Teach the Children Well: Incorporating Cultural Literacy Into the Law School Learning Experience

Debra Moss Curtis

Available at: http://works.bepress.com/debra_curtis/11/
CUMBERLAND LAW REVIEW
VOLUME 37 2006-2007 NUMBER 2

CONTENTS

ARTICLES

TEACH THE CHILDREN WELL: INCORPORATING CULTURAL LITERACY INTO THE LAW SCHOOL LEARNING EXPERIENCE
Debra Moss Curtis ............................................................... 177

STATE ATTORNEY GENERAL OVERSIGHT OF NONPROFIT HEALTHCARE CORPORATIONS: HAVE WE REACHED AN IDEOLOGICAL IMPASSE?
Alice M. Maples................................................................. 235

COMMENTS

RUSTY SHIELDS FOR THOSE WHO WIELD THE PEN: THE STATE OF ALABAMA’S REPORTER SHIELD LAW IN THE AFTERMATH OF PRICE V. TIME.............................................................. 263

INTELLECTUAL PROPERTY PROTECTION OF COMPUTER SOFTWARE: MORE EFFECTIVE THAN SKYWRITING ON A WINDY DAY? .... 289

CASENOTES

CONSTITUTIONAL LAW—EXCLUSIONARY RULE—VIOLATION OF THE KNOCK AND ANNOUNCE RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE SEIZED PURSUANT TO A VALID SEARCH WARRANT ................................................................. 927

CONSTITUTIONAL LAW—FIRST AMENDMENT—FIRST AMENDMENT DOES NOT CONFER LIABILITY ON GOVERNMENT EMPLOYER FOR DISCIPLINE RESULTING FROM A PUBLIC EMPLOYEE’S SPEECH MADE PURSUANT SOLELY TO EMPLOYMENT DUTIES .................. 330

ELEVENTH CIRCUIT: SURVEY OF RECENT DECISIONS ......................... 359
TEACH THE CHILDREN WELL: INCORPORATING CULTURAL LITERACY INTO THE LAW SCHOOL LEARNING EXPERIENCE

DEBRA MOSS CURTIS

I. INTRODUCTION

This article is an examination of what and how we teach in law school. Much attention has been given to the concept of the Socratic Method and whether teaching in this manner "hides the ball" from students. Rather than focusing on whether the ball is hidden, my work shall focus on whether students know what the ball is in the first place.

In a now infamous incident, which led to an examination of possible bias in SAT testing, high school students were given the following question: "runner: marathon, as (A) envoy: embassy; (B) martyr: massacre; (C) oarsman: regatta; (D) referee: tournament; (E) horse: stable.\textsuperscript{a} The correct answer was "(C) oarsman: regatta," which required factual knowledge of the sport of rowing and its terminology. Some critics contended that these terms were not within the scope of the experience or education of the minority, inner-city students who took the test.\textsuperscript{f} According to these critics,

\textsuperscript{a} Debra Moss Curtis is an Associate Professor of Law at Nova Southeastern University Shepard Broad Law Center in Fort Lauderdale, Florida. She teaches Contracts, UCC Secured Transactions, and Law Office Management Workshop.

\textsuperscript{b} Laura Perminov, The National Collegiate Association's Quest to Educate the Student Athlete: Are the Academic Eligibility Requirements an Attempt to Foster Academic Integrity or Merely to Promote Racism, 14 N.Y.L. Sch. J. HUM. RTS. 471, 474-76 (1998). It is often contended "that words such as 'regatta' are more familiar to suburban children than those from lower income families." Eli Denard Oates, Curton v. NCAA: The Recognition of Prop 114 Misplaced Use of Standardized Tests in the Context of Collegiate Athletics as a Barrier for Educational Opportunities for Minorities, 35 WAKE FOREST J. CRIM. L. 445, 464 n.190 (2000).

\textsuperscript{f} Id. The question was reported to be answered correctly by fifty-three percent of whites and twenty-two percent of blacks. JUSTIN PORTER, ZNET INSTITUTIONAL RACISM INSTRUCTIONAL § 5 (2002) (chapter entitled "Culture and Racism").
the purpose of the SAT question was to test a student’s ability to reason an analogy, not to test knowledge of the sport of rowing.9

Likewise, as those of us in law school teach concepts that require analysis of information and ideas, we attempt to evaluate students’ abilities to understand legal concepts or analysis. However, frequently, students’ prior factual or contextual knowledge may interfere with the ability to do that. For example, a student’s failure to understand the concept of a “turnkey” property may interfere with his or her ability to properly analyze whether an enforceable contract exists in order to buy one. One question must be this—to what degree is a law professor responsible for a student’s social, factual, and background knowledge, in addition to teaching legal analysis? How do we, as educators, address this issue in the classroom?

Part II of this article discusses the theory of cultural literacy and general knowledge, and examines why deficiencies exist in the educational system. Part III of this article explores the importance of students’ legal education in social, factual, historical and cultural knowledge. Part IV of this article discusses specific obstacles to good teaching, how law professors can use educational techniques to assist students with deficiencies, and how law educators can help to assure that students are truly getting the most out of their law school experiences.

II. WHAT IS CULTURAL LITERACY AND GENERAL KNOWLEDGE?

A. Definition of Cultural Literacy

To understand cultural literacy, we must first address the concept of culture. Culture’s basic roots stem from early efforts to distinguish man from lower species. The idea of culture was created in order to preserve the dignity of man as a higher, less-brutish species, as well as to include the arts and sciences that comprise a civil society.10 However, culture also has been referred to as the “contemporary historical figures, politicians, writers, painters, sculptors, 179

architects, theologians or philosophers” surrounding any particular time period.11

“Cultural literacy” is a narrower concept. One source defines cultural literacy as “what a student must experience and understand to be called educated.”12 Another source defines the term as follows:

The ability to converse fluently in the idioms, allusions, and informal content which creates and constitutes a dominant culture. From being familiar with street signs to knowing historical reference to understanding the most recent slang, literacy demands interaction with the culture and reflection of it. . . . Cultural literacy stresses the knowledge of those pieces of information which content creators will assume the audience already possesses.13

Still another source defines cultural literacy as understanding the meaning of written words “based on a background of common knowledge that enables one to make sense of what is read.”14 Cultural literacy is associated with the “Core Knowledge” movement, started by Dr. E.D. Hirsch, Jr., and based on research in psychology that was designed to improve education by establishing a “core of common learning” that represented a sound education.15 Cultural literacy is important because it may help to explain information presented to students in higher education, both from books and the classroom.16

The basic tenet of Hirsch’s seminal book, Cultural Literacy: What Every American Needs to Know, is simple—“[t]o be culturally literate is to possess the basic information needed to thrive in the modern world.”17 While many might associate the idea of “culture”

8. Id. (attributed to Lionel Trilling).
14. Id. at xiii.
only with "the arts," that is not the point of this national bestseller.15 Hirsch makes a compelling case demonstrating that the standards of American cultural literacy are falling behind the standards of the rest of the modern world.16 According to Hirsch’s argument, American students’ overall education suffers from this lack of knowledge.

Hirsch defines cultural literacy as a skill, i.e., concrete information that is known.17 First, he points out that understanding the surface meanings of words is not enough to truly learn and comprehend.18 Instead, students must understand context through understanding the background information.19 He cites an experiment from Scientific American, in which a researcher measured context by going to Boston and asking passers-by for directions to a particular place.20 First, the researcher assumed the role of a local. Then he stepped into the shoes of an out-of-towner.21 Curiously, the sets of directions he was given while assuming the two roles were completely different. When he appeared to be a native of Boston, he was merely told on which stop on the subway to disembark, while when appearing to be from out-of-town, passers-by gave explicit, step-by-step directions even though he never explicitly defined himself as being from any particular place.22 The submerged thesis, therefore, is that the passers-by are like learners, in that the background information that they absorb will shape the new information that they process.

What does it mean to be truly culturally literate? Although Hirsch’s book contains an appendix of cultural literacy that lists ideas and concepts that he believes comprises the cultural literacy of Americans, the focus of being truly literate is when a person can “grasp the meaning of any piece of writing addressed to the general reader.”23 Every piece of literature, including books and newspapers, assumes knowledge in the audience, and although the specifics of what a writer assumes to be known may differ according to the situation and the work, the general practice of making a judgment about what the reader knows is fairly universal.24 For example, this piece is written in a manner directed at lawyers and legal educators. Certain assumptions about law school and legal education are assumed by this author in crafting ideas. Put another way, the audience is culturally literate in the law school environment. Other such pieces may be less specific in their assumption of knowledge, yet the presumption and necessity often remain.

The idea of cultural literacy can vary from country to country, which presents an interesting challenge to education.25 Even when populations from two countries speak the same language, their bases of knowledge may be quite different.26 When considering the increasingly international makeup of today’s student bodies,27 this could throw a new dimension into context-based learning. The idea of a national, common identity did not exist in this country at its outset. Rather, it was not until after the Civil War that those efforts were spearheaded. Public schools responded by reaching out to children—particularly immigrants—to incorporate them into this single cultural identity.28

The cultural literacy movement and its resulting publications have been criticized as being too narrowly focused on the concept of Western culture. However, regardless of race or gender, an understanding of certain concepts, such as "suffrage" or "abolitionism," is expected of anyone functioning in society.29 Common culture, even as described by Hirsch, has been charged as being overly Eurocentric and not sufficiently sensitive to culturally diverse needs.30

15 HIRSCH JR. ET AL., supra note 13, at 17.
16 Id.
17 PORTRAIT OF A PROFESSION: TEACHING AND TEACHERS IN THE 21ST CENTURY 214 (David M. Moss et al. eds., 2005).
19 Richard P. Vance & Robert W. Prichard, Measuring Cultural Knowledge of Law Students, 42 J. LEGAL EDUC. 253, 258 (1992). Their study determined that only fifty-five percent of women could define suffrage and only forty percent of black students correctly defined abolitionism. Id.
20 Suzanna Sherry, Responsible Republicanism: Educating for Citizenship, 62 U. C. D. L. REV. 131, 168 (1995). One defense of some of the ideas presented by Hirsch may be best expressed in the words of W.E.B. DuBois — "literature knows no color." Id. at 169. In other words, the commonality of much of what is discussed in cultural literacy, such as music and the arts, is common to all people.
B. Prior Knowledge and Context

The concept of prior knowledge is "arguably the single most important factor in learning."60 The idea has been widely explored by psychologists and philosopher-educators through various methods, including the creation of knowledge structures ("schemas"), the examination of the role of problematic experience when being exposed to new ideas, and the study of social interaction in learners.61 These studies suggest that "[w]e learn by connecting new information to patterns that we already understand."62

What one knows and what one adds to this knowledge, must both be managed; the whole of information, knowledge, and wisdom is more than the sum of the individual parts that students might obtain.63 Data itself is not information—it is like an "event out of context" and thus it has no meaningful relation to anything else.64 Simply having data is not information, and simply having information is not knowledge. Instead, data and knowledge must meaningfully interact in an emerging continuum to truly become something learned.65

Prior knowledge, as it relates to current learning, is a key concept in education, as it affects the manner by which a learner "perceives new information."66 Therefore, cultural literacy is not only concerned with specific facts that are absent in a repertoire of learning, but with absent context in which specific words might be understood.

Think of the word "cardinal." Are you thinking of the color red, or are you thinking of priests, baseball, football, or birds?67 The first problem with cultural literacy might be in not being able to find a general meaning for that word. The second is that when confronted with a word in a reading or learning task in school, the word may appear in context, supposedly assisting the reader in determining which meaning applies.68 However, if the meaning which applies is not within the prior knowledge of the reader—if there is no cultural literacy to understand the context—then the learning may be hampered. Even more detrimental than missing knowledge can be incorrect knowledge, which not only slows down student learning but also truly may hamper it.

Prior knowledge does more than merely pave the way for students to understand new information; it also may affect how students organize this new information.69 A goal of learning is to incorporate new information into existing information, whether students simply add it chronologically to what they already know about a subject, or as more often needed in law classes, to truly incorporate it into a learned doctrine.

One real benefit of being culturally literate is the ability to learn more efficiently by allowing one's subconscious thinking process ideas and thoughts while allowing the conscious mind to focus on the limited facts being presented.70 This "schema" of learning connects these facts, including names, dates, and actions, all under the surface in order to place them firmly in a context that one processes on a sub-level.71 Only then, with that context placement, Hirsch argues, may one truly understand what one reads.72 A person's schema of learning may be affected by many factors, including experience, culture, and other influences, and so it is important that we understand how one constructs the schema in order to teach effectively.73

This fluency of information carries over into further learning and performance. Readers who possess a great deal of diverse and task-specific information are better learners, as are experts who perform more efficiently than novices because of the speed in which they can access more—and better—information.74 In other words, the more knowledge a person has, the easier it may be to gain even more. This knowledge within context also allows one to be able to synthesize existing information, to see an entire issue, and to be able to act accordingly. As such, the situation has been described as the difference between the ability to only habitually solve a problem that is repeatedly thrown at you, such as a me-

---

61 Id.
62 Id.
64 Id.
65 Id.
66 Id.
68 Id.
69 Id.
71 HIRSCH JR. ET AL., supra note 13, at 61.
CUMBERLAND LAW REVIEW

184

C. What Do Today’s Students Know?

Hirsch defines cultural literacy not by what people should know, but rather what is known by the society in which they live. At the risk of sounding like Paul Lynde’s character, Harry Mcafee, from Bye Bye Birdie, it is easy to ask, “What’s the matter with kids today?” Do students today know less about the world or is this a matter of generational perspective? According to the National Geographic-Roper Public Affairs 2006 Geographic Literacy Study, eighteen to twenty-four-year-olds certainly appear ignorant of geography. In one study, one-third of young adults could not locate

23 Id.
24 Id.
25 Id. at 501-02.
26 HIRSCH JR. ET AL., supra note 13, at xix.
27 Lawrence A. Frolik, Cultural Literacy: Or, Why Is Magellan Better than Kink?, 43 J. LEGAL EDUC. 283, 286 (1993). A comment such as this is a tipical one that if a law professor made in class, is a great device for mixing in mark—many students won’t necessarily remember this 1960’s show or the 1985 and 1995 movies.
29 Louisiana on the map less than six months after the devastation of Hurricane Katrina, and nearly two-thirds could not locate Iraq on the map, even though the United States had been in combat in the country for more than three years.
30 The report noted that “[f]ar too many [young people] lack even the most basic skills for navigating the international economy or understanding the relationships among people and places that provide critical context for world events.” Perhaps as disturbing as the results was the tone of the full report on the results, which categorized the statistic that only seventy percent of young adults could correctly locate China on a map as being “[o]n the positive side.” Is this considered education?
31 A 1990s Department of Education report found that the quality of education in the United States was, in fact, steadily declining. In particular, a recent American Bar Association Poll/Quiz in July 2005 demonstrated the lack of education by the general public in a specific area of knowledge—namely, separation of powers. In the four-question quiz commissioned by the ABA, adults demonstrated an almost astounding lack of knowledge of the American
government. The first question, which simply asked, "What are the Three Branches of Government?" yielded correct answers from only fifty-five percent of Americans polled. Rather than identifying the correct multiple-choice answer to be "Legislative, Executive and Judicial," almost one in four polled believed the three branches to be "Republican, Democrat, and Independent." In the second question, asking the meaning of the concept "separation of powers," fewer than half polled could correctly choose that it meant that "Congress, the President, and the Federal Courts each have different responsibilities." The third question, which inquired about the principle of checks and balances, elicited the most successful response, with sixty-four percent identifying the correct choice. The last question asked about the role of the judiciary in the federal government, with only forty-eight percent of those polled correctly identifying the role as being to "determine how existing law applies to the facts of a case." Only twenty percent of those polled answered all four questions correctly. Who were these Americans? Almost one quarter of them were college graduates who, as such, were potentially eligible to apply to law school. However, not all in education believe that schools have declined or failed. While that assumption remains as the anchor of the private school tuition voucher cause, at least one author asserts that measuring whether schools are failing is not so clear-cut. In 2007,測量 some empirical data, one could interpret that some student achievement has been steady, or even has advanced. This dichotomy results in vast disagreement, both as to pinpointing a potential solution to improve education and as to whether such a solution is necessary at all.

The decline of student knowledge of U.S. history, geography, and civics may not exactly be news. Assessments taken in 1986 of eleventh grade students on social knowledge revealed a serious gap in knowledge of American history, as the average score on an assessment in categories such as the Constitution, labor, and industry was only 54.5 percent correct. A 1990 survey showed no change in eleventh graders in high school as to their factual knowledge of history, and an assessment of twelfth graders showed that they performed no better. Similar patterns and performance levels also were evident in high school students' knowledge on geography and economics.

For some, cultural literacy has not changed at all; instead, educators and critics simply have forgotten that cultural ignorance is nothing new. Professor Sam Wineburg of Stanford University claims that there is "no evidence for the 'gradual disintegration of cultural memory,'" but rather what is growing is "our amnesia of past ignorance." Although he gives a variety of reasons why students have always fared so poorly in a subject such as history, Wineburg asserts that "American students have always performed badly" on factual, knowledge-based tests. Wineburg lays the blame on a variety of culprits, including the multiple-choice system of testing, inadequate textbooks, teachers who teach the subject poorly, and a system that poorly or inappropriately instructs these teach-
ers. Wineburg's end result, however, is a conclusion that the measurable knowledge (or lack thereof) by students as tested has not changed and that the current hand-wringing over today's students is misplaced.73

D. Cultural Literacy and Education Gaps Today

One observer asserts that the purpose of education is not necessarily to focus on an individual's past, but rather to ensure, via the inclusion of both knowledge and, in some form, assimilation by all cultures, a society that can foster good citizenship through education.74 Only then can the result be called a "responsible" education.75 The American educational system arguably has declined in past years, causing debate throughout the nation.76

Public schools determine what students are taught in a manner that has oftentimes been deemed undemocratic and at odds with the general purpose of the educational process—to serve the idea of American democracy as a whole.77 It has been pointed out that agents of the state, ranging from government bureaucrats to individual teachers, have control over ideas taught—a spectrum that can reach from Huck Finn to the New Deal.78 This control, it is suggested, includes the power to shape the viewpoint through which these topics are taught.79 By allowing these agents to make choices about what, and how, material is taught, students' cultural literacy is in the hands of others from the beginning of their education. Yet, one of the tenets of cultural literacy is that the relevant information is what should be known to Americans, and thus helps Americans communicate in—and run—their democratic society.

Some theorists posit that cultural literacy has no place in education because of the principle of democracy, in that social democracy, which represents a commonality of ideas, would skew or bias children's learning and sensibilities.80 Rather, some say that education should remain neutral so that children's senses are not influenced.81 However, this prescriptive suggestion simply is not possible—a viewpoint is communicated any time a curriculum is built.

80 Id. at 163.
81 Id. at 165.
82 Id. at 156.
84 Id.
85 Id. at 940-42.
86 Id. at 943.
87 Id. at 950.
88 Bruce Marlowe & Marilyn Page, Making the Most of the Classroom Mosaic, in EDUCATION FOUNDATIONS: AN ANTHOLOGY OF CRITICAL READINGS 79 (Alan S. Comenius & Bruce A. Marlowe eds., 2004).
89 Id.
Hirsch argues that schools have failed to meet the fundamental objective of teaching cultural literacy and sharing the proper background knowledge with students. He notes that as a society, we have taken the idea of cultural literacy for granted, much like we do oxygen. In placing the blame on school curricula, Hirsch noted that while they may have a tremendous positive effect on creating a literate culture, educational institutions have fragmented the information presented, thereby destroying the distribution of commonly shared information.

Throughout the country, students receive an education which may be specific to their particular school districts, counties, or states. Cultural literacy pushes back against that localization and embraces a nationalization of information, the result of which creates a national dialogue. The skill of learning this "language" needs to start early with cultural content in even the primary grades. That is not to say that dialects in language or regional differences should not be learned or that diversity should be eliminated. To the contrary, individualized and specialized knowledge should be preserved as "elite" knowledge, while basic national fluency should cut across race, class, and socio-economic groups.

Hirsch has introduced mandates in different grade levels, such as his 1991 follow up, What Your Second Grader Needs to Know, in an effort to solve the problem of cultural literacy from even the earliest of educational systems.

The debate over the status of education continues even after landmark cases such as Brown v. Board of Education. Although education for children of color was the real goal of such education litigation, the fight for equal education throughout the county was far from over. The debate contributed to the No Child Left Behind Act in 2002, in which Congress insisted that children's learning...
Although litigation has made vast improvements for children of color in educational opportunities, there has yet to be established a minimum level of education achievement for all children. Schools charged with making "adequate yearly progress" (AYP) must meet certain targets levels of accomplishment in the subjects of reading and math, thus prioritizing these narrow subjects. As some schools continue to devote more class time to standardized test preparation rather than art or music, curriculums are being revised and students are learning different material than they may have in the past. Since the arts "aren't something that can be measured with a multiple choice test[,]" these courses, which may require expensive supplies and smaller classes, may be the first victims in schools with a greater percentage of low income and minority students. Other neglected subjects may be geography, government, history, and foreign languages. These may well be the very courses that form the backbone of cultural literacy.

Students taking these courses that are being squeezed out of the curriculum can benefit in many ways. For example, students who study music or languages may perform better in their core subjects and see improvements in both spatial abilities and reading skills. Students who take these courses may have higher self-esteem as a result of their sense of belonging. Finally, students who take these courses arguably know more about life and culture.

It is difficult to define minimally adequate education, but at least one author has asserted that a "national standard of adequacy" needs to be developed. These levels should be measured by educational outcomes, and not specific class time spent in particular courses. Ultimately, the definition of "minimally adequate education" should be connected to the amount of education that is necessary to function in pluralistic society, to exercise fundamental rights, and to participate in democratic government. There is no question that education is critical to citizenship in our nation. Surely, cultural literacy and general knowledge comprise some of these building blocks, although they perhaps are not necessarily the framework for a standardized curriculum, as has been suggested.

This lack of knowledge comes at a time when we are "becoming an information society where the Internet has changed the flow and access to information." The way that we receive and access information has changed, which also changes the concept of knowing where ideas come from—in other words, what may be considered to be the context of them. With the growth of the internet as a tool for accessing information, we may be entering into a time when ideas themselves are more important than their pedigree. Thus, knowing an idea and being able to use it become more important than knowing who generated the idea.

It has been asserted that in many cases it may be neither "necessary nor desirable for students to identify the origin" of an idea, although certain historical or political reasons may apply. This is a different viewpoint on cultural literacy, and one which encompasses the notion of idea in context, not ideas separate from context. However, the divorce from context of ideas may be inevitable due to the internet and the resulting manner by which students access information about our world.

Arguments have also been made that education is in fact causing harm more broadly. In his controversial book, Why Education Is Useless, Daniel Cottom asserts that education destroys our common sense, leads us away from practicality, and isolates us from other humans—all traits that, if not eliminated, could assist with general knowledge and understanding. Therefore, it is possible that not only are we not learning what we are supposed to in the classroom, but that what we are learning is preventing us from gaining other important knowledge. Since education emphasizes only what is in the textbooks or traditions that confront a particular student, the impetus for free inquiry and paying attention to the world is gone.

Related to this proposition is the idea that when a student

---

111 Morgan, supra note 106, at 116-17.
112 Vincenti, supra note 105, at 142.
113 Id. at 143.
114 Id. (quoting jazz musician Wynton Marsalis).
115 Id. at 142-45, 145.
116 Id. at 148.
117 Id. at 149.
118 Morgan, supra note 106, at 127.
119 Id. at 128.
120 Id.
121 Sherry, supra note 30, at 131.
122 Morgan, supra note 106, at 129.
125 Id.
126 Id.
127 Id.
128 Id.
129 DANIEL COTTON, WHY EDUCATION IS USELESS 2-3 (2005).
130 Id. at 9-11.
is "in education," he or she is distanced from "real life," which ultimately may be another way of saying that we in higher education may lack knowledge as to how the world works.

The idea that education is not nourishing students properly was assertively introduced in 1987 with Allan Bloom's *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today's Students*.

In the foreword to the book, noted author Saul Bellow asserts that "[t]here are things that people should know if they are to read books at all," while recognizing that fewer of his readers in the future might actually know them.

Bellow further gives purpose to this knowledge by stating that an understanding of its precepts is important not only for the reader to identify with culture alone, but rather to induce the reader "to view the world differently" as a goal of art.

We must more carefully examine students and not just the educational system. In teaching students at different points in history and comparing post-Sputnik, space-race charged students with later generations, Bloom came to believe that education is not all about nature; instead, the desire, ability, and drive to learn needs assistance from the system in which students are operating in order to bring out the best.

Unlike the European system of education, American students are not necessarily receiving cultural literacy from an early age in their homes, because traditions of many American families do not encourage careers in literature and philosophy.

Such indoctrination into information about the world shapes the way that these students approached all of their studies.

Traditionally, American students approach their first university experience with more of a clean slate and are more open for new ideas than their European counterparts.

Moreover, the idea that cultural concepts are needed in order for one to understand learning in the classroom ultimately leads to the converse notion that the classroom is vital in providing a background of cultural concepts. At some points in American history and education, rock music—which could easily fall under the definition of culture—was written so that core knowledge was needed in order to understand and appreciate it.

Examples of this phenomenon are the Neil Young song "Ohio," often performed by Crosby, Stills, Nash, and Young, about the shootings at Kent State University in 1970; Joni Mitchell's anthem "Woodstock;" or "Sympathy for the Devil," by the Rolling Stones—a song in which various historical episodes involving the devil are described, with the listener invited to decipher the identity of the singer.

Without the education of the Vietnam War, Woodstock, or the Christian religion and historical conflict respectively, these songs make little sense. Thus, although the focus of this article is on culture affecting classroom knowledge, it is important to note that education and culture are similarly intertwined.

Part of the examination of students being culturally literate must focus on the perception of what it means to be educated in today's society. Bloom asserts that with "[a]lmost everyone in the middle class" having a college degree, compared with previous generations of students who never attended institutes of higher education, the conclusion may be drawn that as a society, we are better educated. Arguably, however, this concept depends on what it means to be "educated" and whether a student learning about the Bible or Shakespeare is more or less "educated" than a student taking only technical courses.

Bloom's ideas have been critiqued, in that through his observation of the decline of culture in education, he has been pointing the finger in the wrong direction.

Rather than placing the blame on the departure from classical education and professing the cure to be a return to such, critics assert that new changes in society must lead to a different educational path.

Bloom's failure may be in that he fails to recognize that universities cannot simply return to what they used to teach, as they now face ever-growing competition for resources of all types, including funding, students, and facility.

The source of the education problem is not necessarily what is being taught, but rather the changes in the educational system, which may lead to the same result, but which require a very differ-
ent fix.\textsuperscript{105} Viewed in this manner, simply bringing back "the great books" and teaching missing information is not the cure, and will not bring cultural literacy back to students without addressing larger institutional issues.

The ability to "connect the formal knowledge of schooling with . . . everyday life" is central to some theories of education; perhaps even that "schooling" is "education" without context.\textsuperscript{106} Students must be challenged to "enter" a subject rather than observe it from a distance, as is accomplished through the intertwining of American history with oral traditions and family knowledge.\textsuperscript{107} Only then can learning truly be complete.

Advocates of cultural literacy are concerned that students are being taught basic skills, such as reading and writing, without any integration of relevant cultural skills.\textsuperscript{108} The "domain theory" of learning emphasizes learning in the context (or domain) of when thinking occurs, and asserts that the same subject matter could be learned differently if delivered in different contexts.\textsuperscript{109} It is clear that when students learn new information that is not related to their prior knowledge, students will have more trouble learning it properly.\textsuperscript{110} To move beyond memorization and into "complete comprehension" of new information, there must be that existing base of knowledge.

Part of the problem may reside in the ever-increasing reliance on textbooks, as a result of inexperienced teachers leading classrooms.\textsuperscript{111} Textbooks are not being properly tested in order to assess learning, and are considered both heavy on students' backs and light on their intellect.\textsuperscript{112} In addition, they may contain different information than in the past. Books which once had students reading Longfellow, Hawthorne, Shakespeare, and Dickens now contain different types of information, such as essays on map-reading skills, which may improve a specific ability to complete a task but

\textsuperscript{105} Id.
\textsuperscript{106} Rennie et al., supra note 47, at 234.
\textsuperscript{107} Id. at 75.
\textsuperscript{108} Okra, supra note 48, at 501.
\textsuperscript{109} Friedland, supra note 45, at 6.
\textsuperscript{111} Id. at 949.

2007] CULTURAL LITERACY 197

which fail to help students understand why they are doing it.\textsuperscript{113} Reading outside of the classroom may have changed as well, as students are more likely now to be reading about other contemporary teenagers rather than classic fiction.\textsuperscript{114}

1. Cultural Literacy in the Field of Philosophy

The concept of cultural literacy and learning in context has been addressed specifically in the field of philosophy. One author asserts that in order to work and learn in the discipline of philosophy, cultural literacy is necessary for successful communication.\textsuperscript{115} Poor communication with the profession and education of those going into the field have been blamed largely on the lack of information shared among those in the field.\textsuperscript{116} Overspecialization and basic differences in philosophical groups within the profession, such as those in the analytic camp and those in the continental camp, has led to a lack of commonality in experience, so that many groups in the profession do not speak the same language.\textsuperscript{117} In essence, they share no cultural literacy of the field, which is causing overall harm to the field. The argument continues, stating that effort needs to be made for beginning philosophy students to create the literacy—the common bond of knowledge that would further bind and not separate the profession.\textsuperscript{118} One suggested method for creating a common bond is to teach philosophy in an historical context.\textsuperscript{119} This teaching of the subject rooted in its historical roots not only leads to a "genuine understanding of philosophy" but also ensures a commonality of educational experience for those entering the field.\textsuperscript{120}

2. Cultural Literacy in the Field of History

Problems of cultural literacy have crept into the field of history as well. In the debate regarding the integration of quantification

\textsuperscript{113} David O. Friedelich, Narration Jurisprudence and Other Heresies: Legal Education at the Margin, 40 J. LEGAL EDUC. 3, 11 (1990).
\textsuperscript{114} Id. at 75.
\textsuperscript{116} Id.
\textsuperscript{117} Id.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Paul Saka, Philosophy in Historical Context, 97 APA NEWSLETTERS, Spring 1998, http://www.apa.org/aps/archive/newsletters/v97n2/teaching/historical.as
data into historical scholarship, the movement to do so was set back
when a “loosening of the undergraduate curriculum” had students
studying history without a foundation in math, making the produc-
tion of statistical analysis impossible. 180 While a different kind of
knowledge was lacking here, a change in the education system on
one front had a striking impact on another unrelated field,
strengthening the argument that cultural literacy—fluency in a
variety of information—can have a specific impact on learning.
Cultural literacy is important in all aspects of learning, regard-
less of the field of study. Schooling can be bleak without the neces-
sary context. 181 There may be no single cause of why students either
are, or appear to be, culturally illiterate, but higher education cer-
tainly is feeling the pinch.

III. CULTURAL LITERACY AND GENERAL KNOWLEDGE IN LEGAL
EDUCATION

The idea that law students need knowledge of history and cul-
ture is not new.182 The purpose of law students needing such
knowledge is to be able to think contextually, defined as “the ability
to understand and evaluate the historical, social, and economic
forces that, in one way or another, helped shape a particular re-
sult.”183 A lack of cultural knowledge can hamper a student in his or
her learning. When students cannot distinguish between the
“sublime and trash, insight and propaganda,”184 they lack a unique
perspective needed to study law. How can students analyze and
weigh arguments if they cannot distinguish between the two?
Students often come to law school not knowing enough about
our culture.185 The first part of the discussion requires an analysis
of who comes to law school, and how. The second part of the dis-
cussion involves an analysis of who is teaching the students, and how.

180 John F. Reynolds, Do Historians Count Anymore, 51 HISTORICAL METHODS 147
(Fall 1998).
181 KONSHIRE ET AL., supra note 47, at 505.
182 Robert M. Jarvis et al., Contextual Thinking: Why Law Students (and Lawyers) Need
to Know History, 42 Wayne L. Rev. 1603 (1996); Vance & Frichard, supra note 29. In
1992, Wigmore published his List of One Hundred Legal Norms, 17 Ill. L. Rev. 26
(1922).
183 Jarvis et al., supra note 170, at 1604.
184 BLOOM, supra note 5, at 64.
185 Vance & Frichard, supra note 29, at 238.
to socially close out those who could attend, that is, until fairly recently.105

Past studies have attempted to determine what kinds of students apply to law school. Indirectly influencing the decision to apply were such factors as socioeconomic status and enrollment in private undergraduate institutions.106 As these factors also purportedly can influence the kind of learning that students experience, they are important factors in considering the knowledge with which students come to law school.

When Landigell at Harvard solidified the initial framework of legal education, women were not regularly a part of the law school student body.107 Nearly 100 years later, doubt still lingered concerning women’s role in the legal profession.108 In addition, the integration of African American students to law school has paralleled that of women.109 In 1987, when an empirical study of Stanford Law students was taken, women comprised forty-five percent of the class.110 The current web page for New York Law School states that of the approximately 1,500 law students enrolled, most of whom enrolled straight from college, fifty-three percent are women and twenty-eight are self-identified minorities.111 Thus, the face of the law school class has changed, but educational approaches have not.

Studies show that law school admissions favor applicants with economic, academic, and “cultural experiences,” which facilitate success on these necessary application steps, and thus stack the law school classes with these students.112 John Dewey, the American educator, stated that students’ experiences are essential components of learning.113 If these students being admitted are, in fact, those with the greater advantage of education and information about culture, then the picture of what students know, overall, when coming into law school is quite bleak indeed.

105 Id. at 235, 244.
106 Oglof et al., supra note 176, at 83.
107 Id. at 113. The first woman admitted to a state bar was in 1869, but the first woman with a law degree was in 1870. Id.
108 Id.
109 Id. at 114.
112 Lustbader, supra note 156, at 843.
113 KIRCHELOR ET AL., supra note 47, at 305.
study and heavily criticized the 1992 findings. His first line of attack targeted the assertion that students’ cultural literacy levels were properly quantified. He asked why “adequate knowledge” was not considered to be found if students could answer thirty percent of the questions on the Bible, for example. He complained that the authors of the survey had no real yardstick to measure the level at which cultural literacy was achieved. Frolik asserts that cultural literacy is only “a measurement of existing cultural knowledge,” and that there is no “preset” level to be measured. Therefore, students shouldn’t be declared literate or not. Another line of attack targeted the study’s conclusion that the test given yielded no significant differences among education and cultural backgrounds—begging the question, was this an appropriate test to be measuring anything at all relevant to education? In other words, did the test prove “anything except that there is some common knowledge floating around” that is not particularly relevant to education at all?

A larger issue involving the idea of cultural literacy, and its purpose in being measured, is which ideas are being considered candidates for being cultural literacy. Of particular note, Frolik challenged the conclusion that there is a problem because students scored poorly on knowing certain specialized items, such as “adenoids.” Frolik was certain that the particular word had not come up in his conversation in 30 years, nor had it caused him to “misunderstand or fail to appreciate anything” that he has read.

Frolik went on to suggest that students were simply being measured in this study on the wrong ideas, and that some students might not know less, but rather different hits of cultural information. For example, he asserted that “adenoids” might not be relevant to today’s law students but “silicone implants” may be instead.

His largest critique of the 1992 study was that the authors failed to make any connection between being culturally literate and being a better lawyer. Frolik claimed that dictionaries and encyclopedias exist in order to bridge the knowledge needed, and that ignorance of certain comments in judicial opinions would be unlikely to affect a practicing lawyers’ ability to perform as such.

This author disagrees with Frolik’s overarching critique. Frolik misses the point of cultural literacy by glily dismissing the need to understand history and the culture of all time periods. One problem, not addressed by either the 1992 study or its critique, can be analogized by paraphrasing the Passover story recounting the Jewish people’s escape from Egypt in the Biblical time of Moses. The Passover story recounts four types of children (sons, in traditional liturgy) that represent the different types of Jewish people with regard to their knowledge. One is the wise child, another the simple child (sometimes interpreted as indifferent or unconcerned), another the wicked child who wants no part of the tradition, and the last is the child who has no capacity to inquire.

Many who speak and write of cultural literacy promote themselves as wise, inquiring about practice and customs, while Frolik portrays himself as wanting no part of the tradition in his argument that cultural literacy is potentially unimportant to law practice. Students often are characterized as simple, i.e., not culturally literate as a result of indifference or unconcern. But the true answer may be that students simply do not have the capacity to inquire. While it is true that encyclopedias and dictionaries are at the ready disposal of those seeking specific knowledge, one must know what information to look for and why it is important to look for it. Law students lacking cultural literacy and general knowledge may find themselves in that predicament. In other words, they do not even know what they do not know, and no amount of reference materials can combat that canyon-sized gap in learning.

What do students know and not know? An often-distributed, humorous look at what law professors will be facing in a few years (and what undergraduate professors are facing now) is found in a list compiled each year at Beloit College in Wisconsin. The list is meant to be a reflection of the attitudes and experiences of new students, and is intended to try to bridge the gap between the faculty and the freshman mindset. The Class of 2006 list, comprised

---

281 Frolik, supra note 53.
282 Vance & Frichard, supra note 29, at 283.
283 Id.
284 Id. at 284.
285 Id.
286 Id. at 285.
287 Vance & Frichard, supra note 29, at 285.
288 Id. at 286.
289 Id. at 285.
290 Beloit College, Beloit College’s Class of 2006 Mindset List, www.beloit.edu/~pubrel/mindset/ (last visited Feb. 21, 2007). It is noted that the lists are “serious in-depth” research, but are meant to be thought provoking and fun while being accurate. Id.
of students who could potentially enter law school in the next year, have a different perspective on life than many teaching in the legal profession. Consider these striking examples from the list of what they have experienced, which no doubt will affect how those students study law: that cars have always had safety features such as eye-level rear stop lights and air bags (torts); that we have always been able to choose our long distance carriers (antitrust law); that Barbie always has had a job (employment discrimination?); that genetic testing and DNA screening have always been available (bioethics?); that the U.S. has always maintained that it has a “clear right to use force against terrorism” (international law?); and that scientists have always recognized the impact of acid rain (environmental law?).

C. The Law Teachers

Another perspective requires an inquiry into who is doing the teaching in law school. In a 1975-76 sample of law professors, the poll results showed that the overwhelming majority of law professors were white males, the majority of which graduated from one of only twenty law schools. In a 1988-89 sample, changes in race and gender were minimal, and a majority of the professors still graduated from the same twenty law schools. While inroads have been made by women and minorities to faculties in ever-growing numbers, these newer additions are more likely to be younger, less-experienced colleagues.

When comparing the group of teachers, for which tenure or long-term contracts mean turnover is slow, to students, a new group of whom come in every year, the gap between the establishment and the audience can be great. Put simply, this difference potentially almost certainly contributes to a cultural literacy gap. In addition, although law schools are hiring women and minorities, one study found that in 1981-82, twice as many women were hired into non-tenure track positions than into tenure track positions. Fast-forward from that time, and the retention rate of those hired into tenure positions is higher than those in non-tenure track positions, potentially leading to the conclusion that although women are being hired, more men are remaining, meaning that not much will have changed at all. As more diverse students, with different life experiences, come to the classroom to work with a largely homogenous group of faculty, the knowledge and cultural literacy brought into today’s law classroom could be quite different than when the professor started.

D. The Law School Method of Study

The vast majority of law professors likely would agree that new law students who do not understand the new language of “law” must spend an enormous amount of time deciphering it, and that this is part of their new responsibilities. The case method of law education begins with concrete disputes in which the students must wrap their perspectives around the various viewpoints from a judge’s decision about a case in order to understand the legal principles as applied. Many schools may recommend a Black’s Law Dictionary, and urge students to plow through their new readings with the tome by their sides so that they may decipher such new phrases as “summary judgment” or “concurring opinion.” But a starting question in the idea of lack of cultural literacy and general knowledge in law school is this: To what extent do these obligations exist in order to bink up knowledge of the world outside of legal lingo?

In an often-read Contracts case dating from 1919, the plaintiff sues her husband on what she claims to be a contract to support her while he is at his job in Ceylon, while she remains in England. The main purpose of the case, as taught in a first-year contract class, is to understand that there was no contractual obligation in this situation, because the parties “in the inception of the agreement, never intended” that the contract be enforced.

However, the purpose of this case is potentially sidetracked, and has in this author’s experience been sidetracked by a central caveat relating to cultural literacy: What is Ceylon and why would a British husband be working there? A student may not have learned enough history to identify the country of Sri Lanka prior to 1972 (before a vast majority of them were born), but a quick internet

---

\[\text{Id.}\]
\[\text{Ogloff et al., supra note 176, at 129-30.}\]
\[\text{Id. at 130.}\]
\[\text{Id.}\]
\[\text{Id. at 135-56.}\]
\[\text{Id. at 136.}\]

\[\text{BLACK’S LAW DICTIONARY (7th ed. 2000).}\]
\[\text{Id. at 5.}\]
search of Ceylon can reveal this information.\textsuperscript{56} The internet additionally states that the country was a British crown colony until it gained independence in February 1948.\textsuperscript{57} Sufficiently armed with this information, a student, who realizes that the facts of a case need to be understood, should be able to piece together the puzzle of facts and understand the "back story" to this contracts case. The student should thus be able to perform the legal analysis at hand in the case, in context. But additional research steps required to merely grasp the basic fact pattern of a case adds hours a week to an already full study schedule if a student realizes at all that the context could help them. Although this puzzle may be solved with a small bit of research and reasoning, other areas of the fact pattern may not be so readily understandable.

In Plantation Key Developers, Inc. v. Colonial Mortgage Co. of Indiana, another case often taught in a Contracts class, the elusive concept of option contracts is buried inside a complex discussion of mortgage rate percentages and points.\textsuperscript{58} Although Contracts, along with Property, is a first year course for many law students, mortgages may be a subject covered in a separate upper-level course such as "Real Estate Finance." Deciphering mortgages and how they operate is not something as easily understood if, for example, the term is "Googled." In addition, the complex technicalities in the facts and the weight of the economic dispute are critical elements that must be properly understood. Cognizance of the fact that the case was decided in 1979, a year in which interest rates were high and the economy was poor, is an important undertone to the dispute at hand. Even if the student grasped these technicalities—and if basic research could unravel the difficult world of mortgage brokering—there are no clues for a student to recognize to relate to the contextual importance of the economic dispute. Without contextual knowledge the student lacks the capacity to grasp the fact that this is even something worth considering.

A difficult course such as Contracts is laden with similarly obfuscatory examples in which students with a lack of cultural literacy or general knowledge are bewildered by basic fact patterns. These students may often become frustrated prior to reaching the analysis, or may miss part of the analysis, as a result of their misunderstanding of the facts. Students who do not understand the meaning of factual terms such as "Mason fruit jar," "turnkey property," or who are unfamiliar with the "Getty" family may miss a lot of a case's significance.\textsuperscript{59} To some degree, teachers utilizing the case method have approached complexities or unfamiliarities within facts head-on. In Carlill v. Carbolic Smoke Ball Co., the main issue of whether a party can accept an offer which may be "mere puffery" is indelible upon anyone who has taken a first-year Contracts course.\textsuperscript{60} In this case, no student is ever really expected to know beforehand that a "carbolic smoke ball" is an inhalation contraption purported to prevent colds and the flu.\textsuperscript{61} Instead, professors have published web pages containing the original patent illustrations and back story of the product, presumably with the intent of explaining the facts to enable students to focus on the analysis of offers and acceptances. Instead of puzzling over the facts\textsuperscript{10} In this instance, literacy of the facts and recognition of their importance were brought into the learning process for the student's benefit.

Even within the study of law at the undergraduate level, an understanding of the underlying facts and circumstances of the case is necessary to fully understand the complex legal issues. As part of his Contracts course curriculum, one law professor teaches Justice William O. Douglas' dissenting opinion in Ohio v. Wyandotte, a 1971 United States Supreme Court case, deciding not to act to abate mercury dumping\textsuperscript{62} The professor asserts that the dissent may be fully understood only after the reader gains an appreciation for Douglas's passion for the environment.\textsuperscript{63} Accordingly, he shows his class a notable documentary about Douglas and discusses the justice's career and life.\textsuperscript{64}

The result is that some law professors have deemed the facts of certain cases sufficiently obscure so as to deserve a full explanation of the relevant historical and cultural knowledge on the subject. On the other end of the spectrum, concerning purely "legal" concepts, most educators would likely agree that students should take

\textsuperscript{56} A Google search on February 3, 2007 with "Ceylon" as the search word led to the first entry about Sri Lanka on "Wikipedia," a popular, free internet encyclopedia, which, in the first paragraph, identified Ceylon's origin.


\textsuperscript{58} Plantation Key Developers, Inc. v. Colonial Mortgage Co. of Ind., Inc., 589 F.2d 164 (5th Cir. 1979).

\textsuperscript{59} Id. at 257-58.

\textsuperscript{60} See UK Law Online, http://www.bears.ac.uk/law/hamlyn/carlill.htm (last visited Feb. 3, 2007).

\textsuperscript{61} Friederichs, supra note 160, at 17.

\textsuperscript{62} Id.

\textsuperscript{63} Id.
the time to utilize available resources to discern these concepts for themselves. However, for many students, the question is left in the middle.

Cases studied in law school are full of other concepts that confuse students who are not culturally literate. In a Constitutional Law class, for example, students without an understanding of United States history will “need significant help” to understand the forces that shaped the Supreme Court’s decisions pertaining to civil rights.\footnote{Vance & Frichard, supra note 50, at 237.} Similarly, the previously discussed cultural literacy examination of Wake Forest University School of Law freshmen asking them to describe 250 specific items, one student’s unexpected answer to the prompt “gerrymander” was “to speak at length in Congress.”\footnote{Id. at 234-35.} Given the line of cases on voting rights and equality that may be studied in a Constitutional Law class, how can a meaningful discussion of the Court’s actions take place if a student is laboring under such a misconception? In addition, judges use various phrases in their writings that allude to general concepts that they assume are known to readers, such as the “authority of Hippocrates” or the “veritable word of Damocles” to make a point.\footnote{Id. at 237 (citing Roe v. Wade, 410 U.S. 113, 131 (1973); Nixon v. Adm’r of Gen. Servs., 433 U.S. 425, 494 (1977)).} A working knowledge of these concepts, while not directly related to a decision, is nevertheless key to grasping the reasoning.

In The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions, a scholar criticized the use of metaphors in judicial opinions as leading to confusion because readers may neither interpret the metaphor the same way as the judge, nor even understand it.\footnote{Chad M. Oldfather, The Hidden Ball: A Substantive Critique of Baseball Metaphors in Judicial Opinions, 27 CONN. L. REV. 17, 25 (1994).} However, this critique of opinions was itself criticized by Michael Yelnosky, who asserts that some metaphors, such as those relating to baseball, are not only appropriate, but also useful.\footnote{Michael J. Yelnosky, If You Write It, (She Will Con: Judicial Opinions, Metaphors, Baseball, and The Sex Stuff,” 28 CONN. L. REV. 813, 817-24 (1996).} One of the central tenets of Yelnosky’s argument that metaphors are appropriate is that “baseball is central to our culture.”\footnote{Id. at 817.} Included on the list of items known by the “culturally literate,” baseball is presumed to be understood by Americans as central to its national culture for more than a century.\footnote{Id. at 821.} While it has been argued that Americans actually would have to work hard to not be come schooled in the fundamentals of baseball, or at the very least its idioms such as “strike out” or “play in the big leagues,”\footnote{Charles Yahn, On the Contribution of Baseball to American Legal Theory, 104 YALE L.J. 227, 229 (1994).} this is itself presupposing a certain cultural literacy by readers of judicial opinions using these phrases.

The original criticism of the use of baseball metaphors in judicial opinions—that some women (who might be less “interested” in following baseball) might be “excluded from the dialogue”——was vehemently dismissed by Yelnosky’s documentation of women’s historical involvement in the sport of baseball.\footnote{Yelnosky, supra note 237, at 839.} However, by framing the debate only in terms of gender, the larger picture of cultural literacy is obscured. There may be, despite the assertion that baseball is everywhere, many people, especially among the increasingly international contingent of students, who simply do not understand the sport. If they are not familiar with the sport, the metaphors meant to enhance understanding only obscure it.

Yelnosky, in further defending baseball metaphors in judicial opinions, goes on to point out that a metaphor in general is an analogical device that is naturally related to legal reasoning and, thus appropriate to use in judicial opinions.\footnote{Id. at 818.} If this is so, being able to decipher metaphors is more than learning a bit of trivia about a sport—it is a skill essential to a successful law school career.

Given the focus in the legal education on problem solving, thinking contextually and being able to see all angles of a problem are critical skills.\footnote{Jarvis et al., supra note 171, at 1608-14.} But the inability to process information contextually carries over from the legal education. It further serves to make one less capable of good lawyering and properly serving clients by truly solving problems from their roots, rather than superficially based on their facts.\footnote{Id. at 1012.} As law students complete their studies and begin practicing, their clients will unavoidably have varied cultural backgrounds.\footnote{Vance & Frichard, supra note 50, at 238.} It is therefore necessary to be culturally literate as lawyers to properly communicate with their multicultural clients.

The deficiency in law students’ educations may be producing a different breed of lawyers when compared to previous generations.\footnote{Lucina E. Burch Jr., The Education of a Lawyer, in 22 MEM. ST. U.L. REV. 719, 719-20 (1992).} Students who have not been able to truly absorb the...
ture or history of the law have, in one view, an unsurprisingly high chance of becoming lawyers who "show almost no social or political passion."199 At one point in their histories, lawyers were educated to enjoy the classics for reading, to quote the Bible and Shakespeare in making literary analogies, and to understand Thomas Jefferson’s idea that "history, politics, ethics, physics, oratory, poetry... [are] as necessary as law to form an accomplished lawyer..."200 The need for a sweeping education to practice law has not changed, but the actual education itself has.

Closely connected to the law, literature is another discipline in which students’ educational foundation may be lacking.201 Laws were not developed in a cultural vacuum, but rather have been developed from the historic and cultural forces that shape our society.202 Law professors may have contributed to students’ lack of understanding in this area by not focusing enough on either history or literature in their research and teaching of law students.203 In addition, being isolated in their legal studies may have kept law professors “blissfully ignorant” of trends in other areas of education.204 Some have blamed both the academic freedom movement and the abandonment of generalized liberal arts studies for destroying the broad base of common basic knowledge in students that most law professors took for granted in their students years ago.205

The study of law also has been compared to the study of poetry.206 It has been noted that both disciplines rely on the study of texts language form, and, hopefully, the context to educate in the field.207 It was asserted in this comparison that it “isn’t enough” to simply read either poems or judicial opinions for their main ideas alone, but rather one must read them to cull the meaning given to them from the reader’s life experience.208 Obviously, if there is no life experience to attach to the meaning, then the learning process is compromised.

199 Id. at 720.
200 Id.
202 Id. at 89.
203 Id. at 90.
204 Id. at 93.
205 Id. at 95-97.
207 Id. at 1680-81.
208 Id. at 1681.

2007] CULTURAL LITERACY

Knowing the culture behind facts is important as we move toward globalization and international legal programs. As the legal community, and thus legal education, participates in such exchanges, the importance of knowing the culture and history behind facts becomes clear. A scholar relates a story of Chinese judges coming through the Massachusetts court system as part of an exchange.209 The judges were perplexed as to why the lowest-level court in the system was called the “superior” court.210 The American judges found this question difficult to answer, and simply informing the visiting Chinese judges that the Superior Court of Massachusetts was the lowest-level court wasn’t enough—a “historical, cultural, and social explanation” was needed.211 To successfully relay the answer to others, those in the legal profession first must know the answer.

It has been suggested that a lack of cultural literacy has led to bad lawyering with regard to participation in civil litigation and its reform.212 When lawyers fail to appreciate the role of the adversary system, litigation in the modern legal system can be hindered by inappropriate behavior.213 A proper understanding of the system is itself a type of cultural literacy.

To be attorneys who are effective at both counseling clients and advocating for them, lawyers must be able to do more than read legal documents at face value—they must be able to think about the contents and link them to larger contexts in the world.214 But in an educational system where high school and college students are trained to pass reading comprehension tests that specifically look for facts and information, there is a great disconnect between the reading skills that students presently have and the skills that they must learn.215 Put simply, this is due in part to being culturally illiterate.216 It will be difficult to teach this deeper skill to students who do not have the contextual knowledge to support the “between-the-lines” reading, which forms the foundation of one’s connection to the real world. Further, because good writing flows

210 Id.
211 Id. at 455-54.
212 Stempel, supra note 105, at 316.
213 Id. at 355.
215 Id. at 164.
216 Id.
from a deep understanding of the reading, improvement may be seen here as well.\textsuperscript{387}

IV. THE SPECIFIC PROBLEMS OF LAW TEACHING AND SUGGESTIONS TO SOLVE THEM

It has been asserted that the quality of education in the United States will improve only if America makes education a priority.\textsuperscript{388} Law professors were charged some years ago to "demand that the educational process yield a more culturally literate product."\textsuperscript{389} But law professors have been accused of a "parochialism about education," that is, a narrowness of looking at legal education in a vacuum when trying to improve it rather than drawing on the vast bodies of educational knowledge from other disciplines.\textsuperscript{390} Although the "substance" of what is taught in law school may differ from that which is taught in other disciplines, the educational process of learning remains the same.\textsuperscript{391} We must reach into other areas to be able to answer the question: How do we, as law professors, improve our students' broad knowledge so that we may teach them in context?

A. The Challenges to Teaching

We know that law students have changed from the homogenous middle-class, white male population that existed when the law school curriculum first emerged.\textsuperscript{392} Those students were educated in "philosophy, classical studies[,] and political science;[.\textsuperscript{393} Students enrolled in law school today come from a wide variety of socio-economic backgrounds and undergraduate studies.\textsuperscript{394} It has been suggested that the disconnect in the law school experience is not to be blamed either on the students or the expectations of the teachers, but rather on the lack of focus on the purpose of law school in today's society.\textsuperscript{395}

\textsuperscript{387} Id. at 171.
\textsuperscript{388} Bourwell, supra note 59, at 557.
\textsuperscript{389} Vance & Prichard, supra note 30, at 289.
\textsuperscript{391} Id. at 449-51.
\textsuperscript{392} Bethany Robin Henderson, Asking the Lost Question: What is the Purpose of Law School?, 55 J. LEGAL EDUC. 48, 50 (2003).
\textsuperscript{393} Id.
\textsuperscript{394} Id.
\textsuperscript{395} See id. at 52.
a legal education may be irrelevant for top students because of their superior learning skills, they may also be irrelevant to those who are culturally literate. For the vast majority, however, the ways in which they are taught will have a great effect on their learning.

In looking to other sources, the curriculum that Hirsch proposes in order to increase cultural literacy may not do justice to law students. This may be so because neither his extensive national curriculum nor his intensive specialized curriculum includes the idea of analogical imagination. Mastering analogies is indeed important to the concept of legal reasoning. While Hirsch addresses analogies on the functional level—the bare building of them—he fails to nurture the idea of imaginative analogies that can result in broader, more creative thinking. The difference between merely possessing knowledge about something and truly experiencing it accounts for the difference in being able to merely solve one problem versus being able to reason and to approach problems.

Through the historical evolution of the law school’s role as gatekeeper to the legal profession, the idea that the purpose of law school, as part of a formalized, academic, institutional education, is to teach students “to think like lawyers,” this very concept, however, has been criticized when compared to other professions. We do not expect medical students to “think like” doctors when they graduate, but rather we expect them to be doctors. Should the same be true in law school?

In addition, there has not been much formal or empirical study contemplating the effect of legal education on students’ reasoning skills. While a recent study demonstrated that students’ reasoning abilities can improve through graduate school, the study also showed that within different types of graduate students, law students did not demonstrate a statistically significant improvement in verbal reasoning from their first year of study to their third; medical students, on the other hand, did show improvement. Therefore, more careful studies should be conducted to help de-

termine how a legal education can best improve this skill, rather than assuming that the educational goals of “thinking like a lawyer” are already being met.

At its base, the task could mean teaching students how to solve problems like lawyers, both from the functional element of lawyering skills, and also in the normative context of considering the lawyer’s role in society. However, there is no agreed-upon definition. The function of lawyering can include serving as advocates, advisors, policy and rule makers, adjudicators, negotiators, mediators and educators. Through all these skills, lawyers must ultimately have the capacity for good judgment, legal reasoning, and communication. Judgment includes knowing how to discern existing or potential problems based on (usually incomplete) knowledge of facts and familiarity with the relevant legal doctrine; how to investigate the factual, legal, ethical, and practical aspects of problems, including undertakings of legal research; how to identify stakeholders and investigate their interests and needs; and how to locate and call upon potential legal and nonlegal collaborators. In addition, legal reasoning capacity focuses on identifying and assessing legal concerns and risks, as well as on proposing solutions. Finally, communication involves the ability to effectively reach a variety of audiences about a wide variety of information. The "case method" of instruction, developed more than a century ago, has been, and remains, the central focus of legal education. In first-year law school education, the case, the skill of briefing, and the idea of "thinking like a lawyer" all remain paramount. The problem, then, as discussed earlier, is that if the student is stumbling on the factual component of the case, possibly due to cultural illiteracy, then the resulting thought and analysis will be stunted as well. Judging by the number of student-given graduation day speeches listened to by this author, students are well aware that they have been subjected to the "Socratic Method." However, what do they know about Socrates? Further, would knowing more about Socrates and his beliefs concerning justice and
learning change their opinion about the way in which they were taught? Socrates believed in and practiced discussions. If students understood more about him and how this works, could the Socratic Method be more effective? 

There have been many reasons asserted as to why law professors do not focus more on context in the learning process in law school. These include the focus on black-letter rules of law; the editing of casebooks to include newer rather than historical cases; and an influx of younger faculty who may be lacking this very knowledge themselves. But when students have a general lack of knowledge, they may also have a reduced ability to develop and use important skills in law schools, including “deliberation, discourse, critical thinking, and decision making.”

The attitude about education works against the law school mantra. Very often, the public may not view school as a place of “intellectual learning and character development,” but instead as a way to satisfy requirements for employment. Accordingly, the public may think of it as “a lawyer school” rather than law school. Are law schools viewed as merely professional training schools or as schools in which a larger idea of learning is being attempted? If education policy in general is determined at the state level, leading to disparities in the quality of educational experiences from state to state, then law school policy may be even more individualized by school.

We must acknowledge the premise that the famous Socratic Method is being used to question, and thus teach first-year law students in core courses, a practice that dates back to the days of Robert Langdell at Harvard. Perhaps any troubles in legal education today can be traced to that decision. In his book, Why Education is Useless, Daniel Cottom asserts that Socrates himself was “the most famous classical model for the uselessness of learning.” Cottom points out that “being condemned to death would seem to indicate that something has gone wrong in one’s tenure review” and that Socrates can come off like “the patron saint of academic deadwood.” Not exactly the inspiring model of efficient education. Socrates has been quoted as saying, “To none did I promise instruction, and none did I teach,” which may very well be the echo of many a law professor in his or her own classroom, at least from the student’s perspective. Cottom asserts that this attitude epitomizes the very uselessness of learning. If this is true, then what are we doing in law schools? Are we contributing to the uselessness of the education that our students haven’t already received? That isn’t to say that questioning students on law cannot be one useful approach to teaching and learning. We, as educators, must get away from the idea that not only is there more than one right way to teach the law, but there is also more than one right way to teach any particular subject. Compelling arguments have been made as to how clinical teaching—practical client based problem solving—can enhance classroom teaching and vice-versa. We must seek out alternative models for instruction, not only system-wide and curriculum-wide, but week-to-week within any given course.

B. Suggestions for Improving Teaching

1. Problem-Based Teaching

The first way to solve the problems associated with teaching is to circumvent the lack of factual knowledge in reading cases by not teaching entirely through the case method. Although the case method is one analytical tool, skills-based problems may be useful as well. In skills-based theory, the focus is not backward-looking at already solved cases, but forward thinking, with a fresh set of facts to be explored. With this method, students are faced with facts to be discovered and applied, allowing all students to start at the beginning and work through a client’s problem, rather than, as could be potentially gleaned from reading only matters after they have been decided, being confronted with fully formed, well-defined fact patterns.

The focus on forward-thinking skills development would, in essence, level the playing field when it comes to general knowledge. While students still may not understand all of the facts in front of them, delving into the factual understanding would now become a part of the process, rather than an implied knowledge. In trying to
solves the problem, students will be forced to gather knowledge on various areas, such as history, art, politics, or geography, depending on the facts. It not only incorporates general knowledge context education into the law curriculum, but it paves the path for teaching students how to obtain facts when they might need them; it also gives them the capacity to inquire. 

The education of the general knowledge and context of a factual situation would become part of the task to be solved, not just the legal analysis. This focus also would serve as a positive habit to instill in future lawyers. If through the case method we are framing students to see cases in a limited backward-looking framework (as they have already been decided), leaving limited roles for attorneys as advocates, then the skills method breaks free of this mold. The skills method of proceeding carefully forward, one step at a time, asking questions and investigating facts, not just accepting them, instills new habits for law students and teaches an important skill for lawyers.

Recently, there has been talk of changes in the law school curriculum. The Boston Globe reported that Harvard Law School, which has used the case method approach since the 1870s, is considering the addition of a problem-solving approach. On the undergraduate level, several writing teachers have recently developed exercises to help students think about the deeper meaning in text and learn to use context to understand material. Various techniques, such as filling in "ghost chapters," working with hypothetical information, and preliminarily recording thoughts and questions may assist in overcoming cultural illiteracy, in addition to fulfilling other designated purposes. These exercises force students to confront their missing information directly, rather than "buzzing" over it and allowing the missing information to be subsumed into a technical reading of a rule or holding.

Law teachers need to set their courses in the same manner as do instructional design experts, using a "reflective, systematic, and comprehensive approach." This means analyzing the context of the learning, determining who the learners are and what the learning tasks are, in addition to determining instructional strategies. Essentially, this approach would ensure that professors could incorporate all ideas that need to be taught into the instruction, without excluding base or context knowledge that may be an important component. It is important to remember that instruction alone does not equal classroom teaching—instruction can be accomplished through a variety of means, including textbook reading and online discussions. Professors may add context material to the course, thereby assisting their students in becoming culturally literate without changing the traditional classroom approach.

Students should be encouraged, as part of a larger approach, to read especially for context—to specifically ask themselves "how [does] the opinion accord[] with other things we know about . . . the world." An important use of context is looking at the facts in which the case took place—learning about the case from a different perspective than the appellate voice, such as a newspaper account. Such an investigation can serve to broaden a student's literacy in the world. There is room for improvement and flexibility in the way that law school is taught—if only we consider the problems of our students within our own general knowledge and help put their learning in context.

2. Context Teaching

Another approach to bridge the knowledge gap is context teaching. This method involves staying within the framework of the case method and teaching a fuller context, including thinking about a lawsuit as a whole, such as why it was brought, how it could be avoided, or even how it could have been prevented. This includes looking at the people involved in the case: the parties, the lawyers, and their approaches. Exploring these dynamics is a less radical change to make within the confines of the already-existing teaching system, even in the first year. In this solution, the case itself becomes about more than the analysis or outcome; it becomes about the facts and history leading up to it, about the people involved in it, and the roles that lawyers could take in solving this problem in a different way. This approach could also solve the gap in knowledge. Context teaching values the examination of the facts and opens the door to instruction and education in this often neglected area.

---

92. See id. at 358-59.
94. Fajans & Falk, supra note 264, at 182-83.
95. Schwartz, supra note 293, at 383.
96. Id.
In some academic institutions, the idea of teaching with context has caught on. A recent example is the teaching of the constitutional idea of impeachment following the 1998 House of Representatives vote to impeach President Clinton. Following this historic act, teachers debated whether to follow the facts and technicalities of the constitution or whether to take advantage of the context in which it happened to broaden the discussion. Educationally, the answer is clear—by emphasizing inclusion of the context of controversy, viewpoint and politics, students discover more than just the answer, which leads to greater learning. The teaching of the "law" in this context adds up to a sum far greater than its individual legal parts and can be a lesson for law professors in approaching the everyday teaching of law.

3. Revamping Materials Used in the Classroom

Revamping materials with which students work to include general knowledge is also an alternative. For example, one legal publisher has started a series of texts that explain the stories behind landmark cases, including historical context. In addition, law books could include a wider range of information, as do many books written for other disciplines. Students of education, for example, are taught educational research, just as students in legal programs are taught legal research. One introduction textbook to the education field adopts a very practical problem solving method in teaching those approaching the field to understand, from the ground up, all of the factual and technical concepts that comprise the field of educational research. The book, directed towards both those already teaching and graduate students, even contains a glossary of commonly used terms. Some of these terms are highly technical, such as "chi-square," a complex technical term, which, exists, when thinking about learning, in correlation to a law student's exposure to technical legal terms. But other terms in

---

[65] Id.
[68] Id. at 982.
[69] Id.

---

[70] Id. at 383, 388.
[72] Id.
[73] Id.
[74] Saka, supra note 166.
perience of law students and humanize it, by mirroring the way other subjects are taught successfully. An example can be found in the fairly widespread use of Jonathan Harr's book about toxic tort litigation, *A Civil Action,* reportedly used at one time in more than fifty law schools. Such a book may broaden the world for students, steer them into learning about law in context, connect their prior learning, and reach them in new ways. Books such as *A Civil Action* have the benefit of providing a narrative meant to instruct in the real world, far broader than the narrow confines of the purposes of writing an appellate opinion. The book is not trying to explicate the law, but rather show how the story of the law occurred in the world, which may be exactly what students need. These books generally are legally accurate but non-technical, and can enhance any curriculum. Likewise, many books, which are specifically designed for the legal education audience, also use story-telling as effective educational tools. Once exposed to these real-life stories, students may find it more engaging to work directly with lawyers to learn their personal experiences. Indeed, lawyers themselves can be excellent sources of background information, bringing real-life knowledge, history, and context to legal situations.

One study of casebooks, published between 1875 and 1982, found that in the years since 1950, the number of more-recent cases has increased compared to "principal" cases. This trend has been encouraged, and it supports the idea that students may learn law within the confines of a generation's experiences and knowledge. Therefore, some credence has been given to the idea that students may know, or need to know, different factual situations through the generations.

The concern of bringing lawyers' stories into the classroom is that while "war stories" may be entertaining, they may hold little educational value. However, there are so many compelling stories that could be used in positive ways, whether the relator is objective

---

194 Id. at 214.
195 Other such suggestions are Edward Abbey's *The Monkey Wrench Gang,* Harper Perennial Modern Classics, 2000, focusing on environmental issues and originally published in 1975; and the *Buffalo Creek Disaster,* by Gerald M. Stern, published in 1976.
196 Wilcox, supra note 363, at 218.
198 Id. at 113.
199 Ollolf et al., supra note 176, at 186.

---

200 Wilcox, supra note 356, at 225.
201 Id. at 230.
202 Id. at 231.
204 Id. at 124.
205 Id. at 129.
seeing what students know about a small swath of information that appears in edited casebooks, why not teach the skills of reasoning and communication outside of these factual experiences? Why is it that we believe that only learned white male judges from history can teach us "how to discern existing or potential problems"? Is it not possible for a biology student, who has completed various experiments, to demonstrate reasoning? Alternatively, math majors, who have solved complex theorems, may be able to help explain logic. As to assessing legal risks, what about students who have worked in business and faced real day-to-day operational problems? Might this amalgamation of students assist in teaching ideas relating to facing real-life situations and weighing decisions? Another obvious goal of legal education is to teach communication. Any number of students who may have worked in customer service, whether in retail or restaurants for example, could share a thing or two learned about reaching an audience. When the traditional method of legal teaching emerged, studying what courts had done with fact patterns was essentially the only way to learn the law. However, at that time, the law student population did not bring the wonderful diversity of background and experiences that contributes knowledge to the educational process—students were funneled quickly into the law library as the "laboratory" of law students. But now, students can bring their prior experiences, whatever they may be, to the classroom and use them, instead of merely using words of the past, to help with some of the necessary skills of lawyering.

Waiters helping to train lawyers? Why not? Lawyers have developed a bad reputation throughout the years. Undoubtedly anyone reading this article likely could spontaneously insert his or her own lawyer joke. Would it not be possible for lawyers to improve the image of the profession and to have a better place in society if lawyers were not so different? When students learn how to communicate law through reading confusing and arcane doctrines, they learn to communicate in a confusing and arcane way. But if students are trained in communicating from classmates' real life experiences to which they can relate culturally and socially, then perhaps we can indeed meet the purposes of law school today.

5. Misconception/Preconception Check

At least one scholar recommends that law professors do a "misconception/preconception check" of each class's student population, during which teachers may uncover misunderstandings or gaps in knowledge before studying the law in a particular area. By taking the "temperature" of the class through determining what they know about a subject before delving into the specifics of laws covering that area, law professors may avoid considerable frustration. A few minutes of factual discussion can head off weeks of indifference to a topic that a student already (erroneously) believes that he or she has mastered. This may also avoid confusion on a topic the student actually has not mastered, or tuning-out on a topic that a student does not understand factually. This deliberate use of prior knowledge to "prime the pump" is an excellent teaching aid. However, students should also monitor their own knowledge and experiences to get in the habit of using them in learning their new information. By encouraging students to recall what they have read, seen, and heard from other places, the task of identifying missing prior knowledge can be shared between the teacher and the class. This monitoring for knowledge should continue throughout a student's education.

6. Better Use of Academic Support Programs

The better use of Academic Support Programs (ASPs) may provide another way to help students gain a more contextual legal knowledge. ASPs developed, in part, to help provide access to law school for diverse groups of students. While "[g]eneral law

---

85 Henderson, supra note 272, at 60.
86 Students could also follow lawyers around, which wasn't necessarily practical. Rapport, supra note 288, at 95.
87 Id. at 96.
school admissions policies favor applicants who were raised with
the advantage of economic, academic, and cultural experiences
that enable the applicant to perform well on the LSAT and in un-
dergraduate institutions. 64 ASPs have aided student who lack the
skills that are measured by traditional admissions indicators and
have therefore helped open law school doors to more diverse ap-
plicants, providing a more culturally diverse law student popula-
tion. As such, an ASP is a natural tool in legal education to help
combat students' lack of cultural knowledge.

It is clear that prior knowledge assists learning. However, it is
difficult to teach properly without knowing what prior knowledge
students have. 65 Because most law schools do not require a specific
major or undergraduate degree as a prerequisite for application,
it is improper to assume that all law students will have taken com-
mon college courses, experienced common classroom environ-
ments, or had common experiences outside of the classroom. In
fact, although the American Bar Association (ABA) recommends
that a student acquire a base knowledge that is "helpful to a legal
education," 66 including a broad understanding of history, Ameri-
can politics, basic mathematical and financial skills, human behav-
or, social interaction, and diversity of cultures, it does not recom-
mand a special group of courses for admission to law school. 67 In-
stead, it is suggested that a student take a broad range of courses.
Unfortunately, much of this information is on the ABA web site, a
site that students may not know about before law school. One
thing that schools should do is incorporate this information into

and graduate from law schools, so they can pass a bar examination and gain entry
into the legal profession.

64 Id. at 945.
65 See id. (stating that in helping to provide diverse students access to law school,
ASPs have shown that with "a shift in pedagogy, traditional indicators are not pre-
dictive of performance.").
66 See Svinicki, supra note 57 (stating that prior knowledge is "the most critical type
of knowledge to monitor" because it shapes how a student perceives, organizes,
and connects new information). According to Svinicki, what students know is
related to what they will learn, and if a teacher lacks knowledge of what a students
knows, then this can result in miskomunciation which can "extract from learn-
ing." Id.
that law students "come from many walks of life and educational backgrounds .
... and are admitted to law school from almost every academic discipline.").
68 Id.
69 Id.
70 See id. (encouraging students to pursue an area of study which interests them as
well as a "broad range of difficult courses").

their admissions material and assist in getting this information out
to the target audience more efficiently. ASPs can help to bridge
this diverse educational gap by taking the time not available in
regular classes to assess the prior knowledge and educational back-
ground of law students, as well as the way in which that knowledge
influences a student's ability to process legal information.

In addition, ASPs can assist teachers in their individual class-
rooms. Because much of the law school educational information
comes in the form of cases generated from a narrow perspective—
a "white, upper-middle class, often male experience"—connect-
ing to the cultural and general knowledge of diverse stu-
dents is a very real challenge for teachers. 68 ASPs have the flexibil-
ity to allow a school to learn more about their students on a per-
sonal level and to help teachers bridge specific cultural and general
knowledge gaps by formulating examples that are "specific to the
students' lives." 69

ASPs can also help teachers take learning one step further by
encouraging and allowing students to create their own hypothetical
problems to "provide meaning and context to what they are learning...
and to reflect the type of situations and surnames that have
meaning to them." 70 Of course, this is not to suggest that students
should limit knowledge to their own experiences or fail to learn
more about the cultures of the world around them. Rather, it en-
courages the assimilation of personal experiences with new knowl-
edge, for ASPs can assist students in combining their own experi-
ences with traditional law school pedagogy to create more mean-
ingful educational experiences, rather than frustratingly limited
ones. 71

7. Use of Electronic Classroom Supplements

Law professors often find themselves out of time during a
classroom meeting, but still wanting to distribute more material or
continue a discussion. Many professors have turned to electronic
classrooms, such as the TWEN platform by Westlaw or the Black-
board platform by LexisNexis, both of which allow postings by stu-
72 Liasbader, supra note 156, at 849.
73 See id. (stating that such homogeneous teaching materials lack relevance to the
diverse student's knowledge and experience and thus makes retention of legal
principles difficult).
74 Id.
75 Id.
76 See id. (explaining that relating traditional legal teachings to the personal di-
verse experiences of students creates an important relevance to students' daily
lives thereby encouraging motivation and retention).
of law school. For example, it is quite difficult to teach Constitutional Law to those who have little understanding of the Constitution, its history, and the historical context upon which battles over some of the amendments were waged. In contrast, contract law and the reasoning behind when an advertisement constitutes an offer can be taught without a student being able to identify a canning jar or a fur stole. There are other ways to approach the material.

Not all scholars believe that legal education is failing; many believe that it meets some of the unique needs of those entering into the field of law. One area of success is in assisting students in moving from facts to conclusions using analysis that does not include the personal value concept, but rather which classifies facts and rules on which the law was developed. If this is so, then the importance of general knowledge and cultural literacy is placed into focus even more. Students need knowledge to be able to classify information and apply rules.

One tactic is to increase the amount of specific courses dealing with jurisprudence, history, sociology, and economics. Although most students can take these kinds of courses, many choose to not. Because "history, sociology, and economics often are highly relevant to the determination of what the law is," these courses may serve a larger purpose in the law school curriculum. In fact, at most law schools, these types of classes are considered third-year electives. They are taken once the first-year required curriculum and other required or recommended courses focusing on bar exam subjects are completed. However, legal education should rethink the place for these courses in the curriculum. If these courses can help make students understand what law is, would teaching them earlier in the curriculum help them better learn the law in other, more fundamental courses? Providing students with the basic grasp of the role of law in society at the beginning, as opposed to the end of law school, could open up students to the idea of context and cultural literacy, and pave the way for students to have this knowledge.

Another alternative approach to the classroom experience that might assist students in cultural literacy or general knowledge gaps is to utilize group projects. Group learning is growing in accep-
tance and is used in other areas of education, but has generally only gained acceptance in certain kinds of classes, such as upper-
class skills courses.46 Student groups could be assigned to research
more information and cases and then present the class with a
greater amount of beneficial information. Student groups could
also be charged to generate creative solutions to hypothetical prob-
lems and other traditional law classroom tasks.

9. Filling the Gap in Education

Another solution is to reform the curriculum in order to ap-
proach the problems experienced in the education gap. It has
been suggested that law schools may require students to take a
course each year to specifically expose them to history and similar
subjects in order to directly fill the knowledge gap.47 Other ways to
directly fill the gap include directly incorporating history and lit-

erature into the classroom through both lecture and writing.48 Law
and the humanities has not always been a welcome match, but the
learning of the law may benefit by a mastery of literature and a sto-
r
going approach.49

Another solution is to look for the symptoms of undereduca-
tion. Some legal education experts have characterized students' lack
of knowledge as a decrease in their ability to write.50 This lack
of proficiency may be interpreted as a symptom of underexposure
to literature.51 If so, law professors need to be on the lookout for
symptoms so that the real problem may be addressed. In other
words, when bad writing is spotted, the answer may not be found in
grammar, spelling or even legal writing resources, but rather in
general exposure of law students to well-written pieces.

10. Staying Culturally Literate as a Faculty

We, as educators, must ensure that we are, or stay, culturally
literate as well. In Portrait of a Profession: Teaching and Teachers in the
21st Century, the reader is taken a "mile in [the] shoes" of various

---

46 Friedland, supra note 45, at 30.
47 Lucius E. Burch, Jr., Distinguished Alumnus Address at Vanderbilt Law School: Help Return the Law to a Learned Profession (Oct. 22, 1988),
48 Richmond, supra note 251, at 97-98.
49 Friedrichs, supra note 160.
50 Richmond, supra note 251, at 95.
51 Id. It is analogous that poor writing is a symptom of underexposure, just as a
lack of grace in dance can be overcome by exposure to better dancing exhibits.
Id. at 95-96.

teachers in order to learn from their experiences.52 One experi-
ence is that of a Connecticut high school teacher that listens to
National Public Radio instead of pop music on her morning com-
mute.53 The teacher was able to improve her teaching by broaden-
ing her knowledge of global issues so that she could better relate to
her students the importance of world events.54 She found that
keeping up-to-date on world events not only helped her teach the
established curriculum, but broadened her ideas for teaching.55 As
teachers, law professors must also keep their heads in the real
world. Especially when teaching a class that may change each year,
such as Contracts or Torts, rooted in classic cases long since de-
cided, it is easy to forget that students come from, and will be re-
turning to, the world outside of legal academia. Staying attuned
both to past context of cases as well as the future context of how
these cases will be relevant is critical to a complete education.
Law schools must become better breeding grounds for infor-
mation that enriches the law school experience. Law libraries
should invest in titles that represent major historical ideas in the
development of our country and the historical experiences of our
country's founders.56 Law librarians can also be another excellent
resource and tool on the front line of combating cultural illiteracy
by educating themselves in available resources that will round out
students' knowledge.57

V. CONCLUSION

It has been stated that ["]faculty members may disagree about a
lot of things but most of us still believe, I hope, that it is better to
be smart rather than stupid, to be informed rather than misin-
formed . . . ."58 Society has a right to expect college graduates to
know something about "human culture and history"59 as do law
professors. Some suggestions made here as to teaching can be un-
comfortable to an audience made up of what has been called a
"conservative lot" in teaching methods.60

52 Moss ET AL., supra note 27, at 87.
53 Id. at 101.
54 Id.
55 Id.
56 Carol D. Billings, Sources for the Study of the Constitutional Era: A Bibliographical and
57 Id.
58 Trout, supra note 12.
59 Id.
60 Kerper, supra note 221, at 373.
However, a growing series of voices claim that this is the time for a change. Commentators have asserted that the fear of changing the teaching methods at the law school level is rooted in law professors' apprehensions about being characterized as a teacher of a "trade school" rather than of true academics. This worry is shortsighted from many viewpoints. First, one focus of that fear is on the law faculty itself, exposing potential insecurities about our place in a university setting without PhDs. Such a fear places a professor's personal ego above the needs of her students. Second, the fear is shortsighted due to its failure to understand that true teaching, true pedagogy, involves a variety of methods to reach students; methods geared towards the best needs of the students.

We need to focus on "meaningful learning" in law school—the type that produces law graduates who can creatively solve problems through proper reasoning. Exactly what constitutes meaningful learning may not be agreed upon, but this author asserts that it is not just facts and figures. We teach legal research to law students under the premise that no lawyer can memorize all of the law and must therefore constantly check for updates in the law when confronted with a legal problem. And yet in teaching our other subjects in law school, we demand an instant recall—a memorization, a potential base of knowledge in facts and figures that may be impossible to research. If we approached cultural literacy and general gaps in knowledge in the same way we approached gaps in knowledge of the law, a systematic method for uncovering the most up-to-date information would be incorporated into the curriculum. Rather than being frustrated, students could potentially be enlightened. Once a "learner has mastered the skills of how to learn, they can teach themselves anything." This includes ideas outside the law.

Some may say that recent changes in curriculum in elementary and secondary schools will catch up the next generation of law students and fix the problem itself. As of 2005, ninety-seven elementary and secondary schools in the country were considered "Core Knowledge Schools", meeting the requirements of the Core

---

63 Id. at 374.
64 Rapoport, supra note 288, at 105.
65 Id.
67 Id. at 53-54.
68 Id. at 59.
69 supra note 48, at 503.
70 Vance & Frichard, supra note 29, at 238.
71 Id. at 239.
72 Ogloff et al., supra note 176, at 182.