

Teach in Context: Responding to Diverse Student Voices Helps All Students Learn

Paula Lustbader

When my daughter was two years old, I was reading a book with her. She was holding the book and, as one can do with children, we spent an inordinate amount of time pointing to all the different things on one page. I finally got tired of looking at the same page, so I asked her to turn the page. She said, "Okay," and rotated the book. We were still looking at the same page, only now it was upside down.

People interpret words and new information within the context of their prior experience and knowledge, and in accordance with what they believe to be the purpose for the information. Given my daughter's context and purpose, her interpretation of "turn the page" was valid. To her, rotating was the same as turning, and rotating served the purpose of giving us something different to look at: the picture did look different upside down. Because her interpretation served her context and purpose, my daughter had no reason to wonder whether she understood me. If I had not observed how she interpreted my words, and then explained that I meant flip the page rather than rotate it, she would have continued to make the same error, without ever realizing that she was mistaken.

This happens to law students. We think they know what we mean by "turn the page," but in fact many do not. Because they do not understand the context and purpose of what is being taught, they often make errors, and the errors go undetected because there is little meaningful dialog between student and teacher until the exam—which is too late to help students.

This disjunction between what teachers mean and how students interpret what is being taught explains why a significant number of law students are not learning or performing at the level of their capabilities. In part the problem is their lack of context. Although that is a challenge for all students, it is often

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exacerbated for diverse and nontraditional students.¹ Because they experience greater dissonance between effort and performance in law school, their insights about the problems they experience as learners, and their suggestions of ways to solve those problems, offer fertile ground from which to develop a pedagogy that would benefit *all* students. We asked diverse students from nine law schools² to discuss their law school experience. Specifically, we asked them to tell us what creates barriers to their learning and what helps them learn.

Students described a myriad of factors that create barriers: the institutional environment, the competitiveness, the narrow view of success, the psychological stress, the outside pressures from family and financial problems, and—most resoundingly—their feelings of alienation:

I remember an experience in my first-year criminal law class. We were discussing the Bernard Goetz case, and several students began making what I thought were racist remarks, and the professor did nothing to counter those remarks. I did not speak up because I was emotional; I was angry; I felt terrible. I was afraid to say anything because I did not want to look like a fool, and since I was so emotional, I did not feel that I could effectively get my point across. I was emotional because as one of only a few black men in the class, I felt the remarks were directed at me.

I felt if I could not formulate my thoughts in the male pattern, I would not be able to express myself in the “right” way, so I did not speak in class.

For me, being gay, I felt invisible . . . I hear a lot of snickering.

Sometimes, as a minority student, you feel there is a bright light around you when an issue of race comes up. It’s uncomfortable for everyone.

In Criminal Procedure, whenever a question arose as to a defendant’s motive, the whole class would look to me as the resident expert just because they presumed that the defendant was black, and because I was also black, I would know.

1. For purposes of this article, “diverse” is broadly defined to include not just racial diversity, but also culture, socioeconomic status, gender, sexual orientation, disability—in fact, any person who does not come from the white male middle- to upper-middle-class experience that is reflected in the legal system. Because most law school pedagogy tends to teach to a generic student, it does not adequately address ways in which learning is influenced by students’ prior background and experience.
2. Laurie Zimet (Hastings) and I produced a videotape—*Incorporating Academic Assistance Pedagogy into Our Classrooms and Clinics to Create an Effective Learning Environment*—to present at the Diversity in the Law School Curriculum Conference, Society of American Law Teachers, University of Minnesota School of Law (1994). We used it later in other presentations. Even though the technical quality was poor (we edited the tape on two VCRs), the content was extremely powerful. As a result of the overwhelming response, the Institute for Law School Teaching produced *Teach to the Whole Class: Barriers and Pathways to Learning*, a faculty colloquia kit that contains teaching notes and a higher-quality video.

The students we spoke with represented a spectrum of experience from first year to fourth year. Some were at the top of their class; some had to repeat their first year. The nine schools were selected for their geographic and demographic diversity; they included both private and public schools. What was surprising was the universality of the diverse students’ experience. To protect the anonymity of the students, their names and the names of the law schools do not appear in this article. We are grateful for their willingness to share their experiences, and for the assistance of several academic support colleagues.

It's difficult because you don't want the professor to turn to you and say, "Mr. Garcia, what is the Hispanic view?" But at the same time, you don't want the professor to skip over you. Why can't they just treat us like other students?

Look at us. There is a whole group of students who are here for different reasons and who have different goals. Some of us do not want to be in the big firms. We are here because we want to empower ourselves to do something else.

Just look and see where we sit in the class. We sit in the sides or the very back. Why? Well, we feel self-conscious about other people looking down our necks.

Alienation creates a significant barrier to learning because it undermines students' sense of their place in the world, their confidence, and the validity of their values and goals. They must constantly justify their existence, both consciously and unconsciously. When students must use all of their psychic energy just to hold on to their sense of themselves, they do not have energy left for their studies, and their motivation to learn is diminished.³

To reduce alienation and enhance learning for all students, law schools must create a culture and climate in which diverse students can flourish. That means increasing the diversity of the students, staff, and faculty, and modifying both curriculum and pedagogy to provide greater context.⁴

Students explained that the most effective teaching techniques were those premised on contextualized learning. Such techniques reduced feelings of alienation because they helped students relate the new material to their prior experiences, allowed students to express their perspectives, and showed students how to use the new material on exam questions and in situations they will face when they are attorneys. Students also said that they learned better whenever teachers used a variety of exercises—experiential, writing, collaborative—and a variety of mediums, including visual aids, props, recordings, films, and videotapes.

This article discusses learning theory and teaching techniques that enhance learning and decrease feelings of alienation. What follows is a theoretical framework for contextualized learning, a summary of students' voices reflecting the need for context, theoretical explanations that underscore the need for context, suggestions on specific teaching techniques that provide context, and ideas about implementing these techniques.

3. See 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 (1994); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 *U. Pa. L. Rev.* 1, 93, 96 (1994); Paul N. Savoy, *Toward a New Politics of Legal Education*, 79 *Yale L.J.* 444, 446 (1970); Roger C. Cramton, *Professional Education in Medicine and Law: Structural Differences, Common Failings, Possible Opportunities*, 34 *Clev. St. L. Rev.* 349, 354 (1985); Robert V. Stover, *Making and Breaking It: The Fate of Public Interest Commitment During Law School*, ed. Howard S. Erlanger, 45 (Chicago, 1989).

4. When the values reflected in the core curriculum are not those shared by the student, learning is diminished. See Richard L. Roe, *Valuing Student Speech: The Work of the School as Conceptual Development*, 79 *Cal. L. Rev.* 1271, 1295 (1991) (citing James Comer, *Educating Poor Minority Children*, *Sci. Am.*, Nov. 1988, at 42, 44).

Contextualized Learning

Contextualized learning involves three basic concepts. First, when students interpret new information, they relate it to their own lives and their existing knowledge structure.⁵ Second, when students develop their ideas about the new concepts, express them, and reflect upon them, they own the concepts. Third, when students can articulate the concepts in a conventional context, they translate them.⁶ In short, to understand and use new information, students must be able to relate it, own it, and translate it.

Relating

To help students relate what they are learning to their lives, teachers need to be aware that students' backgrounds and experiences are not universal. They must find out what students know, what they value, and how students organize their knowledge and values.⁷ Teachers can then increase their effectiveness by incorporating other experiences into the content of their teaching and by encouraging students to relate what they are learning to their own lives.

Students gave many examples of their need to connect what they are learning to what they know.

I was raised in the sixties, where we did food cooperatives and nonprofit corporations. When I studied Corporations, I continually struggled with the new concepts and terms. Also, I had extreme difficulty understanding many of the policies because I could not relate to profit-making motives as well as I could relate to social-benefit motives. Although I did very well on that exam, I do not feel that I have a good grasp of Corporations, and I cannot remember much of what I learned.

In Contracts, I read the case three times and wrote a thorough brief of it, but when the professor asked me a question about it, I could not understand what he was saying. He might as well have been speaking a foreign language. I felt nervous and stupid. Then the professor did a really neat thing; he leaned over the podium and said, "Forget about that case. Instead, let's say you and I entered into a contract . . ." I immediately understood his question and was able to answer it.

When I grew up, my family was on welfare. We never had a checking account, so I am at a complete loss in my Commercial Paper class.

5. Brook K. Baker, *Beyond MacGrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 *Ariz. L. Rev.* 287, 295-301 (1994); see also Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 *J. Legal Educ.* 313, 337 (1995).
6. See Baker, *supra* note 5, at 313-14; Roe, *supra* note 4, at 1293, 1295; Alexandra Weinbaum & Anne M. Rogers, *Contextual Learning: A Critical Aspect of School-to-Work Transition Programs* (Washington, 1995); Joseph J. Schwab, *Science, Curriculum, and Liberal Education: Selected Essays* 242 (Chicago, 1978); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *Vand. L. Rev.* 321, 332-34 (1982).
7. See John B. Mitchell, *Current Theories on Expert and Novice Thinking: A Full Faculty Considers the Implications for Legal Education*, 39 *J. Legal Educ.* 275, 283 (1989).

The way I understand things is that I relate the material to my family, so I put the names of my family in place of the parties. This reality check helps me understand.

These comments emphasize students' need for teachers to relate new information to students' experiences. That promotes students' learning by decreasing their feelings of alienation, increasing their motivation to learn, and facilitating their cognitive process. The more students can identify with the material, the more they will feel they have a place in the learning endeavor.⁸ Similarly, the more students believe that what they are learning is relevant and important to their lives, the more they will feel motivated to learn.⁹ And the more students can use their existing knowledge base to give meaning to the new information, the more they will understand. So it is essential that teachers build from student-based experiences by beginning with specifics to the students' lives and then moving to progressively higher levels of generalizations and abstractions.¹⁰

This teaching progression can best be explained through schema theory. We graft new information onto existing structures (schemata) that we have created from prior experiences. As the new information interacts with prior knowledge, we reorganize these schemata. Our schemata accommodate assimilation—the process whereby we fill in blanks to provide meaning to the new information.¹¹ If one does not have a developed schema of prior knowledge that is relevant to the new information, one cannot graft on the new ideas, nor can one fill in gaps to give the new information meaning.¹²

Teachers can help students relate new material to their prior experiences by discovering what those experiences are and then explaining how the new information or concept is analogous. For example, the student in Corporations had a preexisting schema for nonprofit corporations and cooperatives, and her teacher could have helped her learn by explicitly relating for-profit concepts to nonprofit concepts. The teacher could have explained that a shareholder in a for-profit corporation is similar to a member of a nonprofit corporation, or that a board of directors of a for-profit corporation is similar to a nonprofit's board of trustees.

Another way teachers can help students relate the new material to their preexisting schemata is to put it into a relevant context. As the student in

8. Comer, *supra* note 4, at 44.

9. See John Dewey, *How We Think: A Restatement of the Relation of Reflective Thinking to the Educative Process* (Boston, 1933); see also Jerome S. Bruner, *On Knowing: Essays for the Left Hand* 120–24 (Cambridge, Mass., 1979).

10. See Albert J. Moore, *Trial by Schema: Cognitive Filters in the Courtroom*, 37 *UCLA L. Rev.* 273, 279–83 (1989); see also Blasi, *supra* note 5, at 337.

11. Moore, *supra* note 10, at 279–83; see also Blasi, *supra* note 5, at 337.

12. See Richard C. Anderson, *The Notion of Schemata and the Educational Enterprise: General Discussion of the Conference, in Schooling and the Acquisition of Knowledge*, eds. Richard C. Anderson et al., 415 (Hillsdale, N.J., 1977); see also Samuel S. Wineburg, *Historical Problem Solving: A Study of the Cognitive Processes Used in the Evaluation of Documentary and Pictorial Evidence*, 83 *J. Educ. Psychol.* 73 (1991).

Contracts explained, he was unable to answer the teacher's question until the teacher put the question in the context of a contract between himself and the student.

It is helpful to have students place names of people they care about into the case they are reading or the problem they are solving. That takes the new information out of the abstract and grounds it in their reality. This is particularly useful for students who have difficulty in developing their analysis or in analyzing both sides. For example, I had a student in Criminal Law who could recite the different levels of homicide and their elements, but could not apply the different levels to a practice exam: a man who was provoked into anger beat a woman to death. Except for facts that established a motive, there were no facts to suggest that any other element of first-degree murder was present (planning, deliberation, time, premeditation). Nonetheless, this student concluded that the man was guilty of first-degree murder. To her, when a man kills a woman, that's it. Period. I knew that she had a nineteen-year-old son, so I placed her son in the position of the man in the hypothetical. At that point, the student wanted to save her son from a first-degree-murder conviction, and she was able to move through the levels of analysis to get to the appropriate level of homicide.

Finally, teachers can help students relate new information to their preexisting schemata by having them create their own hypothetical problems, using situations and names that have meaning to them. This is a great way for teachers to diversify their hypotheticals and to understand more about students' frames of reference.

Owning

Helping students "own" what they are learning does not mean that they need to believe it, buy into it, sell out, or lose their voice. Rather, it means they must make it theirs, take it into themselves, form and express feelings and opinions about it, and then accept or reject it. But before they can accept or reject it, they must internalize it in the same way a person internalizes two languages, never losing the first language, but gaining a second one. Students must learn to be bilingual and bicultural. Teachers need to give students time and opportunities to process new concepts and explore different perspectives.

Students say that they need to express themselves:

Some professors have their own perspectives and are not willing to hear other perspectives.

I was never called on in two of my classes for the entire year.

I think my grade was affected by the fact that, as a woman who had her hand up all the time, I was never called on, so I was unable to develop my thoughts in that class.

We were discussing an issue that was important to me. Although I raised my hand, and the professor saw me, he did not call on me. From that moment on, I missed the rest of the discussion.

The professor sat back and allowed us to argue our different viewpoints. Because it was a small class and we were encouraged to speak freely, I was able to articulate my ideas. The professor did not provide commentary, but because I was the only black student in class that day, I felt if I did not talk, my viewpoint would not have been brought out. The professor gave time for my viewpoint to be heard.

This professor brings in a lot of human touches. He provides a global perspective. People feel included.

When I can contribute, I feel my ideas are valid on their face, so I have more to give and learn all at the same time.

Helping students “own” the concepts not only is necessary as part of the cognitive process. It is essential in helping students resolve dissonances of culture and values, cope with emotionally charged situations, and feel a sense of inclusion.

Many students feel caught in a conflict of values. If they do not challenge the prevailing attitudes, they feel they are losing their voice. If they can succeed in the law school classroom, they feel they are selling out. Other students simply feel hostile. For these reasons, teachers need to encourage all students to speak, and need to provide time and a safe environment for conflicts to be aired and resolved. Because students will serve a diverse population as attorneys, they will all benefit from different perspectives in the classroom.¹³ We are mistaken if we treat law as an objective and neutral body of rules and values, and fail to recognize how white, male, middle-class experience and values dominate the legal system. Such lack of perspective harms students of color, forcing them to put their race and experience aside because their views are not “relevant” to the discussion, or allowing them to express their views only when the topic directly relates to issues of discrimination.¹⁴

Providing students an opportunity to express their opinions not only validates them and gives others the chance to learn different perspectives. It also encourages students to consider their own emotional reactions and explore ways to cope with emotionally charged issues and stressful situations. The absence of opportunities for students to learn such coping skills results in disproportionate levels of clinical depression¹⁵ and substance

13. See Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 *La Raza L.J.* 140, 144–50 (1995).

14. See Kimberlé Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 *Nat'l Black L.J.* 1 (1989); see also Calleros, *supra* note 13, at 159–60.

15. A 1986 study found that students entering law school did not differ significantly from the general population in a variety of psychological attributes, but that after the first year they exhibited elevated levels of psychological symptoms, such as depression and hostility. Other symptoms included obsessive-compulsive behavior, phobic anxiety, paranoid ideation, and social alienation and isolation. The study revealed that these symptoms became progressively worse during law school and did not decrease until the first two years after law school. The authors concluded that it was the law school experience itself that exacerbated these symptoms rather than law students' predilection to suffer from them. The study found that before entering law school, 10.3 percent of the prospective law students were clinically depressed, a level equal to that of the general population. By the end of the first year, the

abuse,¹⁶ as well as dissatisfaction with the profession. The clinical setting provides one vehicle to teach students such coping skills,¹⁷ but these skills should be taught throughout the curriculum.

Providing class time to air diverse perspectives helps minimize students' sense of alienation and lets all students feel valued.¹⁸ One way to do that is to encourage the expression of differing perspectives on a topic, without presuming that certain students will represent certain views; the instructor may present views that otherwise would not be represented.¹⁹ As the students indicated, when they have strong feelings about a topic but their concerns are not given adequate expression, they disengage from the learning process. Many teachers feel a constant tension between covering the course material and exploring certain issues in greater depth, and many do not want to engage in group therapy; but good discussion does not require large amounts of time or counseling expertise on the part of the instructor. For example, teachers can forewarn students when a particularly charged issue will be in the materials; ask students to summarize their perspectives anonymously on an index card, then collect the cards and read some during class; play devil's advocate and present the differing perspectives; assign articles that have differing perspectives; put students in small groups or pairs for five minutes to discuss their reactions; have students include their own opinions at the end of their briefs; invite them to keep journals of their feelings; encourage students to engage in discussions with other students outside of the classroom to explore different viewpoints; and suggest ways students can effectively cope with their emotions.

Translating

Teachers can help students translate their understanding into a conventional context so that they can make use of it. Students tell us that they need explicit context:

Even though the professor had been teaching this and knew everything there was to know, he didn't forget that we didn't know.

percentage increased to 17.9 percent. By the end of the third year, it increased to 33.6 percent. At the time of the study, employment prospects for law students were considerably better than they are today. See Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 *Am. B. Found. Res. J.* 225; see also Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 *J. Psychiatry & L.* 9 (1990); James Taylor, *Law School Stress and the "Déformation Professionnelle,"* 27 *J. Legal Educ.* 251 (1975); Robert Stevens, *Law Schools and Law Students*, 59 *Va. L. Rev.* 551 (1973); Thomas A. Dye, *Law School's Contribution to Civility and Character*, *Law Prac. Mgmt.*, Oct. 1996, at 40, 42.

16. See Michael A. Bloom & Carol L. Wallinger, *Lawyers and Alcoholism: Is It Time for a New Approach?* 61 *Temp. L. Rev.* 1409 (1988).
17. See Peter Toll Hoffman, *Clinical Scholarship and Skills Training*, 1 *Clinical L. Rev.* 93, 94 (1994).
18. Crenshaw, *supra* note 14, at 1; see also Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 *Cal. L. Rev.* 1511 (1991).
19. Calleros, *supra* note 13, at 159-60.

Some professors will start the class summarizing what happened last class and then build on that.

He would give a five-minute review at the beginning of each class. Students really appreciated that.

I found it beneficial when the professor would say, "OK, next class be prepared to defend this position."

Any type of example of what we are supposed to be doing or how to put things in order helps me learn.

For example, in Contracts, I was given a big-picture outline and I could then fill in the cases on my own. Without that, I would have been at a loss. Just where to begin was helpful because I had never outlined before.

Every week we had quizzes that did not count, but forced you to pull the ideas together. I thought that was very helpful.

Throughout the semester, the professor would hand out questions for you to write answers. He had examples of answers on reserve in the library. This was very helpful.

The professor brought in a lot of personal stories. That helped a lot.

The teacher came in and said, "Good morning, your honors," and gave an oral argument for both sides. This showed us exactly what he was looking for.

It is not surprising that students find it useful when teachers give explicit instructions and examples of the context in which doctrinal areas arise, and the way students will be expected to use what they are learning. The difference between an expert and a novice is that the expert has well-constructed schemata that facilitate information processing and problem solving.²⁰ In other words, the expert has a context to build on.

One way to help students develop a context and make the transformation from novice to legal expert is for the teacher to explicitly relate and review the legal system, the conventions and structure of legal discourse, the schema of particular doctrinal areas, the situation in which the doctrine arises, and the practical application of the doctrine. For example, teachers who provide an overview of the substantive area, have a detailed syllabus, give reading questions and hypothetical problems with reading assignments, and begin each class with a brief review of the previous class help students develop the context for what they are learning and where it fits in the overall schema of the course. Also, teachers help students by giving practice exams and modeling the steps of analysis. These practice exams should be given throughout the semester and begin with simple fact patterns, then progress to increasingly more complicated facts and policy implications. Finally, students learn by example. Teachers should provide sample answers to the practice exams; samples

20. Mitchell, *supra* note 7, at 283; see also Blasi, *supra* note 5, at 337 (citing P. Reiman & M. Chi, *Human Expertise in Human and Machine Problem Solving*, ed. K. J. Gilhooly, 161 (New York, 1989)).

should be in the B range, with comments on the answer's strengths and weaknesses.²¹

In addition, teachers can enhance learning by explaining the background and context of doctrinal areas. Consider the student who had no context of the banking system. If the teacher had reviewed the banking system and used diagrams, charts,²² and short hypothetical scenarios, this student would have been able to form a basic schema about banking. She then could have used this basic schema to help her develop a schema about commercial law. Once this student had a basic schema, she could develop a context for using what she is learning through practice exams and role-playing exercises.

In summary, facilitating contextualized learning is relatively simple and can be broken down into three main goals of teaching: (1) start from the students' existing context; (2) give students the opportunity to explore and express their ideas and feelings about the material; and (3) explicitly develop the context in which the students will use what they are learning. Such context building can be accomplished by integrating three basic teaching strategies.

Three Teaching Strategies

Teachers can use various techniques to accomplish these three teaching goals, including experiential, writing, or collaborative exercises. In some respects, such exercises blend together: most writing exercises involve some degree of experiencing, and many experiential exercises involve collaborating. But it is useful to think of them as separate categories when one begins to use them in teaching. The important point is not to decide whether an exercise is an experiential, writing, or collaborative one, but to integrate a full range of learning exercises into your teaching.²³ By doing so, you will enhance the learning experience of all students.²⁴

For example, teachers can design learning exercises that incorporate various learning styles and processes. To help students process verbally, they can create mock oral arguments and play games such as charades and jeopardy.²⁵

21. The A answer presumes a level of knowledge and judgment that struggling students have not yet acquired. When the struggling students try to model the A, either they will feel defeated or, worse, they will skip important steps of analysis because they have not yet internalized enough of the discourse. Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 *Willamette L. Rev.* 315, 345 (1997).

22. See, e.g., Corinne Cooper, *Getting Graphic 2: Visual Tools for Teaching and Learning Law* (n.p., 1994).

23. Barbara Gross Davis, *Tools for Teaching* 31–38, 39–59 (San Francisco, 1993).

24. Because people have different learning styles, teachers can be more effective by using different teaching techniques and explicitly teaching different learning techniques. See Don Peters & Martha M. Peters, *Maybe That's Why I Do That: Psychological Type Theory, the Myers-Briggs Type Indicator, and Learning Legal Interviewing*, 35 *N.Y. L. Sch. L. Rev.* 169 (1990); Vermellia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 *Cumb. L. Rev.* 63 (1995).

25. See Davis, *supra* note 23, at 315–44; Jennifer L. Rosato, *All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom*, 45 *J. Legal Educ.* 568 (1995).

To help students process visually, they can use visual aids, videotapes and films, charts, graphs, and diagrams.²⁶ To help students process through writing, they can use a variety of writing exercises.²⁷ To help students who are not aural learners, they can hand out the hypotheticals they use in class, preferably before class. To help students process kinesthetically, they can include experiential learning exercises.²⁸

Experiential Learning Exercises

Most students find that their understanding of material increases significantly when they are active with what they are learning:

I had a professor who would split the class in the middle and have the left side represent the plaintiff and the right side represent the defendant. This made the class discussion much more interesting.

One professor set up a debate and had us act as the attorney for each side.

He wanted us to look at a statute as if we were writing the statute. He asked us to do active thinking. For some reason I thought, "I think I know what he wants us to do."

Experiential exercises are tied to the same theories that support contextualized learning. If we remember that students are motivated to learn what they perceive as important to them, then it makes sense to help them perceive that what you want them to learn is important to their lives. Role-playing exercises in which students put into context what they are learning help them understand why they will need the information and how they will use it. Consider the difference between teaching the elements of a pleading and having students actually draft a pleading. Students may be able to memorize and regurgitate the elements of a pleading, but with no other emphasis they probably will have a harder time understanding the pleading requirements. Students who actually draft a pleading will appreciate more of the subtle complexities; they will understand how to use their knowledge and be able to transfer their knowledge to a new situation.²⁹

Experiential learning exercises help students who have kinesthetic learning styles. They learn more in practical situations than in the abstract. For these students, exercises that involve role playing, oral arguments, clinics, internships, and other types of real-life experiences are extremely effective. In addition, the teacher can explicitly model the type of analysis required either by role playing with the class or by providing several samples of analysis and writing. Modeling helps those students who do not pick up on teachers' subtle

26. See Cooper, *supra* note 22.

27. Davis, *supra* note 23, at 209-12.

28. See Gary S. Laser, *Educating for Professional Competence in the Twenty-first Century: Educational Reform at Chicago-Kent College of Law*, 68 Chi-Kent L. Rev. 243, 256, 271 (1992).

29. See *id.* at 271; see also Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 Legal Writing 9 (1991).

cues about what is important and what is not.³⁰ Another advantage to experiential exercises is that they reduce stress because they are fun.

Writing Exercises

Free-writes—I loved them and thought they were great. They got my energy going. Anyone could say “OK write something,” but then to take five minutes to talk about what we wrote . . . Someone wanted to hear about what I was thinking, what my concerns were at that time.

She would ask us to write out a rule, summarize the reasoning of a case, or write a hypothetical problem, things like that, on index cards. She then would read some to the class and comment on them. This helped me determine if I was on track.

In Wills and Trusts, my professor had us write answers to hypothetical problems. This was great. I thought I knew what was going on in a Trusts issue, but when I was asked to write an answer, I found I was stuck.

Writing gives students an opportunity to see if they understand what they think they understand.³¹ According to metacognition theorists, it is essential that students become aware of how they learn best, have feedback mechanisms to determine whether they are learning, and then modify their learning strategies to maximize their learning.³² As the student in Wills and Trusts explained, he thought that he understood a concept until he was asked to write about it. Writing provides students with feedback about what they are learning and how well they are learning it. An expressive process of learning enables them to create schemata and reflect upon what they understand.³³ Ultimately students' grades will depend on a written examination, which requires different skills from the classroom. The transfer of knowledge and skills from the classroom to the written examination is not automatic. Students need practice in writing before they write an exam answer.

Writing exercises should not be limited to practice exams and do not always need to be critiqued.³⁴ In fact, writing exercises should take a variety of forms to encourage students to brainstorm, to discover what they already know, to prepare them for the learning experience, to summarize what they have just

30. See Bloch, *supra* note 6, at 332–34; James E. Moliterno, Legal Education, Experiential Education, and Professional Responsibility, 38 *Wm. & Mary L. Rev.* 71, 86 (1996); see also Paul T. Wangerin, Skills Training in ‘Legal Analysis’: A Systematic Approach, 40 *U. Miami L. Rev.* 409, 477–84 (1986).

31. See Michelle S. Simon, Teaching Writing Through Substance: The Integration of Legal Writing with All Deliberate Speed, 42 *DePaul L. Rev.* 619 (1992); see also Davis, *supra* note 23 at 205–29.

32. See Mary Levin & Joel Levin, A Critical Examination of Academic Retention Programs for At-Risk Minority College Students, 32 *J.C. Student Dev.* 328 (1991); see also James D. Gordon III, How Not to Succeed in Law School, 100 *Yale L.J.* 1679, 1692 (1991); Randall, *supra* note 24, at 63.

33. See Roe, *supra* note 4, at 1299 (citing Richard S. Prawat, Promoting Access to Knowledge, Strategy, and Disposition in Students: A Research Synthesis, 59 *Rev. Educ. Res.* 1, 14–15 (1989)).

34. See, e.g., Davis, *supra* note 23, at 206.

learned, to help them refine their analytical process, to help them articulate their knowledge and analysis, and to encourage reflection. One creative exercise is to have students write letters explaining doctrine to siblings or friends who know nothing about the law. Another exercise, peer critiquing, allows students to give constructive criticism to each other. Fill-in-the-blank charts or rough outlines give students the framework to help them begin their outlining or analytical process. Still another exercise is to have students write journals about their learning process or their feelings about what they are learning. The bottom line is that writing helps students take responsibility for their learning.

Other writing exercises are free-writing, micro-writing, and larger writing exercises. A free-write is a type of brain-dumping: students write without censoring their thoughts. The rules are easy: students should not lift their pens off the paper, and they should write whatever comes to mind. Usually, teachers do not collect the free-write. For a micro-writing exercise the teacher asks a definitive question that can be answered in a very short space.³⁵ Students might write their definition of a rule, explain a holding, write a broad or narrow issue statement, discuss the reasoning of the dissenting opinion, or identify the strongest argument for the defendant and explain why it is the strongest. The teacher typically collects these writings. The teacher need not do individual critiques, but it is a good idea to review the answers with the class. The larger writing exercises, such as hypothetical questions, short problem sets, and practice exams, are helpful even when the teacher does not individually critique the student responses because they help students gauge their own understanding. Students can get significant feedback from a teacher's critique of a sample answer or from reading several sample answers, and can adjust their learning strategy as necessary.

Collaborative Learning Exercises

Many students find that collaborative learning exercises not only enhance learning, but also enhance the academic environment in general. Although a few students strongly prefer autonomous learning, most students find collaborative exercises a refreshing change from the Socratic or lecture method.³⁶

We broke into small groups. I found it refreshing to find out that you're not the only one who feels dumb in class. It doesn't benefit just a certain group of students, but it benefits everybody. You learn from each other.

She put us into small groups and gave us different roles. I had a chance to meet and interact with students I otherwise would not have. We got to know each other on a more positive light. Gave me another setting to approach a student. As a minority, often you're the only one, so having the exercise to

35. See *id.* at 218.

36. See Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 *Stan. Rev.* 1547 (1993); see also Susan H. Williams, *Legal Education, Feminist Epistemology, and the Socratic Method*, 45 *Stan. L. Rev.* 1571, 1573–76 (1993).

talk about was a good experience.

The law school environment is overwhelming. Everyone is from different backgrounds. Small group exercises allow you to get each person's perspective, and you get to think about it differently.

As these students indicate, the benefits of collaborative exercises are multiple. They give students an opportunity to form social bonds that decrease their feelings of alienation;³⁷ to explore what they understand and what they do not understand in a small group, which is much less threatening than the larger class;³⁸ and to increase their participation, practice their verbal skills, and get feedback from the members of the group. In addition, collaborative exercises give the teacher the opportunity to work with the students in groups that need extra assistance.³⁹ Finally, collaborative learning exercises are effective because they group people within a similar zone of development,⁴⁰ and those slightly more advanced can help the others. Experts internalize much data and are less likely to be able to deconstruct all the steps that are implicit in their understanding. Someone closer to the novice experience, but further along the continuum towards expert, will be able to remember and articulate the steps that are an unspoken given for the expert. For example, in teaching students to outline their analysis for a practice exam question, I used to begin by having them break out the elements of the statute, then select facts that support the finding that the element had been satisfied, and then select facts that did not support that finding. A student teaching assistant modified this approach by inserting a step in between the first and second step. After she had students break out the elements, she had them select facts in general that went with the elements, and then had them decide which facts suggested the element was satisfied and which ones suggested the contrary. I had skipped a necessary step of analysis.

Collaborative exercises are best for having students synthesize materials, analyze hypothetical problems, and compare writing samples. As a general rule, it is best to assign three to five students per group because a larger group tends to lose focus. It is useful to give the group clear, written instructions about what you want the group to do, with suggested time allocations for each task. Finally, it is helpful to assign each member a distinct role, such as time

37. David W. Johnson et al., *Active Learning: Cooperation in the College Classroom* (Edina, 1991).

38. David W. Johnson & Roger T. Johnson, *Learning: Cooperation in the College Classroom*, (Edina, 1991); see also James L. Cooper et al., *Cooperative Learning in the Classroom*, in *Changing College Classrooms: New Teaching and Learning Strategies for an Increasingly Complex World*, eds. Diane F. Halpern et al., 74 (San Francisco, 1994).

39. See David W. Johnson et al., *Cooperative Learning: Increasing College Faculty Instructional Productivity* (Washington, 1991); see also Cooper et al., *supra* note 38, at 74–91.

40. See Lev S. Vygotsky, *Thought and Language: The Development of Scientific Concepts in Childhood 174–90* (Cambridge, Mass., 1956).

41. See Paula Lustbader, *Some Tips on Using Collaborative Exercises*, *Law Tchr.*, Spring 1994, at 9; see also Randall, *supra* note 24, at 81.

keeper, recorder, or reporter.⁴¹ Collaborative exercises expose students to diverse perspectives and provide checks on student understanding through peer interaction.

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The law school experience should motivate, not alienate. One way to accomplish a better learning environment is for teachers to listen to students. The main idea is for teachers to begin teaching from the students' reference point and then gradually and explicitly transition students to the legal reference point. When teachers listen to their students, they will know when students are on a different page; when teachers expand their pedagogy, they will ensure that their students are on the same page. In this way, teachers will enhance the learning experience of their students, and all students will have the opportunity to reach their full potential.