hands down, Canvas is the much more aesthetically pleasing platform because of its clean and modern design. It also provides numerous options to easily customize and professionalize the appearance of the home pages or any of the other components you choose to use. TWEN looks, well, blah, and customizing it is much more difficult.

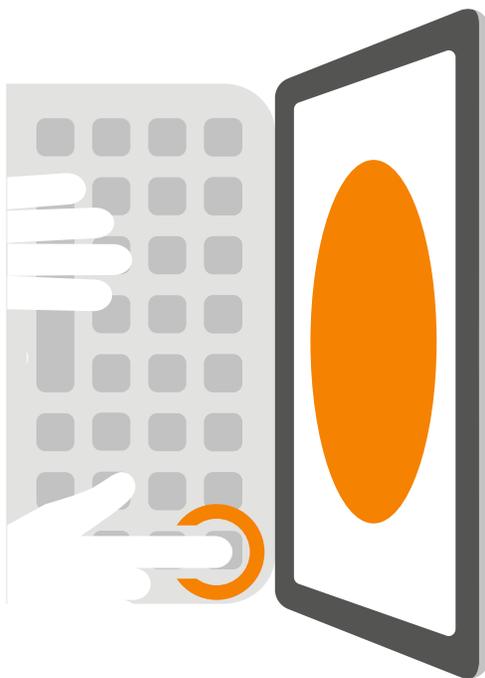
Conclusion

I have touched upon just a few of the features that I think currently makes Canvas the superior LMS to TWEN for teaching legal research and writing courses. I understand that TWEN is constantly being updated and perhaps the day will come when I switch back . . . but not this year!

“Canvas provides a whole host of user-friendly viewing options that are easy to navigate and that minimize unnecessary clicks and confusion.”

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