

TYING IT ALL TOGETHER

BY BRENDA SEE

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 the column: Louis J. Sirico Jr., Villanova University School of Law, 299 N. Spring Mill Road, Villanova, PA 19085-1682, phone: (610) 519-7071, fax: (610) 519-6282, e-mail: sirico@law.villanova.edu.

Brenda See is Associate Professor at Faulkner University, Thomas Goode Jones School of Law, in Montgomery, Ala. She teaches Legal Research and Writing and Appellate Advocacy.

Understanding the reasoning of a court, applying the law to a fact situation, presenting a case to the court, and advocating another person's cause: Most students who come to law school have had little, if any, exposure to these skills. Teachers of skills courses have a challenge in introducing and nurturing the students through the first steps of skill building, filling in the gaps that other courses neglect.

Two incidents, one from long ago and one more recent, framed my idea to assign case reports to my first-semester Legal Research and Writing students. Each student was to give a five-minute oral briefing on the case in front of the class.

The first incident. When I was a first-year law student at the University of Alabama more than 20 years ago, I had a "Kingsfield" torts professor who used the classic Socratic method. Students had to stand and recite a case, enduring his questions and hoping we were not making fools of ourselves before the class. I remember thinking that when it was my turn to perform I did not learn a thing because I could not take notes or really think about his questions. The method was confusing to all of us at first. In addition to overwhelming us in class, the professor gave us supplementary bibliographies so we could learn even more about torts. The lists included all the Alabama cases on each subject we covered in class,

and he told us that we should read those to get a full understanding of Alabama tort law.

I tried to read them, but I just did not think I had the time. For the first time in my educational career, I decided that the assignment was too onerous and that I could not, or would not, do it, and I was not alone. I read a few cases on each topic, but just when I thought I might have time to go back and read more, we were given a new list. Besides, the cases I did read did not really mean much to me because I was new to the study of law and could not put them into meaningful perspective. That led me to read the facts of one case and then go on to the next; no one had explained that I should be trying to understand the reasoning of the court or should be looking for patterns or trends. His idea did not work for me because I did not think I got any real benefit from reading a lot of additional cases that I did not understand.

The second incident. Recently, I listened to students making their cases for reinstatement to law school after dismal performances on their exams. Each student submitted a written statement and then addressed the faculty. Admittedly, these were students who were at the bottom of the class, but I still was surprised that only one of them presented a decent argument. They simply were not advocates.

One student read aloud the written statement he had already given us. Several did not even try to make a presentation. They just said something like, "I'd like to be back in school and I will answer any questions you have." When asked questions, they did not give confident answers. It was clear they had not thought about what it might take to convince the faculty to reinstate them. I thought (without placing blame on anyone), "These students seem never to have been taught how to stand before a group and talk, much less persuade." At the least, they never learned what they might have been taught.

The idea. I was two or three weeks into the semester with a brand-new group of first-semester Legal Research and Writing students—still pliable, still eager to absorb. We were working on a one-case analysis and within a couple of weeks would begin our second project, a closed memo on whether a business would be liable to an invitee for the intentional criminal conduct of a third party. I

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decided to begin preparing them for advocacy by giving them practice in standing before a group and making a presentation. I put together a list of Alabama cases on the memo topic and assigned each student one case on which to give a five-minute report, telling the class the issue, the facts, the holding, the reasoning, and whether the student agreed with the decision. I told them that the purpose was twofold: to get them on their feet before a group, and to study this tort more thoroughly.

In our memo project, we would be using five cases different from those assigned for student reports. Therefore, the reported cases would broaden their knowledge of this area of the law. My plan was to spread the presentations over several weeks, letting one or two students present a case as time permitted. We have 75-minute classes, and while I need every minute, I decided this was worth an experimental try. Not only would the students have the opportunity to make a presentation, they would observe other students making presentations and, perhaps, formulate some opinion about what makes an effective one.

The result. Before the first student presentation, the presenter e-mailed me several questions, including whether she had to explain other cases that the court cited in her case. At that point in class, we were learning about what a court's "reasoning" is, and I asked her why the court even cited the other cases. She replied, "Oh, I see; those cases are important because neither one is like my case. The court is showing how my case is different from the ones it has already decided." This student was taking some ownership of that case and was studying it much more closely than she otherwise would have. She was understanding a concept through experience.

The first two presenters did a nice job, though they read most of their presentation. Since my objective was just to get them on their feet, I did not critique their performance as presenters other than to say that the most interesting part of each presentation was when the presenter seemed to be talking to the class and making eye contact. The cases interested the class; they asked questions and made comments. For example, because the cases were Alabama cases, one student remembered one that happened near his hometown. I used the opportunity to ask a couple of questions designed to foreshadow things to come in our second memo project.

As students presented their cases week after week, they began to understand the area of law for our memo topic; they heard about case after case where the Alabama courts have dealt with related issues. We also noticed how each case got to the court—whether by summary judgment or directed verdict—and that not many of those types of cases ever get to a jury. I was very pleased with the efforts the students made to explain the reasoning of the court because they came naturally to conclusions that in the past I have tried, perhaps artificially, to lead students to through their closed memo project. Their knowledge base was broadened with relatively little effort. Because the cases were presented by different students each time, the interest level of the class rose even though the presentations were at the end of class. Quite often the students stayed after class to discuss the cases. When we began the second memo, the students did not undertake the project blindly. They already knew the general idea behind the type of case we had.

This idea spilled over into teaching opportunities in research as well. I tied some of the cases into a research exercise on using digests, "planting" the cases as answers the students should find. One student wrote on her research answer sheet, "This was my case," referring to the case she had presented in class. As another research tie-in, when we learned about Shepardizing™ as a method for finding case law, I told the students that I had developed the list of cases they had been presenting by Shepardizing one of the key cases in our memo project.

Only after I started implementing the idea did I think of that time long ago when I was supposed to read all those cases and become an expert on Alabama tort law. If I had assigned my students all those cases, they wouldn't have read or understood them any better than I had. Because of their ownership of their assigned case, they studied and understood it. That enabled them to meaningfully discuss similar issues in the other students' cases.

I am not charged with teaching my students every case in the universe, but I am charged with helping them broaden their knowledge and develop advocacy skills. This exercise works to bring the students along in thinking, reasoning, and presenting.

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