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COLLEGE REUNION: AN EXERCISE THAT REDUCES STUDENT ANXIETY AND IMPROVES CASE ANALYSIS

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Legal writing instructors can help their students overcome the stress and anxiety of the first weeks of law school by relating legal analysis to the methods of inquiry students learned in their college majors. This article presents the need for such an activity, the method used, and examples of actual student responses, and concludes with a justification for celebrating the diversity of academic experience in law.

Current scholarship on pedagogy insists that real learning can only take place in a “mindful” environment, in which students are able to make the material meaningful to themselves by linking new information and concepts to those that they already know about.¹ In contrast to requiring rote memorization and teaching subject matter in isolation from other topics, the teacher should seek to show students how the subject matter is similar to and different from the concepts and data with which students are already familiar.

Unfortunately, law school provides students with little that is familiar. The gulf between the subjects taught in law school and those taught to undergraduate students, regardless of their major concentration, may likely serve as the cause for the high levels of stress reported by law students. In fact, psychologists and educators have established that law school provides the most stressful learning environment of any graduate program.² In addition to the novelty of the subject matter (most incoming students define a tort as a rich layer cake) and the Socratic method of instruction, the specialized techniques of legal research, writing,

and advocacy contribute to the students’ sense of disconnectedness and despair, especially in their first year of law school.

The high levels of anxiety may create fear and shatter confidence, further decreasing a student’s ability to learn.³ James B. Levy has gravely opined that such stress results in “an atmosphere in which no meaningful learning can take place.”⁴

Noting my own students’ uneasiness as we entered our third week of classes, I looked for a way to reduce their sense of anxiety. We were learning the basics of case analysis by examining Florida appellate decisions that depicted the evolution of intentional infliction of emotional distress (IIED) as an independent tort. The students’ pinched brows and strained voices insinuated that I was intentionally inflicting emotional distress on them. Some sort of palliative was needed to revive the students’ self-confidence.

I therefore created a take-home assignment that I named “College Reunion,” asking students to reanalyze the same cases, using the methodologies they had mastered as undergraduates in their chosen college majors. Each student presented his or her explication with a degree of self-assurance and joy that was quite distinct from earlier in-class participation. An unexpected benefit of this assignment was that the students uncovered legally valuable insights. In addition, most of them evidenced a far closer reading and appreciation of the facts than they had previously shown when they had limited themselves to (what they considered) the legal analysis of the case. Finally, most of the students genuinely enjoyed the chance to exhibit their expertise and mastery, not only to the other students and to me, but also to themselves. The exercise reminded them that three months earlier, as graduating seniors, they had exemplified high standards of academic excellence. It also provided them with reassurance that they could likely master the legal process as well. This assignment was so successful that I encourage all legal writing teachers to use it.

To provide a sense of the range and beauty of the responses, and to better enable other teachers

¹ See generally, Ellen J. Langer, *The Power of Mindful Learning* (Addison Wesley 1998).

² Stephen B. Shanfield and Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. Legal Educ. 65, 69 (1985).

³ Robert S. Redmount, *A Conceptual View of the Legal Process*, 24 J. Legal Educ. 129, 150 (1972).

⁴ James B. Levy, *Legal Research and Writing Pedagogy*, 8 Perspectives: Teaching Legal Res. & Writing 103, 107 (2000); reprinted in *Best of Perspectives* 39, 43 (2001).

to create their own assignments, I present the following examples from my own classes. The first example presents how a student's nonlegal expertise revealed the dangers of a narrow legal reading. A psychology major analyzed an IIED case that centered on whether a defendant insurance agent's conduct was outrageous when she attempted to persuade a brain-damaged beneficiary to waive his rights to payments. The student noted that no evidence of severe emotional distress had been introduced. The plaintiff also claimed to have preexisting psychiatric problems, mental problems, and mental injuries. Remarking skeptically on the likelihood of words alone causing emotional distress to someone who is severely brain damaged, the student recommended that psychological tests and batteries should be used to analyze the plaintiff's current mental status and such tests should be compared to a previous evaluation to establish whether further mental stress appeared. The student commented, "A correlational analysis of these new psychoses with elements associated with the situation surrounding the case may further solidify or weaken charges alleged." Absent substantive differences, the student questioned the merit of the plaintiff's case.

Another student, a political science major, provided useful thoughts about the social burdens that may have been at the root of the same controversy. On one hand, he saw an insurance industry that felt within its rights to manipulate and injure the same people that it was being asked to protect. Such an attitude may have been prompted by the burden that competition placed on insurance companies, encouraging them to deny liability whenever possible. The student hoped that the courts finding against the insurance company in the case being studied would "send a signal to our insurance industry concerning potential uses of the system that our present society will not accept." The student enlarged his analysis to an even more abstract level proclaiming that it is our nation's duty to protect the weak from bullies: protecting individuals from corporate aggressors.

An electrical engineering student who had been previously silent in class delighted and surprised us with detailed schematic diagrams of the same case, showing the decedent's health as an electric generator, her illness as an inductive coil, and the various actions of the insurance company as

resistors of differing ohms. The student showed in a very intense way that certain choices made by the insurance company would obviously reduce and interrupt the decedent's life force. The graphic nature of the presentation weakened the strength of the insurance company's claim and the court's holding that contractual language protected the insurance company from liability.

Instead of speculating on underlying abstract policy considerations, an English major studied the sentence construction of an early Florida case that involved IIED. The long tortuous sentences reminded him of the long, convoluted, and sometimes ungrammatical sentences of another Southern writer, William Faulkner. Whether the judge's style was due to careless or thoughtful deliberation was not clear. Perhaps, like Faulkner, the judge was using the "stream-of-consciousness" device to give the reader direct access to the full contents of the judge's thoughts, even if these thoughts were inharmonious and vague. The student wondered whether Northern judges would write with more clarity and precision and whether decisions and jurisprudence in general might vary between the North and South due to differences in syntactic preferences.

Because Ave Maria is a Catholic law school, it attracts students with a strong education in theology, religion, and moral philosophy. In discussing a Florida court's first encounter with IIED, several students noticed the theological implications of the state's recognition of IIED as an independent cause of action. One student commented that accepting IIED as an independent tort reveals society's view that "(1) money can compensate for emotional suffering, and (2) such compensation is just." This exemplifies, she stated, the current American view that the payment of money can atone for evil actions and that society should have the ability and the right to alleviate suffering. The student pondered how this cultural shift from a view that suffering is the natural result of Adam's sin to the position that money can and should mitigate suffering has influenced the holdings in other types of cases.

Another saw the central element of IIED—whether a reasonable person would be outraged by the conduct—as a radical shift away from the Catholic definition of the nature of personhood.

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While a moral view might indicate that all individuals are entitled to respect as they are made in the image and likeness of God, modernistic views that spring from the empiricism of the Enlightenment offer no firm rule, but rather ask courts and juries to judge conduct on the basis of their own emotional responses to the facts of the complained-of action.

As the reader may have noticed, some of the students' analyses resemble accepted methods of legal analysis. For example, one political science major adopted a Marxist perspective, commenting that protecting an insurance company from IIED liability betrayed the legal system's favor for the capitalist mode of production, exposing the uneven power relationships between capitalists and the proletariat in a capitalist society. This mirrors the cynicism of “critical legal studies” proponents, who believe that the logic and structure of the law are primarily derived from societal power relationships, and not from independent legal principles.

Similarly, an economics graduate unknowingly argued a “law and economics” view in finding that the courts decreased the economic efficiency of justice by establishing IIED as an independent tort. A finding of IIED is so subjective that its determination requires exhaustive analysis of the facts. In addition, because the outcome of IIED cases is so uncertain, lawyers have little ability to determine the merits of a case, increasing the amount of litigation. However, the student noted, a final determination would require analyzing the cost of increased court caseloads against the benefits of increased justice.

Thus, in expressing their own opinions based on their special areas of expertise, the students illustrated some of the viewpoints that have captured the attention of legal scholars. While I did not speak to my students of these divergent theories of jurisprudence, the very breadth of analysis enriched the class's understanding of the legal context of the cases studied.

The entire class regarded this exercise as a great success. It generated rich class discussion, promoted deeper reading of the cases, and made it easier for students to learn about case analysis by linking new information to knowledge previously acquired. Most importantly, the exercise gave each of the students the opportunity to stand out as an

expert, presenting his or her sophisticated views to classmates with assurance and pride.

Some law professors may be hostile to an exercise that maintains a student's self-esteem and reduces stress. Traditionally, the first year of law school has been seen by some as a “boot camp” that seeks to destroy a student's former self and then rebuild the individual as a lawyer. However, to be successful, a lawyer cannot restrict himself or herself to narrow stereotypes of an attorney. Even in television depictions, lawyers are shown in all shapes, sizes, and stripes. The successful lawyer is one who incorporates a legal perspective into his or her preexisting persona.⁵ One way to teach students to draw on their unique gifts is to encourage them to integrate their prior experiences into their legal studies through exercises like “College Reunion.”

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⁵ “For the lawyer must engage his work with his whole self to give the world the benefit of his moral sensibility and to receive from the world all that the world has to teach about the complexities of right and wrong.” Robert P. Burns, book review of *From Expectation to Experience* by James Boyd White, 50 J. Legal Educ. 147, 151 (2000).