

Buffalo Creek prevents legal writing class disaster

By Susan Hanley Kosse

Nothing can replace real-life experiences. Yet as a legal writing professor it is difficult to make a writing assignment realistic and still accomplish all your pedagogical goals. I found using the book *The Buffalo Creek Disaster*, by Gerald Stern, helped me replicate real life without sacrificing any of my course objectives. In fact, using the book actually had unexpected benefits for the students and myself.

The Buffalo Creek Disaster is attorney Gerald Stern's easy-to-read narrative detailing his representation of the survivors of a horrible coal mining accident in West Virginia in the 1970s. The plaintiffs sued a major coal company after one of the company's slurry dams broke, destroyed entire towns, and killed more than 120 people.

How I Used the Book

I used *The Buffalo Creek Disaster* as the basis for my graded assignments during the fall of 2000 and for the first persuasive writing assignment in the spring of 2001. During the first week of class, I asked the students to read the book. It is straightforward and written for a broader audience than law students, so it is both easy to understand and a nice variation from the traditional casebook reading. I then showed the class an Appalshop documentary of the disaster. This video gave vivid detail to the images in the book. The students also were able to see and hear their "clients."

Closed Memo

Piercing the corporate veil was the topic for the closed memo. In the real case, the plaintiffs' attorney wanted to show there were enough ties between the Buffalo Creek Mining Company and the parent company, Pittston Inc., to sue Pittston directly. Since the assignment was given fairly early in the fall semester, I provided the applicable case law that resolved the issue. Students needed to analyze several factors as part of a balancing test, making it a perfect exercise for first-year students. Students used the book to find the facts that were relevant to this issue. I liked this better than my providing the facts because facts are never presented to a practicing lawyer in such a neat package.

Open Memo

The open memo addressed whether bystander plaintiffs with no physical injuries could recover damages for their

psychological trauma under the tort of intentional infliction of emotional distress (IIED). The students went outside West Virginia to find authority that would support such a claim since there was no case directly on point. I drafted several deposition transcripts, reports of federal agencies, and affidavits from which the students could find the necessary facts.

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Persuasive Writing Assignment

To introduce the students to persuasive writing, I developed a problem based on the open memo. Instead of representing the plaintiffs, the students had to switch sides and represent the company.

Using the research from the objective predictive open memo, the students drafted Pittston's argument challenging one of the elements of the IIED claim. This greatly challenged many students because they had become emotionally attached to the plaintiffs.

Gerald Stern's Visit

A grant enabled me to invite Gerald Stern to meet with my class. Prior to his visit he agreed to read four or five of the best papers. He critiqued these papers and told the class how he would have responded to these arguments as the plaintiffs' attorney. He also met with the entire student body and faculty to discuss his career as a public interest attorney.

Why Use a Piece of Literature?

Unfortunately, legal writing classes are perceived as dry and not as stimulating as the doctrinal classes. Students find learning about criminal law much more exciting than dissecting a paragraph. Although they realize research and writing skills are essential to the practice of law, it is difficult to provide them with a writing problem that seems realistic. Problems can be designed that highlight particular legal issues, but usually they lack the necessary context to be anywhere close to real life. Legal writing professors have the constant challenge of narrowing the gap between the study of law and the practice of law. Using *The Buffalo Creek Disaster* or a similar work is an excellent way to address this challenge.

In addition, law school in general has a goal of making students think like a lawyer. However, this process often makes students detached and too analytical. The academy

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excels at teaching students the rules of law. Yet it has been criticized in recent years for failing in its obligation to teach professionalism, ethics, and compassion. These concepts have been virtually ignored in most classes, including Legal Writing. The only discussion of the human side of lawyering and the life of a lawyer has been left to the Professional Responsibility classes. Most law schools are now encouraging all professors to incorporate these concepts in their curriculum. By using *The Buffalo Creek Disaster*, I was able to achieve those goals in addition to teaching the students all the necessary writing and analytical skills.

Specific course objectives and goals that were accomplished by using *The Buffalo Creek Disaster*:

- It addressed the gap between the profession and the academy by integrating legal doctrine with practical, realistic situations.
- It broadened the law students' reference base to include situations that they had yet to experience.
- It gave the social and historical context the students often miss when they read a judicial opinion.

- It humanized clients in a way no created legal writing problem can.
- It showed law students the complexities of a lawyer's work and a lawyer's life.
- It engaged the students more than traditional legal writing material.

Conclusion

Stories about lawyers, whether fiction or nonfiction, are plentiful. Although stories will never replace course textbooks, nor should they, these narratives have a place in virtually every course. They can provide students with needed contexts relevant to their academic studies, and they have the added benefit of engaging students' interest and attention better than most materials.

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