Beyond Chalk and Talk: The Law Classroom of the Future

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I. INTRODUCTION[1]

Law schools are rethinking the traditional Langdellian classroom as they construct the law classroom of the future. Although the reform of legal education has long been heralded, law schools are now on the cusp of actual change. Carnegie's *Educating Lawyers* and the Clinical Legal Education Association's *Best Practices for Legal Education* are promoting a rethinking of the law classroom.[2] Also

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2. *See infra* Part II.B.

encouraging the examination of legal education are changes in the incoming student population, such as the influx of students from the Millennial Generation; technological innovations; and shifting realities and economics of law practice, such as the increased focus on efficiency and collaboration.[3] These changes are informed by recent developments in adult learning theory, neuroscience, and cognitive psychology.[4] All of these sources lead to the conclusion that learning is best when students are self-regulating, engaged, and motivated learners, and when the learning process is active, experiential, collaborative, and reflective. One of the best ways to cultivate and develop this learning environment is to have students write a variety of assignments and receive content-specific feedback in a variety of courses.[5]

To that end, this article serves as both inspiration and a resource for the law classroom of the future. The critical component is the inclusion of writing exercises that engage the students and enhance student learning to better prepare students for the practice of law.[6] The featured exercises are drawn primarily from the authors' experiences teaching civil procedure, professional responsibility, and trusts and estates.[7] The exercises range from in-class exercises that take as little as five minutes of class time to extended projects to be completed outside of the classroom. We will highlight the theoretical underpinnings, transferability of these exercises to other courses, and manner of assessment.[8] Each exercise is designed to be academically rigorous, foster the development of self-regulated learners, and reflect the realities of current law practice.

II. FUTURE OF LEGAL EDUCATION

In some respects, the law school classroom of yesteryear is similar to the law school classroom of today.[9] The American Colonial Lawyer had

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3. *See infra* Part II.C.
4. *See infra* Part II.A.
5. *See infra* Part III.
6. *See infra* Part III.
7. *See infra* Part III.A-C.
8. *See infra* Part III.
9. For a critic of legal education, *see* Morrison Torrey, *You Call That Education*?, 19 WIS. WOMEN'S L.J. 93 (2004). For a consideration of the stereotypical law professor, *see* Michael Vitello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955 (2005).

few resources to learn his[10] craft.[11] Prior to 1776, only thirty-three books relating to law—including eight editions of the same one—were printed in America.[12] Before 1776, there were no American printings[13] of Edward Coke or any other English legal writer—other than Blackstone.[14] Litchfield Law School[15] was founded in 1784, and other law schools, such as Harvard and Yale, were founded in the mid-nineteenth century.[16] Therefore, before the Civil War, an individual interested in pursuing the legal profession could serve through apprenticeship, law school, or a combination of both apprenticeship and law school.[17] "Education tended to encourage the capacity for rote memorization and compartmentalization while trimming the sails of imagination."[18] After the founding of the American Bar Association in 1878, pressure to require formal legal education as a prerequisite to bar admission increased.[19] In 1906, the Association of

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10. For an examination of women in the practice of law, *see* CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW (Basic Books 1981) (1993).

11. *See generally* LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW (1973).

12. CHARLES WARREN, A HISTORY OF THE AMERICAN BAR 157 (1911).

13. *Id.* at 160.

14. The laws of England were influential in the development of law in the Colonies. For example, "[w]hen Georgia became an independent state, the English law of wills was adopted as the law of" Georgia. DANIEL H. REDFEARN, A PRACTICAL TREATISE ON THE LAW OF WILLS AND ADMINISTRATION OF ESTATES IN GEORGIA 89 (1923). In fact, even as late of 1923, gaps in law were filled–in part–by referencing decisions of English courts. *See*, *e.g.*, *id.* at v. This treatise continues to be one of the most popular Georgia treatises and form books in the practice area and is currently a two-volume set in its Seventh Edition. MARY F. RADFORD, REDFEARN: WILLS AND ADMINISTRATION IN GEORGIA (7th ed. 2008).

15. The graduates of the Litchfield Law School "included six federal cabinet officers, two Vice Presidents, more than one hundred Congressmen, twenty-eight U.S. Senators, fourteen state governors, three Justices of the United States Supreme Court, and thirty-four members of the highest courts in their respective states, including sixteen Chief Justices or Chancellors." R. BLAIN ANDRUS, LAWYER: A BRIEF 5,000 YEAR HISTORY 297 (2009).

16. For an overview of the development of law schools, *see generally id.* at 299.

17. Ann Fidler, *"A Dry and Revolting Study:" The Life and Labours of Antebellum Law Students*, *in* LAWYERS AND VAMPIRES: CULTURAL HISTORIES OF LEGAL PROFESSIONS 69-70 (W. Wesley Pue & David Sugarman eds., 2003) (providing a list of required reading for the antebellum law student). *See also* Mark L. Jones, *Fundamental Dimensions of Law and Legal Education: A Historical Framework—A History of U.S. Legal Education Phase I: From the Founding of the Republic Until the 1860s*, 39 J. MARSHALL L. REV. 1041 (2006); Jay F. Alexander, *Legal Careers in Eighteenth Century America*, 23 DUQ. L. REV. 631 (1985).

18. Fidler, *supra* note 17, at 81.

19. For a biography of articles and books relating to the years of the American Bar Association from 1878 to 1960, *see* Norbert C. Brockman, *The History of the American Bar Association: A Bibliographic Essay*, 6 AM. J. LEGAL HIST. 269 (1962). To commemorate the Semi-Centennial of the American Bar Association, the Association compiled and published biographies of past presidents of the American Bar Association. JAMES GRAFTON ROGERS, AMERICAN BAR LEADERS: BIOGRAPHIES OF THE PRESIDENTS OF THE AMERICAN BAR ASSOCIATION 1878-1928 (1932). *See also* John A. Matzko, *"The Best Men of the Bar:" The Founding of the American Bar Association*, *in* THE NEW HIGH PRIESTS: LAWYERS IN POST-CIVIL WAR AMERICA 75 (Gerard W. Gawalt ed., 1984). In August 1892, the group that was to become the National Conference of the Commissions on Uniform Law State Laws met in Saratoga Springs, New York. John F. Blackwood, *Uniformity in the Law–The National Conference of*

American Law Schools adopted the three-year post-graduate program for the study for law.[20]

In the late 19th century, "a 'true' profession came to be identified with 'rational, expert, neutral, universal, and verifiable knowledge.'"[21] Professor Christopher Columbus Langdell[22] of Harvard is credited with marrying law and science in part through the use of the Socratic Method and the case method.[23] The case method "fulfilled the latest requirements in modern [nineteenth century] education: it was 'scientific', practical and somewhat Darwinian."[24] "Brandishing their view of the 'scientific' nature of the law as a justification for their power, lawyers became the new high priests of an increasingly legalistic, industrial society."[25]

Legal education continues to use the Socratic Method and focus on appellate cases.[26] Beyond that, however, legal education is changing.[27]

Commissioners on Uniform State Law, 19 MONT. L. REV. 149, 152 (1958). For a history of the organization, *see* WALTER P. ARMSTRONG, JR., A CENTURY OF SERVICE: A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1991).

20. Warren A. Seavey, *The Association of American Law Schools in Prospect*, 3 J. LEGAL ED. 153, 159 (1950). Extending formal legal education from eighteen months to three years also occurred at Harvard Law School during Dean Langdell's term as Dean of Harvard Law School. *See* ANDRUS, *supra* note 15, at 301. For an early critique of medical education, *see* ABRAHAM FLEXNER, MEDICAL EDUCATION IN THE UNITED STATES AND CANADA: A REPORT TO THE CARNEGIE FOUNDATION FOR ADVANCEMENT OF TEACHING (1910).

21. Harold Dick, *'Mennonite' Lawyers in Western Canada 1900-1939*, *in* LAWYERS AND VAMPIRES: CULTURAL HISTORIES OF LEGAL PROFESSIONS 349 (W. Wesley Pue & David Sugarman eds., 2003) (quoting W. Wesley Pue, *Trajectories of Professionalism: Legal Professionalism after Abel*, 384 MAN. L.J. 416 (1990)).

22. For a biography of Christopher Langdell, *see* BRUCE A. KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL EDUCATION: C.C. LANGDELL 1826-1906 (2009).

23. Christopher C. Langdell, *Teaching Law as a Science*, 21 AM. L. REV. 121, 123-24 (1887). *See also* Dick, *supra* note 21, at 350 ("As scientific pursuits, professions came to be associated with higher learning; a place for a profession's programme of instruction in a university curriculum guaranteed its status while the failure of a profession to secure such a place cast serious doubts upon its claims.").

24. Dick, *supra* note 21, at 359 (quoting R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S 55 (1983)). For an analysis of the alienating nature of the Socratic Method and the case method, *see* LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE (1997); Tanisha Makeba Bailey, *The Master's Tools: Deconstructing the Socratic Method and It's Disparate Impact on Women Through the Prism of Equal Protection Doctrine*, 3 MARGINS: MD. L.J. RACE, RELIGION, GENDER, & CLASS, 125 (2003); David D. Garner, *Socratic Misogyny?—Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 B.Y.U. L. REV. 1597 (2000); Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37 (1997); Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 STAN. L. REV. 1571 (1993). *But see* Peter M. Cicchino, *Love and the Socratic Method*, 50 AM. U. L. REV. 533 (2001); Elizabeth Mertz et al., *What Difference Does Difference Make: The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998).

25. Gerard W. Gawalt, *Introduction*, *in* THE NEW HIGH PRIESTS, *supra* note 19, at vii.

26. *See* Amy R. Mashburn, *Can Xenophon Save the Socratic Method?*, 30 T. JEFFERSON L. REV. 597, 599 (2007).

Technological changes[28] and the evolving nature of practice[29] have impacted legal education.[30] For instance, the conception and development

27. *See, e.g.*, Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327 (2010) (discussing possible methods by which law schools can revise their curriculum to more effectively prepare graduates for the practice of law); Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595 (2008) (posits that "[t]he most important change that is needed in law school is to ensure that every student has a clinical experience or the equivalent"); Joyce McConnell, *A 21st Century Curriculum*, W. VA. L. REV. 12 (2008) (discussing the recommendations of Educating Lawyers publication, and how the curriculum at the West Virginia University College of Law measures up to those recommendations contained therein); Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L.J. 295 (2006) (discussing the cyclical nature of legal education and the criticisms thereof); Peter Dewitz, *Reading Law: Three Suggestions for Legal Education*, 27 U. TOL. L. REV. 657 (1995) (discussing "how to read law and what can be done to assist the beginning law student."). For a consideration of reforms of legal education in China, *see* Symposium, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 3 (2009) (discussing changes made to the Chinese legal curriculum). *But see* Steve Sheppard, *Casebooks, Commentaries, and Curmudgeons: An Introductory History of Law in the Lecture Hall*, 82 IOWA L. REV. 547 (1996) (discussing the history of "methods and books chosen by law professors for the American lecture hall in the last two centuries . . . ."); Mashburn, *supra* note 26 (urging the use of a "reconstituted version" the Socratic Method).

28. For a sampling of articles regarding technology and the law classroom, *see* DAVID THOMSON, LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE (2008); Ryan Patrick Alford, *How Do You Trim the Seamless Web? Considering the Unintended Consequences of Pedagogical Alterations*, 77 U. CIN. L. REV. 1273 (2009) (exploring the "unintended consequences of th[e] proposed change . . ." to law school curriculum and the risks thereof); Camille Broussard, *Teaching with Technology: Is the Pedagogical Fulcrum Shifting?*, 53 N.Y.L. SCH. L. REV. 903 (2008/2009) (discussion of teaching with technology in and the changes being made to law school curricula each year); Kristen B. Gerdy et al., *Expanding Our Classroom Walls: Enhancing Teaching and Learning through Technology*, 11 J. LEGAL WRITING INST. 263 (2005) (discussion of the factors that support incorporating technology into legal education); Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551 (2004) ("explaining how law teachers can use both old and new technologies to increase student engagement in the classroom"); Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1 (2002) (providing strategic implementation of electronic technology into law school curriculum better achieves the goals of 21st century legal education); Jayne E. Zanglein & Katherine A. Stalcup, *Te(a)chnology: Web-Based Instruction in Legal Skills Courses*, 49 J. LEGAL EDUC. 480 (1999) (analyzing whether "Web-based instruction work[s] in the [law school] classroom"); Richard Warner, Stephen D. Sowle & Will Sadler, *Teaching Law with Computers*, 24 RUTGERS COMPUTER & TECH. L.J. 107 (1998) (examination of a variety of ways to incorporate computers into the legal education). *See also* Craig T. Smith, *Teaching Synthesis in High-Tech Classrooms: Using Sophisticated Visual Tools Alongside Socratic Dialogue to Help Guide Students Through the Labyrinth*, 9 PERSPECTIVES 110 (2001) (discussing the implementation of new technology and the Socratic Method).

29. *See, e.g.*, Phyllis E. Brenard, *The Lawyer's Mind: Why a Twenty-First Century Legal Practice Will Not Thrive Using Nineteenth Century Thinking (With Thanks to George Lakoff)*, 25 OHIO ST. J. ON DISP. RESOL. 165 (2010) (discussing the changing nature of law practice and what makes for a successful law practice); Teresa C. Stanton, *Globalization and the Internationalization of Legal Education in the United States: An Annotated Bibliography*, 29 LEGAL REF. SERV. Q. 23 (2010) (discussing the "internationalization" of law school curriculum in U.S. law schools); James R. Faulconbridge & Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335 (2009) (analyzing the effects of globalization on the practice of law); John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. L. & SOC. CHANGE 101, 103 (2009) (discussing a "possible starting point for schools that have not yet moved towards an integrative education . . . ."); Brandon R. Ceglian, *Bridging the Gap between Law School and Law Practice*, 37 THE COLO. LAWYER 59 (2008) (discussing the changes in the profession

of the skills curriculum is an example of this changing nature.[31] The past decade has marked resurgence in the examination of the future of legal education.[32] As our nation and the global community grapple with increasingly-complex problems that depend on creative and thoughtful solutions, the importance of well-trained legal professionals will remain critical. This article suggests how legal education may perform its crucial role in more effective ways as we go forward.

A. Cognitive Psychology and Adult Learning Theory

Academic research into student learning is vast. Adult learning theory, educational philosophy, cognitive psychology, and effective instructional

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and the attempts to bridge the gap between law practice and law school); Jessica Dopierala, *Bridging the Gap Between Theory and Practice: Why Are Students Falling Off the Bridge and What are Law Schools Doing to Catch Them?*, 85 U. DET. MERCY L. REV. 429 (2007) (examining the criticisms "of the American legal education system"); Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 S. TEX. L. REV. 649 (2002) (discussing the state of legal education globally and its inadequacies); Jack B. Weinstein, *Preparing Students to Become Lawyers: Judicial Insights on Legal Education Today*, 15 ST. JOHN'S J. LEGAL COMMENT. 337 (2000) (providing outside perspective on American legal education); Roy T. Stuckey, *Education for the Practice of Law: Times They Are A-Changin'*, 75 NEB. L. REV. 648 (1996) (describing the shift "from apprenticeships to law schools as the primary training ground for new lawyers . . . ." and its effect on the practice of law); Paul Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, 58 LAW & CONTEMP. PROBS. 5 (1995) (proposing a series of advanced courses to integrate the fundamental lawyering skills with insights from other disciplines).

30. *See*, *e.g.*, Arturo L. Torres & Karen E. Harwood, *Moving Beyond Langdell: An Annotated Bibliography of Current Methods for Law Teaching*, 29 GONZ. L. REV. 1 (1993) (compilation of sources used in law classrooms across the United States). *See also* Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233 (2007) (comparing legal education to the preparation provided by other professional schools).

31. Duncan Alford, *The Development of the Skills Curriculum in Law Schools: Lessons for Directors of Academic Law Libraries*, 28 LEGAL REF. SERV. Q. 301, 304 (2009).

32. *See*, *e.g.*, Debra Moss Curtis & David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473, 473 (2009) (discussing "the extended process in which the law school is engaged . . ." and positing a framework for curriculum changes); Thomas S. Ulen, *The Impending Train Wreck in Current Legal Education: How We Might Teach Law as the Scientific Study of Social Governance*, 6 U. ST. THOMAS L.J. 302 (2008) (arguing that changes being made to law school curriculum nationally are beneficial and will ultimately lead to better lawyering); Anita Bernstein, *On Nourishing the Curriculum with a Transnational Law Lagniappe*, 56 J. LEGAL EDUC. 578 (2006) (discussing the "importan[ce] for first-year law students to gain experience in transnational law"); Bethany R. Henderson, *Asking the Lost Question: What is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48 (2003) (discussing the criticisms of legal education in the United States and how to address them); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001) (examining the positive and negative ramifications of law school vicarious self-teaching model in light of learning theory); Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641 (1994) (discussing changes in law school curriculum); John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317 (1987) (discussing reformations being made to law school curriculum nationwide). For a consideration of the limitations, *see* WILLIAM A. LANGER, CURRICULUM REFORM IN CONTEXT, 1870-2008: UNDERSTANDING AND OVERCOMING THE LIMITATIONS OF CONTEMPORARY LEGAL EDUCATION (2008).

design have become large and complex academic fields.[33] In drawing upon those fields, our aim is not to summarize the entire body of research on learning. Indeed, the findings and theories from these academic disciplines are too broad and disparate to yield to an easy synthesis. Nonetheless, a brief overview of learning theory and cognitive psychology follows.[34] We will then summarize certain important lessons from these fields for law teaching.[35]

1. *Educational Philosophy and Adult Learning Theory*

A seminal figure in educational theory is the philosopher John Dewey, who was a leader in the progressive education movement of the first half of the 20th century.[36] Progressive education and similar philosophies, such as the "project method" pioneered by Dewey's disciple William Heard Kilpatrick of Columbia University, rejected traditional schooling that focuses on memorization, rote learning, and content.[37] Dewey and Kilpatrick insisted that children should direct their own learning according to their interests as much as possible, and that learning comes primarily through experience and experimentation.[38] Problem-solving should be at the core of the educational process, and the role of a teacher should be that of a guide as opposed to an authoritarian figure. Perhaps the basic idea behind progressive education is best captured in the aphorism of Plutarch: "the mind is not a vessel that needs filling, but wood that needs igniting . . . ."[39]

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33. *See infra* Part II.A.1.

34. *See infra* Part II.A.1-2.

35. *See infra* Part II.A.3. The work of Michael Hunter Schwartz has been invaluable in bringing the insights of learning theory and cognitive psychology to law professors, and we are in his debt. *See generally* MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS (2005); Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. L. REV. 447 (2003) [hereinafter Schwartz]; Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001) [hereinafter Schwartz, *Teaching Law by Design*]. *See also* MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM (2009) [hereinafter SCHWARTZ ET AL.].

36. *See* JOHN DEWEY, EXPERIENCE AND EDUCATION (1938) [hereinafter DEWEY, EXPERIENCE AND EDUCATION]; JOHN DEWEY, DEMOCRACY AND EDUCATION (1916); JOHN DEWEY, THE CHILD AND THE CURRICULUM (1902) [hereinafter THE CHILD AND THE CURRICULUM]; JOHN DEWEY, THE SCHOOL AND SOCIETY (1900); John Dewey, *My Pedagogic Creed*, 54 SCH. J. 77-80 (1897).

37. WILLIAM HEARD KILPATRICK, FOUNDATIONS OF METHOD (1925). *See also* William Heard Kilpatrick, *The Project Method: The Use of Purposeful Act in the Educative Process*, TEACHERS COLLEGE RECORD (1918) [hereinafter *The Project Method*].

38. *See* THE CHILD AND THE CURRICULUM, *supra* note 36. *See also The Project Method*, *supra* note 37, at 319-95.

39. PLUTARCH, ESSAYS 50 (1992) (Robin H. Waterfield trans., Penguin Classics 1992).
As Dewey himself summarized the principles of "progressive education":

In the second half of the twentieth century, the field of adult learning was pioneered by Malcolm Knowles.[40] He coined the term andragogy (for adult education) as opposed to pedagogy (for children).[41] Knowles identified certain characteristics of adult learners:

- Adults are *autonomous* and *self-directed*. They need to be free to direct themselves. Their teachers must actively involve adult participants in the learning process and serve as their facilitators.

- Adults have accumulated a foundation of *life experiences* and *knowledge* that may include work-related activities, family responsibilities, and previous education. They need to connect learning to this knowledge/experience base.

- Adults are *goal-oriented*. They therefore appreciate an educational program that is organized and has clearly defined elements. Instructors must show participants how this class will help them attain their goals.

- Adults are *relevancy-oriented*. They must see a reason for learning something. Learning has to be applicable to their work or other responsibilities to be of value to them.

> If one attempts to formulate the philosophy of education implicit in the practices of the new education, we may, I think, discover certain common principles amid the variety of progressive schools now existing. To imposition from above is opposed expression and cultivation of individuality; to external discipline is opposed free activity; to learning from texts and teachers, learning from experience; to acquisition of isolated skills and techniques by drill, is opposed acquisition of them as a means of attaining ends which make direct vital appeal; to preparation for a more or less remote future is opposed making the most of the opportunities of present life; to static aims and materials is opposed acquaintance with a changing world . . .
>
> It is the cardinal precept of the newer school of education that the beginning of instruction shall be made with the experience learners already have; that this experience and the capacities that have been developed during its course provide the starting point for all further learning.

DEWEY, EXPERIENCE AND EDUCATION, *supra* note 36, at 17-19.

40. *See, e.g.*, M.S. KNOWLES, THE MODERN PRACTICE OF ADULT EDUCATION: FROM PEDAGOGY TO ANDRAGOGY (2d ed. 1980).

41. *See id.* As Michael Schwartz has pointed out, although law students are adults, they vary greatly in age and life experiences. Schwartz, *Teaching Law by Design*, *supra* note 35, at 363 (nonetheless, they are adult learners rather than children and the principles of adult learning provide insight into law students).

- Adults are *practical*, focusing on the aspects of a lesson most useful to them in their work. They may not be interested in knowledge for its own sake. Instructors must tell participants explicitly how the lesson will be useful to them on the job.

- As do all learners, adults need to be shown *respect*. Instructors must acknowledge the wealth of experiences that adult participants bring to the classroom. These adults should be treated as equals in experience and knowledge and allowed to voice their opinions freely in class.[42]

2. Cognitive Psychology

A central concept in cognitive psychology is the three-stage information processing model.[43] Input first enters through the senses, then processed in short-term memory, and then transferred to long-term memory for storage and retrieval.[44] The sensory register receives input from senses which lasts for no more than a few seconds and then disappears through decay or replacement.[45] Much of the information never reaches short term memory, but all information is monitored at some level and acted upon if necessary.[46] Sensory input that is important or interesting is transferred from the sensory register to the short-term memory.[47] Memory can be retained here for up to twenty seconds or more if rehearsed repeatedly, and short-term memory can hold up to seven items.[48] Long-term memory stores information from short-term memory for long-term use.[49] Long-term memory has unlimited capacity.[50] Deeper levels of processing, such as generating linkages between old and new information, are much better for successful retention of material.[51] Another crucial concept from cognitive psychology is

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42. *See* MALCOLM S. KNOWLES ET AL., THE ADULT LEARNER (5th ed., 1998); *see also* PATRICIA A. LAWLER, THE KEYS TO ADULT LEARNING: THEORY AND PRACTICAL STRATEGIES (1991); SHARAN B. MERRIAM ET AL., LEARNING IN ADULTHOOD: A COMPREHENSIVE GUIDE (1999); JACK MEZIROW, TRANSFORMATIVE DIMENSIONS OF ADULT LEARNING (1991).

43. *See* Schwartz, *Teaching Law by Design*, *supra* note 35, at 366. *See also* DANIEL T. WILLINGHAM, WHY DON'T STUDENTS LIKE SCHOOL: A COGNITIVE SCIENTIST ANSWERS QUESTIONS ABOUT HOW THE MIND WORKS AND WHAT IT MEANS FOR THE CLASSROOM (2009).

44. *See* Richard C. Atkinson & R. M. Schiffrin, *Human Memory: A Proposed System and Its Control Processes*, *in* 2 KENNETH W. SPENCE & JANET T. SPENCE, THE PSYCHOLOGY OF LEARNING AND MOTIVATION 13, 16-17 (1968).

45. *Id.* at 14.

46. *Id.*

47. *Id.*

48. *Id.* at 14-15.

49. Atkinson & Schiffrin, *supra* note 44, at 15.

50. *Id.*

51. SCHWARTZ, *supra* note 35, at 366.

"schema."[52] New information is compared to existing cognitive structures called schema, which are hierarchical structures for organizing memory.[53] Schema may be combined, extended, or altered to accommodate new information.[54] Additionally, meaningful information is easier to learn and remember; if information does not appear to have meaning, it is much less likely to be retained.[55] Practicing or rehearsing improves retention, especially when it is distributed practice.[56] By distributing practices, the learner associates the material with many different contexts rather than the one context afforded by mass practice.[57]

It is important to note that cognitive theory deals with more than simply acquiring knowledge; the cognitive structures and processes that assist in retaining information also are crucial in applying that information to new areas.

3. Lessons for Law Teaching

Although educational philosophy, learning theory, and cognitive psychology are disparate disciplines with very different emphases, certain ideas or themes recur throughout the study of learning. To summarize in one sentence: ***Learning is best when students are self-regulating, engaged, and motivated learners, and when the learning process is active, experiential, collaborative, and reflective*.**[58]

These concepts are particularly relevant to teaching and learning in law school.[59] Each of these concepts will be described briefly below.

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52. SARAH LEBERMAN ET AL., THE TRANSFER OF LEARNING: PARTICIPANTS' PERSPECTIVES OF ADULT EDUCATION AND TRAINING 14-15 (2006); DAVID A. SOUSA, HOW THE BRAIN LEARNS 52 (3d ed. 2006); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1, 7 (2003).

53. JEFFREY E. YOUNG ET AL., SCHEMA THERAPY: A PRACTITIONER'S GUIDE 7 (2003).

54. *Id.*

55. *See e.g.*, Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49, 97 (2000) (explaining how Joseph D. Novak's integrated theory of education can be used to "motivate students to learn meaningfully so they may creatively solve problems.").

56. SOUSA, *supra* note 52.

57. *Id.*

58. *See* Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 102 (2002) ("Students learn better when they are actively engaged in the learning process.").

59. *See*, *e.g.*, Linda S. Anderson, *Incorporating Adult Learning Theory into Law School Classrooms: Small Steps Leading to Large Results*, 5 APPALACHIAN J.L. 127 (2006) (discussing the incorporation of new methods of adult learning theory into law school classrooms).

Students learn best when their learning is self-regulated and their autonomy is supported.

Self-regulated learning (sometimes called expert learning) is the process by which students manage their own learning process.[60] The self-regulated learner actively controls his or her own behavior and motivation; decides how, when, what, and where to study; looks for problems and tries to solve them; seeks opportunities for practice and feedback; and reflects back on the learning experience to plan improvement for the future.[61]

There is promising recent research that better "autonomy support" leads to more effective learning among law students.[62] In defining autonomy support, Sheldon and Krieger state:

> Autonomy support has three prototypical features: (a) choice provision, in which the authority provides subordinates with as much choice as possible within the constraints of the task and situation; (b) meaningful rationale provision, in which the authority explains the situation in cases where no choice can be provided; and (c) perspective taking, in which the authority shows that he or she is aware of, and cares about, the point of view of the subordinate.[63]

Sheldon and Krieger found that those students who experienced the greatest autonomy support from teachers performed better in law school, including higher GPAs and pass rates on the bar examination as well as higher subjective wellbeing and motivation.[64]

For adult learners in particular, effective learning occurs when they can draw upon their prior knowledge and life experiences.[65] Law study often seems entirely foreign to new students—we can help them by tying the new vocabulary, concepts, and skills to what they already know and to previous life experiences. Moreover, cognitive psychology suggests that drawing upon past experience and knowledge helps retention and transfer.[66] New

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60. *See generally* Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33 (2006); Boyle, *supra* note 52; Schwartz, *supra* note 35.

61. Paul R. Pintrich & Elisabeth V. De Groot, *Motivational and Self-Regulated Learning Components of Classroom Academic Performance*, 82 J. EDUC. PSYCH. 33 (1990).

62. *See*, *e.g.*, K.M. Sheldon & L.S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

63. Sheldon & Krieger, *supra* note 62, at 884.

64. *Id.* at 883.

65. Joni Larson, *The Intersection of Andragogy and Distance Education: Handing Over the Reins of Learning to Better Prepare Students for the Practice of Law*, 9 T.M. COOLEY J. PRAC. & CLINICAL L. 117, 123 (2006).

66. Thomas, *supra* note 55, at 90.

information is more likely to be retained if it connects to already-stored information.

Students learn best when they are motivated to learn and have a strong engagement with the subject.

There are many ways to motivate, but the best motivation occurs when the learning is goal-oriented.[67] The goals of a course and of each component of the course should be made clear to the students.[68] In addition, adult learners need to see the relevance of the subject matter to their lives.[69] It is crucial for law students to see the real world application of the knowledge and skills to their future careers.[70] Finally, students are more motivated to learn when the environment embodies mutual respect among students and teachers.[71] Teachers should demonstrate that they value individual students and their experiences and goals.[72] In respectful environments, students and teachers feel free to explore ideas, solve problems creatively, and challenge one another to grow.[73] Intimidation and denigration cause many students to disengage.[74]

Students learn best when they are active, not passive.

If there is one universal principle to be derived from research into learning, it is that active learning is more effective than passive learning.[75] Students learn passively when they listen to a presenter and when they read a text.[76] Although the so-called Socratic Method of the traditional law school classroom is more active than a lecture, the truth is that most law students are passively listening (at best!) during much of the class period.[77]

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67. Leah M. Christensen, *Enhancing Law School Success: A Study of Goal Orientations, Academic Achievement and the Declining Self-Efficacy of Our Law Students*, 33 LAW & PSYCHOL. REV. 57 (2009) (motivation by fear and intimidation is a particularly poor way to increase learning).

68. *Id.* at 85.

69. Larson, *supra* note 65, at 123.

70. *Id.*

71. *See* Justine A. Dunlap, *"I'd Just as Soon Flunk You as Look at You?" The Evolution to Humanizing in a Large Classroom*, 47 WASHBURN L.J. 389 (2008); *see generally* Peter P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753 (2004).

72. *See* Schuwerk, *supra* note 71, at 760–61.

73. *See* Dunlap, *supra* note 71, at 396.

74. *See* Schuwerk, *supra* note 71, at 759.

75. *See* Anderson, *supra* note 59, at 130.

76. Matthew B. Robinson, *Using Active Learning in Criminal Justice: Twenty-Five Examples*, 11. J. CRIM. JUST. EDUC. 65, 67 (2000).

77. *See generally* GERALD F. HESS & STEVEN FRIEDLAND, TECHNIQUES FOR TEACHING LAW 15 (Carolina Academic Press 1999) ("Learning is not a spectator sport.").

Students should be given the opportunity to practice what they are learning.

Cognitive psychology has taught us the need for active processing of information.[78] In order for concepts first to make it into short-term memory, and then—just as importantly—to be stored in long-term memory for retrieval and use, active learning activities are crucial.[79]

Learning should be collaborative.

Collaborative learning, in which students work together in small groups toward a common goal, can generate more learning than purely individual work.[80] In true collaborative learning, the learners are responsible for one another's learning as well as their own, so that the success of one learner helps other students to be successful.[81] Collaborative learning swims against the current in modern legal education, which is highly competitive and often adversarial due to mandatory curves and detailed class ranking.[82] There is evidence, however, that the active exchange of ideas within small groups not only increases interest among the participants but also promotes critical thinking.[83] Numerous studies show that cooperative teams achieve higher levels of thought and retain information longer than learners who work quietly as individuals.[84] Shared learning gives learners an opportunity to engage in discussion, take responsibility for their own learning, and thus become critical thinkers. Moreover, because we are educating for practice, it is crucial that law students learn to work collaboratively. In the practice of law, lawyers work in collaboration with others on a regular basis.[85]

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78. *See* Boyle, *supra* note 52, at 17.

79. *See id.*; *see also* Atkinson & Schiffrin, *supra* note 44, at 14-17.

80. *See, e.g.*, Gerald F. Hess, *Collaborative Course Design: Not My Course, Not Their Course, But Our Course*, 47 WASHBURN L.J. 367 (2008); Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 J. LEGAL WRIT. INST. 185 (2003); Elizabeth A. Reilly, *Deposing the "Tyranny of the Extroverts:" Collaborative Learning in the Traditional Classroom Format*, 50 J. LEGAL EDUC. 593 (2000); David Dominguez, *Seven Principles for Good Practice in Legal Education: Principle 2: Best Practice Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386 (1999); Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201 (1999); Clifford S. Zimmerman, *Thinking Beyond My Own Interpretation: Reflection on Collaborative and Cooperative Learning Theory in the Law School Curriculum*, 31 ARIZ. ST. L.J. 957 (1999).

81. *See* Reilly, *supra* note 80, at 593–94.

82. Zimmerman, *supra* note 80, at 971.

83. *See id.* at 990–91.

84. *See* Nancy T. Blaney et al., *Interdependence in the Classroom: A Field Study*, 69 J. EDUC. PSYCHOL. 121 (1977).

85. *See* Zimmerman, *supra* note 80, at 1002.

4. Reflection

Because professional education is designed to educate for practice, the knowledge we seek to impart is "knowledge-in-action" rather than pure technical rationality.[86] Rather than simply applying predetermined rules or principles to a set of facts, professionals must often act when the landscape is uncertain or ambiguous.[87] Knowledge-in-action refers to the kinds of knowledge we can only reveal in the way we carry out tasks and approach problems.[88] The knowing is *in* the action.[89] It is revealed by the skilful execution of the performance rather than simply learning the rules or principles involved.[90] Moreover, learning from knowledge-in-action requires "reflection-in-action."[91] This is the kind of reflection that occurs while a problem is being addressed.[92] Reflection-in-action includes challenging our assumptions.[93] It is about thinking again, in a new way, about a problem we have encountered.[94] Opportunities to reflect upon tasks, therefore, are crucial to learning from that experience.

B. MacCrate, Carnegie, and Best Practices

Almost as soon as formal legal education was established, educators called for reforms. For example, in 1931 it was stated that "the kind of lawyer today whom a young fellow would like to have as his guide in the study of law is too busy to train him."[95] The much-heralded call to mimic medical education has never gained significant traction.[96] However, legal education is transforming.[97] The strict reliance on a pure Socratic Method

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86. *See* DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION (1984); DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS 3 (1988) [hereinafter EDUCATING THE REFLECTIVE PRACTITIONER].

87. *Id.* at 3.

88. *Id.* at 25.

89. *Id.*

90. *Id.* at 25-26.

91. *Id.* at 26.

92. EDUCATING THE REFLECTIVE PRACTITIONER, *supra* note 86, at 26.

93. *Id.* at 28.

94. *Id.* at 28.

95. *See* Warren Grice, 1 THE GEORGIA BENCH AND BAR: THE DEVELOPMENT OF GEORGIA'S JUDICIAL SYSTEM 262 (J.W. Burke Co. 1931).

96. Andrew J. Rothman, *Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Profession Example*, 51 RUTGERS L. REV. 875 (1999). *See also* Christine N. Coughlin, *See One, Do One, Teach One: Dissecting the Use of Medical Education's Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361 (2010).

97. Jay Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875 (1985) (landmark article regarding pedagogy). For articles from two recent symposia considering the future of legal education, *see* Symposium, *The Evolution of J.D. Programs–Is Non-Traditional Becoming More Traditional?* 38 SW. L. REV. 533 (2009); Joshua Dressler, *Criminal Law, Casebooks: An Introduction to a Dia-*

and the examination of cases has long since disappeared.[98] The American Bar Association's *MacCrate Report* invigorated examination of skills training.[99] Yet the *MacCrate Report* did not prove a panacea for legal education,[100] and calls for reform became louder.[101] In the new millennium,

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logue on Their History and Role in Legal Education, 7 OHIO ST. J. CRIM. L. 215 (2009). *See generally* Scott A. Taylor, *Bang Goes the Theory—Debunking Traditional Legal Education*, 3 PHOENIX L. REV. 209 (2010); Jess M. Krannich et al., *Beyond "Thinking Like a Lawyer" and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 86 DENV. U. L. REV. 381 (2009); Gordon A. Christenson, *Scholarship and Teaching After 175 Years*, 76 U. CIN. L. REV. 1 (2007); Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609 (2007); Philip C. Kissam, *Lurching Towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 OHIO ST. L.J. 1965 (1999); Judith Wegner, *The Changing Course of Study: Sesquicentennial Reflections*, 73 N.C. L. REV. 725 (1995).

98. Joseph A. Dickinson, *Understanding the Socratic Method in Law School Teaching After the Carnegie Foundation's Educating Lawyers*, 31 W. NEW ENG. L. REV. 97 (2009); William R. Mills, *The Decline and Fall of the Dominant Paradigm: Trustworthiness of Case Reports in the Digital Age*, 53 N.Y.L. SCH. L. REV. 917 (2008); Rubin, *supra* note 97; Donald G. Marshall, *Socratic Method and the Irreducible Ore of Legal Education*, 90 MINN. L. REV. 1 (2005); Brook K. Baker, *Language Acculturation Processes and Resistance to in "Doctrine"ation in the Legal Skills Curriculum and Beyond: A Commentary on Mertz's Critical Anthropology of the Socratic, Doctrinal Classroom*, 34 J. MARSHALL L. REV. 131 (2000); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999); Cynthia G. Hawkins-León, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 B.Y.U. L. REV. EDUC. & L.J. 1 (1998); W. Burlette Carter, *Reconstructing Langdell*, 32 GA. L. REV. 1 (1997); Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996); Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to "Think Like Lawyers:" Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885 (1991).

99. For an examination of the *MacCrate Report*, *see* Barbara Bintliff, *Legal Research: MacCrate's "Fundamental Lawyering Skill" Missing in Action*, 28 LEGAL REF. SERV. Q. 179 (2009); Kenneth D. Chestek, *MacCrate (In)Action: The Case for Enhancing the Upper-Level Writing Requirement in Law Schools*, 78 U. COLO. L. REV. 115 (2007); Russell Engler, *From 10 to 20: A Guide to Utilizing the MacCrate Report over the Next Decade*, 23 PACE L. REV. 519 (2003); Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report into a Doctrinal Course*, 3 NEV. L.J. 31 (2002); Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001); Arturo López Torres, *MacCrate Goes to Law School: An Annotated Bibliography of Methods for Teaching Lawyering Skills in the Classroom*, 77 NEB. L. REV. 132 (1998); Michael Norwood, *Scenes from the Continuum: Sustaining the MacCrate Report's Vision of Law School Education into the Twenty-First Century*, 30 WAKE FOREST L. REV. 293 (1995); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994); Beverly Balos, *Conferring on the MacCrate Report: A Clinical Gaze*, 1 CLINICAL L. REV. 349 (1994); Wallace Loh, *Introduction: The MacCrate Report—The Heuristic or Prescriptive?*, 69 WASH. L. REV. 505 (1994); Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457 (1994).

100. *See*, *e.g*., Chestek, *supra* note 99.

101. Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, The Public, and the Legal Profession*, 44 CAL. W. L. REV. 219 (2007). For a consideration of the changing dynamics of law faculties, *see* Gregory W. Bowman, *The Comparative and Absolute Advantages of Junior Law Faculty: Implications for Teaching and the Future of American Law Schools*, 2008 B.Y.U. EDUC. & L.J. 171 (2008). *See also* Michael Jordan, *Law Teachers and the Educational Continuum*, 5 S. CAL. INTERDISC. L.J. 41 (1996).

Carnegie's *Educating Lawyers*[102] and the Clinical Legal Education Association's *Best Practices*[103] have promoted law schools to critically re-examine their curricula.[104] Based on the sheer number of articles published, Carnegie's report and CLEA's *Best Practices* have engendered a lot of interest.[105] One reaction to these reports is reinforcement of the desire to incorporate professionalism and skills into the curricula.[106] Knowledge, skills, and values are now being integrated into many law school courses.[107] This effort, in part, aims to integrate an experiential component into courses.[108] In the words of two authors, "[d]octrinal courses like contracts, torts, criminal law, and property can include skills and ethics dimensions in

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102. WILLIAM M. SULLIVAN ET AL., SUMMARY, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007).

103. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007).

104. *See* James P. White, *Rethinking the Program of Legal Education: A New Program for the New Millennium*, 36 TULSA L.J. 397 (2000). The cry that students do not know how to write is not unique to law school. In a recent Forbes article, the Editor-in-Chief closed his column with this language: "Perhaps all college graduates–unlike many of those today–will actually leave school having learned how to write." Steve Forbes, *Dinosaur U.*, FORBES, Feb. 28, 2011, http://www.forbes.com/forbes/2011/0228/opinions-steve-forbes-fact-comment-dinosaur-u_2.html (last visited Nov. 11, 2011).

105. The 2011 AALS Annual Meeting Presidential Program included a session entitled "Teaching Excellence: Integrating Knowledge, Skills, Values and Assessment." *Program: 2011 Annual Meeting*, AALS, https://memberaccess.aals.org/eweb/Dynamicpage.aspx?Site=AALS&WebKey=9efff27b-7614-458f-9afd-759dd0133f00&RegPath=EventRegFees&REg_evt_key=892be6b0-1b4a-4f8d-b200-6ee44ab0ccc6 (last visited Nov. 11, 2011). For a selection of recent articles, *see* Antoinette Sedillo Lopez, *Leading Change in Legal Education—Educating Lawyers and Best Practices: Good News for Diversity*, 31 SEATTLE U. L. REV. 775 (2008); Nelson P. Miller & Bradley J. Charles, *Meeting the Carnegie Report's Challenge to Make Legal Analysis Explicit-Subsidiary Skills to the IRAC Framework*, 59 J. LEGAL EDUC. 192 (2009); Joseph A. Dickinson, *supra* note 98.

106. *See*, *e.g*., Patricia Grande Montana, *Lessons from the Carnegie and Best Practices Reports: A Look at St. John's University School of Law's Street Law Program as a Model for Teaching Professional Skills*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 97 (2009); Marcia S. Krieger, *A Twenty-First Century Ethos for the Legal Profession: Why Bother?*, 86 DENV. U. L. REV. 865 (2009); Ira P. Robbins, *Best Practices on "Best Practices:" Legal Education and Beyond*, 16 CLINICAL L. REV. 269 (2009); Roy Stuckey, *"Best Practices" or Not, It Is Time to Re-Think Legal Education*, 16 CLINICAL L. REV. 307 (2009); Anne Colby & William M. Sullivan, *Formation of Professionalism and Purpose: Perspectives from the Preparation for the Professions Program*, 5 U. ST. THOMAS L. J. 404 (2008); Lopez, *supra* note 105; Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909 (2008); Toni M. Fine, *Do Best Pedagogical Practices in Legal Education Include a Curriculum that Integrates Theory, Skill, and Doctrine?*, 1 J. ALWD 65 (2002). *See also* Lucia A. Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis?, or More?*, 100 DICK. L. REV. 245 (1996).

107. For a consideration of the continued importance of the law's "great subjects," *see* Nelson P. Miller & Heather J. Garretson, *Preserving Law School's Signature Pedagogy and Great Subjects*, 88 MICH. BUS. J. 46 (2009) (classifying the great subjects as contracts, criminal law, property, torts, and constitutional law).

108. *See generally Experiential Learning*, *supra* note 27; Julie A. Davies, *Methods of Experiential Education: Context, Transferability and Resources*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 21 (2009); David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191 (2003); Noble-Allgire, *supra* note 99.

which students research, write, plan, resolve, and advocate."[109] Furthermore, law schools are even re-examining the traditional method of assessment, the single exam at the end of the semester.[110]

C. Millennials

Quality teaching is produced by effective communication between a teacher and the student audience, which demands an appreciation of the generational nuances that may impact the learning environment for modern-day law students. Are current law students typically resourceful and independent, or team-orientated and motivated through collaborative learning approaches? Such information can prove valuable in the development of course materials and pedagogical strategies, and without this perspective a tremendous opportunity to improve classroom instruction may be lost. Further, it is important to recognize that whether the techniques used to teach law school courses and doctrinal or skills-based courses, like civil procedure, are effective may be significantly influenced by generational differences that exist within the student audience.[111]

Arguably, student populations may be categorized as the Baby-Boomers, Generation X, or Millennials, each observed to have shared viewpoints that might influence learning styles.[112] Most law students today

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109. Miller & Garretson, *supra* note 107, at 47.

110. Jerry R. Foxhoven, *Beyond Grading: Assessing Student Readiness to Practice Law*, 16 CLINICAL L. REV. 335 (2010); Heather Zuber, *A Fresh Look at Assessing Students' Work Product: What Is Assessment, Why We Assess, and How to Do So Effectively and Efficiently*, 19 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 20 (2010); Andrea A. Curcio, *Moving In the Direction of Best Practices and the Carnegie Report: Reflections on Using Multiple Assessments in a Large-Section Doctrinal Course*, 19 WIDENER L.J. 159 (2009) [hereinafter *Moving in the Direction of Best Practices*]; Andrea A. Curcio, *Assessing Differently and Using Empirical Studies to See If It Makes a Difference: Can Law School Do It Better?*, 27 QLR 899 (2009); Ron M. Aizen, *Four Ways to Better 1L Assessments*, 54 DUKE L.J. 765 (2004); Steven Friedland, *A Critical Inquiry into the Traditional Uses of Law School Evaluations*, 23 PACE L. REV. 147 (2002); Philip C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, 70 U. CIN. L. REV. 137 (2001); Steve Sheppard, *An Informal History of How Law Schools Evaluate Students, with a Predictable Emphasis on Law School Final Exams*, 65 UMKC L. REV. 657 (1997). *But see* John D. Schunk, *Can Legal Writing Programs Benefit from Evaluating Student Writing Using Single-Submission, Semester-Ending, Standardized, Performance-Type Assignments?*, 29 HAMLINE L. REV. 308 (2006).

111. *See, e.g.*, Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation*, 15 CLINICAL L. REV. 255 (2009); Joan C. Bohl, *Generations X and Y in Law School: Practical Strategies for Teaching the "MTV/Google" Generation*, 54 LOY. L. REV. 775 (2008). *See also* Robin A. Boyle, *Applying Learning-Styles Theory in the Workplace: How to Maximize Learning Style Strengths to Improve Work Performance in Law Practice*, 79 ST. JOHN'S L. REV. 97 (2005); Robin Boyle et al., *Law Students are Different from the General Population: Empirical Findings Regarding Learning Styles*, 17 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 153 (2009).

112. *See, e.g.*, Ashley Hacker, *Taming the Dragon of Golden Age Standards: A Lyotardian Analysis of Professionalism in the Era of Generation Y Lawyers*, 11 T.M. COOLEY J. PRAC. & CLINICAL L. 199 (2009); Melissa H. Weresh, *I'll Start Walking Your Way, You Start Walking Mine: Sociological Perspec-*

are members of the generational group known as Millennials, who were born between 1981 and the mid-2000s and differ significantly from previous generations.[113] For instance, Generation X students born between 1961 and 1980 are considered "goal driven," in pursuit of "pragmatic outcomes[,]" while the Baby Boomer generation born between 1940 and 1960 has been viewed as confrontational and combative.[114] Baby-Boomers view technology as a necessary evil to cope with, while members of Generation X and Millennials are adept at using technology and consider it a viable tool.[115] Hence, generational differences may present some challenges but it is important that the pursuit of critical thinking skills not be lost. For legal education, students must learn to interpret facts and apply legal doctrine—regardless of their generational background.

Millennials grew up during the information era, with computers at home and access to and use of the internet as a functional part of their life.[116] They prefer directness and action, and maintain a concern for social issues.[117] Many Millennials had working mothers or grew up in a single-parent household.[118] Moreover, Millennials seek positive guidance and feedback regarding their activities, which is consistent with achievement-oriented

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tives on Professional Identity Development and Influence of Generational Differences, 61 S.C. L. REV. 337 (2009).

113. *See* NEIL HOWE & WILLIAM STRAUSS, MILLENNIALS RISING: THE NEXT GREAT GENERATION 4 (2000) (the other generational groups include the "Baby Boomers" born between the 1940s and the early 1960s, and the Generation X born between the 1960s and 1980).

114. Deborah Tenofsky, *Teaching to the Whole Student: Building best practices for collaboration between libraries and Student Services,* 20 RESEARCH STRATEGIES 284, 284-85 (2007); *see also* Morley Winogard & Michael D. Hais, *The Boomers Had Their Day. Make Way for the Millennials*, WASH. POST, Feb. 3, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/02/01/AR2008020102826_pf.html (last visited Dec. 16, 2011).

115. *See* Diana Oblinger, *Boomers Gen-Xers Millennials: Understanding the New Students*, EDUCAUSE REV. 37, 38 (2003). Some of the debate regarding technology in the classroom references Millennials. *See, e.g.*, Diana R. Donahoe, *An Autobiography of a Digital Idea: From Waging War against Laptops to Engaging Students with Laptops*, 59 J. LEGAL EDUC. 485, 485 (2010); C. Steven Bradford & Mark Hautzinger, *Digital Statutory Supplements for Legal Education: A Cheaper, Better Way*, 59 J. LEGAL EDUC. 515 (2010); Jana R. McCreary, *The Laptop-Free Zone*, 43 VAL. U. L. REV. 989 (2009); James Grimmelmann, *The Google Dilemma*, 53 N.Y.L. SCH. L. REV. 939 (2008/2009); Nancy G. Maxwell, *From Facebook to Folsom Prison Blues: How Banning Laptops in the Classroom Made Me a Better Law School Teacher*, 14 RICH. J.L. & TECH. 1 (2007).

116. Pokey Stanford & Stacy Reeves, *Access, Consider, Teach: ACT in Your Classroom*, 80(3) CLEARING HOUSE, 133, 133 (2007).

117. For a consideration of the law office and the millennial, *see* Melody Finnemore, *Meet the Millennials: Young Attorneys Prompt Need for Firms to Explore New Ways of Doing Business*, OR. ST. BAR BULLETIN 9 (Nov. 2005); *Keeping Current: Diversity*, PARTNER'S REPORT (Feb. 2005).

118. For an examination of the challenges parents of Millennials raise, *see* DAVE VERHAAGEN, PARENTING THE MILLENNIAL GENERATION: GUIDING OUR CHILDREN BORN BETWEEN 1982 AND 2000 1 (2005).

attitude and approach.[119] An opportunity to apply innovative teaching strategies exists based on the Millennials' interest in feedback and their comfort level with technology.[120] However, while Millennials may have been exposed to technology their entire lives, it is critical that students from the Millennial generation are able to integrate their acquired technological skill-set into academic work.[121] For example, drafting pleadings in class, allowing students to participate via interactive video or display monitors, could provide an opportunity to examine the application of the Federal Rules of Civil Procedure regarding pleading requirements, discovery, and pre-trial and post-trial motions.

Also, Millennials are characterized by their willingness to work collaboratively, providing a chance for shared learning experiences.[122] This presents a golden opportunity for legal educators to go beyond traditional case law methods and lectures to engage students in the classroom. Faculty should be encouraged to utilize creative classroom simulations that permit Millennials to apply doctrinal concepts and receive immediate feedback.[123] Failure to do so may simply result in a lost opportunity to stimulate law students who will be the next generation of lawyers.

D. Economy

The practice of law is changing.[124] "Under growing pressure from clients to do more with less, lawyers will use technology not only to streamline and automate existing processes but to invent new ones."[125] The

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119. *See* MORLEY WINOGRAD & MICHAEL D. HAIS, MILLENNIAL MAKEOVER: MYSPACE, YOUTUBE, AND THE FUTURE OF AMERICAN POLITICS 85-86 (2008). *See also* JEAN M. TWENGE & W. KEITH CAMPBELL, THE NARCISSISM EPIDEMIC: LIVING IN THE AGE OF ENTITLEMENT 18, 84 (2009); JEAN M. TWENGE, GENERATION ME: WHY TODAY'S YOUNG AMERICANS ARE MORE CONFIDENT, ASSERTIVE, ENTITLED—AND MORE MISERABLE THAN EVER BEFORE 219, 221 (2006) [hereinafter GENERATION ME].

120. *See* GENERATION ME, *supra* note 119, at 217-18.

121. *See generally* Dennis Charsky et al., *Millennials Need Training Too: Using Communication Technology to Facilitate Teamwork*, 53(6) TECHTRENDS 42 (2009).

122. *See* Eric Hoover, *The Millennial Muddle: How Stereotyping Students Became a Thriving Industry and a Bundle of Contradictions*, THE CHRONICLE OF HIGHER EDUCATION, Oct. 11, 2009, http://chronicle.com/article/The-Millennial-Muddle-How/48772 (characterizing Millennials as "special, sheltered, confident, team-oriented, conventional, pressured, and achieving."). *See also* Mano Signham, *More than 'Millennials:' Colleges Must Look Beyond Generational Stereotypes*, THE CHRONICLE OF HIGHER EDUCATION, Oct. 11, 2009, http://chronicle.com/article/More-Than-Millennials-/48751/ (recognizing that "Millennials are typically team-oriented . . . [and] work well in groups . . . .").

123. *See* Hoover, *supra* note 122. *See generally* Signham, *supra* note 122.

124. For an examination of the changing nature of practice, *see* Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073, 1075 (2009).

125. Barbara Rose, *No Way Back: Don't Look Now, But a Technology Revolution is Changing the Way Lawyers Work*, 95 A.B.A. J. 64 (2009) (referring to RICHARD SUSSKIND, THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES (2008)). *See also* DANIEL B. EVANS, WILLS, TRUSTS,

structure and mechanics of large law firms are changing.[126] Legal education is also reacting to changes in the economy.[127]

In the midst of the worst economic downturn since the Great Depression, various sectors of the national economy have struggled, including lawyers and law firm practices.[128] Law schools across the country have experienced a spike in applications while recent law school graduates have found job opportunities scarce.[129] The private sector, in particular law firms, has been forced to respond to this economic environment by reconsidering their relationships with clients and business practices.[130] No longer are client concerns and complaints about billable hours and exorbitant rates being ignored, and there are signs that the tight economy has caused law firms to give serious consideration to alternative billing models.[131] Concepts like the "alternative fee arrangements," which concentrate less on the numbers of hours billed and more on communication with clients and performance, are gaining support.[132] These approaches go beyond some form of discount, the traditional response law firms have given to billing complaints. Today, the economic pressure has caused some law firms to impose flat-fee rates or project management principles to their billing models.[133]

Also, the search for cost-saving measures has compelled some law firms to review their independent capacity to provide some legal services and the potential benefits of outsourcing certain activities.[134] The viewpoint

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AND TECHNOLOGY: AN ESTATE AND TRUST LAWYER'S GUIDE TO AUTOMATION 93 (Aen W. Webster ed., 2004); Stephen Mecca, *Law Office Automation: A View into the Future*, 45 R.I. BAR J. 5, 27-28 (1996).

126. For an examination of the development of large law firms, *see* Wayne K. Hobson, *Symbol of the New Profession: Emergence of the Large Law Firm, 1870-1915*, *in* THE NEW HIGH PRIESTS, *supra* note 19, at 3.

127. *See* Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 598 (2010).

128. Randy J. Maniloff & James A.A. Pabarue, *Millennial Malpractice Tops List of Lawyers' Y2K Woes*, NAT'L L. J. (1999).

129. *See* Zak Kazzaz, *Law School Sees Record Applications*, THE CHRONICLE, Feb. 24, 2009, http://dukechronicle.com/node/148511; Debra Cassens Weiss, *Cornell Law School Officials Expected More Applications, But Not a 52% Spike*, ABA JOURNAL, Jan. 26, 2010, http://www.abajournal.com/news/article/cornell_law_school_officials_expected_more_applications_but_not_a_52_spike/.

130. *See*, *e.g.*, Jesse Nelman, *A Little Trust Can Go A Long Way Toward Saving the Billable Hour*, 23 GEO. J. LEGAL ETHICS 717, 718-19 (2010). For an examination of pre-economy billing, *see* Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 HOFSTRA L. REV. 207, 207-10 (2000).

131. Jonathan D. Glater, *Billable Hours Giving Ground at Law Firms*, N.Y. TIMES, Jan. 30, 2009, http://www.nytimes.com/2009/01/30/business/30hours.html (last visited Dec. 16, 2011).

132. *Hourly Billing: Get Over It*, 10-9 L. OFF. MGMT. & ADMIN. REP. 1 (2010).

133. *See* Weiss, *supra* note 129.

134. Milton C. Regan, Jr. & Palmer T. Heenan, *Supply Chains and Porous Boundaries: The Dis-aggregation of Legal Services*, 78 FORDHAM L. REV. 2137, 2139 (2010).

that law firms exist because lawyers acting alone cannot manage production of complex legal services by themselves supports the organization of large law firms, rather than a sole legal contractor.[135] While movement toward outsourcing of legal services may result in cost reduction and clients' expectations that those savings will be passed along to them, a reduced value is placed on those outsourced legal services.[136] By differentiating legal services ripe for outsourcing from those services that will be performed by the firm, arguably a decreased value is placed on the outsourced activities and may no longer support the need for high-priced first year associates who may have once used those legal services as a training opportunity.[137] Hence, the firm of the future is in a stronger competitive position to the extent it can identify its expertise and most cost-efficient providers.[138]

For legal education, this new economic reality suggests that law students may be expected to enter the profession with more well-defined skills and capabilities. Recommendations offered by the MacCrate and Carnegie reports as well as *Best Practices* agree that law schools can do more to prepare students for practice.[139]

III. PURPOSEFUL WRITING IN ACTION

The translation of thoughts into written words assists in the development of analytical skills.[140] This is the "writing to learn" approach embodied in the writing across the curriculum movement.[141] Because of the

135. *Id.* at 2142; *see* R.H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 386, 390 (1937).

136. *See id.* at 2140-41; *see also* Stephen Denyer, *Legal Outsourcing Remains High on the Agenda*, TIMES ONLINE, Sept. 9, 2008, http://business.timesonline.co.uk/tol/business/law/article4703308.ece.

137. Andrew Zangrilli, *Client Driven Innovation in Legal Services–The State of the Legal Profession, Part 1*, FINDLAW, May 13, 2008, http://articles.practice.findlaw.com/2008/May/13/447.html.

138. *See* Regan & Heenan, *supra* note 135, at 2191.

139. *See generally* LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (American Bar Association 1992); SULLIVAN ET AL., *supra* note 102; STUCKEY ET AL., *supra* note 103.

140. *See* Kent Syverud, *Better Writing, Better Thinking: Concluding Thoughts*, 10 J. LEGAL WRITING INST. 83, 86 (2004); *see also* Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 J. LEGAL WRITING INST. 1, 9 (2000); Linda L. Berger, *Applying the New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 157 (1999).

141. For a selection of articles examining writing across the curriculum, *see* MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, LEGAL RESEARCH AND WRITING ACROSS THE CURRICULUM: PROBLEMS AND EXERCISES (2009); Nancy Levit, *The Theory and the Practice—Reflective Writing Across the Curriculum*, 15 J. LEGAL WRITING INST. 259, 265-66 (2009); Andrea McArdle, *Writing Across the Curriculum: Professional Communication and the Writing that Supports It*, 15 J. LEGAL WRITING INST. 247, 248 (2009); Susan E. Thrower, *Teaching Legal Writing through Subject-Matter Specialties: A Reconception of Writing Across the Curriculum*, 13 J. LEGAL WRITING INST. 3, 8 (2007); *see, e.g.*, Pamela Lysaght, *Writing Across the Law School Curriculum in Practice: Considerations for Casebook Faculty*, 12 J. LEGAL WRITING INST. 191, 204-07 (2006); Carol McCrehan Parker, *Writing is Everybody's Busi-*

benefit of writing, writing has been incorporated into a variety of so-called doctrinal courses.[142] Despite the benefits, professors may be nervous to embark on a path that seemingly entails collecting papers and providing detailed, written feedback[143] throughout the semester.[144] This section presents a variety of approaches to integrating writing into a doctrinal course. Although each of the exercises is grounded in a particular course, the approaches are readily adaptable to a variety of courses.

A. Purposeful Writing for Teaching Civil Procedure

The study of the Federal Rules of Civil Procedure[145] represents an important hurdle for law students because comprehension of the civil procedure rules and concepts impact a student's ability to grasp broader legal doctrines.[146] Throughout a student's legal education, the ability to understand the significance that procedural rules and doctrines have on the posture of legal reasoning applied by the courts is important.[147] Put another

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ness: Theoretical and Practical Justifications for Teaching Writing Across the Law School Curriculum, 12 J. LEGAL WRITING INST. 175, 177 (2006); Pamela Lysaght & Cristina D. Lockwood, *Writing Across the Law School Curriculum: Theoretical Justifications, Curricular Implications*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 74 (2004); Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 601-02 (1997). *See also* Michael J. Madison, *Writing to Learn Law and Writing in Law: An Intellectual Property Illustration*, 52 ST. LOUIS U. L.J. 823, 825 (2008).

142. *See*, *e.g.*, Laurie C. Kadoch, *The Third Paradigm: Bringing Legal Writing "Out of the Box" and into the Mainstream: A Marriage of Doctrinal Subject Matter and Legal Writing Doctrine*, 13 J. LEGAL WRITING INST. 55, 74 (2007); Scott A. Schumacher, *Learning to Write in Code: The Value of Using Legal Writing Exercises to Teach Tax Law*, 4 PITT. TAX REV. 103, 132 (2007); Carol Chomsky & Maury Landsman, *Using Contracts to Teach Practical Skills: Introducing Negotiation and Drafting into the Contracts Classroom*, 44 ST. LOUIS U. L.J. 1545, 1545-46 (2000); Barbara J. Busharis & Suzanne E. Rowe, *The Gordian Knot: Uniting Skills and Substance in Employment Discrimination and Federal Taxation Courses*, 33 J. MARSHALL L. REV. 303, 305-06, 330-31 (2000).

143. For an examination of the critical role of feedback, *see* Sheila Rodriguez, *Using Feedback Theory to Help Novice Legal Writers Develop Expertise*, 86 U. DET. MERCY L. REV. 207, 209, 219-20 (2009); Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 271-72, 274 (2004); Cathaleen A. Roach, *A River Runs Through It: Tapping into the Informational Stream to Move Students From Isolation to Autonomy*, 36 ARIZ. L. REV. 667, 690 (1994); Kathleen S. Bean, *Writing Assignments in Law School Classes*, 37 J. LEGAL EDUC. 276, 276 (1987).

144. *See* Mary Beth Beazley, *Better Writing, Better Thinking: Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 J. LEGAL WRITING INST. 23, 34-35 & 79 (2004). *See generally* Carrie W. Teitcher, *Legal Writing Beyond Memos and Briefs: An Annotated Bibliography*, 5 J. ALWD 133, 133-34 (2008).

145. Also referred to herein as "FED. R. CIV. PRO." and FRCP.

146. *See generally* Larry L. Teply & Ralph U. Whitten, *Approaches to Teaching Civil Procedure: Teaching Civil Procedure Using an Integrated Case-Text-and-Problem Method*, 47 ST. LOUIS L. J. 91, 91 (2003); Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying A Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479, 480-81, 490, 507 (2000).

147. *See generally* Levine, *supra* note 146, at 480-90.

way, student learning regarding doctrinal or skill-based concepts is advanced when the student is empowered to understand the procedural posture wherein doctrinal or skill-based concepts are at issue.[148]

From the early days of their law school experience, students read judicial opinions, more often than not, with no formal introduction to jurisdictional matters, pleadings, discovery, joinder, preclusion, or a host of other subjects traditionally covered in civil procedure.[149] However, legal educators expect students (sometimes first-year, first-semester students) to read and comprehend state and federal court judicial opinions on topics such as contract, property, and torts despite the students' limited exposure to civil procedure.[150] Whether civil procedure is taught concurrently with other traditional first-year courses or shortly thereafter in the second year, students may study judicial opinions for various courses with scarce attention to and little appreciation for the procedural context of judicial opinions studied in various law school courses. As a curriculum development matter, this scenario may not be avoidable.[151] However, the pervasive presence of civil procedure rules, doctrines, and concepts in virtually every judicial opinion a law student will ever read raises the stakes regarding the importance of the traditional civil procedure course.

Therefore, it is critical that faculty teaching civil procedure understand the exposure students have had to the subject and the likelihood that students may not appreciate the gravity of the subject matter. Teaching civil procedure should include a broad array of pedagogical approaches designed to challenge and motivate students.[152] For students who are part of the Millennial generation, this effort to educate and even nurture students may be welcome and consistent with students' expectations. In particular, the civil procedure course should seek to impart both practical and analytical skills to law students. Analytical skills, such as case law and statutory analysis as well as the evaluation of legal doctrinal issues, are critical components of the rudimentary civil procedure course.[153] In addition, students should exit the civil procedure course with an appreciation for the

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148. *See generally id.*

149. Jennifer E. Spreng et al., *It's all About the People: Creating a "Community of Memory" in Civil Procedure II Part One*, 4 PHOENIX L. REV. 183, 196 (2010).

150. *See* Teply & Whitten, *supra* note 146, at 91-93.

151. One reason may be because of the cost and time associated with practicing Civil Procedure skills, *see e.g.*, Levine, *supra* note 146, at 480, 484-85.

152. *See* Teply & Whitten, *supra* note 146, at 93.

153. *See id.* at 91, 110.

skills necessary to draft pleadings, prepare and file motions, and manage the discovery process.[154]

Writing exercises should be among the approaches faculty might consider to further student learning of civil procedure.[155] Legal writing provides a platform for students to examine civil procedure subject matter in a participatory fashion. Students are required to take ownership of their own learning through the use of various writing exercises and projects that highlight civil procedure rules, doctrines, and related subject matter. By pairing traditional lectures and Socratic teaching techniques with well-defined writing exercises, students are provided a *checkpoint* to examine their level of comprehension in a manner that allows for constructive criticism and feedback.

The development of legal writing exercises designed for civil procedure teaching should center on two fundamental goals: (1) *doctrinal and rule application* and (2) *skill development*. Perhaps the most challenging aspect of civil procedure is learning how the rules and doctrinal concepts function in typical litigation proceedings. The import of writing exercises provides an opportunity for students to experience application of civil procedure rules and doctrines in concentrated law-practice scenarios not ordinarily explored via the traditional case law review or problem-solving exercises.[156] Faculty should make discreet decisions regarding whether writing exercises may be most beneficial for student learning.[157] For example, students are highly unlikely to have any experience regarding the distinction between motions in lieu of an answer and an answer as a responsive pleading pursuant to Rule 12 of the Federal Rules of Civil Procedure.[158] A writing exercise regarding this subject area should be designed to amplify teaching opportunities regarding concepts such as notice pleading, timing obligations for pleadings, and affirmative defenses, as well as Rules 8, 11, and 12 of the Federal Rules of Civil Procedure.[159] Consider the following hypothetical

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154. Larry O. Natt Gantt, II, *Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind*, 29 CAMPBELL L. REV. 413, 422 (2007).

155. For another drafting exercise adapted to the civil procedure classroom, *see Moving in the Direction of Best Practices*, *supra* note 110 (outlining a complaint-drafting assignment). *See also* Alfred R. Light, *Civil Procedure Parables in the First Year: Applying the Bible to Think Like a Lawyer*, 37 GONZ. L. REV. 283 (2001).

156. *See generally* Levine, *supra* note 146, at, 480, 490.

157. *See Moving in the Direction of Best Practices*, *supra* note 110, at 162 (2009) (advising "law professors to engage in a self-reflective and scholarly exploration of the pros and cons of various assessment methods in order to make informed decisions about whether to retain the status quo or to move in another direction.").

158. FED. R. CIV. P. 12.

159. FED. R. CIV. P. 8; FED. R. CIV. P. 11; FED. R. CIV. P. 12.

exercise which centers on a request by a senior partner to a junior attorney to prepare a responsive pleading:

> *Please prepare an answer to the complaint (Civil Action No. 104-CV-02007-JOF) filed in recent weeks in the United States District Court for the Northern District of Georgia, Atlanta Division, by the Plaintiff Craig Goaway. Plaintiff alleges four counts in the complaint against our client, the Department of Corrections consistent with Rule 8 of the Fed. R. Civ. P. We take no issue with Mr. Goaway's contentions that he was employed as a computer data entry clerk from January 2005 until December 2008 and that he received "meeting expectations" performance reviews as noted in paragraphs 3, 4, and 5 of the complaint. Also, we do not challenge the jurisdictional grounds for the complaint as set out in paragraphs 1 and 2 of the complaint. However, our client denies that Mr. Goaway was not promoted because of his sex, and denies that Mr. Goaway's supervisors and co-workers, all of whom were female, sexually harassed him in violation of Title VII of the Civil Rights Act of 1964. Further, our client denies that Mr. Goaway was subjected to intentional infliction of emotional distress, or that the Georgia Department of Corrections breached an employment contract Mr. Goaway alleged to have with the state agency. The responsive pleading should include all viable affirmative defenses.*

Students are divided into seven and eight-member groups and are given two days to prepare an answer consistent with Rule 12 of the Federal Rules of Civil Procedure.[160] The drafting exercise requires students to act collectively and within specific time limitations. They are permitted to use the full panoply of research sources that would be available to practicing lawyers. As part of the exercise, students are intentionally not given a mock complaint to review as they prepare their answer but are advised of allegations raised in the complaint and the corresponding paragraph.[161] As a result, students are forced to draft the caption as well as substantive responses to the allegations. This supports the skill-introduction goal of the writing exercise. Here again, faculty are offered an opportunity to highlight, for example, the requirements of Rule 12 and other useful devices such as Federal Rules of Civil Procedure Appendix of Forms, Forms 1, 30,

160. FED. R. CIV. P. 12.

161. This aspect of the exercise can easily be modified to include a sample complaint for student reference. The draft complaint may also be provided to the class to facilitate the class discussion that reviews the submitted exercise.

and 31.[162] Thus, this exercise facilitates learning and introduces students to skills necessary to draft pleadings ordinarily prepared in civil litigation.

In addition to the fundamental goals of facilitating student learning and skill development, legal writing exercises for civil procedure courses should satisfy identifiable objectives that demonstrate evidence of validity, reliability, and student motivation. The validity component should examine whether the writing exercise is purposeful in that it is focused upon analytical or practical skills germane to civil litigation. The reliability component should identify the doctrinal competencies sought to be illuminated, demystified, and studied vis-à-vis the writing exercise. Finally, the student motivation component recognizes that "learning tends to be more powerful when its motivation is internally generated by the learner's belief in the usefulness of the learning."[163] Civil procedure provides the student a noteworthy view of law practice that can be captured through contemporary writing opportunities. Consider the following exercise wherein students are asked to prepare a memorandum to support a senior colleague:

> *The current healthcare debate underway in Congress may result in landmark legislation that will have a tremendous impact on Americans from every segment of our nation. Among the provisions and/or features of the healthcare legislation under consideration is the mandatory conversion of medical records and/or related health information to an electronic or digital format. A senior partner with your firm has just entered your office and asked you to draft a memorandum addressing the advent of electronic medical records (EMR). She needs the memo Monday morning to prepare for an important meeting with clients from the healthcare industry that is also scheduled for Monday at noon.*
>
> *The memo should address what consequences and concerns are likely to surface in civil litigation governed by the Federal Rules of Civil Procedure as a result of the comprehensive conversion of medical records to electronic form. In particular, how would the discovery process be affected by litigants seeking to discover or defend against the discovery of electronic medical records? For*

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162. FED. R. CIV. P. 12; FED. R. CIV. P. APP. F. 1; FED. R. CIV. P. APP. F. 31.

163. Alan M. Lerner, *Using Our Brains: What Cognitive Science And Social Psychology Teach Us About Teaching Law Students To Make Ethical, Professional Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 696 (2004).

each observation cited, provide relevant legal authority (i.e. case law, statutes, regulations, secondary legal resources, etc.).

The memo must not exceed two-pages and is due 8:30 a.m. Monday, October 12, 2009 – no exceptions*. The universe of resources that may be used to prepare the memo includes all materials available in the law school library as well as information accessible on-line via Westlaw or LexisNexis.*

Students are given two calendar days to complete this writing exercise and are required to work independently. The exercise provides a chance for students to consider the application of various discovery devices in the context of an emerging factual scenario. More specifically, this writing exercise prompts students to critically examine civil procedure rules like Rule 34, which governs the production of documents as well as electronically-stored information and protective orders pursuant to Rule 26(c).[164]

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164. FED. R. CIV. P. 34(a)(1)(A) provides in part:

> A party may serve on any other party a request within the scope of Rule 26(b):
> (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:
> (A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form . . . .

FED. R. CIV. P. 34(b)(2)(E) provides in part:

> (E) *Producing the Documents or Electronically Stored Information*. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and(iii) A party need not produce the same electronically stored information in more than one form.

FED. R. CIV. P. 26(c)(1) provides:

> A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending — or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
> (A) forbidding the disclosure or discovery;

Further, it can be helpful to give students an opportunity to experience how a series of decisions during the course of litigation may impact the application of civil procedure rules that are intended to reduce confusion and advance efficiency. Consider the following exercise:

The Distinction or Conflict between the Rules

> *For the better part of a year, your client, ICM Global Communications, Inc., has been embroiled in a contentious lawsuit wherein the plaintiff has alleged that she was sexually harassed, constructively discharged, and subject to intentional infliction of emotional distress due to unwelcome sexual advances from her immediate supervisors Will Clinton and Lou Hefner. The plaintiff is suing the defendants ICM as well as Clinton and Hefner in their individual capacities.*
>
> *In recent months, the litigation has proceeded through the discovery phase and the depositions of Clinton and Hefner were taken a few weeks ago. During the Clinton and Hefner depositions, the deponents were asked several questions about ICM's internal company policies related to sexual harassment prevention in the workplace and the company's implementation of its non-harassment policy. While the deponents, Clinton and Hefner, testified that they each understood that ICM had policies prohibiting harassment in the workplace, they could not answer questions about the ICM's comprehensive, company-wide efforts to implement its non-harassment policies.*
>
> *Shortly thereafter, the plaintiff's attorney served defendant with a Notice of Deposition pursuant to Fed. R. Civ. P. 30(b)(6) demanding that defendants produce someone who could address questions related to ICM's non-harassment policy and the*

(B) specifying terms, including time and place, for the disclosure or discovery;
(C) prescribing a discovery method other than the one selected by the party seeking discovery;
(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
(E) designating the persons who may be present while the discovery is conducted;
(F) requiring that a deposition be sealed and opened only on court order;
(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

company's implementation of that policy. The defendants filed a Motion to Quash the 30(b)(6) Notice of Deposition and sought a Protective Order that would bar any effort to compel an ICM official to appear for such a deposition. Defendants' primary argument is that ICM's non-harassment policy has been produced in discovery in response to Plaintiff's First Request for Production of Documents authorized by Fed. R. Civ. P. 34, and that the document speaks for itself. Further, defendants contend that their Responses to Plaintiff's First Interrogatories, authorized by Fed. R. Civ. P. 33, which question the implementation of the ICM non-harassment policy make it clear that all employees are informed about the policy and that failure to comply with the policy may result in disciplinary action, including termination. Thus, defendants contend that the 30(b)(6) deposition is intended to harass the defendant and not likely to lead to admissible evidence, and should therefore be quashed.

Upon receipt of the Motion to Quash and Plaintiff's Response in Opposition to the Motion to Quash, the Magistrate Judge convened a status conference with the parties and their attorneys. The parties compromised and agreed that the 30(b)(6) deposition would proceed, but that the Notice would specify the issues that would be addressed during the deposition. In pertinent part, the Notice stated that the "ICM representative would be prepared to answer questions about the ICM non-harassment policy and actions taken to implement the policy company-wide."

The 30(b)(6) deposition was scheduled for this morning October 27, 2010 at 9:00 a.m. per the Notice, and Melvin Gibson, Executive VP for Global Operations, will appear as the ICM representative. After more than a hour of questions during the deposition that addressed the ICM non-harassment policy and the manner in which the policy was implemented across the company, counsel for the plaintiff began to ask Gibson questions about the plaintiff's allegations that Clinton and Hefner made unwelcome sexual advances. Gibson was asked to explain why he failed to protect plaintiff from sexual harassment by Clinton and Hefner. As the attorney representing ICM during the deposition, you object and instruct Gibson not to answer the question on the grounds that the question is outside the scope of the 30(b)(6) Deposition Notice pursuant to the parameters agreed to following the Magistrate Judge's status conference and set out in the Deposition Notice.

> *Plaintiff's counsel contends that Gibson is compelled to answer any question posed during the deposition to which he has personal knowledge pursuant to Fed. R. Civ. P. 26.*
>
> *What are the strongest arguments that support the positions of the parties? What authority supports defense counsel's decision to instruct Gibson not to answer plaintiff's* question? *Assuming plaintiff's questions to Gibson are outside the scope of the 30(b)(6) deposition notice, how should the Magistrate Judge rule on defense counsel's objection? Should defense counsel file a Motion for a Protective Order? Why or why not? Can Gibson be compelled to answer plaintiff's counsel's questions about failing to protect his client from Clinton and Hefner pursuant to Fed. R. Civ. P. 37?*
>
> *Provide a responsive memo not to exceed two single-spaced pages with supporting authority. Your response is due on Friday, October 29, 2010 at 3:00 p.m.*

In this exercise, students are forced to ponder the distinction between deposition formats and the consequences for challenging the use of this discovery device after being given an opportunity to confer with the presiding judge and opposing counsel. This approach is consistent with the findings set out in the *Best Practices in Legal Education* report published in 2007 which called for the law schools to, among other things, integrate the teaching of theory, doctrine, and practice, as well as employ context-based instruction.[165] The above civil procedure writing exercise strives to place students in the context of a fluid litigation situation where the student is required to think through writing about the relative consequences of making decisions during a deposition—instructing a deponent not to answer a question—and alternative offensive and defensive motions that may flow from those decisions.

Classroom writing exercises provide an excellent opportunity to survey students' application of analytical reasoning skills regarding civil procedure rules and doctrines.[166] Too often the only view available to assess students' understanding, or misunderstanding, of civil procedure subject matter is the final exam paper.[167] Should the civil procedure classroom of the future be

165. *See generally* SULLIVAN ET AL., *supra* note 102; *see also* Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 J. LEGAL WRITING INST. 207, 217-28 (2007).

166. *See, e.g.*, *Moving in the Direction of Best Practices*, *supra* note 110, at 160-61.

167. *See id.* at 161.

confined to a teaching philosophy or approach without regard to its impact of student learning? Or, should the civil procedure classroom of the future be nimble and flexible, with the capability to adapt? Targeted writing exercises can provide teaching faculty valuable insight as to whether a particular teaching methodology is effective or whether certain adjustments should be made in the classroom to improve student comprehension.

Another challenge that confronts a teacher of the traditional civil procedure course involves the amount of time available to cover important subject matter. Whether the course is designed as a four-hour, one-semester class or a six-hour, two-semester class, the quantity and complexity of the course material is substantial. Subject areas such as personal jurisdiction, subject-matter jurisdiction, pleadings, joinder, discovery, and pre-trial and post-trial practice are time-consuming topics that require particular attention.[168] However, other subject areas like removal, multi-party litigation, appeals, and preclusion often are given less time for coverage.[169] To the extent certain civil procedure topics cannot be given sufficient time for in-class coverage, writing exercises may provide the opportunity to introduce concepts and doctrines that might not otherwise be addressed in the traditional course. Consider the following writing exercise:

> *Students are to prepare a two-page memorandum regarding the definition and utilization of a supersedeas bond in the context of post-trial litigation strategy. Students have forty-eight hours to complete the writing exercise.*

While describing the supersedeas bond may be straightforward, a written explanation regarding the use of the device requires students to conceptually explore the post-trial process and the array of decisions that litigators may consider. Furthermore, this exercise allows teaching faculty to use time or a time-line to place the civil procedure process into context. While students may gravitate to pre-trial subject areas like discovery or summary judgment, important post-trial concepts may get limited attention

168. *See, e.g.*, *Law School Required Curriculum*, HOWARD UNIVERSITY, http://www.law.howard.edu/law_school_curriculum (last updated March 23, 2010); *First Year Curriculum*, VANDERBILT UNIVERSITY LAW SCHOOL, http://www.law.vanderbilt.edu/academics/curriculum/first-year-curriculum/index.aspx (last visited Oct. 30, 2011); *First-year Curriculum*, DUKE LAW ACADEMICS, http://www.law.duke.edu/curriculum/firstyr (last visited Oct. 30, 2011); *2008-2010 Catalog*, OHIO NORTHERN UNIVERSITY COLLEGE OF LAW, *available at* http://www.law.onu.edu/academics/docs/catalog2008-2010.pdf.

169. *See Law School Required Curriculum*, HOWARD UNIVERSITY, *supra* note 168; *First Year Curriculum*, VANDERBILT UNIVERSITY LAW SCHOOL, *supra* note 168; *First-year Curriculum*, DUKE LAW ACADEMICS, *supra* note 168; *2008-2010 Catalog*, OHIO NORTHERN UNIVERSITY COLLEGE OF LAW, *supra* note 168.

and perhaps create the erroneous impression among students that post-trial matters are less important.

B. Professional Responsibility

Exercise on the Duty of Confidentiality

This is an exercise used when we begin our discussion of the professional duty of confidentiality. It is a "think-pair-share" (or better, "write-pair-share") exercise that forces students to grapple not only with the extent of the confidentiality obligation under the rules, but also to explore their own developing notions of the proper professional role.[170] Having students write their initial response and then discuss their response with two or three other students is essential to engaging the entire class on these issues.

The exercise is based upon a gut-wrenching true story of two lawyers and how they dealt with the duty of confidentiality. Students first read the following article: "*Following Professional Rules—And a Moral Compass*," by Maria Kantzavelos.[171] The article tells of two retired Chicago public defenders whose client admitted to them in 1982 that he had committed a murder that another man was convicted for and sentenced to life imprisonment.[172] They kept this information secret for twenty-six years while their client served time in prison for another murder.[173] Meanwhile, the man who was wrongfully convicted spent twenty-six years in prison for a crime he did not commit.[174] The article describes the two lawyers' moral and professional dilemma.[175] According to one of the lawyers, their moral and professional duty was clear (even if profoundly uncomfortable): they could not reveal the information from their client without exposing him to the possibility of the death penalty.[176] "How could I possibly do anything with the information without jeopardizing my client's life? . . . His life was in my hands."[177] On the other hand, a man spent twenty-six years in prison

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170. *See* Barbara P. Blumenfeld, *Can Havruta Style Learning Be A Best Practice in Law School?*, 18 WILLAMETTE J. INT'L & DISPUTE RES. 109, 122-23, 129 (2010) (explaining the basic concept of Think-Pair-Share).

171. Maria Kantzavelos, *Following Professional Rules–And A Moral Compass*, CHICAGO LAWYER, March 1, 2008, http://www.law.northwestern.edu/news/article_full.cfm?eventid=3597.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. Kantzavelos, *supra* note 171.

177. *Id.*

for a crime he did not commit.[178] The lawyers had information that could have freed him, but chose not to reveal it.[179]

Exercise:

Write a short memo in which you answer these questions.

> *(1) Assume ABA Model Rule 1.6 applies. Discuss whether any of the six exceptions to confidentiality set forth in 1.6(b) apply, thereby giving the lawyers discretion to reveal the information if they choose.*
>
> *(2) If you found that one or more exceptions apply, would you reveal the information? (Even if an exception applies, a lawyer is not required by the rule to reveal confidential information.) If you found that no exception applies, would you nonetheless reveal the information, even if it meant you are subject to discipline?*

After twenty minutes, students are assigned to groups of three or four in which they discuss their memos and the answers to the two questions. After about ten minutes, the class comes back together and we discuss their answers as a whole. We first discuss the applicability of the exceptions in Rule 1.6.[180] I ask for students who found an exception or exceptions to explain why, and then I have students who found no exception to argue the other side. This discussion can last for quite a while, because there is at least a colorable argument for each of the six exceptions under 1.6(b).[181]

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178. *See id.*
179. *See id.*
180. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2002).
181. MODEL RULES OF PROF'L CONDUCT R. 1.6 states that:

> (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
> (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
> (1) to prevent reasonably certain death or substantial bodily harm;
> (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;
> (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
> (4) to secure legal advice about the lawyer's compliance with these Rules;

On the other hand, the better argument is probably that none of the exceptions apply here.[182] In any event, it is a fruitful way to begin to explore the scope of the exceptions under 1.6(b).

Next, we discuss the more personal question of whether the students would reveal the information. This generally leads to spirited discussion of the duty of loyalty to one's client versus the moral obligation to an innocent third person. The discussion reveals fundamental issues concerning the lawyer's role and forces students to examine their own emerging professional identity. This discussion can also take a good deal of time if you wish.

Consentability of Concurrent Conflicts of Interest

This is a writing exercise in the professional responsibility class designed to help students understand when conflicts are consentable and when they are not. In actually drafting the "informed consent" letter to the client, students more readily recognize the nature of conflict of interest and why certain conflicts may not be consented to. It also allows for a deeper understanding of the nature of fiduciary duty and the professional identity of the lawyer.

The exercise is based on a lawyer discipline case, *Iowa Supreme Court Disciplinary Board v. Clauss*.[183] Clauss represented National Management Corporation, which retained him to collect past due rental payments from Clark.[184] Clark told Clauss that she could not pay her debt because she had been enjoined by a former employer (based on a covenant not to compete) and could not run her business.[185] Clauss agreed to represent her and try to recover her money.[186] That way, he reasoned, Clark could operate her business and make money to pay National.[187]

Clauss correctly recognized that, although the plan could be beneficial for all involved, problems could arise from the dual representation.[188] Therefore, he sent letters to each client and got them to waive the

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(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

182. *See id.*
183. 711 N.W.2d 1 (Iowa 2006).
184. *Id.* at 2.
185. *Id.*
186. *Id.*
187. *Id.*
188. *Clauss*, 711 N.W.2d at 2.

conflict.[189] He proceeded to represent Clark and collected some money for her, but Clark never paid any money to National.[190]

In this disciplinary case, the court held that Clauss was subject to discipline and suspended him for six months.[191] Although each client signed a purported waiver of the conflict, the court held that the lawyer did not sufficiently advise these clients of the conflict.[192] His letters essentially said "I . . . bring this matter to your attention by way of full disclosure[,]" but did not describe in any detail the risks of multiple representation and the effect on counsel's ability to provide competent and diligent representation to each client.[193]

Exercise:

In discussing this case in class, students quickly recognize that the lawyer should have done more to advise these clients of the conflict. That naturally leads to a discussion of what the letter should have included. I then divide them into groups of three or four to collaborate and write a letter to the clients that would have sufficiently advised them of the conflict. I give them about fifteen minutes for this task. At the end of this period, they turn in the letters to me. (A variation on the exercise is to have students write their own drafts individually and then work together to come up with a joint letter).

Most students write a letter in which they emphasize the benefits of common representation and ask the clients to consent. Some students, however, recognize that this conflict is actually "nonconsentable." That is, in the act of describing, *in writing*, the risks of common representation, they realize that a reasonable lawyer could not conclude that he or she could provide competent or diligent representation to both parties (as required under Rule 1.7(b)(1)).[194]

At the beginning of the next class period, we do a role-play of the lawyer having a follow-up session with the client. I play the client and choose one of the students who thought the conflict was consentable to be the lawyer. In the role of the client, I ask questions and raise concerns that the students had not considered.

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189. *Id*. at 2-3.
190. *Id*. at 3.
191. *Id*. at 5.
192. *See id*.
193. *Clauss*, 711 N.W.2d at 2.
194. MODEL RULES, *supra* note 180, at R. 1.7(b)(1).

This exercise is an example of the "think-pair-share" technique.[195] In requiring the students to put the disclosures in writing, they more readily see the problems with the joint representation (as opposed to simply discussing what must be disclosed).[196] By working in teams, they gain the benefit of others' insights, and they are generally more accountable and engaged when they work together.[197]

This exercise also is fruitful for a discussion of professional identity (the third apprenticeship of Carnegie).[198] Many students quickly see the benefits of the common representation (especially for the lawyer) but ignore the risks of problems that may arise. This can lead to a rich discussion of the fundamental nature of fiduciary duty and how lawyers must regularly subordinate personal interest to the interest of clients.[199] In fact, that leads to the next exercise, in which the students—as junior associates—write a letter to the senior partner telling him or her why the joint representation suggested by the partner is in fact not a good idea, and is likely a violation of the rules.

Non-Engagement Letter

This is another "write-pair-share"[200] exercise, this time on the issue of whether an attorney-client relationship has been formed. It is based upon a malpractice case in which a lawyer allegedly let the statute of limitations run in a negligence action. The lawyer defended on the ground that he never agreed to represent the plaintiff in that case. Communication between lawyer and prospective client was entirely oral; the prospective client asserted that the lawyer told her she did not have a case, but the lawyer denied such an assertion. The court credited client's version of the conversation, and, accordingly, the lawyer did have a duty to the client. In discussing the case, students quickly recognize that the best way for a

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195. *See* Blumenfeld, *supra* note 170, at 122-23, 129 (explaining the basic concept of Think-Pair-Share).

196. *See id.* at 122-23.

197. *See id.* at 122-23.

198. *See generally* SULLIVAN ET AL., *supra* note 102.

199. *See*, *e.g.*, MODEL RULES, *supra* note 180, at R. 1.7(b)(2), which provides in part:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
>
> . . .
>
> (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

200. *See* Blumenfeld, *supra* note 170, at 122-23, 129.

lawyer to avoid such a problem is to send the client a letter confirming that the lawyer will not take the client's case.

Exercise:

In groups of three or four, students must draft just such a "non-engagement" letter. They are given fifteen to twenty minutes to draft the letter, and they turn them in at the end of class. I read through them before the next class, and we begin the next class with a discussion of some sample letters, displayed for viewing with an overhead or document camera.

C. Trusts and Estates

Trusts and Estates is one of the oldest areas of law.[201] It is also a growing practice area.[202] The Trusts and Estates course presents a perfect opportunity to merge doctrinal knowledge with skills, including a variety of transactional skills.[203] Infusion of transactional skills, which involves counseling, negotiation, and drafting, complements the law school's overall curriculum.[204] In addition, this infusion creates a positive, constructive

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201. The oldest, known written will is Ancient Egyptian. *See generally* VIRGIL M. HARRIS, ANCIENT, CURIOUS, AND FAMOUS WILLS 10-48 (1911) (describing the content of a will from the time of Amenemhat III). However, the origin of wills probably precedes written communication. *See* ALISON REPPY & LESLIE J. TOMPKINS, HISTORICAL AND STATUTORY BACKGROUND OF THE LAW OF WILLS: DESCENT AND DISTRIBUTION, PROBATE AND ADMINISTRATION 2 (1928).

202. A 2009 poll conducted on ABAJournal.com listed elder law as one of seven practice areas, in addition to bankruptcy that were thriving in this economy. Deborah L. Cohen & Julie Kay, *Where the Work Is: Lawyers Recommend These Practice Areas in Recessionary Times*, ABA JOURNAL, Aug. 1, 2009, http://www.abajournal.com/magazine/article/where_the_work _is/ (listing (1) alternative dispute resolution, (2) prepaid legal services, (3) environmental and energy law, (4) consumer protection, (5) debt collection, (6) elder law, and (7) labor law).

203. *See, e.g.*, Rachel S. Arnow-Richman, *Teaching Transactional Skills in Upper-Level Doctrinal Courses: Three Exemplars*, 10 TRANSACTIONS: TENN. J. BUS. L. 367, 374-79 (2009) (explaining the teaching of transactional skills in Wills); Rachel S. Arnow-Richman, *Employment as Transaction*, 39 SETON HALL L. REV. 447, 449, 453, 464, 501 (2009) (applying transactional teaching to Employment Law); Karl S. Okamoto, *Teaching Transactional Lawyering*, 1 DREXEL L. REV. 69, 71-73 (2009) (using an interactive method in teaching Business law); Sean M. O'Connor, *Teaching IP from an Entrepreneurial Counseling and Transactional Perspective*, 52 ST. LOUIS U. L.J. 877, 877-78, 887 (2008) (using transactional techniques in the teaching of IP law); Lisa Penland, *What a Transactional Lawyer Needs to Know: Identifying and Implementing Competencies for Transactional Lawyers*, 5 J. ALWD 118, 118, 122 (2008) (discussing transactional competencies which are needed for various areas of the law); Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475, 478, 481 (2002) (explaining the implementation of teaching business transactions in the classroom).

204. For a selection of articles, *see* Peter Siviglia, *Designs for Courses on Drafting Contracts*, 12 SCRIBES J. LEGAL WRITING 89, 91, 95 (2008); Rachel Arnow-Richman, *Contracts Teaching: A Bibliography*, 26 U. HAW. L. REV. 489, 489 (2004); Deborah A. Schmedemann, *Finding a Happy Medium: Teaching Contract Creation in the First Year*, 5 J. ALWD 177, 177, 179-80, 184-85 (2008); Chomsky & Landsman, *supra* note 142, at 1545-46.

perspective to the course.[205] Certainly students can be asked to write a complete will, codicil, trust, or other estate-planning document. However, without proper foundation in the principles of drafting, such an extensive writing exercise can become an overwhelming experience for students, who are faced with a seemingly inexhaustible supply of poorly constructed forms, and be an overwhelming experience for the professor, who is faced with the need to provide written, individualized feedback for eighty students.[206] For that reason, this section highlights five in-class exercises that can be used to introduce drafting concepts to the students and prepare students for more extensive drafting assignments.[207]

1. Writing Prompts

An efficient and effective method to integrate quick writing into the classroom is the use of writing prompts.[208] Requiring students to focus on a particular question and physically write the response channels the class energy. Articulating written responses to the writing prompts also promotes reflection and nurtures self-regulated learning.[209] Index cards can be distributed so that the students actually handwrite their responses to the selected prompts, usually with one prompt per side of the index cards.[210] The student responses may serve as the basis for an immediate class discussion or the cards can be submitted to the professor after class to inform approaches for subsequent class meetings. The review of the cards allows the professor to peek into each student's thought process on selected topics. Writing prompts can be used throughout the semester to pull the class out of a Socratic stupor.[211]

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205. For other exercises in the area of trusts and estates, *see generally* ROGER W. ANDERSEN & KAREN BOXX, SKILLS & VALUES: TRUSTS AND ESTATES (2009).

206. For an examination of critique, *see* Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1129-30 (1999); Richard J. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 754-55, 762 (1989).

207. There is great value to the students writing the full documents. One way of incorporating this experience into the curriculum is to develop a free standing drafting course. Many schools now offer a contract drafting course. At Mercer, Trusts and Estates Drafting is a two credit hour course that allows students to write seven common estate planning documents: engagement letter, Will, codicil, inter vivos trust, financial power of attorney, advance directive, and disengagement letter. Because the course is limited to twenty-four students, students receive individualized feedback on each submitted assignment, along with the opportunity to revise all documents for the compilation of a form file.

208. *See generally* Simon Kewin, *Writing Prompts 101*, DAILY WRITING TIPS, http://www.dailywritingtips.com/writing-prompts-101/ (last visited Nov. 22, 2011).

209. *See* Niedwiecki, *supra* note 60, at 61 (2006); Boyle, *supra* note 52, at 19; Levit, *supra* note 141, at 253-54; *see generally* Schwartz, *supra* note 35, at 456; Karen L. Koch, *"What Did I Just Do?" Using Student-Created Concept Maps or Flowcharts to Add a Reflective Visual Component to Legal Research Assignments*, 18 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 119, 119-20 (2010).

210. The students may also write their answers on a class blog.

211. *See* Sophie Sparrow, *Focus Writing for Doctrinal Classes*, THE LAW TEACHER 8 (2010).

The number of useful writing prompts is endless. Below is a selection of generic writing prompts that are relevant for all courses:

- The topic I understood the least today/this week/this month/this semester was;

- The topic I understood the best today/this week/this month/this semester was;

- The case that confuses me the most is;

- The case that I found the most helpful was;

- The one question I wish someone had asked today is;

- At this point in the semester, the concept/doctrine that I understand the best is;

- At this point in the semester, the concept/doctrine that I understand the least is;

- When it comes to comma usage, I feel;[212]

2. Streamlining

Critical reading is a valuable skill for both students and lawyers.[213] The ability to parse language is a component of critical reading.[214] The Socratic dialogue fosters the ability to orally communicate this understanding. A writing exercise can also foster this understanding. Critical reading can be paired with a writing exercise. For instance, students can be instructed to critically read one sentence to one paragraph and streamline the text while

212. This prompt can serve as a proxy for a student's assessment of his or her writing skills.

213. *See* RUTH ANN MCKINNEY, READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT 13 (2005); Leah M. Christensen, *Legal Reading and Success in Law School: The Reading Strategies of Law Students with Attention Deficit Disorder (ADD)*, 12 SCHOLAR 173, 178 (2010); Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 603 (2007); Debra Moss Curtis & Judith R. Karp, *"In a Case, in a Book, They Will Not Take a Second Look!" Critical Reading in the Legal Writing Classroom*, 41 WILLAMETTE L. REV. 293, 294 (2005).

214. *See* Susan J. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489, 489, 508 (2002). For an examination of language in client interviews, *see* Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of Client Interviews*, 4 CLINICAL L. REV. 321, 325 (1998); *see also* Paul R. Baier, *Beyond Black Ink: From Langdell to the Oyez Project–The Voice of the Past*, 55 LOY. L. REV. 277, 281 (2009).

preserving the original meaning. The students must then interpret the text and revise it as appropriate. By engaging with the text and promoting the use of critical reading, critical thinking, and communication skills, the exercise encourages the review of language to prevent the mindless replication of language in documents of all kinds. Below is an example of a streamlining exercise:

Exercise

Review the following traditional introduction to a will. Determine the function and purpose of each of the words or phrases used. Then decide which words or phrases may be omitted. If needed, additional words may be used.

In the name of God, amen. I, JESSICA CARPENTAR, residing in Bibb County, Georgia, being now of sound and disposing mind hereby declare, make, and publish this as my Last Will and Testament, hereby revoking all prior wills and codicils by me heretobefore made by me.[215]

This exercise grounds class discussions by focusing on language that students may skim. The students must formulate the function and purpose of the wording while recognizing that some wording has lost its function. For example, the opening phrase "In the Name of God, Amen" is an antiquated invocation that has not been in consistent use since the 1930s.[216] Students can thus omit this phrase without altering the meaning of the text. There are multiple ways to streamline this example. As such, the professor need not provide individualized feedback on the writing exercise. Rather, possible answers could be written on the white board, typed on a projected computer screen, or displayed on a document projector.

3. Word Bank

A grade school exercise can be adapted to the law school classroom: the word bank.[217] This is an in-class exercise that promotes the writing-to-learn

215. One possible answer is the following: *I, Jessica Carpenter, of Bibb County, Georgia, declare this to be my Last Will and revoke all my prior Wills and Codicils.*

216. Karen J. Sneddon, *In the Name of God, Amen: Language in Last Wills and Testaments*, 29 QUINNIPIAC L. REV. 665, 698-99 (2011) (citing Harry Hibschman, *Whimsies of Will-Makers*, 66 U.S. L. REV. 362, 367 (1932) (identifying the 1930s as the latest time that this introduction was being used)).

217. For an examination of the application of early education principles to legal education, *see* Leah M. Christensen, *Going Back to Kindergarten: Considering the Application of Waldorf Education Principles to Legal Education*, 40 SUFFOLK U. L. REV. 315, 317-21 (2007). For an exploration of theo-

concept of writing across the curriculum. Not only is this exercise completed in class, but the students receive immediate feedback by the ensuing class discussion.[218] There are no papers to collect and individually mark.

The word bank exercises provide each student with a defined universe of words or phrases. Using all the words or phrases, the students then individually or in groups, write the excerpt. The defined set of words or phrases establishes parameters for the assignment, and the visual manipulation[219] of the words or phrases encourages the students to think creatively about how to cobble together the words or phrases.[220] Additionally, students can weigh the value of the different constructions. The class discussion can then explore the multiple ways to combine the words or phrases and then explore the different consequences of each combination. The exercise can be made more tactile by placing the words or phrases on slips of paper for the students to physically manipulate. The structure of this exercise, which is generally different from many writing exercises, cultivates a sense of enthusiasm in the classroom.[221] This type of exercise facilitates the processing of any so-called boilerplate provision, but this exercise could also be adapted to jury instructions or a statute.

Exercise

Word Bank

Using the designated word bank, write the specific bequest. You must use all the words in the word bank. Insert the appropriate punctuation.

to	antique	Louise	survives	brooch	my	favorite	me	daughter
if	give	diamond	my	she	I	emerald	Reynolds	and

ries of play in the classroom, *see* Bryan Adamson et al., *Can the Professor Come Out to Play? Scholarship, Teaching, and Theories of Play*, 58 J. LEGAL EDUC. 481, 485, 488 (2008).

218. C.A. Spafford & G.S. Grosser, *Vocabulary-Building Activities*, EDUCATION.COM, http://www.education.com/print/vocabulary-building-activities/ (last visited Nov. 22, 2011).

219. For an exploration of other visual techniques to promote learning, *see* Angela Passalacqua, *Using Visual Techniques to Teach Legal Analysis and Synthesis*, 3 J. LEGAL WRITING INST. 203, 205, 208-09 (1997).

220. For other techniques that encourage creative thinking, *see* Janeen Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, 34 CAL. W. L. REV. 351, 352, 359 (1998).

221. For a consideration of the value of student enthusiasm, *see* Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 851-52, 854 (2009).

Phrase Bank[222]

Using the designated phrase bank, write a Perpetuities Savings Clause. You must use all the phrases in the phrase bank.[223]

all property of every trust created under this Will	who was in life at the date of my death unless sooner vested as provided herein.	to prevent any possible violation of the Rule against Perpetuities
and this provision should be so construed.	at the expiration of twenty-one (21) years	The purpose of this provision is
after the death of the last surviving beneficiary of this Will	Anything in this Will to the contrary notwithstanding,	shall vest in and be distributed to the persons then entitled to the income from such property

There are multiple constructions. Two possible constructions are the following:

A. I give my favorite antique diamond and sapphire brooch to my daughter, Louise Reynolds, if she survives me.

B. Anything in this Will to the contrary notwithstanding, all property of every trust created by this Will shall vest in and be distributed to the persons then entitled to the income from such property at the expiration of twenty-one (21) years after the death of the last surviving beneficiary of this Will who was in life at the date of my death unless sooner vested as provided herein. The purpose of this provision is to prevent any possible violation of the Rule against Perpetuities, and this provision should be so construed.

The variety of possible answers forces the students to consider the choices in construction and the implications of each choice. For example, placing the word "favorite" before "daughter" rather than "diamond" infuses quite a different feel, with different audience reactions, especially if the testator has two daughters.

4. Story Starter

Cooperative and collaborative learning[224] can be fostered by the use of a version of a common car game to structure a writing assignment: story

222. For instances where it is too confusing to break the excerpt into individual words, the excerpt can be broken into phrases.

223. This provision is based on the Perpetuities Savings Clause found in RADFORD, *supra* note 14, at § 17:40.

starter. In the car game version of story starter, one person begins a story by sharing one sentence. The story is then picked up by the next person who adds one sentence. Then another person adds a sentence and so on and so forth until the story develops. Unexpected loops and twists in the plot—not to mention hilarity—ensue. Although it may seem somewhat gimmicky, the sharing of authorship mimics the collaborative writing process where multiple authors must join voices to produce one seamless document.[225] The structure also reinforces to the students that English, with over six hundred thousand words,[226] offers an almost infinite number of grammatically-correct constructions.[227] The use of particular phrasing can, however, limit options for subsequent writers. For example, consistent term use is important to avoid ambiguity.

To incorporate story starter into the classroom, the professor can divide the class into groups and provide an initial sentence or two that establishes the frame of the assignment. The assignment could be an engagement letter, letter of intent, or complaint. Once each group completes the assignment, whether in class or outside of class, a class discussion can focus on the content of the assignment as well as the stylistic conventions used.

Exercise

You will be forming a group of four to write a transmittal letter to Pauline. Rather than writing as a group, each group member will be contributing one sentence at a time. So, one member of the group will write the first sentence of the letter. The next member of the group will write the second sentence of the letter, the third member of the group will write the third sentence, the fourth member of the group will write the fourth sentence, the first member of the group will write the fifth sentence, and so forth until the entire letter is complete. Write your letter directly on this handout, using the back if necessary. You will be submitting the letter to me. Because I will be returning a copy of the letter to each member of

224. *See*, *e.g*., Hess, *supra* note 80; Inglehart et al., *supra* note 80; Reilly, *supra* note 80; Dominguez, *supra* note 80; Randall, *supra* note 80; Zimmerman, *supra* note 80.

225. For an examination of collaborative writing, *see* LISA EDE & ANDREA LUNSFORD, SINGULAR TEXTS/PLURAL AUTHORS: PERSPECTIVES ON COLLABORATIVE WRITING (1990).

226. Kenneth Wesson, *The Magic of Human Language*, 1 BRAIN WORLD: HUMANITY'S NEW FRONTIER, 40, 42 (2010).

227. If a speaker is interrupted at a random point in a sentence, there are on average about ten different words that could be inserted at that point to continue the sentence in a grammatical and meaningful way. (At some points in a sentence, only one word can be inserted, and at others, there is a choice from among thousands; ten is the average). STEVEN PINKER, THE LANGUAGE INSTINCT 85 (1994).

> *the group, each group member should write his or her name in the space below.*
>
> *In the letter, you will inform Pauline that you have enclosed the draft dispositive provisions for her review. You will also highlight at least five points about the dispositive provisions that you would like to draw her attention to and to receive her specific input regarding the finalization of those provisions. Include any other information, such as a timeframe, that you think appropriate.*
>
> *Group Members:*
>
> 1.____________________ 2.____________________
>
> 3.____________________ 4.____________________
>
> *Dear Pauline,*

This collaborative writing experience incorporates aspects of the preferred learning method of the Millennial generation[228] and foreshadows the collaborative writing experience of practice. While admittedly, this exercise pushes the collaborative nature further than collaborative writing typically done in practice, the exercise underscores the requirement of substantive accuracy as well as the value of consistent word choice, dovetailing, transitions, thesis sentences, and conclusions.

D. Feedback and Assessment

Feedback is a critical component in the law classroom of the future.[229] Formative assignments, in terms of individual assignments, can be given throughout the semester leading up to the summative assignment of the final exam.[230] Feedback can be individualized, written reactions on individual assignments.[231] However, feedback is not limited to just individualized, written comments. For instance, after students complete an assignment, the professor may distribute a "model answer." Depending on the allocation of class time, students may annotate the answer or the answer may be

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228. *See supra* Part II.C.

229. Samira Guyot, *Learning as Top Priority in the Law School Classroom*, THE LAW TEACHER 12 (2010) ("Two key elements are missing in the course format dominant in law school teaching: focused assessment and meaningful feedback.").

230. STUCKEY ET AL., *supra* note 103, at 191 (historically, law schools have not focused on the provision of feedback).

231. *See id.* at 82 (noting that individual interaction and individual feedback are crucial for an effective education).

annotated by the professor to explain the particular approach identified.[232] Similar to the use of model answers, sample answers could be provided to the students after the completion of the exercise. These samples may be generated by submission from previous classes or by students in the current class. For instance, the students may email the writing assignment to the professor. The professor can use those emails to generate a composite sample for the entire class to consider.[233] As with the model answer, the sample serves as a base for class discussion.[234]

A critical skill for lifelong learners is self-reflection and self-assessment.[235] Lawyers are lifelong learners.[236] Incorporating self-assessment not only eases grading pressures for the professor but also empowers students to assess their own work.[237] To provide guidance, a self-assessment worksheet, such as the example below, can be provided.[238]

Example Self-Assessment Worksheet

Identify two pages of your written assignment. Review the two pages and answer the following questions. Unless otherwise directed, write your responses on this worksheet.

(1) The longest paragraph has _____ sentences, and the shortest paragraph has ______ sentences. *[write the exact number of sentences in the blanks]*

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232. The comment feature on Microsoft Word or other word processing programs can be used to annotate the model answer.

233. In order to avoid embarrassing any student, care should be taken not to draw too heavily from any one particular student's assignment. *See* Karen J. Sneddon, *Revising Revision in the Classroom*, 15 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 130 (2007).

234. *See*, *e.g.*, Judith B. Tracy, *"I See and I Remember; I Do and Understand" Teaching Fundamental Structure in Legal Writing Through the Use of Samples*, 21 TOURO L. REV. 297, 316-41 (2005).

235. *See* Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143 (2006); Andrea Kayne Anzalone, *It All Begins with You: Improving Law School Learning through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 324 (2001).

236. *See* Roger J. Johns, *The Logic Doctor Is In: Using Structure Training and Metacognitive Monitoring to Cultivate the Ability to Self-Diagnose Legal Analysis Skills*, 26 J. LEGAL STUDIES EDUC. 357 (2009); Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33 (2006); Boyle, *supra* note 52; Schwartz, *supra* note 35.

237. *See*, *e.g.*, Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE UNIV. L. R. 51 (2010); Terri L. Enns, *Students Critiquing Novice Writing: Building Hope by Building Bridges*, 48 DUQ. L. REV. 403 (2010). *See also* TRANSFER OF LEARNING IN PROFESSIONAL AND VOCATIONAL EDUCATION (Vivienne E. Cree & Cathlin Maccaulay eds., 2000).

238. *See* Patricia Grande Montana, *Better Revision: Encouraging Student Writers to See Through the Eyes of the Reader*, 14 J. LEGAL WRITING INST. 291 (2008); Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 J. LEGAL WRITING INST. 175 (1997).

(2) The longest sentence has ______ words, and the shortest sentence has _______ words. *[write the exact number of words in the blanks]*
(3) Locate one sentence with twenty words or more. Trim two words from the sentence and write the revised sentence below.
(4) Write one sentence that you think needs the most revision: *[write complete sentence as it appears in the original paragraph]*
(5) Explain why the sentence is the most in need of revision:
(6) Write a possible revision of the sentence that addresses the concern in the preceding question:
(7) Identify the concept that you had the hardest time articulating:
(8) Explain your reasons for identifying the concept in Question 7.
(9) Identify the concept that you articulated the best:
(10) Explain your reasons for identifying the concept in Question 9.
(11) Identify one word or phrase that is either too casual or strikes an improper tone:

Peer review also fosters a cooperative and collaborative classroom environment.[239] Peer review allows students to receive individualized feedback and observe another approach to the same assignment.[240] With structured peer review, the students are deputized—but within limits—to provide constructive comments. The structure offers guidance so that each student will receive substantive feedback rather than a perfunctory "good job" scrawled on the top of the excerpt. Below is an example of a structured peer review worksheet.

239. *See generally* Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, http://works.bepress.com/cassandra_hill/1 (last visited Sept. 25, 2011); Lynn C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809 (2010). *See also* Teresa G. Phelps, *The New Legal Rhetoric*, 40 SW. L.J. 1089, 1096 (1986) ("[S]tudents can effectively and accurately evaluate each other's work by being or simulating an audience.").

240. *See, e.g.*, Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 J. LEGAL WRITING INST. 1, 3 (2003); Jo Anne Durako, *Peer Editing: It's Worth The Effort*, 7 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 73, 74-77 (1999). CLEA's *Best Practices* also identifies peer review as one method of providing formative assessment. STUCKEY ET AL., *supra* note 103, at 56.

Example of Structured Peer Review Worksheet

You will be switching draft engagement letters with a colleague in the class. Once you have switched drafts, review your colleague's draft and complete the following questions. Unless otherwise directed, write your responses on this worksheet. The draft and this worksheet will be given to the author.

(1) The number of times first person (I, We) is used:_______________.
(2) The number of times second person (You) is used:_____________.
(3) The number of times the client's name is used:____________.
(4) The longest paragraph has _____ sentences, and the shortest paragraph has ______ sentences. *[write the exact number of sentences in the blanks]*
(5) The longest sentence has ______ words, and the shortest sentence has _______ words. *[write the exact number of words in the blanks]*
(6) Other than professional, I would describe the overall tone of the draft as:__________________________.
(7) Write one sentence that you consider to be one of the strongest: *[write complete sentence as it appears in the original paragraph]*
(8) Explain why you selected the sentence in the immediately preceding question:
(9) Write one sentence that you consider needs the most revision: *[write complete sentence as it appears in the original paragraph]*
(10) Explain why the sentence is the most in need of revision:
(11) Write a possible revision of the sentence that addresses the concern in the preceding question:
(12) Select the word or phrase that you would most like to incorporate into your letter:
(13) What, if anything, is missing from the excerpt: *[insert topics, concepts, phrases, or words that could be included in the paragraph]*
(14) Circle any grammar, punctuation, or spelling mistakes on the original.
(15) Write any additional comments in the space below:

Rubrics and checklists provide the students with explicit evaluation criteria and can come in many forms.[241] The rubrics and checklists can be used by students before the submission of a writing assignment and by the professor when providing feedback on the assignment.[242]

IV. CONCLUSION

Learning is best when students are self-regulating, engaged, and motivated learners, and when the learning process is active, experiential, collaborative, and reflective. This article presents a blueprint for the classroom of the future in a manner that cultivates learning. Writing exercises engage students and enhance learning to better prepare students for the practice of law.

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241. *See generally* Sophie M. Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics–Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1 (2004).
242. *See id.* at 6.