AALS Annual Meeting Presentation
9:30-10:30 a.m., Thursday, Jan. 6, 2005

Linking Process of Cognitive Breakthrough

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Introduction—Building a Better House

As any carpenter will tell you, building is better if you start new, from the foundation up, rather than retrofitting an existing structure. Yet, law school learning is often retrofitted. Under the traditional model, we assess what students have learned after the fact, with a final exam at the end of the course. Although our students study long, they often study wrong.[1] The revelation that some did not learn what we hoped may not come until those students receive poor grades on their final exams. At this point there is little incentive to correct. The course is over, and they may already have burned their books and notes in frustration.

Legal writing classes overcome some of the retrofit problem by requiring rewrites of assignments. Yet, even with rewrites, the evaluation and assessment step of each interim phase takes place after the fact when the professor reviews a written product. At this point, students may already have constructed a faulty framework. Despite advice to begin the rewrite with a clean slate (or using a modern metaphor, with a blank Word template), students often revert to structural mistakes they made in the initial drafts.

To help understand and improve the learning process, we at the Sturm College of Law are working on techniques for peeking into students' cognitive processes earlier on, before they even begin writing the draft. In this way, we hope to intervene and improve the foundation while students are building it, rather than retrofitting afterward. One of the most exciting new tools that allows us to view students' linking and thinking processes in the pre-draft stage is a software called *CaseMap*.[2]

CaseMap

In the Fall of 2004, approximately 350 1L students in the Lawyering Process class at Sturm used *CaseMap* by *CaseSoft* for the course memo problem. The office of the United States Attorney has over 15,000 licenses for *CaseMap* nationwide, and the software is used by hundreds of law firms across the country. In its most simple form, *CaseMap* is a case management software designed to keep track of client documents and research. Yet at Sturm, we recognized that three of *CaseMap*'s functions go beyond traditional case management and provide powerful teaching tools.

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[1] Modified from a conversation with Patricia Broussard from Howard University on November 6, 2004.

[2] Lawyering Process Professor and Tech Lead David Thomson initiated this proposal and was invaluable in introducing the *CaseMap* software into the Sturm Lawyering Process Program.

1. Analysis of authorities

First, we used *CaseMap* to help our students at the initial research phase with analysis of precedents. The program has a screen for inputting information about authorities that students may cite in their memoranda and briefs. In this space, students are required to brainstorm the possible significance of an authority as they read it. The program permits students to highlight a portion of a passage and then to insert it electronically into the *CaseMap* database. In addition to collecting terms they may quote, students also are required to make notes about the possible significance of the authority.

Before computers, students might organize their research in separate file folders, one for each issue. In their other law school classes, students are accustomed to handling excerpts of cases surgically limited to the issues the author of the casebook intends to illustrate. Because of this, when these students encounter real-world cases, they are not prepared to comprehend that the case addresses multiple issues. They usually opt to stow the case into a single folder and lose the benefit of its insight into the other facets of an argument. *CaseMap* includes a "links" column that allows students to electronically file a single case in a number of different topic folders.

2. Synthesis

CaseMap also can help students with synthesis. Frequently, students who have not completed the synthesis process turn in an analysis that simply lists seriatim narrative versions of individual case briefs. These students have not yet recognized how the cases relate and might be combined to form a synthesized rule. *CaseMap* helps students to see the relationship of ideas before writing to improve the final written product.

CaseMap provides an outlining feature that allows students to create a detailed "Issues Outline." This outline goes beyond a traditional outline that bullets main points. It allows students to link back and forth to the extracts they pulled from the authorities in order to develop a more coherent analysis of the issues and the relationship of concepts.

Also as a critical part of this intiative at Sturm, we meet with students to review their outlines and research extracts before they write their assignments. This review can quickly reveal missing facts, gaps in research, confusion in understanding statutory and common law, and difficulties in building the link from analysis to outlining the problem. At this point, we can help guide students and fill in any gaps *before* they have committed their ideas to writing.

3. Rule Application

CaseMap helps with the final step of legal analysis that first year students often skip in their early drafts—application of the synthesized rules of law to the client's facts. The program includes a screen to catalogue the facts of the client's problem. After inputting client data, students create links that connect to the Issues Outline to

graphically illustrate the relationship between the law and the client's facts. This helps students see the connections between the legal issues, the cases, and the facts of the client's case--essential information best processed in the prewriting stage.

Conclusion

By using *CaseMap* along the way to assess students' thinking while they are actively engaged in the learning process, we can intervene to help our students lay a firm foundation for structuring their legal analysis in the construction phase, rather than correcting problems after the fact. Any gains from minimizing retrofit time may allow us to concentrate more on the process of teaching students to communicate their ideas crisply.