

The Legal News Portfolio: Building Professionalism Through Student Engagement in “Off-Topic” Course Content

Teachable Moments for Teachers ... is a regular feature of Perspectives designed to give teachers an opportunity to describe a special moment of epiphany that changed their approach to presenting a particular topic to their students. It is a companion to the Teachable Moments for Students column that provides quick and accessible answers to questions frequently asked by students and other researchers. Readers are invited to submit their own “teachable moments for teachers” to the editor of Perspectives: Mary A. Hotchkiss, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020, phone: (206) 616-9333, e-mail: hotchma@u.washington.edu.

By Kathryn A. Sampson

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In my several roles as “table parent” for a local youth group, another adult and I take on the primary roles of relationship building and crowd control, with a group of fifth-graders. We share dinner once a week, on an international theme. We have used chopsticks, twice, for ports of call in Hong Kong and Japan. Both times, our fifth-grade boys, hungry and impatiently waiting for the food to be served, have wanted to convert their eating utensils to drum sticks, or “body art,” requiring the table parents to make such uses off-limits. In “Japan,” one of the boys at our table, realizing he was, indeed, limited in his available choices for chopsticks and plastic cups, turned to me and asked: “What are you going to take next: my dignity?”

He offered an insight into the mind of a captive.

His honest and direct question went to the heart of any formal relationship that involves a “leader” and a “follower.” “Where is my dignity?” Implicit in the question is a statement that it is the leader’s role to

preserve a safe harbor, and to provide some flexibility in the experience. Also implicit in the question is the captive’s demand that the leader allow for the measure of dignity that accompanies self-determined choices.

In a sense, the captive mind is present in every required law school course, in which teaching has its peculiar set of specific challenges. When those challenges are met, successful teaching methods have been employed. The methods are successful, in part, because the students have experienced certainty but also flexibility that accommodates their individuality and helps them learn new skills and concepts. Successful teaching methods do not present themselves out of whole cloth the first time a teacher enters a classroom. They evolve through a process of negotiation between students and teacher. For the teacher, each semester offers a new opportunity to refine the terms of the negotiation, by learning from prior good (and bad) experiences and adopting methods that reach students more effectively.

Thus, the question is repeatedly, and freshly, put: “Where is the safe harbor, and where is dignity?”¹

¹ This quest is an ongoing pursuit, for both teacher and student. Recognizing that lawyers, as a matter of self-preservation, have an ongoing need for civility, safe harbor, dignity—in their careers and in their lives—significant institutional and scholarly attention has emerged. See, e.g., Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 *Clinical L. Rev.* 425 (2005); Angela Olivia Burton, *Cultivating Ethical, Socially Responsible Lawyer Judgment: Introducing the Multiple Lawyering Intelligences Paradigm into the Clinical Setting*, 11 *Clinical L. Rev.* 15, 15 (2004) (“focusing almost exclusively on rule-based inductive, deductive, and categorical reasoning processes and linguistic precision, traditional law school pedagogy neglects other kinds of intellectual activity such as narrative, interpersonal, intrapersonal, and strategizing work, all of which are essential to the exercise of sound legal judgment”); Robert J. Araujo, *Humanitarian Jurisprudence: The Quest for Civility*, 40 *St. Louis U. L.J.* 715 (1996); Jack L. Sammons Jr. & Linda H. Edwards,

“Successful teaching methods do not present themselves out of whole cloth the first time a teacher enters a classroom.”

As the teacher of three required writing courses for first- and second-year law students, I have made several observations, interacting with my students and addressing my teaching challenges. In this ongoing process, I have recognized that a routine teacher-directed environment works effectively for first-year law students, for whom matter-of-fact, and undivided attention to tightly limited course content helps them acclimate to the strange culture of law and law school.

Early into the second year, however, those former first-year students, as they survey their choices, sometimes develop a critical eye with respect to required coursework and may question curricular design options. When they do, the confident perspective of a law-trained mind informs the critique. Students communicate their appraisals in overt and less direct ways, pressing their instructors to reconfigure their thinking about best teaching practices. So, too, the mindful teacher, when working with an advanced group, calibrates the teaching focus, in response to fundamental changes that take place in the students' perspectives as they progress through law school.

An informal survey of the second-year "third-semester" population reveals this student is a

Honoring the Law in Communities of Force: Terrell and Wildman's Teleology of Practice, 41 Emory L.J. 489 (1992); Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism"*, 41 Emory L.J. 403 (1992).

The work of Prof. Lawrence Krieger has resulted in a developing institutional commitment to humanistic principles. See Florida State University College of Law, *Humanizing Law School*, <www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html> (accessed February 7, 2007). The bar is also mindful of these concerns, which are fully discussed in Benjamin Sells, *The Soul of the Law* (1996) (analyzing, from a lawyer-turned-psychologist perspective, law-as-institution dysfunctions that contribute to lawyer alienation). See also, e.g., Steven Keeva, *Problematic Perfectionism*, A.B.A. J., April 2006, at 80; Alan F. Blakly, *Law Practice: Healthy Challenges or Unhealthy Stress*, Fed. Law., Feb. 2006, at 18; Rebecca Nerison, *So You're a Lawyer. Can You Be Happy?*, 21 No. 7 GPSolo 62 (2004); Coe Swobe, *Dealing with the Difficult Lawyer: Stress, Addictions, Success Fatigue*, Nev. Law., Feb. 2004, at 24; Ellen Ostrow, *The Lawyer's Life: Clear the Obstacles to a Balanced Life*, Trial, July 2003, at 27; George W. Kaufman, *The Lawyer's Guide to Balancing Life and Work: Taking the Stress Out of Success* (2d ed. 2006).

member of a various species. In the process of teaching more than 30 sections of a required advanced writing course, I have recognized some recurring themes among the members of this group, based on the timing of enrollment. A requirement that must be completed in the student's second year of law school, the course has three enrollment options: first and second summer session, 2L fall semester, and 2L spring semester. The timing of the students' participation in the course makes a noticeable difference in the orientation of the students it attracts and also, potentially, in the general attitude of the class in which they will participate.

The classroom culture in a third-semester writing course tracks the adage: "first year, they scare you to death; second year, they work you to death; third year, they bore you to death."

In either of the summer sessions, the third-semester student retains some of the receptivity and malleability of the first-year student, having not quite finished a first-year clerkship or having elected to fully enroll in summer school. This student, well acclimated to the classroom setting and to a teacher-directed environment, maintains dignity in a classroom that is focused exclusively on the formal advanced writing curriculum.²

In the fall, which is the second timing option for this requirement, the student is often in the "work you to death" mode and is also likely to have finished a summer clerkship or a summer abroad before entering the advanced writing course. This student's dignity is often tied to finding a clear path to the completion of the next project. Given the average student's hectic slate of activities, another deadline is imminent.

² At the University of Arkansas School of Law, the advanced required writing course focuses on pretrial practice, with research and writing assignments in client counseling, pleading, and motion practice. This course has been in place since 1993. Thanks to my colleagues Kim Coats, Angela Doss, Ann Killenbeck, and Karen Koch, who inspired this discussion and suggested helpful editorial enhancements to its written form.

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In the spring, which is the last timing option, the course attracts those who have delayed enrollment for various reasons, and this third-semester student may well be in the “bore you to death” mode. The spring semester students are often working and attending law school; they are students who have wound their way through several extracurricular options, and students who have participated in the on-campus job search. All these experiences will have introduced them to a taste of independence and self-determination, coupled with a developing sense of professionalism and awareness of standards and practices in the legal profession and in the subterranean law school culture. This group possesses a large store of legal information and resources, beyond the legal research and writing instructor’s advanced writing projects. The dignity of these students has a connection to increased opportunities for sharing that knowledge and those insights.

Of course, every group of advanced writing students—in the summer, spring, and fall—includes some combination of these stereotypes. A teacher does her best to teach, to a shared need for new information and skills, lessons that reach the entire group. What these students share is a first-year curriculum, a round of academic advising for selection of upper-level coursework, and a developing idea of who they, individually, are becoming as law-trained professionals. Their diversity, and their collective information and insight, can easily be disregarded in an upper-level course designed for, and taught to, the hypothetical neophyte. These students present a changed, and changing, landscape.

A designed opportunity to individually contribute to an ongoing group project may reduce unconscious resistance to the required third-semester course. In this regard, students in my advanced writing course take turns presenting oral and written “legal news shorts,” broadly defined to include legal topics not addressed in the core syllabus. These presentations offer students the opportunity to share information they care about, to gain respect from their colleagues, and to make meaningful contributions to the course. Not

incidentally, this exercise allows students to practice their oral, analytic, and writing skills, and to develop core professionalism values.³ The impact on the standard course material is minimal; these short oral presentations take about 8 percent of the total semester minutes allocated to instruction for the two-hour course. “What’s in the legal news?” is launched the first day of class, and includes a formal writing requirement that incorporates the project into the course teaching priorities and curricular standards.⁴

³ See *supra*, note 1. The American Bar Association has recognized an essential supportive characteristic of the professional lawyer is the “[c]apacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system.” ABA Sec. Legal Educ. & Admission to the B., *Teaching and Learning Professionalism, Report of the Professionalism Committee* 6–7 (1996). The ABA recommends law schools develop “additional perspective[s] [on] professionalism issues such as the strengths and weaknesses of our justice system, the role of lawyers in our society, and the sociology of lawyers and law firms.” *Id.* at 21. While the ABA recommendation focuses on the development of entire courses on perspectives topics, the legal news exercise provides a taste of the variety of issues that affect lawyers, and highlights strengths and weaknesses of the justice system.

⁴ The ABA’s MacCrate Report broadly defines the types of communication skills a competent member of the legal profession must possess, and its general prerequisites focus on the ability to organize a presentation; express ideas or views with precision, clarity, logic, and economy; and attend to detail. ABA Sec. Legal Educ. & Admission to the B., *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development: An Educational Continuum*, 5.2(a)(i) (1992). An important concomitant skill is the ability to accurately perceive and interpret the communication of others: “reading, listening and observing receptively; and responding appropriately.” *Id.* at (a)(ii).

The 1997 *Sourcebook on Legal Writing Programs* reflects on the pedagogical value in programs that move beyond a first-year curriculum, recognizing the potential value in upper-level research and writing courses that are designed to allow students “to research and write in areas of law in which they are interested,” and noting “[s]tudents will tend to work harder and retain longer the skills and knowledge acquired by their own efforts.” ABA Sec. Legal Educ. & Admission to the B., *Sourcebook on Legal Writing Programs* 8, 34 (1997) (1997 *Sourcebook*).

Nearly 10 years after the 1997 *Sourcebook*, and drawing upon extensive scholarship that developed after its publication, the 2006 *Sourcebook* provides a comprehensive description of upper-level writing courses that have evolved under ABA standard 302(a)(3). ABA Sec. Legal Educ. & Admission to the B., *Sourcebook on Legal Writing Programs* 169–98 (2d ed. 2006) (2006 *Sourcebook*). Informed by this research and by the experience and expertise of the drafters of both the first and second editions, the 2006 *Sourcebook* provides a highly structured analysis of programmatic priorities and organizing principles that underlie a 302(a)(3) advanced writing course: mastery of legal research sources, communication of a “legal writing doctrine” that involves context, clear articulation of legal rules and editorial principles, with a focus on attaining skill in a clearly defined set of principal goals. *Id.* at 170–72.

The mechanics follow:

Timing: Early and often. The first legal news summary should be presented by the professor in the session's first week. Preceding the demonstration of a model news short (taking between three and five minutes), the teacher should provide an explanation and illustration of both the oral and written formats, as well as research sources for selecting legal news articles. In the process, the teacher can showcase sources for legal news, using the Internet and other computer research resources. The format requires introductory outlines and a calendar of days for students to schedule a legal news summary. The finalized calendar should be distributed in the first or second week. With a capped enrollment of 15 students, each student can schedule two oral summaries in a two-credit-hour course with 30 hours of class time.

Overview: A small, but significant, percentage (about 5 percent) of the course grade is devoted to the legal news project. A written component is the graded component, comprised of a clippings file and student commentary on news articles that touch on legal issues at the local, state, national, or international level. The clippings file is comprised of student-selected news articles, together with a minimum of two five-sentence paragraphs. One paragraph summarizes the central thrust of the article while the second paragraph supplies the student's point of view of the article's contents. The commentary is focused by a general review of the legal significance of the news, and is guided by specific questions designed to enhance analytic reading.⁵ The students may use Internet newspapers

The legal news exercise is perhaps most closely aligned with the "writing-to-learn" approach recognized in the *2006 Sourcebook* under the general category of "Writing Across the Curriculum," where "writing is used as a tool to develop ideas and to promote understanding of the subject matter." *Id.* at 191. It is a loose alignment, at some variance with the *2006 Sourcebook* illustrations. *See id.* As an adjunct to an intensive writing course where the dominant materials and instruction teaches legal writing doctrine, the legal news exercise provides some freedom for individual expression without altering the important structural standards the *2006 Sourcebook* identifies and illustrates. *See id.* at 3 (articulating the purpose of both editions of the *Sourcebook*: "to help improve the overall quality of legal writing programs across the country while increasing the consistency with which those programs are administered"). *Id.* (quoting *1997 Sourcebook, supra*, at 2).

to develop this file, but they need to produce a hard copy of each of the articles they choose to summarize and discuss. In the commentary paragraph, the students are instructed to discuss the roles lawyers, judges, or law-trained legislators will play or have played in the news item; identify the point of view of the legal claim, or of the article writer; and contrast it with their own.

The daily "what's in the news?" presentation keeps the project on the students' list of priorities, and creates an informative, entertaining, and collaborative opening to class.

Teachable Moments for the Teacher in the Evolution of This Project

I have made several adjustments to this project since I first started it in the spring of 2001 and experimented with it over the course of a dozen or so subsequent advanced writing courses. Following are six rules of thumb reflecting those adjustments, and the reasoning behind them:

1. Regularly Schedule an Oral Component for the Exercise

Early on, I assigned this project as a completely independent project, with a chapbook of 15 articles and comments due at the end of the semester. I found students were scrambling to complete all 15 entries, when they were also in the process of studying for finals. I added the class time oral component, with a view to helping students complete the project in self-monitored increments throughout the semester. Still, for the frenetically busy students, deadlines had the important meaning, and some students continued to "finish up" at the end of the semester, just in time to meet the hard deadline.

⁵ *See, e.g.,* Santa Clara University Library, *Writing an Annotation*, <www.scu.edu/library/research/general/writingannotation.html> (accessed February 7, 2007); National Association of County and City Health Officials, *Developing an Opinion Editorial*, <www.naccho.org/advocacy/MarketingPublicHealth_guide_op_ed.cfm> (accessed February 7, 2007); Kevin Dennis, *Assessing Written and Oral Communication of Senior Projects*, <www.maa.org/saum/new_cases/new_case_07_04/StMarys.html> (accessed February 7, 2007).

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2. Assign No More Than Six Discrete Articles and Their Related Annotations

The number six strikes a good balance for both economy and critical mass for engagement and evaluation purposes. Fifteen was way too many, and even a more moderate 10 was fairly daunting, for the students to compile, and for me to review.

3. Set Some Incremental Deadlines for the Written Summaries

A portfolio deadline of the last day of the semester can lead to the accumulation of summaries that have not yet been written, after oral presentations. The last time I used this project, some students turned in clippings dated the last week of the semester, indicating they were playing catch-up when they could have been finalizing their course outlines and studying for exams. This semester, I am experimenting with incremental deadlines. The deadlines change my weekly workload but provide me with increased opportunities to encourage student insights and suggest ways to polish subsequent submissions.

4. Assign the Project with a “Just Right” Limit on Article Content

Current legal news, broadly defined, is surprisingly just right. While it would be possible to limit article content to legal news about trial practice or law practice, and to require a tie-in to a rule of procedure or a judicial ruling, such limitations would jettison some of the more interesting articles that exist under the broader category. In earlier versions of this exercise, I asked students to track the activities of their state legislator. This focus worked fairly well in the spring semester during the off-year our General Assembly was in session. An alternative, to track the activities of a particular member of the United States Congress, proved to be too daunting.

5. Keep the Presentations to Classmates a) Oral, b) in the Physical Presence of the Teacher, and c) During the Formal Class Time

A TWEN® (The West Education Network®) discussion board outlet, where students could write analytical summaries of their selected news articles and engage in a dialogue with each other, was an

experiment I tried one year,⁶ with a warm reception from those students who were actively involved in the news of the day and who were comfortable with the discussion board format. A couple of students ultimately found the discussion board environment intimidating or burdensome, after trying it with some optimism at the semester’s outset. Even those students who readily warmed to the interactive possibilities perhaps spent too much time developing their points of view on the discussion board. The nature of an online discussion requires that the professor monitor and, if necessary, censor student commentary that displayed deep-seated prejudice or misapprehension of another student’s point of view.⁷ Both semesters I experimented with a discussion board, the intensity of the group bonding was a positive by-product. Even after the semester ended, one of these groups held several book club meetings to continue exchanging news and views. It was a good experience and a worthwhile experiment, but as discussed here and in the notes, opening a limited public forum in a required course had its own set of logistical difficulties.

6. Identify Some Off-Limits Topics

Appeal to the students’ shared sense of professionalism and decorum in a law school classroom. In a sense, this stricture reflects the personal taste and comfort level of the instructor. Before developing a standard

⁶ This experiment was the subject of a session I gave contemporaneously with one of the two semesters during which a TWEN discussion board formed part of the project. See Kathryn A. Sampson, *A Virtual Twist on Journal Writing*, presentation at the 2004 Rocky Mountain Legal Writing Conference, University of Nevada at Las Vegas, March 6, 2004 (discussing potential writing fluency uses for the TWEN discussion board function and highlighting some pedagogical concerns that are raised through its use, as more fully discussed *infra* notes 7–8).

⁷ This tension highlighted the pedagogical concerns expressed in *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 270, 271 (1988) (stating “[e]ducators are entitled to exercise greater control over . . . student expression to assure that participants learn whatever lessons the activity is designed to teach, . . . and that the views of the individual speaker are not erroneously attributed to the school”). In the post-secondary setting, the *Hazelwood* application is even more ambiguous than it is the secondary schools. See *Hosty v. Carter*, 412 F.3d 731 (7th Cir. 2005); *Kincaid v. Gibson*, 191 F.3d 719, 723 (6th Cir. 1999), vacated, 197 F.3d 828 (6th Cir. 1999), rev’d en banc, 236 F.3d 342 (6th Cir. 2001); Edward L. Carter, Kevin R. Kemper & Barbara L. Morgenstern, *Applying Hazelwood to College Speech: Forum Doctrine and Government Speech in the U.S. Courts of*

decorum, when I offered the open-ended call for “what’s in the legal news,” early presentations included a couple of stories about violent crimes. I imposed this limit after the beginning of the semester and students adjusted the content quickly. In subsequent semesters, the prior restraint on graphic detail and “shock” news has virtually eliminated voyeuristic details,⁸ while preserving an array of legal news reports that reflect interesting and important contemporary issues. More importantly, this prior restraint gives the upper-division students an opportunity to clarify a developing sense of professionalism, as students make news selections that meet the course requirements.

In each permutation of this exercise, I have learned about current legal issues I would not have noticed but for student presentations.⁹ The breadth of possible insights is reflected in this list, gleaned from fall 2006 student selections:

1. Election law in the context of U.S. Representative Tom DeLay’s inability to remove himself from the ballot in the 22nd District of Texas;
2. Immigration law and a Pennsylvania town’s restrictions aimed at fining landlords who rent to undocumented aliens and denying permits to companies who employ them;

3. Free speech of an Alaskan student suspended for unfurling a banner that read “Bong Hits 4 Jesus”;
4. The legal effect on Kenneth Lay’s estate when his Enron conviction was overturned posthumously;
5. The United States Supreme Court’s decision to grant certiorari in an “obvious” patent infringement case, involving a gas pedal;
6. An Audubon Society petition in Washington state for injunctive relief against logging near spotted owl habitats; and
7. A federal court’s ruling that the Treasury Department practice of issuing bills all the same size discriminates against the blind.

The list grows, and in it is one of the reasons teachers embrace lives as teachers: because they love lives as students. I carry a notebook with me, and often jot down notes from lectures or conversations, or something I have seen in the newspaper or heard from a media outlet. And one of my favorite things to do, as a teacher, is to take note when I learn something new from one of my students.¹⁰

In the short term, in the day-to-day success of any particular hour, the legal news portfolio provides a unique way to engage upper-level students, even as it refines their oral, analytical, and legal writing skills. The daily routine helps make connections among a heterogeneous group of students, their teacher, and the law-trained minds who are making

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Appeals, 48 S. Tex. L. Rev. 157 (2006); Richard J. Peltz, *Censorship Tsunami Spares College Media: To Protect Free Expression on Public Campuses, Lessons from the “College Hazelwood” Case*, 68 Tenn. L. Rev. 481 (2001). For analysis of secondary school discipline under a school rules-based civility analysis, regarding Internet comments about nonparticipants, see Layshock ex rel. Layshock v. Hermitage Sch. Dist., 412 F. Supp.2d 502 (W.D. Pa. 2006) (parody of school principal); Flaherty v. Keystone Oaks Sch. Dist., 247 F. Supp.2d 698 (W.D. Pa. 2003) (general Internet discussion of school personnel).

⁸ *But see* Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) (illustrating the inventiveness of the human mind in pressing the edges of polite discourse). A gentle prior restraint, grounded in a spirit of professionalism, avoids the complexity of the fringe contributions, while opening a modest outlet for the expression of various viewpoints, through the lens of the media stories.

⁹ The currency of the legal news topics that surface also produces ideas for potential scholarly articles. Moreover, the student selection of legal news that interests them suggests topics for legal research and writing assignments.

¹⁰ Such rewards are shared by many teachers, including the teacher who inspired me in several details of this discussion. Helen A. Sampson (*nee* Sundahl) (1909–2006) spent much of her life preparing for, and teaching, both junior high students and adult learners. In our very last conversation, she asked what was most rewarding for me in my life as a teacher. After some pause, I realized I most appreciate my exchanges with those students who put forth an effort, who teach me new insights, who give me something back. I returned the question, and she said—words I wish I had transcribed—but I remember the nod and the knowing smile that meant, “Yes, it’s all of a piece.” Or in the words of the poet, “bird and flower were one and the same.” Robert Frost, *In a Vale*, in *Complete Poems of Robert Frost* 21 (1964).

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the news. The written component solidifies these connections and develops the critical thinking and analysis that lie behind all good writing.

In the end, the days of the advanced writing semester unfold, and each student’s voice and contribution have been added to the mix of information that forms an important part of the classroom culture. The safe harbor and dignity of both professor and students has been preserved and developed, in the context of a structured, but dynamic, classroom forum for the exchange of ideas.

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Another Perspective

“It has been argued that for the Founders, ‘original intent’ referred only to what could be gleaned from the Constitution’s language and the use of structural means of interpretation but not from the personal intentions of the Founders. The present study opens this argument to reevaluation. In the Founding Era, the debates over the Constitution’s scope permitted a broader array of evidence, including the purposes, expectations and intentions of the individuals and gatherings that created the document. At the same time, this study shows that the compromises and decisions of the First Congress resulted from both interest politics and a variety of arguments, including originalist arguments, which were sometimes raised on opposite sides of the same issue. This process has always been typical of legislatures.

For example, in a speech opposing the establishment of a national bank, Madison allowed the use of ‘contemporary expositions given to the constitution.’ Under this canon of construction, he introduced evidence on the sentiments expressed in various state ratifying conventions that the necessary and proper clause should be narrowly construed. Thus, he relied on legislative history—not contemporary expositions of meaning—to argue that Congress lacked the authority to establish the bank. In doing so, Madison deviated from the purely textual British tradition that did not employ legislative history to construe statutory text. Despite this deviation, Madison apparently expected his argument to be persuasive to his colleagues. His choice of argument suggests that when it came to rules of construction, the Founders were not purely textualists, but were often pragmatic politicians.”

—Louis J. Sirico, Jr., *Original Intent in the First Congress*, 71 *Mo. L. Rev.* 687, 718–719 (2006).