Let's Focus on Forms for Teaching

Jalae Ulicki
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By Jalae Ulicki, Phoenix School of Law

Forty-two Years Ago

Forty-two years ago I graduated from high school and legal education was the furthest thing from my mind. Forty-two years ago Chief Justice Warren Burger was attending the Prayer Breakfast of the ABA Convention in Dallas, Texas. On his mind was “The Future of Legal Education,” the topic of the speech he was about to give to the audience. Little did the Justice know then that the words he was about to speak would continue to resonate in the minds of legal scholars for over four decades: “The law schools of this country on their part have superbly trained students in legal principles and analysis but the question is whether that is enough. In my view that is not enough. The modern law school is not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world.”

Expanding Needs of Our Changing World

Conventional wisdom tells us that forms “stifle” the thought process, but I disagree. Conventional wisdom should tell us that the expanding needs of our changing world, set amidst the abundance of form pleadings and other legal forms in usage today, should stimulate the thought process. Law professors can and should use forms in law school to help students construct meaning from the forms that they will be using in practice. Research suggests that the learner constructs rather than simply receives knowledge. Using forms to build upon knowledge already within students’ conceptual frameworks will allow them to construct meaning rather than merely inculcating received information. But legal education’s traditions are tough to shake.

One Hundred Forty-Two Years Ago

The legal education system has endured criticisms that started long before Justice Burger pointed out that law schools were not addressing the needs of society. The early apprentice system was criticized for its lack of legal theory and inherent inconsistencies. In response, Harvard Law School developed the Socratic dialogue and the case method in the 1870s, which continues in many law schools today. The practice of law, however, has changed, and law schools can no longer rely exclusively on their archaic approach to teaching. Instead, they must accept that in the evolution of law practice, forms will continue to rapidly increase as the needs of society, courts and the profession meet the challenges of cost and expediency.

The Needs of Today

In truth, American education in general has long been criticized for not keeping up with developments in learning theory. In 2000, the National Research Council (NRC) published How People Learn: Brain, Mind, Experience, and School. The report explored the link between research on the science of learning and actual practice in the classroom. Although the report focused on elementary and secondary schools, its findings are applicable to the legal education setting as well. Indeed, applying the NRC report’s guidance to law school classrooms will help address some of the common critiques of the current system. Students learn by exhibiting a true understanding of what they have learned rather than by merely reciting facts. It is not sufficient for a student to read a mathematical problem, apply a formula, and come up with an answer – akin to reading a case, applying the rule, and coming up with the conclusion. Similarly, it is utterly insufficient for them to find a form and fill in the blanks. Students instead perform better when they understand why the formula (or form) works (or does not work). Once students have developed that understanding, they are likely to be more successful at applying the knowledge in other contexts.

Requiring students to question and analyze why particular content is in the form in the first instance will lead to their development of continuous questioning and challenging the content in forms rather than simply mindlessly filling them out. Take the loan application form below: Why does the lender want to know the face value of your life insurance policy? Are you required to disclose that information simply because it is a blank in the form?

Looking Forward

What I propose is that we can and should teach both substantive areas of the law and practical lawyering skills through the use of pre-printed forms. A select few law professors are already doing that, at least to some degree. Some ask their students to find the standard forms available online that are relevant to particular class sessions. Still others direct their students to the wealth of existing forms on Westlaw—telling them there is no need to “reinvent the wheel.” Often, these professors use the forms to supplement the cases or the lecture. I am proposing that we instead begin with the form—something that has been sitting in front of our eyes all along and that we, as legal educators, have been overlooking.

Knowledge and understanding are more than a disconnected string of

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memorized facts. We also need to account for a student’s pre-existing knowledge and to accommodate and incorporate that pre-existing knowledge into the learning process. We must reject the very false notion that students come to us as entirely blank slates. Individual knowledge, skills, and beliefs can significantly affect how a student remembers material, organizes data, and interprets the substance of the curriculum.

We should often begin with sample forms with which the students might already be familiar; they already have the “pre-existing” knowledge and familiarity with such forms. They have filled out a multitude of forms, such as loan or credit card applications, insurance forms, leases, and the many real estate forms associated with the buying and selling of property. Let’s teach students the implications of what they have already signed. It fascinates (and sometimes alarms) them. Law professors can use forms in a multitude of ways. One possibility is to assign students the task of writing instructions for the forms. Another variation could be to have students write annotations to the form to explain the importance of the variables. A third possibility would be a simulation in which a student, playing the role of the lawyer, explains a form to a client (played by another student).

Even more importantly, students will be using a multitude of similar forms when they practice; preprinted forms abound. For one example, review the ABA websites. I conducted such a search and found 3,048 forms on just one website[^3]. Efficiency in a changing world means lawyers use forms – practitioners use them, the courts use them, and nearly every industry uses them. It’s time we teach them.

With the hefty plurality of real estate forms that are available, real estate is a particularly attractive subject to teach through the use of forms. According to the 2007 report published by the ABA Standing Committee on Lawyer’s Professional Liability, 20% of all legal malpractice claims against lawyers were based on real estate matters. Legal malpractice claims related to real estate, moreover, are up approximately four percentage points. Certainly, lack of understanding about the widely-used real estate forms undoubtedly accounts for a number of those malpractice claims.

Finally, Rule 1.1 of the Model Rules of Professional Conduct defines “competent representation” as the legal knowledge, skill, thoroughness and preparation necessary for the representation. The commentaries point out that “[s]ome important legal skills, such as the analysis of precedent, the evaluation of the complexity of the matter and the feasibility involved when the lawyer recommends using the form or filled it out? [^3]

Forty-Two Years Later

Today, legal education is at the front of my mind. We need to recognize that the practice of law is changing to meet the needs of a changing clientele who demand more efficiency, the changing needs of the courts that demand more uniformity, and the changing needs of students who need more knowledge and understanding of practice as it exists today.

To meet these needs, the use of forms will increase by necessity. Law schools can no longer afford to turn a blind eye to the use of forms, discarding them as “stifling thought.” Rather, we must embrace their usage as a new tool for teaching students who will be expected to use and scrutinize forms in countless practice areas. Teaching students to think about forms rather than simply filling out forms will lead to better attorneys and happier clients.

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Integrity Feedback

By Mark L. Perlmutter, University of Texas School of Law

A sometimes insurmountable challenge for lawyers is handling our own costly and embarrassing mistakes. And they will happen—litigation is not a game of perfect. It’s like a surgeon trying to operate on a patient while another competing doctor is reaching in to jiggle the scalpel. Mistakes will be made. The heat of battle, the pressure of client loyalty, the desire to win, not to mention financial imperatives, often drive lawyers over the line of propriety. And when the line is crossed, as so many of our elected officials have learned, the cover-up is often more hazardous than the original lapse.

Another important attribute for lawyers is trustworthiness. It is the foundation for any fiduciary relationship. For law students to begin to improve their trustworthiness and to develop their mistake-handling capacities, it’s first necessary that they learn to be honest with themselves and to recognize their own weaknesses. To introduce this skill, I ask each of my students to send out my standard form (see below) to seven (five will do) of their friends and acquaintances. The form asks the raters, anonymously, to assess my students’ integrity on a Likert scale of 1 to 7 and to offer suggestions on what my students might do to improve their integrity, honesty, and trustworthiness. The forms come back to me directly, whereupon I have my assistant compile a sheet for each student containing that student’s average trustworthiness score as well as the anonymous comments from that student’s raters. Frequent comments relate to maintaining confidences, doing what they say they’re going to do, telling the truth even when it’s difficult, not manipulating others, and being more open and honest.

In the ensuing class, I arrange the students in a circle and pass out paper strips fortune cookie style, each strip containing a single, gender-neutralized comment about one unidentified student. I tell them this class is about looking inwardly and being honest with ourselves so that we can handle the mistakes we’ll all make and be more trustworthy. I then relate one or more of my more embarrassing screw-ups to model how to acknowledge personal frailty and imperfection—a critical step. I then tell the students to see if they can guess which comments apply to them, or in any event, whether each comment contains advice they need to hear. Then, we go around the circle and each student draws two or three of the strips out of a hat and they all take turns reading those strips.

Finally, students receive a compilation of their raters’ comments along with their average rating. They’re often surprised by how candid their friends are, and some are relieved that their worst traits weren’t identified. Most all of them acknowledge that comments they swore were about themselves were actually about someone else.

From this experience, they not only receive a roadmap to improve their trustworthiness, but also begin to learn to accept and take responsibility for their own failings. Finally, they comprehend that they share such failings with much of the rest of humanity and therefore judge others at their own peril.

Feedback Form

Instructions for class members: Assignment for the June 9th class, due June 5, midnight: Select a total of seven people, not relatives, five of whom you think know you best, and two others who are members of this class you didn’t know before class began. Ask them to candidly fill out the form below and email me the results through mlp@civtrial.com. Please email this form to those from whom you seek feedback.

Name of person being rated______________________

Instructions for raters: Please rate your friend’s trustworthiness by placing an “X” above the appropriate number on the following scale. I will not disclose to the person being rated or anyone else the numerical results or name of any one survey participant, only my class member’s average score and all of that person’s comments, anonymously.

By “trustworthiness” is meant the extent you would allow yourself to be vulnerable based upon positive expectations of the intentions or behavior of this person.

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Please identify anything you think your friend could do to improve his/her trustworthiness, honesty, and integrity. By “integrity” is meant consistency among statements, actions, and beliefs.

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