

WELCOME

On behalf of the committee that planned the event, I'd like to welcome you to the 2007 AALS Workshop for New Law Teachers. We hope that it will help you become a first-rate teacher and a first-rate scholar!

We all know that lawyers have to be educated and trained in order to be good at what they do. That is why law schools exist. The same is true of law professors. Great professors are not born great; they have to learn to think about what they are doing and how to do it. Our goal in this workshop is to help you develop the skills with which to start this process of being self-conscious and self-critical about what you are doing when you teach and when you write.

To do this, we have gathered together professors from all parts of the country, who profess various subjects in various ways in various sorts of schools, and who do not necessarily agree with each other on what makes an excellent teacher or scholar. What unites them is a belief in the importance of what they do, and a concomitant willingness to volunteer their time to help you grow into what has to be one of the best jobs in the world.

Again, welcome to the Workshop - and welcome to the profession!

Todd D. Rakoff, Harvard Law School,
Chair, Planning Committee for AALS
Workshop for New Law Teachers

Workshop for New Law Teachers
Alison Grey Anderson

Learning Theory and the Classroom

I. Models of Teaching

Banking model--transmission of information
Learner-centered model

II Learning Theory

The literature
Classroom experience

III How People Learn - Basic Concepts

Preconceptions
 unschooled mind
 law and lawyers
 school and law school
Deep understanding
 knowledge base
 structured knowledge
 conditionalized knowledge
 expert-novice studies
 cognitive apprenticeship
Metacognition
 what do we know
 how do we think and learn

IV. The Law School Classroom

Finding out what they know(or imagine) and how they think
Structuring the course around basic concepts
Providing explicit problem-solving strategies
Demonstrating and practicing the problem-solving process
Feedback
The coverage issue

TEACHING NUTS AND BOLTS OUTLINE
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- I. Before Classes Begin
 - A. Find out if the AALS section has a list serve that you can join.
 - B. How to select a Casebook.
 - C. Contact the Casebook author.
 - D. Drafting a Syllabus.
 - E. Making sense of your institution's tenure standards.

- II. During the Semester
 - A. Finding a teaching style
 - B. How to handle classroom challenges
 - C. Exam discussions with your class
 - D. Drafting the Exam, Answer Key, and Instructions
 - E. Familiarize yourself with your school's examination policies

- III. After the Last Class
 - A. Grading Exams
 - B. Teaching Evaluations
 - C. CELEBRATE!!!!

SELECTED ARTICLES ON LAW TEACHING FOR THE NEW LAW TEACHER
PREPARED BY
DOROTHY A. BROWN
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Arturo Lopez Torres and Mary Kay Lundwall, *Bibliography: Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching*, 35 Gonz. L. Rev. 1 (2000)

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Stephen Carter, *Academic Tenure and White Male Standards*, 100 Yale L. J. 2065 (1991).

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Teaching Methods: Building a Learning Community in the Large Classroom

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1. Building and enhancing a learning community in a classroom can help you to accomplish your teaching goals as well as potentially have an impact on the learning that students engage in outside of the classroom. Perhaps one of the toughest places to develop such a learning community is in the large classes that many of us are assigned to teach. This outline provides you with some modest suggestions to help you to develop a learning community in your classroom.

2. We begin with a definition of the learning community. A learning community is one where both the professor and the students share the responsibility for the learning that occurs in the classroom. This sharing of responsibility is demonstrated by mutual preparation, use of a variety of activities and/or techniques to address the different learning styles of your students, and guided respectful discussion. The learning community is not a touchy feely place without form or substance but rather it is a highly analytical environment with high standards for both student and faculty contributions. But, ultimately, for the learning community to be successful for both you and your students, it is a place where relationships matter. The relationship between the professor and the class matters as a whole as well as the relationship between each member of the class and the professor. It is essential that you pay attention to both of those relationships in each class. *See David Dominguez, Principle 2: Good Practice Encourages Cooperation Among Students, 49 J. Legal Educ. 386 (1999).*

3. While we share the responsibility for developing a learning community in the classroom, it is important to understand that the learning that actually occurs is something that students accomplish for themselves. Clearly, a professor cannot learn for the students. But the professor can facilitate and support an environment within the classroom that makes learning a more likely outcome. Listed below are some core principles for building a learning community.

a. “People don’t care what you know until they know that you care.” (Former NFL Quarterback and Congressman Jack Kemp). In as many ways

as possible, you need to demonstrate that you care about the students' learning and about their success. Remember this is a relationship therefore "one act" of caring will not do. You need to demonstrate caring as an integral part of the way that you engage in your teaching on a regular basis.

b. Be prepared. Sounds obvious doesn't it and yet often professors will spend more time trying to understand and manage the content of the material than planning how to get students to "swallow" it. You must update your notes and keep up with new developments in your field even if the casebook does not have a new edition containing that information. If you try various activities in your classroom, you will want to plan how to integrate it (and in some cases do a trial run) before you introduce an activity or exercise to your class.

c. Find a classroom style that works for you. You must be yourself and no one else in the classroom.

d. Demonstrate and maintain high expectations for your students. You should be willing to explain the rationale behind assignments, or outline the kinds of questions that you expect them to be able to handle. Tie your expectations to the reality of the practice or personal experiences that you had in practice. In this way, you can help students to understand why you insist on high standards in their class work.

e. Be humble. All knowledge does not emanate from the fount – i.e., the podium that you are standing at in the front of the classroom. We can (and often do) learn from our students. Further, there may be that occasion (rare of course) when you do not know the answer to a question or you have made an honest mistake. "Fessing up" when you honestly do not know the answer to a question is an option that a professor can use.

f. Set boundaries for the way(s) in which students will interact with each other and you in the classroom. For example, if you say that students must treat each other respectfully during a discussion then you may want to provide a concrete example of respectful discourse and one that is not. Name calling for example would never be appropriate and would clearly seriously undermine the cohesiveness of the learning community. You must be prepared to reinforce those boundaries when necessary.

Sources: D.K. Newell, Ten Survival Suggestions for Rookie Law Teachers, 33 J. Legal Educ. 693 (1983); Kent D. Syverud, Taking Students Seriously: A Guide for New Law Teachers, 43 J. of Legal Educ. 247 (1993); C. Tomkovick, Ten Anchor Points for Teaching Principles of Marketing, 26 J. Marketing Education 109 (2004); C.J. Auster & M. MacRone, The Classroom as a Negotiated Social Setting: An Empirical Study of the Effects of Faculty Member's Behaviors on Students' Participation, 22 Teaching Sociology 289 (1994).

4. What can you do to help students to share the responsibility for creating and maintaining the learning community? There is much research on the kinds of conditions that need to exist in the classroom to help increase students' motivation and help the professor to achieve his/her goals in the course. See Sara E. Quay and Russell J. Quaglia, Creating a Classroom Culture that Inspires Student Learning, 18 The Teaching Professor 1 (February 2004).

a. Create a sense of belonging in the classroom. One easy way to accomplish this condition is to learn the names of your students as quickly as possible. In addition, the use of an electronic classroom along with the live classroom can create more opportunities to help students to feel a part of the class.

b. Recognize your students' accomplishments not just their grades. It is useful to take time to acknowledge students who may have successfully competed in a moot court competition or assumed a leadership role in or outside of the law school.

c. Build moments of fun and excitement into your course. You can do this with the kinds of activities that you plan for your course or by allowing yourself to laugh (or even have a good time) in class.

d. Encourage your students to be creative and curious about the subject matter. You can accomplish this by exposing them to another jurisprudential perspective on a case or principle of law. See Okianer Christian Dark, Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching, 32 Willamette L. Rev. 541 (1996).

e. Encourage healthy risk-taking by making it safe for students to both fail and succeed. Think carefully about how you plan to respond to the student who offers an interesting or even intriguing comment but it feels really way-out-there from your perspective.

f. Provide opportunities for students to be leaders in the classroom and to take responsibility for their choices. This can be done by using small group activities in the classroom where a student is selected or volunteers to be the spokesperson for the group.

5. Teaching Techniques: Variety is the spice of a learning community.

a. The Socratic Method. You really must consider supplementing this method in your large classroom with other teaching techniques. Remember that this method assumes that one student is engaged in discussion with the professor while the others learn from listening in (and stay alert based on fear that they may be the next victim to be called on by the professor). The assumption is that the student who is on the hot seat is learning something and everyone in the classroom is learning something from that student's performance (or is it the faculty member's performance?)

b. The Problem Method. The use of a problem or a case file can be a very effective way for teaching content, process and raising other issues that may be important to your teaching objectives in the course, e.g., raising ethical issues. There is no need to use long involved problems in order to utilize this method. Casebooks often have problems in the notes that can be just as helpful for the students. *See* G. L. Ogden, The Problem Method in Legal Education, 34 J. Legal Educ. 654 (1984).

c. Incorporating "Writing to Learn" Techniques. There is considerable research that writing can be used in the classroom to help facilitate and deepen students' understanding of a subject and encourage students to become active learners. There are many such techniques that do not increase the paper load (i.e., grading/evaluation load) for the faculty member. *See* <http://wac.colostate.edu/intor/pop2d.cfm>..

d. Role-plays. Often I combine a role play with a problem that I have assigned to the class. Students are selected to play the roles in the problem ahead of time so that they have ample time to prepare. The role-plays are a very effective form of active learning that can allow the students to provide

their perspective of the facts, law and/or the roles of a client, attorney or judge in a more meaningful way.

e. Use audiovisual and audio materials in the classroom whenever possible. This comment would extend to the use of power point or other technology in the classroom as well. Remember to check the equipment before class to make sure it works and you know how to operate it as well.

f. Collaborative Work or small group work. Buzz groups or small groups can be effectively used in the large classroom. Groups of 5-6 students can provide everyone in the classroom with an opportunity to offer his/her opinion or viewpoint on the issue/case/problem. It is important to have some dialogue or follow up to the small group work each time so that important teaching points are identified and underscored for the students.

g. Show and Tell. This technique works well for visual learners. Ask students to bring an example of an item in a case or assign students to bring something in so that the items can be used as a part of the discussion. For example, in the products liability course we discuss warnings. Prior to the session on warnings, each student is asked to bring in an example of a warning from a product. Students shared their assessment of the warnings on various products which allowed for a very rich discussion about the necessity for the warning, its purpose, adequacy and effectiveness by using concrete examples provided by students in the class.

5. Always debrief or self-evaluate each class in terms of whether you accomplished your teaching objectives for that particular class and any activity that you may have tried. You can also seek student input by asking them to evaluate a particular activity.

6. The Final word – you cannot please everyone so don't try. Your goal is to create, build, and support a learning community for your students. Many students will profit from this environment but there will always be one or two who simply are not compatible with you, the notion of a learning community or have other issues unrelated to you. As long as that student(s) do not disrupt the class or actively undermine the learning community, then you simply have to let them go and focus on the overwhelming majority of your class who are interested in learning and interested in learning from you.

Nuts and Bolts of Teaching: After Getting Ready for the First Class

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I. The First Class

- * introductions
 - * yourself: the students know you are new
 - * the course: give students a road map
 - * form of evaluation: give some sense that you care
 - * students: know about students in advance if you can (shows interest)
- * themes for the course
- * setting ground rules, expectations (participation policy, attendance): not all students read the syllabus

II. Conducting Classes Generally: Establishing an Effective Classroom Environment

- * demeanor: what's *your* personality
 - * dress
 - * student names
- * students who are asleep do not learn
- * knowledge is constructed not received
- * teaching methods: use a wide range
- * questions and answers
 - * there are bad (instructor) questions
 - * there are bad answers: some student answers are wrong
 - * there are questions to which you don't know the answer
 - * there are questions not to answer
- * calling on students: compulsion or persuasion (and lots in between)
- * earn respect
- * show respect
- * show that you enjoy teaching (and enjoy teaching!)
- * reliance on notes
- * teaching to the whole class
- * use of powerpoint and other audio-visual aids

III. Disruptive Students and Differences of Opinion

- * different forms of disruption
 - * student multi-tasking: the joy of wireless
 - * students struggling
 - * students who “know better”
 - * students who want to fight
- * leading by example: do not fight
- * dealing with problems in class or outside class
- * you have the support of your colleagues . . . if in doubt ask.

IV. Learning and Teaching Outside The Classroom

- * office hours
- * email inquiries
- * supplementary aids: web pages, CALI

V. Examinations and Other Forms of Assessment

- * mock exams
- * drafting exams
- * grading exams
- * components of a grade: class participation
- * curves and other schools rules (e.g. regarding class participation)
- * reviewing exams with students

VI. Course Evaluations

- * self-assessment
- * student assessment: those forms
- * peer assessment: learn class visit expectations
- * visit the classes of others

VII. Doing It Again

- * keep learning
- * keep adapting

SUMMATIVE ASSESSMENT IN LAW SCHOOL
AALS New Teachers' Conference

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“At last, mustering his courage, the young man comes to the great question: How do you teach law [or evaluate what students have learned in your class]? And the old professor, who is at least a very truthful man, answers him as he was himself answered so many years before: “I don’t know. None of us knows.”” – William Prosser¹

OUTLINE

I. Why Have Summative Assessment In Law School?

- A. Local culture, grand tradition
- B. Rank and order students for employers and graduate schools
- C. Students’ validation
- D. Learning tool
- E. Foreshadow Bar Exam

II. The Relationship Between Teaching, Learning and Evaluation

A. Having Goals Matters

1. Psychometrics – Assessment Principles – Validity, Reliability and Workability

A. *Content validity* (testing the quality and quantity of learning in the course)

- 1. Linking articulated course goals to exam objectives

B. *Reliability*

- 1. Consistency from one paper to the next and one question to the next
- 2. Grading issues – more like figure skating or golf? – Criterion-referenced? (external standards) or normative-referenced? (Relative to other papers)

C. *Workability* – *minimize distortions* resulting from length, time, clarity, etc.

- 1. Considerations: Learning styles, disabilities, cultural

¹ W. Prosser, “Lighthouse No Good,” 1 J. Legal Educ. 257 (1948).

differences

EXERCISE: How will your students describe the goals in one of your courses in terms of learning: (1) substance; (2) procedure; (3) skills; and (4) values?

- B. Achieving those Goals Matters
 - 1. Are you achieving your goals? How do you know?
 - 2. Are the students learning?
 - 3. Input – Output
 - 4. Modeling – whole-rule vs. skimmers
 - 5. Curiosity
- C Seeking Rules Mastery or Fluency – legal literacy
 - 1. The 4ECs: Elements; Explanations; Examples; Exceptions; and
 - 2. Comparisons
- D Using Protocols – for Courses; for Rules
 - 1. Contracts – The first question to ask?
 - 2. Evidence – The major fork in the road?
 - 3. Res Ipsa
- E. Respecting the Call of the Question
 - 1. “Discuss” Essay Questions
- F. Teaching Habits and Values
 - 1. Judgment
 - 2. Preparation
 - 3. Curiosity
- G. Quick Evaluations of Learning
 - 1. Problem Solving – Extra Optional classes
 - 2. Student Understanding – After Class Rehash
 - 3. Competition – One question quizzes
 - 4. Writing
 - A. All-writes
 - B. Before, During or After a topic
 - C. In answering a question – the eight second rule
 - D. Peer review
 - E. Over-the-shoulder

III. Question Types

- A. Essay, Short Answer, Multiple Choice
- B. Why Use All Three?
 - 1. Comparisons; learning styles; coverage; variable complexity; feedback; or ability domain (level of ability)

IV. Creating Questions Using a Protocol

- A. Step #1: Select the Subject Matter
 - 1. Pick from the course syllabus
 - 2. Focus on one aspect of the rule (e.g., the 4EC's)
- B. Step #2: Select a Question Objective
 - 1. Lawyering competencies (e.g., persuasive advocacy; client interviewing; negotiating);
 - 2. Substantive coverage
 - 3. Cognitive Thinking Skills
 - A. Adapted Bloom's Taxonomy – orders of cognitive thinking:
 - B. Knowledge;
 - C. Understanding;
 - D. Critical reading (issue spotting; fact sifting);
 - E. Problem solving;
 - F. Doctrinal and course synthesis;
 - G. Judgment in advocacy (e.g., what to argue when)
- C. Step #3: Ask a Question About the Subject Matter
 - 1. E.g., What does the element *mean*? What's an *exception* to the rule? For example, in *Res Ipsa Loquitur*, what does it mean for the defendant to have exclusive control over the thing that produces the injury?
- D. Step #4: "Factualize" the inquiry (create the stimulus) – add facts
 - 1. Can use cases from class, advance sheets, other case books, films, books, pop culture, history, etc.
- E. Step #5: Create the call of the question
 - 1. The call of the question should be (1) a complete sentence that (2) clearly asks the test-taker to identify, understand or do something.
 - 2. Examples:
 - A. What are the *best/worst arguments* by (a party to the dispute)?....
 - B. If A sues B, what is the most *likely outcome*? *Explain*, using case law.
- F. Step #6: (Multiple Choice Questions) Create the responses
 - 1. The responses should all possess a similar structure, length and amount of detail to minimize guessing. Incorrect answer choices generally should fall within the "3i's:" inaccurate; incomplete; or irrelevant.
 - 2. *Example: Who will win, A or B?*
 - A. A wins because....
 - B. A wins because...
 - C. B wins because....
 - D. B wins because....

V. Grading Practices and Principles

- A. Set Aside Time

- B. Use a protocol and create reliability
1. Reliability means consistency – from one paper to the next and one question to the next within the same paper. E.g., a scale measuring height
 2. Reliability factors
 - A. The number of positive relationships between items
 - B. The length of the test – the more test items, the greater chance of reliability.
 - C. The test content – the more homogeneous the test subject matter, the more reliable it likely is.
 3. Essay Reliability Issues
 - A. Does test assess all levels of cognition? Have a sufficient number of items? Place importance on the skill of communication?
 - B. Errors:
 1. Weighting errors;
 2. Linkage problems;
 3. Spread in scores
 4. Single test, higher reliability required
 4. Item Statistics – analyzes individual items for quality of item and expanded to quality of test as a whole
 1. *Mean* – average response to a particular item
 2. *Standard Deviation* – the range of scores on a particular item.
 3. *Item discrimination* – determines whether the better (higher scoring) test-takers are performing better on an item than the worse test-takers.
 4. *Reliability coefficient* – the likelihood of a test being
 - A. Range – from zero (no reliability) to one (perfect reliability)

reliable

- C. Grading Methods
1. Comparison to model answer – form of holistic assessment
 2. Point system – awarding points for statements of value. (Conversely, subtracting points for omissions, incomplete statements or misstatements.).
 3. Rubrics – assessment inventories describing different levels of competency.
 4. Trait grading
 - A. Trait-based grading of content, organization, style, mechanics and creativity.
 5. Holistic assessment – Assessing quality of response as a whole. Holistic assessments often use a rubric and a score of 0 to 6 or 0 to 8.

VI. Summative When?

A. *Midterm*

B. *Quizzes at end of doctrinal area (in review)*

1. Make accommodations for test-takers when needed.
2. Only one multiple choice question required.
3. Can use answer justification, asking for an explanation.

C. *Take-Home Exam/Paper (with spacing, length and margin limits)*

D. *Course Project*

VII. Exam Do's and Don'ts

A. Do's:

1. Observe local culture (course, school year, faculty, administration, etc.)
2. Get a mentor
3. Start early – use an exam file with cases; newspaper articles; pointers from class; etc.
4. Write out a response to get the feel of the questions – clarity is paramount.
5. Have a detailed and comprehensive set of exam instructions
6. Proof-read
7. Grade methodically, e.g., one question at a time for entire class or switch order of exams

B. Don'ts

1. Use fancy, obfuscatory or esoteric names.
2. Create obscure, esoteric or excessively lengthy questions.
3. Test outside of the reading assigned.
5. Forget the influence of time limits.

VIII. Question Appendix

1. (Released MBE Question) Plaintiff sued Defendant for breach of a commercial contract in which Defendant had agreed to sell Plaintiff all of Plaintiff's requirements for widgets. Plaintiff called Expert Witness to testify as to damages. Defendant seeks to show that Expert Witness had provided false testimony as a witness in his own divorce proceedings. This evidence should be
 - (A) admitted only if elicited from Expert Witness on cross-examination
 - (B) admitted only if the false testimony is established by clear and convincing extrinsic evidence.
 - (C) excluded, because it is impeachment on a collateral issue.
 - (D) excluded, because it is improper character evidence.
2. Estella was in a golf contest that rewarded accuracy from the fairway at distances of more than

150 yards from the pin. The top prize was \$1,000. When Estella played the fourth hole, 495 yards in length, she hit two shots, leaving her approximately 150 yards from the pin. Her next shot was straight and true and took one bounce right into the cup. When she went to claim her prize, she was told her shot was from 149 yards, not 150. She sued for the money. At trial, she offered the testimony of another golfer in her foursome, Lydia, who said, “my ball was the same distance from the hold as Estella’s. Here is a print out from my Pro-Distance Yardage device, that clearly says, “You are 151.3 yards from the pin.” If Estella offers the print-out, how should

a
judge rule?

- A. Admit the printout, but only if the original is admitted and not a copy.
- B. Admit the printout, if a foundation is laid for the reliability of Lydia’s Pro-Distance Yardage device.
- C. Exclude the printout as a prior recollection recorded.
- D. Exclude the printout as hearsay and not within any exception.

3. Trusts Question: A, trustee for B, deposited \$2,000 of the trust funds in the X Savings Bank in A’s name as trustee for Z. The X Bank at A’s request then applied \$1,000 of the deposit in satisfaction of A’s mortgage on Blackacre to the X Bank. Both A’s and X Bank’s property being liquidated in insolvency proceedings what are the rights of B and Z? [Harlan Fiske Stone]

4. Sales Question [“Think first, and don’t write until you see where you are going. It is not necessary to finish any question. State the law before you discuss or criticize it.”] B was a jobber in groceries working a limited territory..... Is B liable in regard to any of the goods ordered or shipped, and to what extent? [Karl Llewellyn]

IX. Rubrics (Assessment Inventories)(Derived from the work of Professor S. Sparrow; *see*, e.g., 2004 Mich. St. L. Rev.1)

Exam-taking Competencies:

1. The ability to identify facts that cause or relate to legal issues.
2. The ability to understand the particular legal issues to which the facts relate.
3. The ability to articulate the specific applicable legal principles, especially the elements of the governing rules of law.
4. The ability to apply the facts of the hypothetical to the relevant law and how the problem ought to be resolved in light of the applicable law.
5. The ability to organize a response in a coherent and understandable fashion.

Grades:

4 = Highly Competent.

Skillful, clear, well-organized, accurate and thorough in spotting issues, identifying facts that relate to those issues and analyzing the consequences of the relationships.

3 = Competent.

Sufficiently understandable and organized, fairly accurate in spotting issues, identifies some facts relating to the legal issue and engages in some application of facts to the rules.

2 = Less than Competent.

Weak issue spotting, inaccurate and incomplete statements of the rules, fails to identify facts relating to the issues, confused legal analysis.

1 = Poor.

Little or no ability to spot issues, define relevant rules or analyze the legal issues.

AALS Workshop for New Law Teachers
Select Bibliography on Teaching and Learning
Alison Anderson (UCLA) and Gerry Hess (Gonzaga)

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Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 *J. Legal Educ.* 313 (1995)(Application of cognitive science literature to how lawyers make judgments).

Allan Collins, John Seely Brown, and Susan E. Newman, *Cognitive Apprenticeship: Teaching the Crafts of Reading, Writing, and Mathematics*, in L.B. Resnick (Ed.), *Knowing, Learning and Instruction: Essays in Honor of Robert Glaser* (1989), slightly different version available as *Cognitive Apprenticeship: Making Thinking Visible*, online at http://www.21learn.org/arch/articles/brown_seely.html.

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AALS Workshop for New Law Teachers 2006
“Learning Theory”

Gerry Hess
Gonzaga University School of Law
Phoenix International School of Law

Goals

Share passion, theory, practical ideas about teaching and learning
Explore principles of effective teaching and learning environments
Facilitate active student engagement

Methods

Stories
Lecture
Discussion
Writing
Listening to students

Effective Teaching and Learning Environments

Respect

Expectations

Delight

Variety

Facilitating Active Student Engagement

What is active learning?

Learning Methods Continuum

PASSIVE

Listen
Take notes
Read
Formulate questions
Answer questions
Organize and synthesize
Discuss
Write
Perform skills
Make presentations
Apply content and skills (simulation or real-life)

ACTIVE

Why use active teaching/learning methods? Active learning promotes:

- Construction of knowledge
- Deep understanding
- Higher level thinking (analysis, synthesis, criticism)
- Skills and values
- Student motivation and engagement

How to Use Active Learning Methods in Law School

Questioning (Socratic Dialog)

- Enable
- Engage

Large Group Discussion

- Pose
- Pause
- Participate

Small Group Discussion

- Designate
- Directions
- Duration

Writing

- Questions
- Quizzes

Graphics

- Teacher created
- Student created

Experiential (Simulation and Real Life)

What are the barriers to active learning methods in law school?

How can we overcome those barriers?

EVALUATION AND CONTINUOUS ASSESSMENT

AALS Workshop for New Law Teachers – June 2006

Ann L. Iijima

William Mitchell College of Law

“We get paid to grade blue-books; we’d do the rest for free.”

I. INTRODUCTION

A. Evaluating students may achieve a number of objectives:

1. Reflect students’ achievement of course goals (summative assessment)
2. Provide students and professors with information regarding the students’ progress throughout the course (formative assessment)
3. Help the professor achieve pedagogical goals.

B. Consider the following questions:

1. What are your course goals? (When you picture an ideal class, what do you see?)
2. How may you use assessment techniques to help you and your students achieve your goals?

II. FORMATIVE ASSESSMENT

A. Midterms

1. Students often appreciate receiving a midterm. This need not take a great deal of administration time. You might allow them to write the midterm during class time or to take it home.
2. Although it would be most helpful to the students for you to score them (for a grade or not), you also may provide an answer key for self-assessment purposes. When I do the latter, I offer to meet with the students individually to discuss their answers.

B. Weekly quizzes

1. Logistics:
 - a. The quiz covers materials to be discussed **that** class period. (I’m

- assessing their ability to prepare for class, not their ability to take notes on my comments during class.)
- b. First ten minutes of class. (Encourages students to arrive on time.)
 - c. Makeups only for *truly* exceptional circumstances. (I don't want to spend additional time administering exams to students who had (or say they had) health, family, or work conflicts. Students are allowed to drop their lowest quiz score, however.)
 - d. Primarily T/F. Students are allowed to explain their answers if they deem it necessary to clarify ambiguities in the questions.
2. Grading/scoring: The quizzes count 20% of final grade. My administrative assistant marks the wrong answers using my answer key. I read written explanations for any incorrect answers & sometimes gave credit for the answer.
3. Quizzes help me achieve pedagogical goals
- a. Students are better prepared for class
 - b. Having the quiz in the first few minutes gets them “warmed up” for class discussion. (No more “I read this case *so* long ago . . .”)
 - c. Students and I learn whether they are having difficulty with material.
 - d. Quizzes take relatively little time to prepare & score.
 - (1) It takes me about 45 minutes to prepare the quizzes (I do it as I go over my notes before class.)
 - (2) My administrative assistant spends about 30 minutes each week marking incorrect answers, and I spend about 20 minutes looking at written explanations.
 - (3) Although quiz takes 10 - 15 minutes of class time, class moves through material more quickly.
4. Most students like the quizzes. Quizzes help students keep up with reading, focus on important concepts, and evaluate their own progress. They also take some pressure off final exam. (Students much more receptive to quizzes since I added pedagogical goals to course syllabus.

See Attachment A.)

- C. Polls – You can quickly “poll” your students regarding their understanding of the materials.
1. “Low-tech” – At the beginning of class, particularly when you will be discussing relatively difficult material, give your students one minute to quickly jot down the thing that most confuses them about the materials. At the end of the class, give them 10 seconds to jot down, on the same piece of paper, whether or not they still are confused. Collect the papers as they leave. In most instances, their articulation of their problems helps them clear up their confusion during the class discussion. You may address remaining questions during the next class session.
 2. “High-tech”
 - a. I use CPS¹ to assess the students’ understanding.
 - (1) After discussing a particular case or area of doctrine, I’ll ask students to use their remote response pads (clickers) to respond to a statement such as: “I fully understand this case.” They chose one of the following responses:
 - (a) Strongly agree
 - (b) Agree
 - (c) Disagree
 - (d) Strongly disagree
 - (2) I project the bar graph showing the numbers of responses.
 - (a) Students see where they stand in relation to other students.
 - (b) Based on the numbers of responses in each category, I will either move on or spend a few more

¹Classroom Performance System (eInstruction.com) is only one of a number of products available. The TWEN system also allows you to poll students via their laptops.

minutes on the case.

Attachment A – Information on Weekly Quizzes from Course Syllabus

Weekly quizzes: There will be approximately 10 quizzes during the semester including true/false, short answers, and/or essay questions. Except for the first and last days of class and the day of the practice exam, there probably will be a quiz at the beginning of each Tuesday class. Each quiz will cover the material assigned for that class period.

The cumulative weekly scores will count 20% of the combined quiz/exam grade. Because we will be discussing the answers during the class period, there will be no opportunity to make up missed quizzes. Students, however, will be allowed to skip one quiz or to drop their lowest score. Frequently asked questions:

- *Why do you give quizzes--aren't they a waste of class time?* Frequent testing enhances student learning. Students are better prepared for class and get more out of the discussions. Discussions are more lively. Students learn early in the semester whether they are having troubles with the material. It is easier to pinpoint and correct problems in the students' approach to the materials. I have found that classes move through material more quickly when all the students have thoroughly prepared the materials.
- *Why do you quiz so frequently? Less frequent quizzes would be less stressful.* More frequent quizzes increase the pedagogical benefits of the quizzes and give students an opportunity to continually improve their performance. Because students will be caught up on their class preparation at the end of the semester, there should be less end-of-semester stress.
- *Why don't you quiz at the end of the hour, **after** we've discussed the material?* The quizzes are designed to evaluate your abilities to read, understand, and use caselaw, essential lawyering skills. They are not designed to evaluate your ability to take notes on class discussions, a skill of less value to lawyers. Additionally, discussions are much livelier when students are already focused on the materials. (We have all heard the statement: "Gosh, I can't remember that case--I read it so long ago.")
- *Will the quizzes be likely to help or hurt my final grade?* **Assuming you thoroughly prepare for each class**, the quizzes are much more likely to help than hurt your final grade. Because of the relative weights of the quizzes and final exam, there must be a significant difference in performance for the quiz scores to affect the final grade. Most students will perform approximately the same on the quizzes as they perform on their final exam, and will see no impact. A few students, however, will receive a grade "bump;" they will perform significantly better on their quizzes because of opportunities to improve and to drop one score. Although a reduced grade is possible, very few students lose ground because of the quizzes.

Attachment B – Bibliography

General Articles

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- Nancy H. Kaufman, “A Survey of Law School Grading Practices,” 44 J. Legal Educ. 73 (1997).
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Writing Courses

- Anne Enquist, “Critiquing and Evaluating Law Students’ Writing: Advice from Thirty-Five Experts,” 22 Seattle Univ. L. R. 1119 (1999).
- Laurie Magid, “Awarding Fair Grades in a Process-Oriented Legal Research and Writing Course,” 43 Wayne L. Rev. 1657 (1997).

Archetypal Legal Scholarship – A Field Guide

Martha Minow

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- I. Doctrinal Restatement, e.g., Robert Clark, Corporate Law, Laurence Tribe, Constitutional Law; Yoram Dinstein, War, Aggression and Self-Defence (3rd ed. 2001)
 - a. Organize and reorganize case law into coherent elements, categories, and concepts
 - b. Acknowledge distinction between settled and emerging law
 - c. Identify difference between majority and “preferred” or “better” practice—ideally with some explanation for the criteria to be used

- II. Recasting Project, e.g., Charles Reich, The New Property, 73 Yale L.J. 733 (1964); Fuller & Perdue, Reliance Interest in Property, 46 Yale L.J. 52 (1936); Warren and Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193; Guido Calabresi and A. Douglas Melamed, Property Rules, Liability Rules, and Inalienability: One View of the Cathedral, 85 Harv. L. Rev. 1089 (1972)
 - a. Gather more than one “line” of cases, across doctrinal fields or categories, and show why they belong together or expose unjustified discrepancies
 - b. Offer a new framework or paradigm that can recognize past, present and future material

- III. Policy Analysis, e.g., Elizabeth Bartholet, Nobody’s Children: Abuse and Neglect, Foster Drift, and the Alternative of Adoption (1999); Jeff Sovern, Opting in, Opting Out, or No Options At All: The Fight for Control of Personal Information, 74 Wash. L. Rev. 1033 (1999); Russell Korobkin, Bounded Rationality and Unconscionability: A Behavioral Approach to Policing Form Contracts, 70 U. Chi. L. Rev. 1203 (2003); Roderick Hills, Jr., Is Federalism Good for Localism? The Localist Case for Federalist Regimes, 21 J.L. & Politics 187-221 (2005); William Fisher, Promises to Keep: Technology, Law, and the Future of Entertainment (2005)
 - a. Usual Structure: present a problem; canvass alternatives; propose an evaluative scheme or method; recommend preferred solution
 - b. Attribute problem to: distance between goal and implementation; conflict with a powerfully competing goal; the lack of fit between legal rules or practices when compared with changing social, economic, biological, or technical circumstances; or mistaken assumptions as demonstrated by historical review, economic model, psychological research, or evidence from other fields
 - c. Not a brief: include fair analysis of a range of alternatives and alternative criteria; offer useful analyses even for people who do not agree with the assumptions, methodology, or conclusion

- IV. Test a proposition about society or the economy or about human beings that is used by lawyers or assumed in legal sources, e.g., Ellickson, Order Without Law: How Neighbors Settle Disputes (1992); Robert H. Mnookin and Lewis Kornhauser, Bargaining in the Shadow of the Law, 88 Yale L.J. 950 (1979); Lucien Bebchuck and Alma Cohen, The Costs of Entrenched Boards, 78 J. Financial Economics 409 (2005)
 - a. Take a widely assumed or commonly known proposition familiar to lawyers or legal theorists
 - b. Undertake an empirical investigation about its validity or summarize and assess empirical work conducted by others or undertake model-building or summarize and apply model(s) developed by others
 - c. Digest the findings for legal audiences

- V. Study, Explain, and Assess Legal Institutions, Systems, or Institutional Actors, e.g., Abram Chayes, *The Role of the Judge in Public Law Litigation*; Marc Galanter, *Why the "Haves" Come out Ahead*, *Wis. L. Rev.* 1974; Richard Lempert, *A Classic at 25: Reflections of Galanter's "Haves" Article and Work It Has Inspired*, *Law & Society Rev.* (1999); George L. Priest and Benjamin Klein, *The Selection of Disputes for Litigation*, 13 *J. Legal. Stud.* 1 (1984); Judith Resnik, *Managerial Judges*, 96 *Harv. L. Rev.* 4; Patricia Ewick and Susan Silbey, *The Common Place of Law* (1998); David B. Wilkins and Mitu G. Gulati, *Reconceiving the Tournament of Lawyers: Tracking, Seeding, and Information Control in the Internal Labor Markets of Elite Law Firms*, 84 *Virginia Law Review* 1581 (1998)
- Offer historical, anthropological, sociological or economic analysis of the behavior of legal actors of institutions, often exposing complexity, gaps between theories and practice, dynamics, and layers of meaning and effects
 - Use empirical or interpretive methods and/or models
 - Offer a normative assessment or agenda for further study
- VI. Critical Projects, e.g., Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 *Harv. L. Rev.* 1685; Robert Cover, *Supreme Court—1982 Foreword: Nomos and Narrative*, 97 *Harv. L. Rev.* 1 (1984); Kimberle Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331 (1988); David Shapiro, *Federalism: A Dialogue* (1995)
- Expose unstated assumptions, patterns or results, internally inconsistent structures, or other tensions within a body of law or legal practices or institutions
 - Highlight the tensions, contradictions, or paradoxes behind the surface of law or legal practices; sometimes they are not resolved but instead try to linked to larger psychological, social, or philosophic difficulties and political or normative efforts
- VII. Comparative and Historical Inquiries, e.g., Mary Ann Glendon, *Abortion and Divorce in Western Law* (1987); Bruce Mann, *Republic of Debtors* (2002); William Forbath, *The Shaping of the American Labor Movement*, 102 *Harv. L. Rev.* 1109 (1989)
- Offer a rich description of an earlier era or contrasting legal regime
 - Satisfy the criteria within the fields of anthropology or history in use of sources, triangulation, and contextualization
 - Suggest how this study illuminates differences, choices, or continuities when compared with contemporary domestic practice
- VIII. Jurisprudence, Philosophy of Law, and Connecting Philosophy and Law, e.g., Ronald Dworkin, *Law's Empire* (1986); Catherine MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *Signs* 635 (1983); Richard Posner, *The Problematics of Moral and Legal Theory* (1999); Seanna Shiffrin, *Speech, Death, and Double Effect*, 78 *NYU Law Review* 1135 (2003)
- Develop or elaborate a theory that tries to explain how all of law or chief portions of it hang together
 - Engage with alternative theories
 - Demonstrate the contribution this theory makes to a conceptual puzzle or set of doctrinal or practical problems
 - Advance view of justice or analysis of what norms law should pursue
- IX. Combinations, e.g., Cass Sunstein, *Interest Groups in American Public Law*, 38 *Stan. L. Rev.* 29 (1985) (history, doctrinal recasting, conceptualization and reconceptualization, jurisprudence); Derrick Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518 (1980); Lani Guinier, *The Triumph of Tokenism*, 89 *Mich. L. Rev.* 1077 (1991); Frank H. Easterbrook and Daniel R. Fischel, *Voting in Corporate Law*, 26 *J. L. & Econ.* 395 (1983); Ian Haney Lopez, *White by Law* (1996, rev'd ed. 2006)

**Advice from One Year Out
AALS New Teachers Workshop - 2006**

*Erin Murphy * University of California, Berkeley * eemurphy@berkeley.edu*

Before school starts:

- *The moving/new job thing*
 - o Nest (at home, at office, at HR -- there is a lot of paperwork!)
 - o Lunch like there is no tomorrow
 - o Writing a killer faculty webpage

- *The teaching thing*
 - o Choose a casebook
 - o Class prep: useful things to do that hopefully don't stress you out
 - Gathering materials (syllabi, notes, exams)
 - Writing draft master syllabus (give out in parts)
 - o Choosing office hours to optimize your least productive times
 - Practice: "I'd love to talk about this...why don't you come by my office hours?"
 - Responding to student email

- *The scholarship & tenure thing*
 - o Finding out standards (formal and informal)
 - Getting a copy of all internal/external evaluations
 - Keeping an activities/tenure file
 - o Show me the \$\$, finding resources (especially on university campus)
 - o Establishing a writing schedule for yourself, even if purely theoretical
 - Lashing yourself to the mast
 - Job talk piece: the longest star footnote you'll ever have

During the school year

- Hiring & using RAs

- Don't always DIY: letting your faculty assistant actually assist you, ditto reference librarians, etc.

- Finding a good, diverse set of mentors (inside & outside the school)
- Exam file (no really, trust me, keep one).
 - o AALS bulletin boards, Listservs, specialty blogs
 - o Exam ideas for yourself, but also sample exams/answers to hand out.
 - o Grading
- Self-administered informal mid-term evaluation
- Everything not teaching or writing (aka, “service”)
 - o Committees
 - o Choosing what talks to attend
 - o Receptions etc.
 - o Media & press
 - o Conferences

Final thought: Navigating the strange world of self-promotion

*Luxuriate in the joy that is your new profession --
you are the luckiest person in the world --
you are now officially getting paid to think about all the things
that you used to think about for free!*

Mid-Term Evaluation Form

Please circle the number corresponding to your views using the scale below:

Strongly disagree

1 2 3 4 5 6 7

Strongly agree

Instructor

Instructor displays knowledge and mastery of subject.

1 2 3 4 5 6 7

Instructor is well-prepared for class.

1 2 3 4 5 6 7

Instructor's presentation is organized and clear.

1 2 3 4 5 6 7

Instructor is responsive to student ideas and questions.

1 2 3 4 5 6 7

Instructor is available to students after class.

1 2 3 4 5 6 7

Class discussion

Class discussion is interesting and thought-provoking.

1 2 3 4 5 6 7

Class adds something positive to my learning experience beyond what I get from just doing the reading.

1 2 3 4 5 6 7

I feel comfortable speaking in class.

1 2 3 4 5 6 7

The instructor treats those who speak in class with appropriate respect and dignity.

1 2 3 4 5 6 7

I feel as though the instructor welcomes and respects a diversity of views and perspectives in class discussion.

1 2 3 4 5 6 7

The powerpoint presentations are useful.

1 2 3 4 5 6 7

Materials

The pacing of the course is:	too slow	just right	too fast
The workload for the course, given the units assigned, is:	too little	just right	too much
The reading materials are useful and beneficial:	not really	somewhat	definitely
I am learning what I want to be learning from the class:	agree	disagree	

Considering both the limitations and possibilities of the subject matter and course, how would you rate the overall effectiveness of this instructor?

Not at all Effective				Moderately Effective			Extremely Effective
1	2	3	4	5	6	7	

OPTIONAL SHORT ANSWER.

What are the strengths of the class, or what do you like most?

What are the weaknesses of the class, or what do you like least?

What changes would you like to see, or how do you think the class, or the instructor, might be improved?

Any other comments or suggestions?

Daniel P. Tokaji
Tips from a 3LP

AALS Workshop for New Law Teachers
“Junior Faculty Feedback”
June 24, 2006

General Advice

- Take everyone’s advice (including mine) with a grain of salt. What works for one person may not work for another.
- Get a fresh start, this summer and every summer.

Learning to Teach

- Preparation time invested in your first year will pay dividends later.
- Don’t curb your enthusiasm.
- Experiment (with materials, technology, and methods), recognizing that not everything you try will work.
- Get your grading done promptly. Don’t let it hang over your head.

Becoming a Scholar

- Your scholarly agenda will evolve over time, so don’t feel bound by what you said/thought your “scholarly agenda” was in October.
- Create an “idea box,” to capture thoughts that come to you when you’re too busy to write.
- Be a writer, not (just) a reader. Set aside time to write, and find a quiet place.
- Set reasonable goals. Your first piece need not be the new “New Property.”

Professional Development

- Relationships matter! Find mentors and friends, inside and outside your institution.
- You’re your own PR person, so seek out opportunities to participate in debates (e.g., conferences, listservs, op-eds, blogging?).
- Keep a “My Book About Me” file.

Some Things to Read

- Douglas J. Whaley, *Teaching Law: Advice for the New Professor*, 43 OHIO ST. L.J. 125 (1982) (a nice, short essay by a great teacher).
- Hiroshi Motomura, *Setting a “Scholarly Agenda,”* 10 ST. LOUIS U. PUB. L. REV. 175 (1991) (another short essay, written by a great scholar, addressing some things to consider when developing writing projects).
- Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992) (a controversial critique of legal academia from a great judge; see also the responses in 91 MICH L. REV., Issue 8).

Delivering The Ideas

Comments for New Legal Scholars
by Ron Wright

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INTRODUCTION

In the talk preceding this one, Martha Minow covers the motivations for writing, selection of topic, selection of audience, and types of scholarship. Her emphasis is on getting ideas and choosing among them. My task is to focus more on the nuts and bolts of *delivering* the ideas: getting them into a publication and out into the world. We're interested here both in career advancement and in putting your ideas out where they can actually change the world.

1. **Managing the calendar.**

Yes, there are deadlines (or if you prefer, target dates). Aim for either the Spring or the late Summer "Sweeps Weeks" at law reviews.

As you arrive on the job and establish your habits, build in some discipline about writing time. There are different models for distributing the hours, but you must log lots of hours for writing.

2. **Shifting from reader to writer (and back again).**

You can't read everything first and only then start to write; that's paralysis. Read on the general topic until you start to see repetition.

After you've begun writing, the research should happen without stopping your momentum.

3. **Keeping your idea trim, and what to do with the out-takes.**

Articles early in the career tend to be too long.

What's trimmed out is rarely lost; it will be published elsewhere later.

When it comes to High Theory, hint in Round 1 and elaborate in Rounds 2-10.

4. Working with research assistants.

Research assistants help you more when they get involved later in the writing process. Research assistants might handle the record keeping that will make it easier later to deal with law review editors.

Hire research assistants as much for their sake as for yours.

5. Knowing when the piece is done; asking for help.

Even if it stinks, it's done (for some purposes).

The piece is ready to submit for friendly advice before it is ready to submit to journals.

Advice from unknown and less friendly sources comes next.

The piece is ready to submit to journals before it is ready to publish.

Electronic posting of your draft shortens the publication cycle by many months.

6. Targeting journals for initial submissions.

Placement quality counts, but it is not the only (or best) measure of quality.

For every article, develop a ranking of journals to serve your purposes.

Plan for multiple submissions, possibly in waves.

The article's title and a punchy cover letter should help an editor convince her peers.

7. Negotiating with journals; the final choice.

Use your waiting period to good advantage.

Collect all the vital statistics about the terms of the offer.

Use an initial offer to spur other journals into action.

8. Working with student and peer editors.

As author, you are still teaching the editors.

Make sure you can track the changes.

Page-proof shock is normal.

9. Spreading copies, electronic and reprints.

Consider the journal as one among many outlets for your work.

Post electronic copies, both on the school's web page and on research services like SSRN.

Scatter reprints generously, both internally and externally.

Electronic distribution is not the future; it is the present.

Listen while you spread the good news.

10. Reflecting on your work.

Look for chances to rework your ideas.

Look for ways to build a coherent body of ideas.

Welcome to the Growing Writer's Guild!

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