Whom Are We Teaching? Members of Communities

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by Lisa T. Moseley, Roger Williams University School of Law

When I was a second-year law student, I took an advanced Constitutional Law course with a preeminent scholar in the field. One day, as we were discussing life and death issues, I raised my hand and made a comment based, not on the law, but on lessons learned during coursework for a Masters degree in Public Health. I asked whether we should reexamine our legal analysis in light of the real-life impact the legal rule would have on the people it would touch. The scholar’s response? “Yes, but this is law school.”

Scared Silly

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you need to understand the law and the facts of this particular case quickly, and you need to make a decision. Now read the sentence again. Is it clear or accurate, or well organized, or complete, or concise—fill in the weakness you’re trying to get Joe to diagnosis} to you? Now you and Joe can have a dialogue about his choices when he wrote the sentence, and whether he can think of better ones now.

My syllabus contains this paragraph: “The projects you complete in this class are yours. They don’t become mine because I enter into the process with you here and there and give you suggestions or discuss strategies. The best way to perform well and learn everything you can in the class is to stay in the “driver’s seat” of your own work. After all, you don’t want to leave this course having only produced a few projects with me holding your hand the entire way. You want to develop your own writing and analysis muscles—your own strong instincts for what works and what doesn’t in legal writing—so that when you sit down to your first project in your first job all on your own, you know exactly what to do.”

With this introduction, students “get it” and are more patient when, in response to their relentless “Is it O.K. to do this?” refrain, I just as relentlessly sound my “You have a decision to make” counter-melody. Over time, cultivating this dynamic for my class transforms students’ anxiety into a sort of bustling industriousness. The work doesn’t get easier, of course, but less energy is dissipated by unfocused angst.

And this is the result we should want. Law students don’t have to be as afraid as they are, but they do need to learn how to work. After all, when our students chose law school, they chose to do something complex and challenging with their lives. Legal analysis is the most difficult, multifaceted skill most students have yet worked to learn, and therein lies a wonderful challenge for us. It’s more fun to teach chess than checkers (or, certainly, tic-tac-toe). Our students are here to learn chess. Don’t hold back or dumb down—give ‘em what they came to get!

That class has stuck in my mind and really informed my teaching. This may be law school, but the people we teach were members of a community long before they were law students. We should be teaching students to look at the everyday communal implications and consequences of the legal process and of our work as lawyers. After all, the law does not and could not exist in a vacuum. Rather, the law arises and develops because communities need it to, and when laws don’t work, communities usually try to make adjustments.

The following are some ideas that I’ve used in my legal writing classroom to bring home the concept that we, as lawyers, live and work in communities, our clients are members of communities, and the law we practice has a profound impact on our communities.

1. Inspire students to be positive members of the legal and societal communities in which they live and work.

In the first legal writing class or two in the fall semester, I ask my students to think of a way that the law has impacted their lives. Inevitably, some students remind me of a law school classmate of mine, who had decided to go to law school after being acquitted of the murder of her abusive husband; for others, the law has touched their lives in a far less dramatic way. I ask all students to think about how every moment of their day, from the toothpaste purchased at the drugstore (on which they paid state-mandated sales tax) to the drive to school (during which they obeyed traffic laws) to the plates on their car (which they registered with the state) to the paper on which they take notes (which was manufactured in accordance with environmental regulations), is governed by the law.

Then I ask them to think about a legal situation they’ve encountered that they wish had ended with a different result. How did the law fail them? Even more importantly, how could they envision and implement improvements? And what process causes change in the law to occur? Why do communities need laws at all?

Finally, I ask them to think about how, as lawyers, they will be in a position to make the changes they envision and, more importantly, that these changes will impact real people. They will advocate for clients who want to change the law or develop it along existing lines. They will have the opportunity to serve on advisory committees, to run for office, to become judges.
The students are building their future legal community, and that community building begins on their first day of law school.

What changes can they make? What changes can’t they make? How can they work within—or outside of—the system to effect change? And what types of people are most successful at making changes? Only positive, intelligent, goal-oriented people who have done their research and who know how to build coalitions can make change happen. Therefore, I ask students to begin their legal careers by thinking about how they can become the types of people who live in and positively affect their communities.

2. Talk honestly about the law school experience and how the students can impact it.

Many of our students enter law school knowing little about it except what they have read in 1L or seen in The Paper Chase or Legally Blonde. All of these works depict law school in a cruel, unfeeling, competitive light. I talk openly with my students about how law school is a community and, much to some of their surprise, that their law school community will be what they make it. I remind them that most people learn best in a supportive, collaborative environment, and I encourage them to create a law school community that fosters learning rather than one that intimidates learners. In the course of this discussion, our Honor Code and the reasons for it usually come up. This line of inquiry presents another opportunity to discuss the fact that laws only arise to address communal needs.

I then extrapolate this lesson to the legal community. Because all of them have the same professional goal, they will be a part of this same community for their entire legal careers. This is especially true at Roger Williams, the only law school in the smallest state in the Union. Further, they will constantly run into their law school classmates in years to come. I also tell them that members of the bar get to know each other well. Indeed, they may well work in the same law offices as their law school colleagues, appear opposite each other, or refer business to one another. I ask them to reflect now on what type of lawyers they want to be. The jerks may get ahead early in the race, but nice lawyers, in this legal climate that prefers ADR to litigation and compromise to cut-throat deal-making, rarely finish last. Or is that just our hope? Well, because these students are the future of the legal community, they can make that hope a reality.

What message do we want to send out to the world about our legal community? Do we want lawyers to be feared and put on pedestals, or admired and approached? The students are building their future legal community, and that community building begins on their first day of law school.

3. Look at the reasons courts decide cases, legislatures pass statutes, and enforcement bodies enforce them.

When we begin the semester talking about the way that people affect communities and the manner in which laws develop to serve communal needs, we can then relate the rest of the semester’s work to this theme. When we analyze cases about negligent infliction of emotional distress, we can examine—in terms of how much litigation a community can tolerate—a court’s reasoning about why the class of plaintiffs should be narrowly limited. When we talk about statutes, I point out that statutes are passed to address and correct communal harms. For example, I explain, when a child died in Boston last year because emergency vehicles could not get through the narrow streets on which cars were illegally parked, the City Council and law enforcement agencies jumped into action to enforce existing parking ordinances and to explore the possibility of new ones.

These conversations about communities and their necessary laws lead to some of our most thought-provoking policy discussions. Why does our campus need parking rules? Why can’t faculty members sue students for negligent infliction of emotional distress when they park in our spots? These ideas foster great discussions.

4. Invite students to offer real-life perspectives.

Like me, some students pursued non-legal fields of study before coming to law school. Some have been in the work force for several years before entering law school. This may be “law school,” but the lessons students have learned from other educational experiences can and should become a part of our class discussions. I have learned a great deal from talking with students who are members of unions, former police officers, military officers, and emergency personnel. More importantly, when these members of my classes look at the law in a more informed way through the lenses of their prior experiences, their colleagues take a step back and reexamine their perspectives, too. Inviting students to look more globally at the way law both emerges from and changes communities adds interdisciplinary wisdom to the discourse.

Only when we know the real impact that the law may have on actual people and communities can we analyze its logistics and appropriateness. What better forum than a legal writing classroom—a place where we teach the fundamentals of legal rhetoric, logic, and analysis—to discuss this reality? ♦

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