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THE CLASS LISTSERV: PROFESSOR'S PODIUM OR STUDENTS' FORUM?

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Brutal Choices in Curricular Design ... is a regular feature of Perspectives, designed to explore the difficult curricular decisions that teachers of legal research and writing courses are often forced to make in light of the realities of limited budgets, time, personnel, and other resources. Readers are invited to comment on the opinions expressed in this column and to suggest other "brutal choices" that should be considered in future issues. Please submit material to Helene Shapo, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611, phone: (312) 503-8454, fax: (312) 503-2035.

In the classroom, professors rule. The first-year subject matter is so difficult, and your years of experience so valuable, that your students are likely to view your voice as the only reliable one in your classroom. Think, however, of your days as a student or young lawyer beyond the earshot of your professors or the more senior lawyers. Wasn't one of your first impulses in wrestling with a new problem to discuss it with a colleague? Weren't some of your most valuable learning experiences long discussions full of trial and error with someone as ignorant of the subject matter as you? Would those discussions have had the same vitality if an authority on the subject matter had taken part? Think of the way you hashed out your questions and difficulties on a new assignment with an office mate. You never would have had that type of discussion with the partner who had given you the assignment. Now, however, you are the professor, the authority. Now, you can encourage such discussion between your students—and even listen in—without their getting together in the cafeteria or student lounge. But, if in fact the discussion you want to encourage is the kind that takes place among novices cooperating among themselves to master new material, you must obey one rule: don't butt in.

We are all familiar by now with the power of e-mail. It is easy. It allows the correspondent the chance to deliberate, yet at the same time offers an informality that liberates the writer from the pressure for technical perfection required by, for example, legal writing assignments. In short, it offers a wonderful blend of the spontaneity of speech and the depth of writing. Furthermore, a classroom teacher cannot help but be dazzled at the ease with which a group can communicate via a listserv.¹ What could possibly be more useful to the professor or the student of legal writing? Such group discussion, conducted among members of a class, practically defines the professor's ideal of extending the classroom beyond its physical walls.

Unsurprisingly, however, the professor who uses a class listserv first must decide what type of discussion should take place on it. A professor cannot expect students to use this medium productively simply by telling them to "write whatever you wish to the group." Rather, based on my three years of experience in managing class listservs for first-year LRW classes, the professor must make a choice: use the listserv *either* as a podium from which the professor makes announcements and answers student questions, *or* as a forum within which students, uninterrupted by the professor, conduct a discussion among themselves. Both functions—listserv as Professor's Podium and listserv as Students' Forum—have real value. Nevertheless, they are distinctly different values. In addition, the drastically different role the professor plays in each type of listserv means that the professor, before establishing the listserv, must make a conscious and deliberate decision as to which values the forum is intended to advance.

¹ Listservs, or e-mail discussion lists, provide two basic functions: (1) the ability to distribute a message to a group of people by sending it to a single, central address, and (2) the ability to quietly add members to or subtract members from the list at any time. One can operate a "moderated" listserv, in which each message is filtered through a particular person (such as the legal writing professor), or an "unmoderated" one, in which a message sent to the "listname address" automatically is sent to each of the listserv's subscribers. The listservs I operate in my classes are all unmoderated. For the technicalities of setting up and managing a listserv and using one of the most common listserv computer programs, see James Milles, *Discussion Lists: Mailing List Manager Commands* (Oct. 26, 1997) <<http://lawwww.cwru.edu/cwru/faculty/milles/mailser.html>>.

Motivating Listserv Participation

Before addressing the experiences I have had under both types of listservs, I must add one point on motivation. Even under the best of circumstances, I have found that simply *encouraging* students to contribute messages to a listserv results in an electronic silence. Consequently, I have in the past two years instituted a tiny but negative incentive. For each written assignment my students are required to hand in, they must post to the class listserv at least a minimum number of messages (one in previous years; two this year) that bear “some reasonable relationship” to the assignment. I emphasize that as long as the “reasonable relationship” standard is satisfied, the message can take *any* form—whether it is a complex question about the substantive essence of the problem or niggling over the proper use of the citation signal *see*, whether it is praise or complaint over my teaching, whether it is a profound utterance or a stab-in-the-dark attempt to answer another’s question. If a student does not comply with this requirement, he or she is penalized a specific amount of the grade.² In addition, under either use of a class listserv, the professor must consciously decide how to coordinate the online discussion with any noncooperation or plagiarism policies otherwise in effect.³

As Professor’s Podium

The listserv as Professor’s Podium is the instinctive initial choice of most professors. First, the convenience and theoretical speed with which a professor can reach an entire class with a single message makes a listserv a natural substitute for class announcements, signs posted on bulletin boards, and memos distributed to student mail folders. Nevertheless, I question the real value to

² The penalty I have imposed constitutes one-tenth of 1 percent of the defaulting student’s final grade for the entire course. While this penalty has always turned out to be immaterial with respect to the outcome of the final grade, it was sufficient to provoke participation on the listserv by more than 95 percent of my 1L students last year (a total of 47 students).

³ My course policies explicitly state: “Use on a [Research, Analysis & Writing] assignment by any student of the contents of any message posted to the [class listserv] does *not* violate CWRU’s policy on improper cooperation.” In other words, as I also explain to my students orally, anything posted to the listserv becomes the property of the entire class, to be used by any member of the class in whatever way he or she sees fit to use it.

be gained in using a listserv as an announcement list. Most important, the old ways work well. If, as I propose, there is a better use for a listserv, why should you waste the medium on something you already do well? Furthermore, while e-mail provides some speed and efficiency not previously available, these gains may not be as dramatic as they first appear. The convenience and frequency with which students obtain access to their e-mail vary enormously from student to student (and from school to school). Furthermore, the communications pipelines carrying e-mail are not 100 percent reliable. Certainly a professor cannot assume that every student instantaneously receives every message sent to the list. Thus, I am not convinced that e-mail is sufficiently more efficient than the old ways to justify its use simply as an announcement list.⁴

In addition to providing a means of getting announcements out, using a listserv as Professor’s Podium gives the professor another way to answer questions (whether they have been raised in class, in the office, by e-mail, or by any other means) in a thoughtful and deliberate way rarely attained in the classroom. Not only do you have the opportunity, never available in class, to go back and check your sources, you also have the opportunity to craft your response in a way that will make it most useful to your students. This opportunity is especially attractive to those of us who, as we walk back to our offices after class, are plagued by the feeling that we have sputtered and fumbled away the answers to excellent student questions.

Using the listserv as Professor’s Podium *does* “extend the classroom walls” to the extent that it provides a place in which *students’ questions* and the *professor’s answers to those questions* can be shared outside the classroom. Nevertheless, because the professor’s voice is the authoritative one, as long as you as professor answer questions on the listserv, you will wait in vain for any but

⁴ Indeed, while I have in the past used my class listserv as, among other things, an announcement board, I always felt compelled, in order to reach all of the students soon enough, to repeat the message through one or more other media, including handouts to student mailboxes, signs posted on law school bulletin boards, and in-class announcements. At the same time, I had no doubt that since some of my students seem almost to live online, e-mail started the word on its way through the student grapevine more quickly than ever before possible.

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the most assertive students even to attempt to answer other students' questions. In other words, except for student questions, the listserv used as Professor's Podium will, in essence, be a place for the professor to talk to the students. It will not be a place where students talk among themselves or, except in the form of questions, to the professor.

As Students' Forum

Two years of conducting class listservs in the Professor's Podium mode left me extremely frustrated at my inability to tap into what I consider the greatest potential for a class listserv—serving as a place for students to discuss *among themselves* the problems with which they are wrestling. I finally decided to do what I had once heard suggested but never had had the nerve to implement—I *would stay out of the discussion entirely*. I would not send *any* messages to the listserv. If I had information I needed to get to my class, I would employ the means always available to me—in-class announcements or, if time was of the essence, memos to the students' mail folders.

The results were astounding. While initial student messages to the listserv consisted of the less profound types of questions I expected, the students quickly realized that no one else knew anything more than each of them did. This realization soon led to amazingly varied and productive conversation. The listserv had become the kind of discussion forum anyone struggling with intellectual problems is desperate for. Rather than walking down the hall to knock on a classmate's apartment door or waiting until enough classmates gathered in the student lounge, each student could go online at any time and join a discussion in progress.

Upon reflection, the results were perhaps not so surprising. We teach advocacy. Learning to be an advocate requires finding your own voice. E-mail discussion groups are unusually well suited to allowing our students to develop their own voices. It is a medium with several liberating qualities. An e-mail message has an element of spontaneity missing from a brief that has been drafted, redrafted, spell-checked, and grammar-checked. At the same time, it permits the student an opportunity to deliberate and craft a message in a way classroom give-and-take never could. It removes visual cues that, without our realizing it,

make it far less likely a given student will speak up in class. How much easier is it just to keep one's mouth shut, for example, if you have a quiet voice and sit in a back corner of the classroom? Online, everyone's voice is the same volume.

While an e-mail discussion group can provide us as teachers with an additional forum in which to convey our wisdom and experience, using one to send *our* messages deprives students of a valuable opportunity to develop *their* voices. We should not need nearly as much help in liberating our voices as does the typical first-year law student. Nothing we do can completely remove the bare fact that as teachers we dominate the classroom. In addition, our very wisdom and experience mean that we have an inherent advantage in discussing the subject matter we teach. We can and perhaps too often do anticipate the course of discussion, encapsulating argument, counterargument, reply, and sur-reply in a single speech. In short, the ways in which we as “alpha dogs” unavoidably dominate the classroom “pack” cause our voices to kill most give-and-take discussion.

Silence Is Not Easy

Nevertheless, staying out of an e-mail discussion going on among your students takes an enormous amount of self-restraint. Your calling as a teacher is likely to include, in no small part, a compulsion to be helpful. You want to correct your students' blunders so that they do not humiliate themselves at the hands of the local version of Professor Kingsfield. Moreover, your training as a lawyer makes it difficult to shut up. You are eager to use every available means to make your voice heard. If the court will take a reply brief, you owe it to your client's cause to state again its argument. Maybe this time the court will get it. Maybe this time that one new point will make all the difference. Maybe the simple cumulative effect of reading the same argument again and again will sway the judge. In fact, we teach our students exactly this—if you have a chance to make your point known, seize that chance.

In addition, it is sorely tempting to feel that you can make one little point that will seem trivial among the screensfull some of your students transmit and quickly right a discussion veering off

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course. One little trim of the sail and your students will be cruising. In my experience, there are two primary reasons to avoid falling for this temptation. The first is that you underestimate the dominance of your own voice. The second is that you underestimate the abilities of your students. Typically, the discussion will not sail its course as quickly or efficiently as it would with you at the helm, but it will get to where it ought to be in a reasonable amount of time.

Another reason it is so difficult to stay silent is the fear that doing so is a disservice to your students and even, perhaps, betrays your duties as a teacher. What if the things they are writing one another are wrong? In my experience, there has been nothing in the listservs I have managed that has been so wrong that I did not feel it was a tolerable part of the educational process. While I am not certain why discussions have not veered so far into dangerous waters that they require the rescue of my own voice, I suspect it is for reasons other than that my students are more intelligent than yours. First, while we pay lip service to the concept, it rarely is made as clear as in online discussion that it is difficult, if not impossible, to characterize a given legal argument as simply and entirely wrong. Second, our students are capable of recognizing and responding to those aspects of an argument that are wrong. Finally, what is so intolerable about a little error? We have plenty of opportunity (in class, in office meetings, in handouts sent to mail folders) to correct error. Even so, some errors might creep through into graded product. One wrongheaded student might, through the powers of his or her online persuasion, lead a number of other students into committing some legal writing "sin" we are somehow unable to keep out of their briefs. Yet any student who is *that* persuasive cannot be entirely wrong. Finally, I have yet to grade even a final, end-of-the-year brief that does not contain errors I would not want to correct in practice. We are never going to eliminate our students' errors. Nevertheless, I believe that by allowing them the leeway to try their errors out on one another, we will more quickly make them better writers.

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