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## BRIDGING THE LAW SCHOOL LEARNING GAP THROUGH UNIVERSAL DESIGN

*Jennifer Jolly-Ryan\**

### I. INTRODUCTION

Accessibility aware architects first applied Universal Design techniques to make buildings more accessible and useable to people with disabilities. The central idea behind Universal Design in architecture is that if there are no obstacles or barriers in a building, a person using the building has no disability. Taken a step further into the law school classroom, Universal Design makes a legal education accessible to people with disabilities and offers law professors an exciting opportunity to help a greater variety of law students achieve success in the classroom. A good Universal Design of instruction in the law school classroom benefits not only students with disabilities, but also other diverse groups including part-time law students, English as a Second Language (ESL) law students, and law students with diverse learning styles.

Understanding and tolerance begins in law school. Law students hail from a diverse universe of people. They are male students,<sup>1</sup> female students,<sup>2</sup> part-time students,<sup>3</sup> and adult learners.<sup>4</sup> Law

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\* Professor of Legal Writing, Salmon P. Chase College of Law, Northern Kentucky University. Thanks to my research assistant, Robert Adair. Thanks also to Deifilia Diaz for her thoughtful insights and suggestions about how to help ESL law students navigate law school. And to Lisa Besnoy, Director of Northern Kentucky University's Disability Services for introducing me to Universal Design as a teaching tool. Finally, thanks to Associate Dean Michael Whiteman and Professor Donna Bennett for applying Universal Design to our law school's law library.

<sup>1</sup> See *Volume Summary Admitted Applicants by Ethnic and Gender Group*, L. SCH. ADMISSION COUNCIL (LSAC) 2, <http://www.lsac.org/lisacresources/data/vs-ethnic-gender-admits-archive.asp> (last visited Feb. 14, 2011) [hereinafter *LSAC Volume Summary*]. *First Year and Total J.D. Enrollment by Gender*, A.B.A., <http://www.americanbar.org/content/>

students today come in many different colors, as law school classrooms are more ethnically and racially diverse.<sup>5</sup> Law students today are global citizens and future global lawyers who will advocate on behalf of global clients. “In an increasingly globalized world, these future lawyers need to not only understand substantive law across multiple doctrines, but they need to be tolerant to cultural issues and adaptable to the diversity of their clients.”<sup>6</sup>

Entering law school student classes often include those for whom English is a second language (ESL students).<sup>7</sup> More law students today are attending school on a part-time basis.<sup>8</sup> More law students today are pursuing joint degrees.<sup>9</sup> A growing number of students enter law school with physical disabilities, including visual and

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dam/aba/migrated/legaled/statistics/charts/stats\_6.authcheckdam.pdf (last visited Feb. 14, 2011).

<sup>2</sup> See *Volume Summary Admitted Applicants by Ethnic and Gender Group*, *supra* note 1. Between 2008 and 2010, approximately forty-seven percent of first year law students were female. *First Year and Total J.D. Enrollment by Gender*, *supra* note 1.

<sup>3</sup> The American Bar Association reported that “in the fall of 2008, about 16 percent of U.S. law students were enrolled parttime.” Robert Morse & Sam Flanigan, *Part-Time Law School Rankings Methodology*, U.S. NEWS & WORLD REP., Apr. 15, 2010, available at <http://www.usnews.com/education/articles/2010/04/15/the-part-time-law-school-rankings-methodology>. In 2011, forty ABA approved law schools offered part-time J.D. programs. *Id.*

<sup>4</sup> Approximately one in five law students is “over the age of 30” and five percent of law students between 2005-2009 were over the age of forty. Kimberly Dustman & Phil Handwerk, *Analysis of Law School Applicants by Age Group*, LSAC, 2 (Oct. 2010), <http://www.lsac.org/LSACResources/Data/PDFs/Analysis-Applicants-by-Age-Group.pdf>.

<sup>5</sup> See *Volume Summary Admitted Applicants by Ethnic and Gender Group*, *supra* note 1, at 1; *Statistics*, ABA SEC. LEGAL EDUC. & ADMISSIONS TO BAR, [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (last visited Feb. 14, 2011).

<sup>6</sup> Johanna K.P. Dennis, *Ensuring a Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEX. WESLEYAN L. REV. 613, 614 (2010); see also John Edward Sexton, *The Global Law School Program at New York University*, 46 J. LEGAL EDUC. 329, 329-30 (1996) (noting that the world is becoming smaller through globalization and therefore, the law school curriculum must respond.)

<sup>7</sup> See Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 INT’L J. LEGAL INFO. 396, 400 (2007) (addressing the difficulties of teaching foreign law students); see also Katerina P. Lewinbuk, *Can Successful Lawyers Think in Different Languages?: Incorporating Critical Strategies that Support Learning Lawyering Skills for the Practice of Law in a Global Environment*, 7 RICH. J. GLOBAL L. & BUS. 1, 1 (2008).

<sup>8</sup> See *supra* note 3.

<sup>9</sup> “Up to twenty-five percent of law students pursue dual degrees.” *Appendix G: Considering a Joint Degree*, TOP-LAW-SCHOOLS.COM, [http://www.top-law-schools.com/appendix\\_g.html](http://www.top-law-schools.com/appendix_g.html) (last visited Feb. 14, 2011).

hearing impairments.<sup>10</sup> A growing number of law students today also have learning disabilities, ranging from dyslexia to auditory or visual processing disorders, as more undergraduate students with learning disabilities matriculate and earn their degrees.<sup>11</sup>

Law students' learning styles are just as diverse as law students' other characteristics. Many of today's "law students are visual, tactual, or kinesthetic learners" rather than auditory learners.<sup>12</sup> To meet the needs of the diverse characteristics of today's law students, the definition of effective teaching must also change. Effective teaching must be tolerant, flexible, and adaptable, as law students' learning styles or preferences are constantly changing and developing over time.

To connect with the great variety of students in the law school classroom, today's law professor must anticipate students' needs and unique life situations. Today's law professor must create a variety of course activities and make them accessible to all students.<sup>13</sup>

The effective law professor is challenged to design law instruction for the new universe of law students. One way to approach this situation is through the application of Universal Design of instruction to teaching at the law school.<sup>14</sup>

<sup>10</sup> A study conducted during the 1994-95 academic year by Professor Donald Stone found that of law students with disabilities who requested academic modifications, almost seven percent was due to visual impairment and just over one percent was due to a hearing impairment. Donald Stone, *The Impact of the Americans with Disabilities Act on Legal Education and Academic Modifications for Disabled Law Students: An Empirical Study*, 44 U. KAN. L. REV. 567, 569-70 (1996); see also David Cohen & Richard Bernstein, *Determining Proper Accommodations for Deaf Law Students*, DISABILITIES PROJECT NEWSL. (State Bar Mich., Comm. on Just. Initiatives & Equal Access Initiative, Lansing, Mich.), March 2007, available at [http://www.michbar.org/programs/disabilitynews/disabilities\\_news\\_10.cfm](http://www.michbar.org/programs/disabilitynews/disabilities_news_10.cfm) (noting a trend toward increasing enrollment of hearing-impaired law students); AM. ASS'N OF VISUALLY IMPAIRED ATTORNEYS, <http://www.visuallyimpairedattorneys.org/brochure.html> (last visited Feb. 14, 2011) (stating that membership in their organization, open to both attorneys and law students, has grown from twenty-five lawyers in 1969 to members in several foreign countries and almost all fifty states).

<sup>11</sup> See Jennifer Jolly-Ryan, *Disabilities to Exceptional Abilities: Law Students with Disabilities, Nontraditional Learners, and the Law Teacher as a Learner*, 6 NEV. L. J. 116, 142-47 (2005).

<sup>12</sup> Lisa T. McElroy, *The Other Side of the Story: Using Graphic Organizers to Counter the Counter-Analysis Quandary*, 39 U. BALT. L. REV. 227, 238 (2010).

<sup>13</sup> See generally Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 ALB. L. REV. 213, 247 (1998) (exploring instructional strategies and testing them in a law school setting).

<sup>14</sup> See Bettye Rose Connell et al., *The Principles of Universal Design*, N.C. ST. U. CTR.

Universal Design of instruction will help more than students with disabilities, who are legally entitled to accommodations or modifications in instruction as a result of federal legislation designed to make education more accessible.<sup>15</sup> Adult learners, part-time law students, ESL students and students with varying learning styles, who are not legally entitled to educational accommodations,<sup>16</sup> will be better served as well. The Universal Design of instruction, through a variety of teaching strategies and techniques will reach all law students, and will avoid the necessity of many of the often stigmatizing instructional accommodations or curricular modifications offered to one or two students in a law school classroom.<sup>17</sup> The result of Universal Design of instruction in the law school classroom will be a better learning environment for all students and an energized, creative professor who adds new dimensions to teaching the law.

Today's law school population truly mirrors the diverse world in which we live. This article suggests ways to meet the needs of students with diverse characteristics and learning styles. The article will be most helpful to law professors who want to improve upon

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FOR UNIVERSAL DESIGN 1 (Apr. 1, 1997), [http://www.ncsu.edu/www/ncsu/design/sod5/cud/pubs\\_p/docs/poster.pdf](http://www.ncsu.edu/www/ncsu/design/sod5/cud/pubs_p/docs/poster.pdf).

<sup>15</sup> For example, the Americans with Disabilities Act ensures educational opportunities are accessible to people with disabilities. See Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2006 & Supp. III 2009).

<sup>16</sup> The Test of English as a Foreign Language (TOEFL) exam is used by almost all U.S. universities to make admissions decisions regarding non-native speakers' admission to higher education and law schools. See *TOEFL: Why Take the TOEFL Test?*, ETS, <http://www.ets.org/toefl/why> (last visited Feb. 14, 2011); see also *Flint v. Dennison*, 361 F. Supp. 2d 1215, 1217 (D. Mont. 2005) ("State universities maintain the undeniable right to determine 'on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.' " (quoting *Widmar v. Vincent*, 454 U.S. 263, 276 (1981))). Although ESL students' legal protections do not appear to extend to higher education and law schools, the Equal Educational Opportunities Act (EEOA), states that "the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs" is an illegal denial of equal opportunity. 20 U.S.C. § 1703(f) (2006). But the EEOA left it to the states to determine how to provide equality to ESL students. See *Castaneda v. Pickard*, 648 F.2d 989, 1008 (5th Cir. 1981); *Legal Requirements for Serving Students with Limited English Proficiency*, VT. DEP'T OF EDUC. 4, [http://education.vermont.gov/new/pdffdoc/pgm\\_esl/guide\\_94/guide\\_94\\_01.pdf](http://education.vermont.gov/new/pdffdoc/pgm_esl/guide_94/guide_94_01.pdf) (last visited Feb. 14, 2011).

<sup>17</sup> A learning disability is an "invisible disability" that cannot be seen. Law school administrators, law professors, and law students who do not have a disability are often skeptical of law students' deficits and disabilities. There is a definite stigma attached. See Kevin H. Smith, *Disabilities, Law Schools, and Law Students: A Proactive and Holistic Approach*, 32 AKRON L. REV. 1, 18-19 (1999).

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their teaching and who want to help law students with disabilities, ESL students, part-time law students, and law students with diverse learning preferences and styles. It will also help law students and educators who advocate for change in legal education and improved accessibility to legal education for all.

## II. THE LEARNING AND GENERATION GAP IN LAW SCHOOLS

Most law professors are convinced that they are good teachers.<sup>18</sup> However, even the best teachers have a mental gap between what they think they know is effective teaching and what is actually happening among the learners in their classrooms.

All teachers, however effective, will have a Learning Gap. [A Learning Gap] is the discrepancy between the way the brain learns and the way [students] are taught in the classroom that occurs when, for example, kinaesthetic [sic] learners are compelled to spend large parts of the school day reading, writing and listening; when natural and highly efficient contextual memory systems are ignored and overloaded with vast amounts of content which our brains are simply not designed to absorb, or when lesson activities fail to connect both hemispheres of the neo-cortex, so that the whole brain is involved in the learning process.<sup>19</sup>

From most accounts, that is what is happening in law schools today. There are boundless reports that the development of legal

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<sup>18</sup> See Dennis R. Honabach, *Responding to "Educating Lawyers": An Heretical Essay in Support of Abolishing Teaching Evaluations*, 39 U. TOL. L. REV. 311, 317-20 (2008) (stating that "most law school professors want to be good, indeed most want to be excellent, teachers" and describing a "secret agreement of the professoriate" wherein virtually all faculty members are viewed as "better than average teachers").

<sup>19</sup> Mike Hughes, *Closing the Learning Gap*, EFFECTIVE TEACHING & LEARNING NETWORK (June 1999), <http://www.etln.org.uk/resources/page12.html>; see James W. Stigler & James Hiebert, *THE TEACHING GAP: BEST IDEAS FROM THE WORLD'S BEST TEACHERS FOR IMPROVING EDUCATION IN THE CLASSROOM* (1999). The authors of this book assert that American students, as compared to Asian students, are being short changed. With improvements in teaching, the learning gap can be bridged. American students "could be learning much more and much more deeply than they are learning now." *Id.* at 5; see also Harold W. Stevenson & James W. Stigler, *THE LEARNING GAP: WHY OUR SCHOOLS ARE FAILING AND WHAT WE CAN LEARN FROM JAPANESE AND CHINESE EDUCATION* (1992).

education in America is stagnant or downright ineffective.<sup>20</sup> The practicing bar complains that law schools are doing a poor job of preparing law students for their work as lawyers.<sup>21</sup>

The learning gap between what the law professor thinks is happening in the classroom and what is actually happening must be bridged with innovative teaching and care. For a number of reasons, a learning gap exists between professors and students in law schools.

### A. Law Professors' Elite Educations and the Law School Learning Gap

The way law schools go about hiring and training law professors to deliver legal education is one of the foremost reasons for a learning gap between law professors and their students. Law schools are rather inbred when it comes to hiring new professors.<sup>22</sup> Legal education and the people who deliver legal education have not changed very much over the past 100 years, although law students have greatly changed.<sup>23</sup> Most law professors graduated from the very

<sup>20</sup> See, e.g., ABA SEC. LEGAL EDUC. & ADMISSIONS TO BAR, AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992), available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> [hereinafter "THE MACCRATE REPORT"]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW (2007); Rachel J. Littman, *Training Lawyers for the Real World*, 82 N.Y.ST. B.J. 20, 21 (2010).

<sup>21</sup> See, e.g., THE MACCRATE REPORT, *supra* note 20; SULLIVAN ET AL., *supra* note 20; Littman, *supra* note 20.

<sup>22</sup> See Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 COLUM. L. REV. 199, 244 (1997) (describing a study where the authors found that "it is clear that inbreeding plays a special role at the top-sixteen law schools. Over one-fifth . . . of professors who began teaching at a top-sixteen law school between 1986 and 1991 had graduated from that school, while only about one in twelve . . . professors starting jobs at non-elite schools during those years were inbred."); see also Theodore Eisenberg & Martin T. Wells, *Inbreeding in Law School Hiring: Assessing the Performance of Faculty Hired from Within*, 29 J. LEGAL STUD. 369, 387 (2000) (noting that the Merritt & Reskin study found that "inbred status" was "by far the strongest predictor of being hired at a prestigious law school").

<sup>23</sup> Fred Galves, *Will Video Kill the Radio Star? Visual Learning and the Use of Display Technology in the Law School Classroom*, 2004 U. ILL. J.L. TECH. & POL'Y 195, 195 (2004) ("[L]aw school is taught largely the same way it has been for over one hundred years, with a professor standing at a podium and asking only verbal questions to a large class of students."); see also Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 595 (2008); Toni M. Fine, *Reflections on U.S. Curricular Reform*, 10 GERM. L. J. 717, 728 (2009) (noting that law schools maintain the traditional three year structure with required doctrinal courses and the basic legal skills course in the first year).

top, elite law schools where their own professors taught in a most traditional way.<sup>24</sup> It has been noted that “[l]aw professors are a self-perpetuating elite, chosen in overwhelming part for a single skill: the ability to do well consistently on law school examinations . . . taken at elite ‘national’ law schools.”<sup>25</sup>

There is a very dark side of inbred hiring practices in legal education. Although today’s law students have diverse learning styles and characteristics, their law professors do not always recognize, let alone tolerate, their diversity.<sup>26</sup> Many law professors expect their students to learn the same way that they learned.<sup>27</sup> They are often disappointed.<sup>28</sup> Most law professors, who are often auditory learners, achieved high academic success by using their excellent listening skills and ability to take copious notes while in law school.<sup>29</sup> However, law school and law students have changed.

Yesterday’s successful law students, like their professors, were also mostly auditory learners.<sup>30</sup> They succeeded because they were well suited to take in all that their law professors orally delivered from the lectern.<sup>31</sup> But yesterday’s law students were better equipped to sit for hours, listening with their keen ears and transcribing information with pen and paper for later study.<sup>32</sup> Yesterday’s

<sup>24</sup> See Jolly-Ryan, *supra* note 11, at 124.

<sup>25</sup> Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 762 (2004); see Eric A. DeGroff & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2006 BYU EDUC. & L.J. 499, 504 (2006) (“Law professors, however, were typically high achievers in law school themselves, and most probably found legal analysis relatively natural.”).

<sup>26</sup> See Paul Bateman, *Toward Diversity in Teaching Methods in Law Schools: Five Suggestions from the Back Row*, 17 QUINNIPIAC L. REV. 397, 399 (1997) (stating that when law professors choose teaching methods, “the basis for these choices often lies more with [their] own comfort level than with [their] students’ needs and . . . particular learning styles.”).

<sup>27</sup> “[L]aw professors are likely to use the methodologies by which they learned law.” Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 365 (2001).

<sup>28</sup> *Id.* at 386 (“One of the easiest errors to make as an instructor or designer is egocentrism, which, in the instructional design context, involves assuming that the learners are like the instructor.”).

<sup>29</sup> *Id.* at 364-65.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 354.

<sup>32</sup> M.H. Sam Jacobson, *A Primer on Learning Styles: Reaching Every Student*, 25 SEATTLE U. L. REV. 139, 140 (2001) (describing how today’s learning process includes active group work and use of computers).



successful law students learned the same way that their law professors learned when they were in law school, from professors who “replicate[d] the environment in which they achieved success.”<sup>33</sup>

Successful law students, even today, are often the students who learn just as their professors learned. However, fewer law students today learn the same way as their professors learned, which helps to explain why many law students struggle in their studies.<sup>34</sup> Less than a third of the population today are auditory learners, who learn most effectively through their sense of hearing.<sup>35</sup> There are even fewer auditory learners in law school.<sup>36</sup> Many of today’s law students are likely to be visual learners, conditioned “through use of computers, videos, television, and other visual tools.”<sup>37</sup> Moreover, most law students, regardless of their learning preferences, benefit from kinesthetic or tactile teaching methods.<sup>38</sup>

Law students today learn differently than their professors learned and are less likely to benefit from their professors’ lectures, delivered through traditional law school teaching methods.<sup>39</sup> Additionally, law students’ prelaw training and motivations for attending law school are often different than their professors’ prelaw training

<sup>33</sup> John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 352 (2007); see Michael L. Perlin, “Ain’t No Goin’ Back”: *Teaching Mental Disability Law Courses Online*, 51 N.Y.L. SCH. L. REV. 991, 992 (2006-07) (stating that before he became a legal professor, he was taught the same way his professors were taught when they were law students).

<sup>34</sup> *Id.* (stating that teaching styles are far from what they were in the 1870s).

<sup>35</sup> RONALD L. PARTIN, *THE CLASSROOM TEACHER’S SURVIVAL GUIDE: PRACTICAL STRATEGIES, MANAGEMENT TECHNIQUES, AND REPRODUCIBLES FOR NEW AND EXPERIENCED TEACHERS* 161 (3d ed. 2009) (about thirty percent of the population consists of auditory learners).

<sup>36</sup> See Boyle & Dunn, *supra* note 13, at 227 (finding that “only 26% of the first- year law school students tested [by the authors] had high auditory strengths”).

<sup>37</sup> M. H. Sam Jacobson, *Learning Styles and Lawyering: Using Learning Theory to Organize Thinking and Writing*, 2 J. ASS’N LEGAL WRITING DIRS. 27, 34 (2004); see Galves, *supra* note 23, at 196 (“Display technology gives the professor more access to the student’s brain: two senses—sight and hearing—are accessed instead of only hearing, thereby enhancing understanding, retention, and recall.”); see also Jacobson, *supra* note 32, at 140 (2001) (stating that law students are accustomed to learning through movies, computers, and group projects).

<sup>38</sup> PARTIN, *supra* note 35 (about five percent of the population are kinesthetic or tactile learners).

<sup>39</sup> See Jolly-Ryan, *supra* note 11, at 146 (“Traditional teaching methods . . . are the least effective method for maintaining students’ attention during class and for retaining the information for testing or the practice of law.”).

and motivations for attending law school.

### **B. Prelaw Training and the Law School Learning Gap**

Another reason for a learning gap between law students and their law professors is the type of training each received before coming to law school. Many law students' prelaw training was much different than that of their professors.

The learning gap between law students' prelaw training and their professors' prelaw training is perhaps most obvious in the legal writing class and on essay examination answers.<sup>40</sup> Law students' prelaw training in writing classes often concentrated less on the rules of grammar and more on creative writing.<sup>41</sup> Even students at the most prestigious law schools often enter law school ill-prepared in basic grammar training.<sup>42</sup>

Reading lengthy casebook assignments and professors' comments written in cursive, writing long briefs heavily penalized for grammar and citation violations, and sitting in a classroom for many hours while listening to professors' lectures often is foreign to today's students. Compared to their previous academic work, law school is quite an adjustment for some law students.<sup>43</sup>

<sup>40</sup> See Kristen K. Robbins, *Paradigm Lost: Recapturing Classical Rhetoric to Validate Legal Reasoning*, 27 VT. L. REV. 483, 485 (2003) ("Ask a law professor about the quality of written law school exams: '[Students] can memorize the rules of law, but they don't know what to do with them.'").

<sup>41</sup> See Lisa Eichhorn, *The Legal Writing Relay: Preparing Supervising Attorneys to Pick Up the Pedagogical Baton*, 5 LEGAL WRITING: J. LEGAL WRITING INST. 143, 146 (1999) ("[M]any law students come to law school still needing to learn to do more basic things: use punctuation and proper grammar, organize a paper by topic, and construct clear, coherent sentences."); Henry Mather, *The Medieval Revival of Roman Law: Implications for Contemporary Legal Education*, 41 CATH. LAW. 323, n.94 (2002) ("Our entering law students are not as well grounded as medieval students in the trivium of grammar, logic, and rhetoric.").

<sup>42</sup> Aida M. Alaka, *The Grammar Wars Come to Law School*, 59 J. LEGAL EDUC. 343, 344-345 (2010) (noting that a large number of college freshman, even at prestigious schools such as Harvard, come to college ill-prepared in basic grammar training because of problems created by the No Child Left Behind Act, state education's obsession with standardized assessments, and a lack of teaching focus on student writing).

<sup>43</sup> See Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75 (2002) ("Many students experience the law school environment as stressful, intensely competitive, and alienating."); see also Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity, and Happiness*, 11 CLINICAL L. REV. 425, 433 (2005) (discussing how many law students lose enthusiasm and interest during the progression of their law school

Law students' prelaw training was likely more flexible and adaptable than any training they receive during law school. Today's law student arrives at law school, accustomed to professors who use a variety of teaching tools and a smorgasbord of teaching strategies.<sup>44</sup> Undergraduate students learn by interacting with the Internet, PowerPoints, group activities, collaboration, and peer critiques, in addition to traditional methods such as class lectures.<sup>45</sup> Learning strategies and assessments used by undergraduate professors are just as varied, including the use of pre-testing or diagnostic tests, self-assessment or practice tests,<sup>46</sup> group work or class participation, peer review, interactive assessments,<sup>47</sup> objective assessments,<sup>48</sup> and subjective essay exams.<sup>49</sup> The traditional subjective essay examination at the end of

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careers).

<sup>44</sup> See Gary Mielo, *Misunderstanding Media: A Blurry "Vision of Students Today" (Part One)*, 65 ETC: REV. GEN. SEMANTICS 191, 191 (2008) (A 1967 quote attributed to Professor Marshall McLuhan still holds true: "Today's child is bewildered when he enters the 19th Century environment that still characterizes the educational establishment where information is [scarce] but ordered and structured by fragments, classified patterns, subjects, and schedules.").

<sup>45</sup> See THOMAS A. ANGELO & K. PATRICIA CROSS, *CLASSROOM ASSESSMENT TECHNIQUES: A HANDBOOK FOR COLLEGE TEACHERS* (1993).

<sup>46</sup> *Id.* Some teachers pre-test their students at the beginning of the semester to find a baseline of knowledge for the class. Pre-testing students allows the professor to teach to the students' weaknesses. Examples of pre-testing as an assessment tool are grammar diagnostic tests administered by many legal writing professors. See Alaka, *supra* note 42, at 345 (acknowledging the support for change in legal education to incorporate grammar). Law students who need help can receive additional individual instruction from their professors or can be referred to the law school's academic support or writing specialist. *Id.* at 355.

<sup>47</sup> See Julie A. Oseid, *Take Me Out to the Ball Game: Using the Seventh-Inning Stretch to Teach Law*, 82 N.D. L. REV. 465, n.63 (2006) (discussing interactive games that can be used in the classroom, such as "Citation Jeopardy"); Roger C. Park, *Reflections on Teaching Evidence with an Audience Response System*, 75 BROOK. L. REV. 1315, 1315 (2010) (discussing the use of an audience response system during class lectures).

<sup>48</sup> Objective assessment includes multiple choice, short answer, and true false questions. Objective assessments are appropriate when testing recall of information and when all students are expected to know the same information. See Kenney F. Hegland, *On Essay Exams*, 56 J. LEGAL EDUC. 140, 147 (2006) ("Multiple choice exams can examine more doctrines and in greater detail; in short, they can do a much better job in testing for the rules."). Objective assessments are easily administered and graded, particularly in large classes, because they can be automated.

<sup>49</sup> See *id.* ("Essay exams test how well students recognize legal issues and how well they discuss the controlling legal principles. They also do something that multiple choice exams can never do: recognize the truly exceptional student, the one who sees issues and angles that aren't on the professor's grid."). The traditional mode of assessment in law school is the subjective essay examination, which may be more dependent upon the professor's judgment.

the semester, which remains the sole assessment tool in many law school classes today, is a new and unwelcome experience for law students.<sup>50</sup>

These reasons are among those that cause the learning gap experienced by first year law students, and operate as a culture shock between undergraduate school and law school.<sup>51</sup> Additionally, these are some of the reasons why there is a gap between what is actually happening among the learners in law school classrooms, and what the best law professors think they know is effective teaching.

### C. Law Students' Goals and Motivations for Studying Law and the Law School Learning Gap

Different goals and motivations of law professors and students also create a learning gap in law schools. In contrast to their professors, who completely focused on the law and the opportunity to fully immerse themselves in it during law school, many law students today do not possess the same single focus and drive that their professors possessed.<sup>52</sup>

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*Id.* at 146. However, essay exams are an appropriate assessment of more complex knowledge. *Id.* at 144-45.

<sup>50</sup> See Catherine Gage O'Grady, *Cognitive Optimism and Professional Pessimism in the Large-Firm Practice of Law: The Optimistic Associate*, 30 *LAW & PSYCHOL. REV.* 23, 39 (2006) (discussing how pessimistic law students may be more successful than optimists on exams at the end of the semester); see also Catherine Dunham & Steven I. Friedland, *Portable Learning for the 21st Century Law School: Designing a New Pedagogy for the Modern Global Context*, 26 *J. MARSHALL J. COMPUTER & INFO. L.* 371, 372 (2009) ("Strikingly, each basic course, particularly in the traditional first year of law school, includes only a final summative exam.").

<sup>51</sup> See Susan Grover, *Personal Integration and Outsider Status as Factors in Law Student Well-Being*, 47 *WASHBURN L. J.* 419, 427 (2008) ("[Law] [s]tudents learn so quickly that grades are the be-all and end-all. Success is measured by grades, which determine journal memberships, clerkships, and jobs."). Factors causing the culture shock of first year law students include the heavy workload that students face, the pressure to compete in the classroom and for coveted spots on moot court or law review, and a new sense of mediocrity after experiencing great successes in undergraduate school. *Id.* at 426-27. See also Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *BUFF. L. REV.* 1155, 1186 (2008) (discussing the class rank system in law schools). See generally Jennifer Jolly-Ryan, *Promoting Mental Health in Law School: What Law Schools Can Do for Law Students to Help Them Become Happy, Mentally Healthy Lawyers*, 48 *U. LOUISVILLE L. REV.* 95, 96 (2009) (discussing the stress students experience during law school and its effect on their mental health).

<sup>52</sup> See *Careers for Lawyers: Life After Law School*, THE CATH. U. OF AM. <http://careers.cua.edu/handouts/lawcarer.cfm> (last visited Feb. 14, 2012) (discussing how an

First, law professors and their students often have different motivations for attending law school and joining the legal profession. Second, multidisciplinary and part-time law programs attract law students who have a variety of professional interests and goals. They have busy lives and interests outside of the law school and may not have the time that their professors had to devote to legal studies.

### ***1. Students' Motivations for Attending Law School and the Law School Learning Gap***

Law professors' dreams and their students' dreams or realities often differ. Most law professors aspired to work in prestigious academic careers or law firms when they attended law school. However, prestigious academic careers and highly paid work in big law firms are not realities for most of today's law students.<sup>53</sup> For 2009 law graduates who reported being employed in February 2010, 55.9% were working in law firms.<sup>54</sup> Another 25.8% were in public interest or government jobs, including the military and judicial clerkships.<sup>55</sup> The business world was home to another 13.5% of 2009 law graduates, with a final 3.5% reporting a job in academia.<sup>56</sup>

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interdisciplinary approach to the law may be better for law students because of the competitive job market for lawyers). Students trained in the law may find themselves working in a variety of fields, including academia, business, government, military, entertainment, journalism, law enforcement, real estate, and public relations). *Id.* However, a less focused approach to legal education may make students more difficult to reach in the classroom, and students may give legal educators the impression that law students today are less committed to professionalism and being lawyers than their predecessors.

<sup>53</sup> See Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 751 (2010) (stating that the nation's largest law firms, referred to as, "Big Law," are "suffering not merely from a short-term decline in the general economy or in the overall demand for legal services. . . . Rather, Big Law's problems are long-term, and may have been masked until recently by a strong economy . . .").

<sup>54</sup> Press Release, Nat'l Ass'n for Legal Career Professionals (NALP), *Market for Law Graduates Changes with Recession: Class of 2009 Faced New Challenges* (July 22, 2010), available at [http://www.nalp.org/uploads/Class\\_of\\_09\\_Jobs\\_and\\_JDs\\_Report\\_Press\\_Release.pdf](http://www.nalp.org/uploads/Class_of_09_Jobs_and_JDs_Report_Press_Release.pdf) [hereinafter *Market Changes*]. NALP also reported that compared to prior years, "[A] far higher percentage of this class reported employment that was temporary. . . ." See Katy Hopkins, *Law Jobs Will Be Harder to Come By*, U.S. NEWS & WORLD REP., June 25, 2010, available at <http://www.usnews.com/education/articles/2010/06/25/law-jobs-will-be-harder-to-come-by> (noting that legal employment prospects are not likely to improve until 2012, at the earliest).

<sup>55</sup> *Market Changes*, *supra* note 54.

<sup>56</sup> *Id.*

Law students come to law school for a wide variety of reasons, though not specifically tied to a particular career path.<sup>57</sup> Law students' motivations for studying law are broad, including securing a challenging and rewarding career, furthering academic development, achieving financial security, or achieving prestige. Some students also come to law school because they are not sure what they want to do next in life.<sup>58</sup>

## 2. *Part-time and Joint Degree Law Students and the Law School Learning Gap*

Many law schools offer part-time or joint degree programs today.<sup>59</sup> The law school experiences of part-time students and joint degree candidates are also quite different than their professors' past law school experiences. By design or by necessity, many law students do not devote all of their time to law school.

Most law professors are graduates of traditional full-time law school programs at top-tier law schools.<sup>60</sup> There are no part-time programs or part-time law students at most top-tier law schools.<sup>61</sup> At many other law schools, however, law students work full-time jobs during the day, feed their families, and attend law school classes at

<sup>57</sup> See Survey, *Student Engagement in Law School: In Class and Beyond*, L. SCH. SURVEY STUDENT ENGAGEMENT, 2 (2010), [http://lssse.iub.edu/pdf/2010/2010\\_LSSSE\\_Annual\\_Survey\\_Results.pdf](http://lssse.iub.edu/pdf/2010/2010_LSSSE_Annual_Survey_Results.pdf) ("More than 50% of 1L students reported motivations for law study related to securing a challenging and rewarding career, furthering academic development,").

<sup>58</sup> *Id.* ("Younger students were especially motivated by continuing their studies when unsure of next steps in life."); see also Emily Zimmerman, *An Interdisciplinary Framework for Understanding and Cultivating Law Student Enthusiasm*, 58 DEPAUL L. REV. 851, 893 (2009) ("Many law students may enter law school with little or no real enthusiasm regarding law study.").

<sup>59</sup> See Morse & Flanigan, *supra* note 3; Appendix G: *Considering a Joint Degree*, *supra* note 9.

<sup>60</sup> Richard E. Redding, "Where Did You Go To Law School?" *Gatekeeping for the Professoriate and Its Implications For Legal Education*, 53 J. LEGAL EDUC. 594, 599 (2003) ("A third of all new teachers graduated from either Harvard (18%) or Yale (15%); another third graduated from other top-12 law schools, and 20 percent graduated from other top-25 law schools. Only 14 percent graduated from a school not ranked among the top 25 law schools in the nation.").

<sup>61</sup> See Paul F. Kirgis, *Race, Rankings, and the Part-Time Free Pass*, 54 J. LEGAL EDUC. 395, 400 n.18 (2004) ("With a few notable exceptions, schools with part-time programs generally do not appear near the top of the *U.S. News* rankings.").

night or on the weekend.<sup>62</sup>

Most law professors who graduated from top-tier law schools enjoyed the luxury of not having to work during law school or worry how to feed their families.<sup>63</sup> They had time to meet in study groups, study together in the library, and meet with law professors to discuss issues of law outside of the classroom.<sup>64</sup> Most future law professors were able to totally immerse themselves in the law and in law school. In many ways, they were easy students to teach.

In today's challenging economy, many more law students attend law school on a part-time basis because they are holding down full-time jobs.<sup>65</sup> Although they are often distracted by life outside the law school, part-time law students with work and life experience offer a unique richness to the law school classroom. Older and with more career and life experiences, students who work full-time and attend law school on a part-time basis draw on their backgrounds and see the relevance of their law studies.<sup>66</sup>

<sup>62</sup> See Morse & Flanigan, *supra* note 3 (stating that in 2011, forty ABA approved law schools offered part-time programs).

<sup>63</sup> See David F. Chavkin, *Clinic Under the Stars: Giving Part-Time Students Their Due*, 13 CLINICAL L. REV. 719, 749 (2007) (commenting on how difficult it is for law professors to understand their part-time students by stating, "I know many professors who treat part-time students like bats who hang upside down during the day."); see also Javalovr, *Day v. Night: The Part-Time Law School Experience*, NONTRADLAW (Apr. 18, 2010, 4:40 PM), <http://www.nontradlaw.net/forums/ubbthreads.php/ubb/showflat/Number/90357> ("One advantage day students have is that they can totally immerse themselves in their studies. Also, most (but not all) of them don't have outside responsibilities like kids, mortgages, etc.").

<sup>64</sup> See Jane M. Goddard, Comment, *Building the Cathedral: Sculpting a Part-Time Legal Education in a Double-Time World*, 8 BARRY L. REV. 117, 125 (2007) (citing RICHARD MONTAUK, *HOW TO GET INTO THE TOP LAW SCHOOLS* 30 (The Berkley Publishing Group 2004)) (stating that "[p]art-time students cannot dedicate themselves to studying and to developing peer relationships in the same ways full-time students can").

<sup>65</sup> See, e.g., Symposium, *The Evolution of J.D. Programs—Is Non-Traditional Becoming More Traditional? Panel Two: The Status of Part-Time Evening Programs?*, 38 SW. L. REV. 599, 602 (2009) ("My 1970s student might have had a spouse at home taking care of children and taking care of the household. Today that's less likely to be the case, as more and more households rely on the income from two full-time wage earners.").

<sup>66</sup> Goddard, *supra* note 64, at 132 ("Part-time students bring a wealth of practical knowledge with them into the classroom, simply by virtue of their real-life experiences . . ."); see Nikki Schwab, *The Attractions of Part-Time Law School*, U.S. NEWS & WORLD REP., Apr. 22, 2009, available at <http://www.usnews.com/education/best-graduate-schools/top-law-schools/applying/articles/2009/04/22/the-attractions-of-part-time-law-school?PageNr=2> (commenting on the experience that part-time students bring to the law school, Dean Treanor of Fordham Law School, stated that "[y]ou can really have this incredible richness—you can have in a classroom a doctor, an investment banker, and a schoolteacher, and a police offic-

However, part-time law students are also disadvantaged. Part-time law students often have difficulty transitioning back into studying that law school demands because they have been out of school for years.<sup>67</sup> They are thus, distracted. They have time constraints and are likely unable to be on campus for extended periods of time due to other demands. The scattered nature of their lives may affect the ways part-time law students learn.

Although part-time law students attend law school at great sacrifice and take their education very seriously,<sup>68</sup> try as they may, part-time law students, unlike their professors who attended law school without distractions, do not have the time or energy to be totally dedicated to law school. The development of peer relationships and attending law school extracurricular activities or professionalism programs are difficult for part-time students.<sup>69</sup> At the same time, law students likely realize that interacting with their professors, whether it is to discuss class material, career aspirations, or legal research and writing, is an integral part of their professional development.<sup>70</sup>

Law schools with joint degree programs or certificate programs also attract students with multidisciplinary backgrounds and interests. Law students pursuing joint degrees or certificates have broad interests and academic backgrounds, such as advanced business, biometrics, employment and labor, international studies, health care, human rights, historical preservation, informatics, library science, and social work, to compliment their law school courses.

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er, and a journalist. So, when you're teaching, you really have these people who can say: 'This is what I'm working on[; t]his is how it actually happens.' "); *see also* Goddard, *supra* note 64, at 120 n.21 (citing Amy P. Maloney, Note, *Flexible Academic Programs in Legal Education: Diversifying Our Law Schools by Creating Opportunities for Nontraditional Students*, 67 UMKC L. REV. 165, 168 (1998)) (according to Goddard, part-time law programs are more likely to attract nontraditional students, whose "characteristics often include being older than twenty-seven . . ."). Traditional law students fall between the ages of twenty-three and twenty-seven. Maloney, *supra*, at 168.

<sup>67</sup> Goddard, *supra* note 64, at 132.

<sup>68</sup> *Id.* at 140.

<sup>69</sup> *Id.* at 125 ("Although welcome to join student journals and other law school organizations, part-time students may find it logistically difficult to participate in co-curricular and extra-curricular activities, especially when meetings take place during working hours that preclude part-time students from attending."); *see also* Schwab, *supra* note 66 ("The biggest drawback of part-time legal education is that students have less time than their full-time peers for extracurricular activities . . .").

<sup>70</sup> *See Student Engagement in Law School: In Class and Beyond*, *supra* note 57, at 9.



These varied interests and studies are additions to tracks that have been traditionally pursued by law schools.<sup>71</sup>

There are definite advantages for today's joint degree and part-time law students who come to law school without blinders on about the world and without a very narrow focus on career goals. A well-rounded, interdisciplinary approach to the law may give today's law student much more flexibility and mobility in the competitive job market for lawyers.<sup>72</sup> At the same time, however, law students with such a wide variety of interests and motivations may be more difficult to reach in the classroom, without a more universal approach to teaching.

#### D. Technology and the Law School Learning Gap

Technology and its "fundamental shifts in how, when, and where people expect to learn"<sup>73</sup> also creates a generational learning gap between law professors and students like no other in the history of the American law school.<sup>74</sup> Law students today likely spend more time reading web pages than books, and more time writing text messages or e-mails than letters and long research papers.<sup>75</sup> They likely have not written or read cursive writing, as the cursor more often replaces cursive writing.<sup>76</sup>

The challenge to law professors today, is to take advantage of the modern law students' use of technology and to apply it to their legal instruction.<sup>77</sup> Effective teaching involves the use of technology

<sup>71</sup> See *Survey of Innovations in Law School Curricula*, AM. ASS'N L. SCH. COMM. ON CURRICULUM, 24-28 (2006), <http://www.aals.org/documents/curriculum/Survey.pdf>.

<sup>72</sup> See Francesco Parisi, *Multidisciplinary Perspectives in Legal Education*, 6 U. ST. THOMAS L.J. 347, 351 (2009) (raising "the importance and the marketing appeal of providing students with a multidisciplinary legal education").

<sup>73</sup> Dunham & Friedland, *supra* note 50, at 380 n.43.

<sup>74</sup> *Id.*

<sup>75</sup> Alaka, *supra* note 42, at 345 n. 9 (noting that "[t]he proliferation of technology-aided writing may also be affecting students' writing skills."). See also Katie Zezima, *The Case for Cursive*, *The New York Times*, Apr. 27, 2011, available at [www.nytimes.com/2011/04/28/us/28cursive.html](http://www.nytimes.com/2011/04/28/us/28cursive.html).

<sup>76</sup> Alaka, *supra* note 42, at 345; see also *id.* at 356 n.9.

<sup>77</sup> Mary Kay Kane, *President's Address: Technology and Faculty Responsibilities*, ASS'N AM. L. SCH. NEWSL. (Apr. 2001), available at <http://www.aals.org/presidentsmessages/pmapr01.html> ("[T]echnology in the classroom is not only here to stay, its utilization will continue to grow and is likely over time to become the dominant method for delivery of

to benefit all of today's law students.<sup>78</sup> It has been noted that,

[t]raditionally, legal education was a stationary and linear endeavor, much like an assembly line. Professors transferred information to students in classes, who in turn assembled the knowledge into an organized and useable form outside of class, often in a library or other 'study' place . . . . [T]he Socratic Dialogue approach . . . promoted the notion that learning occurred in the classroom.<sup>79</sup>

But today's students study and learn "on the go."<sup>80</sup> They are "proficient with a variety of technologies, from text messaging, to iPod downloads, to Internet usage, to blogging even during class, and feel very comfortable 'multi-tasking.'"<sup>81</sup> Students today frequently use portable media devices and will use them in practice once they graduate.<sup>82</sup>

At the same time that law students are becoming more reliant upon and enthusiastic about the use of technology in everything that they do, law professors are finding the devil in technology. There is a growing sentiment among law professors that students' use of computers in the law school classroom directly interferes with their learning.<sup>83</sup> A growing number of law professors object to students' use of laptops in the law school classroom.<sup>84</sup> Some law professors have banned their use altogether in the classroom because they are a dis-

higher education.").

<sup>78</sup> See Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 23 (2002); see also Meredith George & Wendy Newby, *Inclusive Instruction: Blurring Diversity and Disability in Law School Classrooms Through Universal Design*, 69 U. PITT. L. REV. 475, 492 (2008).

<sup>79</sup> Dunham & Friedland, *supra* note 50, at 373-74.

<sup>80</sup> See Eileen Narozny, *Students on the Go: What's an Instructor to do?*, FACULTY FOCUS (Nov. 22, 2010), <http://www.facultyfocus.com/articles/learning-styles/students-on-the-go-what%E2%80%99s-an-instructor-to-do/> ("Today's students do not wait to receive information—they want it instantly and feel they are entitled to receiving it instantly because they grew up with the latest, greatest technologies always close at hand.").

<sup>81</sup> Dunham & Friedland, *supra* note 50, at 372.

<sup>82</sup> See *id.* ("Rapid changes in portable media devices have revealed a growing disparity between traditional legal education and law practice.").

<sup>83</sup> *Id.* at 383.

<sup>84</sup> See Kevin Yamamoto, *Banning Laptops in the Classroom: Is It Worth the Hassles?*, 57 J. LEGAL EDUC. 477, 483-84 (2007).

traction.<sup>85</sup> A quick tour around some law school classrooms will show that laptops are a real distraction. A peek at students' laptop screens often reveals Facebook pages, websites, and instant messaging, instead of class notes or class materials.<sup>86</sup> Contrary to students' claims that they can efficiently multi-task while learning class material, recent studies have shown otherwise.<sup>87</sup>

The easy solution to the problem of students' computer misuse in the classroom is to prohibit students from using computers in the classroom altogether. But banning students' computer use in the classroom assumes that students can efficiently learn, and should learn, in the most traditional way.<sup>88</sup> The better solution is for law professors to look inward and become more engaging to law students. The challenge for law professors is to meet their students where they are and use technology as an effective teaching tool.

Law professors can embrace computers in the classroom by utilizing all of the split screens on students' computers when delivering class material.

When teaching the substance of a case, faculty can engage students in their world by calling on students to access related cases on Westlaw and LexisNexis, review a history or pop culture reference on Wikipedia, or seek out some detail related to the case or the notes on the Internet.<sup>89</sup>

With classroom internet access, faculty can project "their own working outline on a split screen that also includes the case itself and other

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<sup>85</sup> *Id.*; Dunham & Friedland, *supra* note 50, at 383; see also *Law Professor Bans Laptops in Class, Over Student Protest*, USA TODAY, Mar. 21, 2006, available at [http://www.usatoday.com/tech/news/2006-03-21-professor-laptop-ban\\_x.htm](http://www.usatoday.com/tech/news/2006-03-21-professor-laptop-ban_x.htm); Martha Neil, *More Law Profs Ban Laptop Use in Class*, A.B.A. J., Jan. 11, 2010, available at [http://www.abajournal.com/news/article/more\\_law\\_profs\\_bring\\_down\\_hammer\\_banning\\_laptop\\_use\\_in\\_class/](http://www.abajournal.com/news/article/more_law_profs_bring_down_hammer_banning_laptop_use_in_class/).

<sup>86</sup> See Dunham & Friedland, *supra* note 50, at 384.

<sup>87</sup> See Karin Foerde et al., *Modulation of Competing Memory Systems by Distraction*, 103 PROC. NAT'L ACAD. SCI. 11778 (2006), available at <http://www.pnas.org/cgi/reprint/0602659103v1.pdf>.

<sup>88</sup> Dunham & Friedland, *supra* note 50, at 383-84.

<sup>89</sup> *Id.* at 384 (suggesting ways to combat the problem of students using split screens on their computers to "multi-task" classroom subject-related activities and non-class related activities on their computer screens).

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content related to the course, such as an analytical map.”<sup>90</sup> Law professors must rethink how to deliver virtual instruction and reach their “on-line” students. The universe of today’s law students will benefit.

### **III. THE IMPETUS FOR A UNIVERSAL APPROACH TO BRIDGE THE LAW SCHOOL LEARNING GAP: LAW STUDENTS WITH DISABILITIES AND ESL STUDENTS**

Because of the diversity among law students and in the ways that they learn, the law professor really has no choice but to think about the universe of learners sitting in their classrooms. Almost every law professor in every law school classroom confronts individual students’ needs and the difficulties in class-preparation these needs can present for the law professor. The need is obvious for a small number of law students. However, the benefits of the professor’s universal design and adaptability can extend to all of the law students in the classroom.

#### **A. The Law Student with a Disability**

The impetus for universal design and adaptability in the law school classroom can be the law student with a disability. At the beginning of each semester the law school, or the university disability services office, or the diversity services department, sends a letter to law professors on behalf of each law student with a disability who requires educational accommodations or modifications.<sup>91</sup> The letter

<sup>90</sup> *Id.*

<sup>91</sup> See *Best Practices Guide for Accommodating Law Students with Disabilities*, NAT’L ASS’N OF LAW STUDENTS WITH DISABILITIES, L. SCH. COMM. ON CURRICULUM, 6, <http://www.nalswd.org/resources.html> (last visited Feb. 28, 2012); see also *A Resource Manual for Faculty: Services for Students with Disabilities*, LA. ST. U. SHREVEPORT STUDENT DEV. & COUNSELING CTR., 5 (Aug. 15, 2008), <http://www.lsus.edu/Documents/Offices%20and%20Services/Student%20Development%20and%20Counseling%20Center/facultymanual.pdf>. Although IDEA does not apply to higher education and law students, it sets expectations for law students and makes law schools more accessible to people with disabilities. Students are eligible for services under IDEA at the elementary and secondary level. Many of those same students increasingly access services in higher education. “As a result, this legislation shapes the accommodation expectations that students bring to college.” See generally 20 U.S.C. § 1400 (2006 & Supp. IV 2010). Students with learning disabilities are protected by The Individuals with Disabilities Education Act (IDEA); *id.* at § 1400(c). IDEA requires that states must ensure a “free appropriate public education” to all students with disabilities or lose their federal funding. *Id.*

outlines the necessary teaching and testing accommodations or modifications required by each law student with a disability.<sup>92</sup> Law professors are legally required to adapt some methods of instruction and assessments for law students with disabilities.<sup>93</sup>

The Rehabilitation Act of 1973 directly applies to higher education.<sup>94</sup> The Rehabilitation Act mandates accessible education for people with disabilities in schools receiving federal funding.<sup>95</sup> Higher educational institutions do not need to develop special programs for students, but must afford appropriate accommodations to allow students with disabilities to participate in the same educational opportunities as students with no disabilities.<sup>96</sup> Finally, the Americans with Disabilities Act (ADA)<sup>97</sup> extends protection to law students by requiring accommodations from private educational institutions, even if it did not receive federal funds.<sup>98</sup>

Law school accommodations for law students with disabilities most often include extended time testing, enlarging fonts on class handouts, visual teaching aids, and making handouts available to law students with disabilities before class.<sup>99</sup> All of these accommodations require the law professor to do additional advance planning and class preparation. Moreover, teaching strategies beyond what is outlined in the letter from disabilities services may be necessary to reach students, and on a day-to-day basis, to make the classroom truly accessible.

For example, the professor may receive letters from disabilities services requiring accommodations for visually impaired law students. For some students, the accommodations required by disabilities services may only include front row seating, the ability to

<sup>92</sup> *Best Practices Guide for Accommodating Law Students with Disabilities*, *supra* note 91, at 8.

<sup>93</sup> *Id.* at 30-33; *see also* Douglas K. Rush & Suzanne J. Schmitz, *Universal Instructional Design: Engaging the Whole Class*, 19 WIDENER L. J. 183, 184-85 (2009). *See generally* 20 U.S.C. § 1400 (2006 & Supp. IV 2010).

<sup>94</sup> 29 U.S.C. § 794 (2006).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> 42 U.S.C. §§ 12101-12213 (2006 & Supp. II 2008).

<sup>98</sup> 42 U.S.C. § 12181(7)(J).

<sup>99</sup> A law school is not required to offer a law student with disability accommodations that would fundamentally alter the law school program, or that would be unduly burdensome to the law school. *See* 42 U.S.C. §§ 12182(b)(2)(A)(ii)-(iii).

tape-record lectures, and the use of a large font on all handouts. However, the professor will soon discover the need to use additional strategies in day-to-day teaching, since law teaching of any kind is very visual. Law students read court cases and citation manuals with intricate rules. In legal writing, the professor often uses examples of student work and places the samples on overheads for peer critiques. Teaching tools such as PowerPoints and student writing samples would be of no benefit at all to visually impaired law students without some modification in teaching strategy and delivery beyond the accommodations required in the disability services' letter.

The law professor can easily adapt a few teaching strategies and learning assessments to accommodate and react to one or two law students' unique needs in the classroom when they have specific disabilities. Moreover, law students without disabilities usually do not notice teaching or testing accommodations being made for one or two students in the class. However, the professor's task becomes much more complex as the number of students needing individualized accommodations or modifications increase and the professor strives to reach all of the students in today's law school classroom.

Throw ESL students, part-time students, joint degree candidates, students with mixed motivations for coming to law school, and students with a variety of learning styles into the mix of students in the classroom, and the professor's task to create an inclusive learning environment can seem overwhelming, if not impossible. With so many students with unique backgrounds, characteristics, motivations, learning styles, and disabilities, it may be impossible for a law professor to truly deliver individualized accommodations or help to all of the law students who need it.

In addition, offering a variety of accommodations and modifications to a large number of law students in a classroom can create chaos and resentment among law classmates.<sup>100</sup> Stigma often accompanies individualized accommodations.<sup>101</sup> Therefore, a more universal approach to instruction, overlapping a great number of learners' needs, is most beneficial to create an inclusive learning environment for law students with and without disabilities.

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<sup>100</sup> See Wendy F. Hensel, *The Disability Dilemma: A Skeptical Bench & Bar*, 69 U. PITT. L. REV. 637, 650 (2008).

<sup>101</sup> See Smith, *supra* note 17, at 17.

## B. The ESL Law Student

Another group of law students who provide an impetus for universal design of instruction in law school is ESL law students. ESL students are those students for whom English is a second language.<sup>102</sup> ESL students often share many of the same learning challenges as students with learning disabilities.<sup>103</sup> Both groups often experience difficulties with “language fluency, comprehension, organization, and familiarity with the rhetorical patterns of academic writing in English.”<sup>104</sup>

ESL students commonly encounter other educational challenges, particularly in writing assignments. First, there are cultural differences between ESL students and other students in the law school classroom. For example, in some cultures, copying the words of another is considered an honor to that person.<sup>105</sup> However, in law school, honoring a person by copying his words without attribution is called plagiarism.<sup>106</sup> Second, the complexities of the American legal writing system cause ESL law students difficulty. For example, legal writing consists of “citations - for summaries and paraphrases[,] . . . quotation marks and citations - for direct quotes.”<sup>107</sup> Some ESL stu-

<sup>102</sup> ESL students are also “referred to as LEP (Limited English Proficient), SDPE (Students developing proficiency in English), ELL (English Language Learners), [and] PHLOTE (Primary Home Language Other Than English). . . .” *Fisher v. United States*, 549 F. Supp. 2d 1132, 1146 n.17 (D. Ariz. 2008). ESL students do have some legal protections in education, but not at the level of higher education and law school. Some have advocated that the Fourteenth Amendment’s Equal Protection clause requires educational services for ESL students. *See Lau v. Nichols*, 414 U.S. 563, 564 (1974). However, the Supreme Court in *Lau* declined to consider the Equal Protection Clause, relying instead on the Civil Rights Act of 1964 and requiring the San Francisco school system to revise how Chinese speaking students were educated. *Id.* at 566-68. Subsequent to the decision in *Lau*, Congress enacted the EEOA, which states that “the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs” is an illegal denial of equal opportunity. 20 U.S.C. § 1703(f) (2006).

<sup>103</sup> Jane Hirschhorn, *ESL and LD Students: Diverse Populations, Common Concerns*, <http://emil.uwc.utexas.edu/praxis/?q=node/175> (last visited Feb. 27, 2012).

<sup>104</sup> *Id.*

<sup>105</sup> Alison Craig, *Failing My ESL Students: My Plagiarism Epiphany*, 12 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 102, 102 (2004); *see also* Spanbauer, *supra* note 7, at 437.

<sup>106</sup> *See Law School Plagiarism v. Proper Attribution*, MERCER U. LEGAL WRITING INST., 2, [http://wiki.lwionline.org/images/e/e7/LWI\\_PLAGIARISM\\_Brochure2009.pdf](http://wiki.lwionline.org/images/e/e7/LWI_PLAGIARISM_Brochure2009.pdf) (last visited Feb. 27, 2012).

<sup>107</sup> Craig, *supra* note 105, at 102.

dents grasp one tier and not the other, or may not understand their professors' written comments or questions on papers like " '[a]re these your own words?' " and " '[w]here did you get this information?' " and basically ignore them.<sup>108</sup>

The longer ESL students live and study in the United States, the more their learning style preferences resemble those in the native speaking group.<sup>109</sup> ESL students do assimilate and become used to the United States' educational system. However, problems with writing can arise even for seemingly well-acclimated ESL students. Many ESL students have resided in the United States since childhood and speak English very fluently.<sup>110</sup> However, their fluency may diminish in written English, where they may show characteristics common to non-native speakers.<sup>111</sup>

In addition to strictly academic challenges, ESL students may also face cultural barriers to learning in the American law school. English "rhetorical patterns [are] shaped by western culture, politics and values."<sup>112</sup> ESL students may totally lack this background information and the patterns may seem unnatural or illogical.<sup>113</sup> For instance, the English idea of using a thesis sentence is not standard practice around the world.<sup>114</sup> Clearly stating a thesis, transition or conclusion may be viewed as insulting the reader's intelligence.<sup>115</sup> Brevity may also be an issue. In some cultures, a statement is proven by "repetition or by citing proverbs; elaboration and decoration of ideas may be valued more highly than conciseness and specificity."<sup>116</sup>

Lack of cultural background also makes comprehension more challenging<sup>117</sup> as both lectures and cases may be much more difficult

<sup>108</sup> *Id.* at 103 (citing Fiona Hyland & Ken Hyland, *Sugaring the Pill: Praise and Criticism in Written Feedback*, 10 J. SECOND LANG. WRITING 185, 201 (2001)).

<sup>109</sup> Joy M. Reid, *The Learning Style Preferences of ESL Students*, 21 TESOL Q. 87, 96 (1987).

<sup>110</sup> Nancy Kreml et al., *Working with ESL Students in the Composition Classroom*, MIDLANDS TECHNICAL COLL. 2, <http://www.midlandstech.edu/esl/eslmanual.pdf> (last visited Feb. 27, 2012).

<sup>111</sup> *Id.*

<sup>112</sup> Hirschhorn, *supra* note 103.

<sup>113</sup> *Id.*

<sup>114</sup> Kreml et al., *supra* note 110, at 4.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 3.



to understand without a basic frame of reference for what is taking place. Getting used to the language and phrasing of law school is difficult for any law student.<sup>118</sup> The problems are compounded for ESL students.

Interaction with faculty and other students may also be a challenge for ESL students. In some cultures, “the teacher is regarded as an authority figure who must be shown the utmost respect and must never be bothered.”<sup>119</sup> ESL students may be reluctant to ask questions, and this reluctance is only reinforced by their lack of confidence in their English skills.<sup>120</sup> Additionally, some ESL students may hold back because they feel that by asking frequent questions they are suggesting that the teacher has done a poor job.<sup>121</sup>

Students from some cultures may be dealing with gender-integrated education for the first time while attending law school in the United States. They may find it difficult or uncomfortable to work with teachers or other students of the opposite sex.<sup>122</sup> Some international students also seem overly concerned with grades, which can come from cultural expectations of high performance, or from the large investment in terms of time away from home and money that they have made to study here.<sup>123</sup>

Although ESL law students are not legally entitled to educational accommodations in law school, helping them overcome some of their obstacles to legal education is consistent with the values of higher education and the American Bar Association in eliminating bias and enhancing diversity.<sup>124</sup> ESL students bring a global perspective to the law school classroom. Therefore, a universal approach to

<sup>118</sup> See Galves, *supra* note 23, at 228-29 (noting that students have frequently told the author that legal courses are “ ‘like a foreign language to them’ ”); see also ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 3-12 (2007).

<sup>119</sup> Kreml et al., *supra* note 110, at 2.

<sup>120</sup> *More advice about teaching ESL students (FAQ)*, FRANKFURT INT. SCH., <http://esl.fis.edu/teachers/support/faq1.htm> (last visited Feb. 27, 2012) [hereinafter *More advice*].

<sup>121</sup> *Id.*

<sup>122</sup> Kreml et al., *supra* note 110, at 2-3.

<sup>123</sup> *Id.* at 2.

<sup>124</sup> One of the formal goals of the ABA is to “ ‘[t]o eliminate bias and enhance diversity.’ ” *2011 Goal III Report*, ABA COMM’N ON MENTAL & PHYSICAL DISABILITY L., 5 (2011), [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/mental\\_physical\\_disability/2011\\_CMPDL\\_goal\\_3\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/mental_physical_disability/2011_CMPDL_goal_3_report.authcheckdam.pdf).

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law school instruction, which helps ESL students, will benefit law schools and the native English speakers in the classroom.

#### IV. THE SEVEN PRINCIPLES OF UNIVERSAL DESIGN

Universal design of instruction is one of the most promising tools for law professors to use to bridge the law school learning gap and reach all of the learners in the law school classroom, regardless of students' legal status.<sup>125</sup> Originally used in architecture,<sup>126</sup> universal design avoids the stigma, exceptions, and often the costs of providing accommodations to a handful of individuals. Rather, universal design benefits the universe of people, both with disabilities and without disabilities.<sup>127</sup>

The Center for Universal Design at North Carolina State University developed universal design "to integrate people with disabilities into the mainstream."<sup>128</sup> It was first applied by architects to make buildings more accessible and useable to people with disabilities.<sup>129</sup> The key to a good universal design envisioned by architects is that everyone benefits from the design, increasing everyone's accessibility and usability. Universal design is defined as "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design."<sup>130</sup>

Buildings are often designed to anticipate and accommodate

<sup>125</sup> See George & Newby, *supra* note 78, at 492.

<sup>126</sup> *Universal Design to Support Access to the General Education Curriculum*, THE ACCESS CTR., 1 (Oct. 19, 2004), [http://www.k8accesscenter.org/training\\_resources/documents/UDFINAL\\_000.pdf](http://www.k8accesscenter.org/training_resources/documents/UDFINAL_000.pdf). See also Richard Duncan, *Universal Design*, CENTRE FOR EXCELLENCE IN UNIVERSAL DESIGN (2012), <http://www.universaldesign.ie/exploreampdiscover/conferenceproceedings/universaldesignforthe21stcenturyirishampinternationalperspectives/universaldesign>.

<sup>127</sup> See Connell et al., *supra* note 14.

<sup>128</sup> *About UD: Universal Design History*, N.C. ST. U. CTR. FOR UNIVERSAL DESIGN, [http://www.ncsu.edu/www/ncsu/design/sod5/cud/about\\_ud/udhistory.htm](http://www.ncsu.edu/www/ncsu/design/sod5/cud/about_ud/udhistory.htm) (last visited Feb. 20, 2011); see also Douglas K. Rush & Suzanne J. Schmitz, *Universal Instructional Design: Engaging the Whole Class*, 19 WIDENER L.J. 183, 186 (2009).

<sup>129</sup> See Rush & Schmitz, *supra* note 128, at 186.

<sup>130</sup> *Universal Design*, N.C. ST. U. DISABILITY SERV. OFF., <http://www.ncsu.edu/dso/general/universal-design.html> (last visited Feb. 20, 2011) [hereinafter *Mace*]. Universal design was defined by Ron Mace, who was the founder and director of N.C. State University's Center for Universal Design. *Id.* Mace himself "used a wheelchair and ventilator after a childhood bout of polio left him permanently disabled."

the needs of people with disabilities and without. This includes men, women, short people, tall people, and old people, as well as people with disabilities. For example, light switches are often placed lower on the wall to accommodate people with mobility disabilities in wheelchairs.<sup>131</sup> The lowered light switches benefit short people as well, because they can easily reach the switches. An automatic door at a building's entrance helps people enter a building when their arms are full of books, but also makes the building accessible to people with disabilities.<sup>132</sup>

A cut in a sidewalk and ramp will help people in wheel chairs or other physical barriers navigate the transition from the street to the sidewalk.<sup>133</sup> But the design will also help people with no disabilities. For example, a smooth transition from the street to the sidewalk will also benefit a person riding a bicycle or a parent pushing a baby stroller.<sup>134</sup> Almost everyone can benefit from larger stalls in a public bathroom, although the larger design also accommodates people with disabilities. Grab bars in a hotel shower do not only benefit the elderly or people with physical disabilities. A person of any age or physical ability can slip on a wet tile floor if they do not have something secure to hold onto. The basic idea of universal design is to design to meet the needs of all people, with disabilities and without. Instead of designing separate facilities for people with disabilities, the facilities are universal in accessibility and use.<sup>135</sup>

In the architecture, building, and construction industry, there are seven principles of universal design used not only to remove physical barriers for people with disabilities, but also to benefit all users. They are:

**“Principle One: Equitable Use[—]The design is useful and marketable to people with diverse abilities.”**<sup>136</sup>

<sup>131</sup> See Robin Paul Malloy, *Inclusion by Design: Accessible Housing and Mobility Impairment*, 60 HASTINGS L.J. 699, 712 (2009).

<sup>132</sup> See Sheryl Burgstahler, *Universal Design of Instruction (UDI): Definition, Principles, Guidelines, and Examples*, U. WASH. DISABILITIES, OPPORTUNITIES, INTERNETWORKING, AND TECH. CTR. (DO-IT), 1 (Nov. 17, 2009), <http://www.washington.edu/doit/Brochures/PDF/instruction.pdf>.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> Mace, *supra* note 130.

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**“Principle Two: Flexibility in Use[—]**The design accommodates a wide range of individual preferences and abilities.”<sup>137</sup>

**“Principle Three: Simple and Intuitive Use[—]**Use of the design is easy to understand, regardless of the user’s experience, knowledge, language skills, or current concentration level.”<sup>138</sup>

**“Principle Four: Perceptible Information[—]**The design communicates necessary information effectively to the user, regardless of ambient conditions or the user’s sensory abilities.”<sup>139</sup>

**“Principle Five: Tolerance for Error[—]**The design minimizes hazards and the adverse consequences of accidental or unintended actions.”<sup>140</sup>

**“Principle Six: Low Physical Effort[—]**The design can be used efficiently and comfortably and with a minimum of fatigue.”<sup>141</sup>

**“Principle Seven: Size and Space for Approach and Use[—]**Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user’s body size, posture, or mobility.”<sup>142</sup>

The same seven principles of Universal Design can be adapted to create a more inclusive and effective learning environment for the universe of diverse law students sitting in law school classrooms today.

## V. THE SEVEN PRINCIPLES OF UNIVERSAL DESIGN APPLIED TO LAW TEACHING

The concepts of universal design have made undergraduate education more accessible and useable.<sup>143</sup> Universal design concepts are also slowly finding their way to law schools.<sup>144</sup>

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Mace, *supra* note 130.

<sup>142</sup> *Id.*

<sup>143</sup> George & Newby, *supra* note 78, at 493.

<sup>144</sup> See Conference, *Anticipating and Meeting Challenges in a Changing Landscape*, 18 AM. U. J. GENDER SOC. POL’Y & L. 141, 151 (2009) (“I would urge everybody in the country in all of these law schools, just to free your mind, open your mind to universal design. It’s not just about levers on doors.” (quoting Rebecca Williford, President of the National Association of Law Students with Disabilities)).

First applied to education as an architectural tool for designing better school buildings,<sup>145</sup> universal design concepts are now being adopted to improve the accessibility and quality of all facets of education. Universal design concepts are applied to instructional design to “create courses that ensure lectures, discussions, visual aids, videos, printed materials, labs, and fieldwork are accessible to all students.”<sup>146</sup> The Center for Applied Special Technology (“CAST”)

<sup>145</sup> *Class Act: Universal Design*, ROCHESTER INST. OF TECH. NAT’L TECH. INST. FOR THE DEAF, <http://www.rit.edu/~w-class/side/universaldesign.html> (last visited Feb. 22, 2011).

<sup>146</sup> Burgstahler, *supra* note 132. Dr. Sheryl Burgstahler and the University of Washington make these suggestions for universally designing higher education:

1. *Class climate*. Adopt practices that reflect high values with respect to both diversity and inclusiveness. Example: Put a statement on your syllabus inviting students to meet with you to discuss disability-related accommodations and other special learning needs.
2. *Interaction*. Encourage regular and effective interactions between students and the instructor and ensure that communication methods are accessible to all participants. Example: Assign group work for which learners must support each other and that places a high value on different skills and roles.
3. *Physical environments and products*. Ensure that facilities, activities, materials, and equipment are physically accessible to and usable by all students, and that all potential student characteristics are addressed in safety considerations. Example: Develop safety procedures for all students, including those who are blind, deaf, or wheelchair users.
4. *Delivery methods*. Use multiple, accessible instructional methods that are accessible to all learners. Example: Use multiple modes to deliver content; when possible allow students to choose from multiple options for learning; and motivate and engage students—consider lectures, collaborative learning options, hands-on activities, Internet-based communications, educational software, field work, and so forth.
5. *Information resources and technology*. Ensure that course materials, notes, and other information resources are engaging, flexible, and accessible for all students. Example: Choose printed materials and prepare a syllabus early to allow students the option of beginning to read materials and work on assignments before the course begins. Allow adequate time to arrange for alternate formats, such as books in audio format.
6. *Feedback*. Provide specific feedback on a regular basis. Example: Allow students to turn in parts of large projects for feedback before the final project is due.
7. *Assessment*. Regularly assess student progress using multiple accessible methods and tools, and adjust instruction accordingly. Example: Assess group and cooperative performance, as well as individual achievement.
8. *Accommodation*. Plan for accommodations for students whose needs

is spearheading the effort. “CAST is a nonprofit research and development organization that works to expand learning opportunities for all individuals, especially those with disabilities, through Universal Design for Learning.”<sup>147</sup> According to CAST,

Universal Design for Learning is an educational approach with three primary principles:

1. *Multiple means of representation*, to give diverse learners options for acquiring information and knowledge,
2. *Multiple means of action and expression*, to provide learners options for demonstrating what they know,
3. *Multiple means of engagement*, to tap into learners’ interests, offer appropriate challenges, and increase motivation.<sup>148</sup>

Universal design of instruction for learning assumes that diversity is the norm, rather than the exception.<sup>149</sup> Students learn in diverse ways and have a variety of abilities and disabilities.<sup>150</sup> The key to universal design is creating instruction that makes the most of all students’ diverse ways of learning and abilities.

The principles of universal design have direct application to good practices in law teaching and overlap them.<sup>151</sup> Professors Ge-

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are not met by the instructional design. Example: Know campus protocols for getting materials in alternate formats, rescheduling classroom locations, and arranging for other accommodations for students with disabilities.

*Id.* at 2-3.

<sup>147</sup> *About CAST*, CAST, <http://www.cast.org/about/index.html> (last visited Feb. 20, 2011) (emphasis omitted).

<sup>148</sup> *CAST Timeline: One mission, many innovations, 1984-2010*, CAST, <http://www.cast.org/about/timeline/index.html> (last visited Mar. 2, 2012).

<sup>149</sup> *Universal Design for Learning (UDL) Guidelines—Version 1.0*, CAST, 2 (2008), <http://www.cast.org/library/UDLguidelines/version1.html> (follow “UDL Guidelines - Version 1.0” hyperlink).

<sup>150</sup> See Boyle & Dunn, *supra* note 13, at 216; Jolly-Ryan, *supra* note 11, at 142-45.

<sup>151</sup> GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 16 (1999). Hess and Friedland’s good teaching Principle Seven notes that “in 1986, leading teachers and scholars in the movement to improve higher education in the United States met to identify the key principles which characterize the practices at educationally successful colleges. Those teachers and scholars developed seven principles for good teaching in undergraduate education.” *Id.* at 15. In March of 1987, “*The Seven Principles for Good Practice in Undergraduate Education*” was the title of the lead article in the American Association of

rald Hess and Steven Friedland's renowned *Techniques for Teaching Law* emphasizes that "there are many roads to learning. People bring different talents and styles of learning to college. . . . Students need opportunity to show their talents and learn in ways that work for them. Then they can be pushed to learn in ways that do not come so easily."<sup>152</sup> Principle Seven of good practices in teaching law "Respects Diverse Talents and Ways of Learning."<sup>153</sup> Universal design principles can be used to further good practices and effective teaching in law schools.

#### A. PRINCIPLE ONE: EQUITABLE USE<sup>154</sup>

To satisfy the first universal design principle, the design must be useful "to people with diverse abilities and the use must be equitable."<sup>155</sup> If the design is truly equitable, it will avoid singling out and stigmatizing law students with disabilities. The design will be appealing to law students with or without disabilities.

Untimed tests or other types of untimed assessments are good examples of equitable use in legal education. They have universal utility for law students, law schools, and the practicing bar. Strict time limitations on law school assessments do not always accurately reflect law students' abilities or test the skills they need in the practice of law. To the contrary, take-home assignments affording time for reflection and research give students a better chance to show what they know and better simulate law practice.<sup>156</sup> Few clients and judges

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Higher Education Bulletin. *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> See Connell et al., *supra* note 14. In the construction industry, power doors with sensors at the entrance of buildings are examples of equitable use because they make access to the building convenient for everyone, while avoiding a perhaps stigmatizing specific accommodation for people with only certain types of disabilities. See Burgstahler, *supra* note 132.

<sup>155</sup> See Connell et al., *supra* note 14.

<sup>156</sup> See Jennifer Jolly-Ryan, *The Fable of the Timed and Flagged LSAT: Do Law School Admissions Committees Want the Tortoise or the Hare?*, 38 CUMB. L. REV. 33, 34 (2007) ("[S]trictly timed tests, as a gate keeping mechanism to the legal profession, might emphasize [test takers'] speed to the detriment of more valuable qualities, such as perseverance, accuracy, and care."); see also Alaka, *supra* note 42, at 354-55 (noting that take-home exams can test legal analysis, while also allowing students and their professors to focus on "language and presentation. Doing so would also mimic the 'real world' of practice, clerkships,

appreciate a lawyer who does not carefully research, write, and reflect on a legal question.<sup>157</sup> Take-home writing assignments more closely simulate the practice of law.<sup>158</sup>

While untimed assessments or extra time are traditionally thought to be accommodations for law students with learning disabilities, they also benefit slow, but accurate, legal readers.<sup>159</sup> Both untimed tests and take-home assignments equalize legal education for law students who are quick readers and those who may read more slowly, but very carefully. Untimed tests and take-home assignments also help to equalize legal education for visually impaired law students or law students with some learning disabilities.<sup>160</sup>

Other examples of equitable use of design in legal instruction are websites, web-based instruction, and videos that are designed to be accessible to everyone. The substantial advantage of web pages or web-based instruction is that a number of adaptive technologies can be used to access the material. Visually impaired students can manipulate the font and use speech output systems to read text.<sup>161</sup> Students with auditory or processing issues can increase the volume and slow the delivery of material. Moreover, law students with mobility barriers or even part time law students, who do not have the luxury of much time on campus, can access the material wherever and whenever

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academia, and other settings, where written legal analysis is judged in the context of its presentation.”); Patricia A. Wilson, *Recreating the Law School to Increase Minority Participation: The Conceptual Law School*, 16 TEX. WESLEYAN L. REV. 577, 591 (2010) (“[A] [law] student’s final grade [should] be comprised of practice-like projects during the term or take-home exams that require use of a broad spectrum of resources to hone research skills and require a student to draft a well-constructed answer . . .”).

<sup>157</sup> See Peter A. Joy, *Ensuring the Ethical Representation of Clients in the Face of Excessive Caseloads*, 75 MO. L. REV. 771, 781 (2010) (“A lawyer may be disciplined for failing to research the law, perform an investigation, advise a client on possible defenses, or take other necessary steps to provide competent representation.”).

<sup>158</sup> See William D. Henderson, *Speed as a Variable on the LSAT and Law School Exams*, LSAC, 6 (2004), <http://www.lsac.org/LSACResources/Research/GR/GR-03-01.pdf>.

<sup>159</sup> See Jolly-Ryan, *supra* note 156; see also LAUREL CURRIE OATES & ANNE ENQUIST, *THE LEGAL WRITING HANDBOOK—ANALYSIS, RESEARCH, AND WRITING* 37-46 (4th ed. 2006) (Good legal readers do not skip words).

<sup>160</sup> See Jolly-Ryan, *supra* note 156, at 49-50.

<sup>161</sup> *Web Pages FAQ*, U. WASH. DO-IT, [http://www.washington.edu/doi/Faculty/Strategies/Academic/Webpages/webpages\\_faq.html](http://www.washington.edu/doi/Faculty/Strategies/Academic/Webpages/webpages_faq.html) (last visited Feb. 22, 2012) (stating that speech output systems only read text). They will not read graphics. See *id.* Therefore, the professor should keep graphics to a minimum on the web site or web based instructional materials. If graphics are used, a textual description should accompany them. *Id.*



er they wish.

In addition to information posted on web sites, hard copy handouts and assignments can also be manipulated to increase the opportunities for equitable use. A larger font used on handouts and assignments accommodates law students with visual impairments, as well as benefits the law professor whose eye sight has deteriorated from years of grading hundreds of papers. The larger font will also improve students' proofreading, as mistakes will appear much larger on the paper.

### B. Principle Two: Flexibility in Use

A flexible design accommodates "individual preferences and abilities."<sup>162</sup> A moot court video with captions, which allows students to choose to read or listen to a moot court argument repeatedly, is an example of a universal design that promotes flexibility in use. A video designed with captions makes the learning tool accessible to the hearing impaired.<sup>163</sup> It also makes the material more accessible to auditory learners. In addition, any student who has difficulty taking notes can slow the video down to meet his or her individual preferences and note-taking ability. The flexibility in design provided by captioned videos can also be of great benefit to ESL students who have difficulty taking notes or understanding spoken English.

Posting a variety of supportive, supplemental documents and links to web pages on TWEN<sup>164</sup> or Blackboard<sup>165</sup> for all students is

<sup>162</sup> Connell et al., *supra* note 14.

<sup>163</sup> Scott Van Nice, a deaf law student attending Salmon P. Chase College of Law, Northern Kentucky University, was selected Best Final Round Oral Advocate at the Robert F. Wagner Labor and Employment Law National Moot Court Competition at New York Law School in 2008. Mr. Van Nice traveled to the competition with two interpreters who helped him communicate his argument to the judges. See *2008 Robert F. Wagner National Labor & Employment Law Moot Court Competition*, MCA DOCKET (N.Y.L. Sch. Moot Ct. Ass'n), Spring 2008, at 1, available at [http://www.nyls.edu/user\\_files/1/3/4/17/90/MCA%20Docket%20vol%203%20issue%202.pdf](http://www.nyls.edu/user_files/1/3/4/17/90/MCA%20Docket%20vol%203%20issue%202.pdf) (last visited Feb. 22, 2012). After the competition, some legal writing professors used a video of the final round as an instructional tool in appellate advocacy. Law students repeatedly listened to Mr. Van Nice's winning appellate argument and took notes in preparation for their own first year oral arguments. Ironically, Mr. Van Nice, who is deaf, never received the same benefit from the video since the video had no captions.

<sup>164</sup> The West Education Network (TWEN), THOMSON REUTERS, <http://lawschool.westlaw.com> (log in; then follow "TWEN" hyperlink; then follow link to selected course; then follow "Course Materials" hyperlink) (last visited Feb. 28, 2012).

another example of Universal Design Principle Two, advocating flexibility of use. Typically, the syllabus, course documents, and visual aids such as PowerPoints are posted on a course web page. However, the web page is much more useful to the universe of law students if the professor incorporates universal design techniques into the course web page. For an example of flexibility in use, links to articles that help first year law students adjust to their new academic and professional life can easily be posted on a law professor's course web page, for the benefit of all law students.<sup>166</sup> Links to articles that help all law students with legal writing and grammar can be posted in much of the same manner.<sup>167</sup> Although ESL students who struggle with the English language may be most in need of writing help, all students in the law school can benefit from such articles.

### C. Principle Three: Simple and Intuitive Use

In order to satisfy the third principle of universal design, the use of an educational product, assessment device, or instructional device must be easy to understand and use. In the context of legal education, a TWEN site with document pages that are clear and intuitive

<sup>165</sup> *Career Colleges*, BLACKBOARD, <http://www.blackboard.com/Markets/Career-Colleges/Overview.aspx> (last visited Feb. 22, 2012).

<sup>166</sup> For an example of an article for first year law students, see Victoria V. Kremski, *A Law Student's Guide to being a Happy, Healthy and Honorable Lawyer*, ABA CTR. PROF'L RESPONSIBILITY (2007), <http://www.abanet.org/lsd/mentalhealth/happy.pdf>.

<sup>167</sup> See *Writing Help for ESL Students (and anyone else who needs it)*, L. SCH. ACAD. SUPPORT BLOG (Feb. 2, 2006), [http://lawprofessors.typepad.com/academic\\_support/2006/02/writing\\_help\\_fo.html](http://lawprofessors.typepad.com/academic_support/2006/02/writing_help_fo.html) [hereinafter *Writing Help*].

In a discussion thread on the Legal Writing Institute Discussion List, Professor John Haberstroh of the Northwestern University School of Law contributed an extensive list of resources that he had compiled to help students for whom English is a second language. The list is in Word format and contains 'live' links to numerous Internet resources for students who need help with writing, grammar, usage, and other elements of the writing process. The list was compiled to help ESL students, but it would also be invaluable for any law student who is struggling with writing. Professor Haberstroh has graciously given us permission to offer the resource to the academic support community. You access can [sic] the document by clicking on the link below and can download it for your own use.

*Id.*; see also Lyn Goering, *Legal Analysis, Research and Writing I*, WASHBURN U. SCH. L. (Spring 2004), <http://www.washburnlaw.edu/faculty/goering-l-classes/larw/> (a good example of offering writing help to all law students).

may make legal material simple and intuitive to use for all users.<sup>168</sup> An online quiz, or CALI<sup>169</sup> lesson that require answers to one question before moving on to the next question, are also good examples of Universal Design Principle Three.

Some students with learning disabilities, visual spatial issues, or visual impairments have great difficulty with fill-in-a-bubble, multiple choice tests.<sup>170</sup> Completing a fill-in-the-bubble answer sheet is fraught with traps for the test taking student. If a bubble is not completely filled, is filled outside of the lines, or is incompletely erased, the answer will not be accurately recorded. If the question is not perfectly aligned with the answer, all of the remaining answers can be thrown off. Accurately completing the fill-in-the-bubble answer sheet requires concentration and visual perception, not just substantive knowledge. Students, both those with disabilities and those without, are likely to make mistakes unrelated to the material and knowledge being tested. Online tests and lessons that avoid the fill-in-the bubble answer sheet are much simpler and more intuitive to use for the universe of students in law school.

#### D. Principle Four: Perceptible Information

Universal design communicates information to the user, re-

<sup>168</sup> See *The West Education Network (TWEN)*, *supra* note 164.

<sup>169</sup> CTR. FOR COMPUTER-ASSISTED LEGAL INSTRUCTION (CALI), <http://www.cali.org/> (last visited Feb. 23, 2011).

<sup>170</sup> See Jim Rodrigues with Kathy Decker, *Making Modifications, Accommodations and Variations for Student Success*, 1 (Sept. 11, 2007), [http://www.jimrodsz.com/sped/Disability\\_Info/Making%20Modifications%20visual%20impaired.pdf](http://www.jimrodsz.com/sped/Disability_Info/Making%20Modifications%20visual%20impaired.pdf) ("Bubble-in answer sheets are difficult for low vision students to use."); LiveInSpirit, Comment to *The Association for Education and Rehabilitation of the Blind and Visually Impaired Listserv*, AERNET (Mar. 5, 2008, 8:07 PM), [http://lists.aerbvi.org/pipermail/aernet\\_lists.aerbvi.org/2008-March/008791.html](http://lists.aerbvi.org/pipermail/aernet_lists.aerbvi.org/2008-March/008791.html).

Even if a child can manage to bubble an answer sheet, doing so is difficult/impossible [sic] for many students with visual impairments, so why subject them to that task or risk them lowering their score because of bubbling errors? They may be able to find the correct bubble but not properly fill it in or get on the wrong line or fatigue their eyes unnecessarily. Tests can be stressful enough. I try to eliminate all extra visual tasks, so that the test is more likely to measure their knowledge of the test content, rather than how well they could fill out the booklet or endure extensive reading.

*Id.*

ardless of the user's sensory abilities.<sup>171</sup> Principle Four instructs law professors to use different modes of delivery to better reach their audience, including tactile, verbal, and pictorial methods. In their Universal Design for Learning Guidelines, CAST instructs that:

[i]t is impossible to learn information that is imperceptible to the learner . . . . To reduce barriers to learning, [and] . . . ensure that key information is equally perceptible to all students[,] . . . 1) provid[e] the same information through different sensory modalities (e.g. through vision, or hearing, or touch); [and] 2) provid[e] information in a format that will allow for adjustability by the user (e.g. text that can be enlarged, sounds that can be amplified). Such multiple representations not only ensure that information is accessible to students with particular sensory and perceptual disabilities, but also easier to access for many others.<sup>172</sup>

In any given law school classroom, it is likely that a large number of law students will be "poor note-takers."<sup>173</sup> Some will be spatially or visually challenged, or hearing impaired. Other students will be students with learning disabilities. Most law students will go through periods when they are anxiety prone, or are unable to fully concentrate on complex material for a variety of reasons, including lack of sleep, or personal problems. Universal design strategies and teaching techniques that communicate information to law students improve accessibility for all, regardless of the students' sensory abilities, or mental or emotional states.

Some examples of perceptible information that satisfy Universal Design Principle Four include captioned videos. Captioned videos directly accommodate hearing impaired law students, but also benefit any student who cannot quickly process information, take notes, or concentrate on the visual and audio information provided by a video. The video can be reviewed multiple times and a transcript

<sup>171</sup> See *Universal Design of Instruction*, *supra* text accompanying note 132.

<sup>172</sup> *Universal Design for Learning Guidelines Version 1.0*, *supra* note 149, at 9.

<sup>173</sup> Yamamoto, *supra* note 84, at 503 (stating that, in most classroom settings, "students as a whole are poor note-takers").

can be made of the audio portion. Other examples of varied delivery of perceptible information include the use of PowerPoint slides, graphics, and student samples of writing for class critique, accompanied by the professor's verbal cues and directions. A visually impaired law student's accessibility to the classroom is enhanced when the professor provides strong verbal cues about visual material.

### **E. Principle Five: Tolerance for Error**

Universal Design Principle Five provides that the design should minimize "accidental or unintended actions."<sup>174</sup> Software programs that provide guidance when the student makes an inappropriate selection are examples of assessments or teaching tools that minimize problematic actions. CALI exercises designed for law students will not allow a student to proceed until an answer is given to a question. If the student answers incorrectly, CALI provides a pop-up block where the student can read the correct answer and learn from it.<sup>175</sup>

To the contrary, the old-fashioned bubble answer sheet to be filled in with number 2 pencil is an example of a design that maximizes, rather than minimizes, hazards of unintentional actions. The bubble sheet is intolerant of errors. If a student misses one bubble, all subsequent answers are off and the student may fail. Therefore, bubble sheets particularly penalize students with visual, spatial, perception, and attention deficit problems.<sup>176</sup> Likewise, it can also harm the distracted or tired law student.

### **F. Principle Six: Low Physical Effort**

Universal Design Principle Six asks whether "[t]he design can be used efficiently and comfortably and with a minimum of fatigue."<sup>177</sup> In the architectural setting, an example of a design that can be used efficiently and comfortably with minimal fatigue are doors

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<sup>174</sup> Connell et al., *supra* note 14.

<sup>175</sup> Joyce D. Saltalamachia, *Podcasts, PowerPoint, and Pedagogy: Using Technology to Teach the Part-Time Student*, 53 N.Y.L. SCH. L. REV. 893, 897 (2008/2009).

<sup>176</sup> See *Making Modifications, Accommodations and Variations for Student Success*, *supra* note 170.

<sup>177</sup> Connell et al., *supra* note 14.

with sensors that can be opened by a student in a wheelchair or by a student carrying a stack of books. In the learning context, class materials such as PowerPoints, charts, notes, and other visuals can be used efficiently, comfortably, and with minimum fatigue when placed on the computer and made available to all students. The visually impaired student can manipulate the size of the font. Poor note takers will not be penalized, as the material will be readily available for them. Part-time students who miss the material will also not suffer. ESL students will not be hindered by language difficulties which may render classroom lessons hard to follow.

**G. Principle Seven: Size and Space for Approach and Use**

Universal Design Principle Seven promotes designs that are an “[a]ppropriate size and space” that provide “for approach, reach, manipulation, and use regardless of user’s body size, posture, or mobility.”<sup>178</sup> Most applicable to the physical design of law schools, Principle Seven directly affects law students’ learning. For example, computers today are central to students’ studying and learning. Therefore, equipment in computer labs should be placed so that it can be easily reached and operated by everyone.

The use of study tables in the law library, in place of individual study carrels for students, is another example of employing Universal Design Principle Seven. At Salmon P. Chase Law School’s library, large tables with light, mobile, single chairs placed around them are ready to accommodate students with mobility issues, those who simply want to congregate and study together, or faculty and practicing lawyers who enjoy using the library near law students. The study tables have an additional universal application. The law school now holds social functions in the library. The study tables are used to hold hors d’oeuvres during those occasions, and the open, easily navigable area promotes mingling. The new area is an attractive, inviting, comfortable, and easily accessible study area.<sup>179</sup> Be-

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<sup>178</sup> *Id.*

<sup>179</sup> The tables used at the Salmon P. Chase law library were ordered from the Agati furniture company. Agati’s Brown Collection was originally designed for United States Courthouse libraries. See *Brown*, AGATI 3 (2010), [http://www.agati.com/storage/822/files/Agati\\_Brown\\_11.pdf](http://www.agati.com/storage/822/files/Agati_Brown_11.pdf).

cause most students and outside patrons, especially attorneys, use their laptops in the library, the tables came equipped with electrical outlets for powering. The electrical outlets are on the flat surface of the table. Study tables without abundant natural light from windows also have table top electrical outlets and LED lights. The on/off button for the lights is on the table top.

This universal design of the study tables in the law library accommodates people with mobility issues and is easy for anyone to use. No bending is required of users. The study tables are wide and accommodate different body sizes. The surfaces are flat and the edges are rounded. There is sufficient space between the tables to allow wheel chair access. A variety of users are drawn to this area and it has an inclusive feel to it. Law students, attorneys, and university faculty sit side by side.

## **VI. UNIVERSAL DESIGN SUGGESTIONS TO BRIDGE THE GAP FOR ESL LAW STUDENTS**

With different learning style preferences in combination with difficulties learning the English language, ESL students are often at a disadvantage in the law school classroom, particularly when it comes to class lectures and note-taking. The use of universal design principles can help equalize native speakers and ESL students in the law school classroom. At the same time, the application of universal design principles will benefit many other learners in the classroom, including law students with disabilities or law students who are struggling.

ESL students and native speakers of English often prefer different learning styles.<sup>180</sup> For example, ESL students often prefer kinesthetic (“experiential learning, that is, total physical involvement with a learning situation”)<sup>181</sup> and tactile (“‘hands-on’ learning, such as building models or doing laboratory experiments”)<sup>182</sup> learning

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<sup>180</sup> Reid, *supra* note 109, at 96.

<sup>181</sup> *Id.* at 89.

<sup>182</sup> *Id.* Interestingly, although some have suggested group work as helpful for ESL students, it generally did not fare well in the survey of learning style preference. *Id.* at 96. Respondents from all of the nine language backgrounds ranked group learning as a minor or negative preference. *Id.* at 97. However, group learning was rated lowest amongst the na-

styles.<sup>183</sup> In contrast, native speakers often prefer auditory learning (listening to lectures or tapes),<sup>184</sup> with kinesthetic learning ranking second.<sup>185</sup> The use of visual aids in the classroom can also be very helpful to ESL students. ESL students “learn best when they have written material to look at.”<sup>186</sup> These students, however, are not the only ones who will benefit. Law students with visual or hearing impairments also benefit from presentations that utilize both vision and hearing.<sup>187</sup> Further, all students in the law school classroom can gain a better understanding as a result of a clearer presentation.

ESL students experience particular difficulty with writing exam answers and papers. While native speakers have internalized many of the rules of grammar and the American legal culture, ESL students usually have not.<sup>188</sup> ESL students may have particular difficulty in understanding slang or variations in the English language that appear on exam questions. Following are some additional universal design strategies and tools to help ESL students that will also benefit other law students in the classroom.

#### *Delivery*

- Provide students with copies of PowerPoint presentations at the beginning of class, or allow students to use computers in class so students can follow along. ESL students often learn best when they can refer to the written material, hear it, and see it. ESL students “have great difficulty listening and copying notes at the same time.”<sup>189</sup> Key words can be omitted from copies so all law students will actively listen during the class.

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tive English speakers. Reid, *supra* note 109, at 97-98. So it was apparently more helpful to and popular with the ESL students. See *ESL Strategies for Success*, U.N.C. WORLD VIEW 9 (2006), <http://www.unc.edu/world/Fichter%20ESL%20Strategies%20for%20Success.pdf>.

<sup>183</sup> Reid, *supra* note 109, at 92.

<sup>184</sup> *Id.* at 96.

<sup>185</sup> *Id.*

<sup>186</sup> *ESL Strategies for Success*, *supra* note 182, at 19.

<sup>187</sup> See Galves, *supra* note 23 (explaining the benefits of display technology).

<sup>188</sup> See ANNE ENQUIST & LAUREL CURRIE OATES, *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* (3d ed. 2009) (discussing in “Part III—A Guide to Legal Writing for English-as-a-Second-Language Writers”—how ESL law students have difficulty approaching legal writing); see also *Writing Help*, *supra* note 167.

<sup>189</sup> *ESL Strategies for Success*, *supra* note 182, at 18.



- When possible, illustrate concepts in pictures and write “correct answers on the board” so they can be recopied.<sup>190</sup>
- If visual material is displayed, also convey the information in spoken words. Use non-verbal and context clues to illustrate meaning - pictures, maps, graphic organizers, and demonstrations.<sup>191</sup>
- “Model correct grammar when speaking to [the class] or when writing answers on the board . . . .” “Repeat back a question” that ESL students phrase “incorrectly[,] so they can hear it” properly without being embarrassed.<sup>192</sup>
- Pre-teach essential legal vocabulary and concepts law students will need for each assignment.<sup>193</sup>
- Create an environment that allows all students, including ESL students, to be comfortable speaking and “taking risks”. “Students talk [more] in small groups than in [the] whole class setting,” and ESL students “are more likely to take [the] risk [of] speaking in a smaller setting.”<sup>194</sup> Language learning (and probably other types of learning as well) takes place “when the student is motivated by the task, feels low or zero anxiety, and has had his or her self-esteem protected or enhanced.”<sup>195</sup>
- Assign students to work in pairs. Often ESL students will be more familiar with grammatical rules than native speakers, while native speakers can assist the ESL student with common usage.<sup>196</sup>
- “Adjust[] the amount of teacher-to-student and student-to-student talk in order to give students more opportunities to speak.”<sup>197</sup>
- Walk “around the room during assignments” to ensure ESL

<sup>190</sup> See *id.* at 13.

<sup>191</sup> See *id.*

<sup>192</sup> *Id.* at 14.

<sup>193</sup> See *id.* at 11.

<sup>194</sup> *ESL Strategies for Success*, *supra* note 182, at 12.

<sup>195</sup> See *More advice*, *supra* note 120, at 7.

<sup>196</sup> See *Teaching ESL Students in Mainstream Composition Classrooms*, MIDLANDS TECHNICAL COLL., <http://www.midlandstech.edu/esl/eslmainstreamhelp.htm> (last visited Feb. 24, 2011).

<sup>197</sup> *ESL Strategies for Success*, *supra* note 182, at 10.

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students understood the directions and are on the right track.<sup>198</sup>

- “[S]pend[] the last five minutes of the [class]” period asking questions about the day’s lesson to reinforce learning.<sup>199</sup>

#### *Assessments*

- Break units into smaller pieces “with frequent comprehension checks,” rather than entire units with a single test at the end.<sup>200</sup> Smaller quizzes, papers, and other assessments can be administered throughout the semester.
- Consider allowing ESL students to use dictionaries during the exam.<sup>201</sup>
- Consider untimed tests, or allowing more time on tests for all students.<sup>202</sup>

<sup>198</sup> See *id.* at 21.

<sup>199</sup> See *More advice*, *supra* note 120, at 9.

<sup>200</sup> *ESL Strategies for Success*, *supra* note 182, at 11.

<sup>201</sup> *More advice*, *supra* note 120, at 6. At our law school, professors have allowed ESL students to use non-legal dictionaries to look up words they do not understand during an examination. See *Additional Time Request Form (International Students)*, U. DENVER STURM COLL. L., <http://law.du.edu/forms/registrar/international-additional-time.cfm> (last visited Feb. 24, 2011) (online form allowing students to request a “dictionary in my native language” for use on exams); *Student Handbook 2009-2010*, MICH. ST. U. COLL. L. 38 (2009), <http://www.law.msu.edu/students/student-handbook.pdf> (last visited Feb. 22, 2012) (allowing the use of a non-legal dictionary “only for the 12-month period following a student’s first day of class”).

<sup>202</sup> See *More advice*, *supra* note 120, at 6; *Teaching ESL Students in Mainstream Composition Classrooms*, *supra* note 196, at 2. Some law schools will grant ESL students extra time to complete timed exams, upon request. See, e.g., *Additional Time Request (International Students)*, *supra* note 201 (allowing twenty additional minutes per hour of the exam); *Policy Manual*, HAMLINE U. SCH. L., 61 (2009), <http://law.hamline.edu/files/Student%20Policy%20Manual%20Aug%202009.pdf> (offering “10 extra minutes per hour on Law School exams for students who have earned fewer than 12 Law School credits; . . . 8 extra minutes per hour on Law School exams for students who have earned from 12 to 18 Law School credits; and . . . 5 extra minutes per hour on Law School exams for students who have earned from 19 to 24 Law School credits” to qualifying students); *Student Handbook 2010-2011*, SEATTLE U. SCH. L., 40 (2010), <http://www.law.seattleu.edu/documents/studentlife/handbook.pdf> (“If extra time on examinations is granted, the standard amount of extra time offered will be one-quarter extra time during the first year of Law school, decreasing to one-sixth extra time in the second year of law school. No extra time is usually granted after the second year of law school.”). The extra time granted often decreases as the law student progresses through school, probably because “state bar examiners do not offer exam accommodations to ESL students.” *Id.*

*Support*

- Provide regular access to academic support and writing specialists.<sup>203</sup> Academic support and writing specialists can review rhetorical patterns, help with fluency and word choice, clear up comprehension issues, spark brainstorming, and address concerns.<sup>204</sup>

*Writing*

- Use writing conferences and conferences with a writing specialist to allow students to “brainstorm orally before beginning to write.”<sup>205</sup>
- “[R]esist the urge to correct every mistake” on a writing paper.<sup>206</sup>
- First, “concentrate[] on the content quality of the answer rather than on its grammatical accuracy.”<sup>207</sup>
- Be careful when making corrections on legal writing papers – use consistency and indicate the type of error committed, rather than just writing in a correction.<sup>208</sup>
- Ask questions to clarify what the student was trying to say – a correction made by the writing professor may be grammatical, but could change the student’s intended meaning.<sup>209</sup>
- Type comments on papers – ESL students, and many other law students today have difficulty reading cursive and their professors’ handwriting.<sup>210</sup>
- Provide model answers, briefs, etc. to help student understand the type of writing they are expected to produce.<sup>211</sup>
- Be aware that “[m]any languages use the same punctuation marks,” even some like Arabic and Chinese which use differ-

<sup>203</sup> See Hirschhorn, *supra* note 103.

<sup>204</sup> See *id.*

<sup>205</sup> See *id.*

<sup>206</sup> *ESL Strategies for Success*, *supra* note 182, at 14.

<sup>207</sup> *More advice*, *supra* note 120, at 3.

<sup>208</sup> Laureen A. Fregeau, *Preparing ESL Students for College Writing: Two Case Studies*, INTERNET TESL J. (Oct. 1999), <http://iteslj.org/Articles/Fregeau-CollegeWriting.html>.

<sup>209</sup> *Id.*

<sup>210</sup> *ESL Strategies for Success*, *supra* note 182, at 20.

<sup>211</sup> Kreml et al., *supra* note 110, at 4.

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ent alphabets.<sup>212</sup> This can make punctuation marks seem deceptively familiar to ESL students – in many other languages the “rules for using them are very different.”<sup>213</sup>

## VII. UNIVERSAL DESIGN SUGGESTIONS TO BRIDGE THE GAP FOR PART-TIME LAW STUDENTS

Parents, educators, businesspeople, healthcare professionals, and students for whom English is a second language, all enroll in part-time law programs each year. Increasing numbers of these part-time students are adult learners over the age of thirty.<sup>214</sup> They come with a wide array of real world experiences, making the law classroom a dynamic experience for the professors and students. While legal discussions about business transactions, real estate transactions, family law, and international law may seem far removed to full-time law students, many part-time law students live these experiences and uniquely contribute to the law classroom’s learning environment.<sup>215</sup>

Part-time law students are motivated. They sacrifice great time and energy to attend law school, so they take their studies very seriously. Often attending law school with definite career goals in mind and a sense of purpose,<sup>216</sup> part-time law students see the relevance of their law courses to the work they do, or aspire to do. A law student with work and worldly experiences puts law school in the context of life experiences.

Part-time law students also know how to juggle school, job, and family responsibilities. At my law school, part-time students are usually enrolled in the evening division, which meets three nights per week in three and a half hour blocks for classes. Classes begin at 6:30 P.M., after most students already put in a long day at work. Typically, it takes part-time law students four years to earn their law degrees. Students take classes during the summer sessions, in addition to the regular academic year. While full-time law students typically work the equivalent of sixty hours per week, much like a full-

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<sup>212</sup> *Id.* at 5.

<sup>213</sup> *Id.*

<sup>214</sup> Goddard, *supra* note 64, at 120-21 (“As a result of the influx of nontraditional students, the median age of law students has risen . . .”).

<sup>215</sup> See *supra* note 64 and accompanying text.

<sup>216</sup> Goddard, *supra* note 64, at 141-42.

time job at law school, part-time students essentially work the equivalent of two full-time jobs.<sup>217</sup> They work a demanding job at the law school and another at their day job.

Despite all of the hard work and wonderful attributes of part-time law students, their unavoidable time constraints play havoc with their law school schedules. Part-time law students' full work and class schedules also play havoc with their professors' schedules, as they strive to provide part-time law students with the same opportunities and feedback on class work and assignments that the full-time students enjoy.<sup>218</sup> Most part-time law students have little time to spend at the law school campus to meet outside of class with their professors. They have limited or no access to them during regular office hours at the law school. Indeed, time-crunched, part-time law students seldom use their professors' office hours at the law school. Office hours before scheduled classes often cause part-time law students to leave work early to come to campus before evening classes start. Conferences on weekends, or evenings when classes are not scheduled, cause part-time law students to be on campus during the few waking hours that they could be at home with their families. At the very least, they could be enjoying doing law school work at home over the weekend, instead of spending additional time at the office or law school.

Offering office hours to part-time students after class meetings is also impractical. Evening classes adjourn late at night. Learning will not take place for an exhausted student who works all day

<sup>217</sup> *Id.* at 136.

<sup>218</sup> See *ALDW/LWI 2010 Survey Report*, ASS'N LEGAL WRITING DIRS. & LEGAL WRITING INST., ix (2010), [http://www.alwd.org/surveys/survey\\_results/2010\\_Survey\\_Results.pdf](http://www.alwd.org/surveys/survey_results/2010_Survey_Results.pdf) (indicating that legal writing faculty spend on average thirty-five hours each semester in student conferences that are required or strongly recommended). Although one-on-one writing conferences take a great amount of the time and energy of writing professors and their students, they are vital to the progress of law students. Some of the best learning in the legal writing course takes place outside of the classroom. See Robin S. Wellford-Slocum, *The Law School Student-Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 262 (2004). "When it comes to teaching someone how to write, there is probably no better method than the one-on-one writing conference." LAUREL CURRIE OATES, ANNE ENQUIST, & CONNIE KRONITZ, *JUST BRIEFS TEACHER'S MANUAL* 21 (2d ed. 2008). Presumptively, a legal writing course without the availability of individual conferences is inadequate. See RALPH L. BRILL ET AL., *SOURCEBOOK ON LEGAL WRITING PROGRAMS* 45 (1997) (stating that legal writing courses should include individual conferencing).

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and sits through a long, evening law school class.<sup>219</sup> It is difficult for exhausted part-time law students to retain attention in late night of-office hours. Moreover, after a late night meeting with the professor, the student and his or her professor may face a cold, dark, and perhaps even dangerous trip though the campus parking lot to his or her car.

It is the law professors' challenge to design meaningful meetings with their students and be accessible to students on a flexible schedule. Here are some ideas to design office hours, meetings, and assignments to accommodate the universe of law students, including part-time law students:<sup>220</sup>

- Use a course web site to schedule conference appointments, and post online the information necessary for the conference. A feature on TWEN allows students to schedule and reschedule their own appointments. By self-scheduling, the busy law student will avoid playing phone tag with law school personnel or missing hard copy sign-up sheets for appointments.
- Use weekend emailing to communicate with students and answer questions. Set a specific time during the weekend to check and answer emails from students. Weekends are often the only time that part-time students will have an opportunity to study for law school classes or work on their writing assignments.<sup>221</sup> As students write, questions will occur to them, and the answers most likely cannot wait until the following weekend when they will have a chance to work on the assignment again.
- Use message boards. The professor can answer questions for all students on a message board. Often, one student will ask a question, but many more students will likely have the same question. Also, students can interact with each other on a message board and solve problems.
- Use an instant messaging system to set up regular, electronic office hours. There are several instant messaging systems

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<sup>219</sup> Part-time law students usually attend law school classes at night, after putting in a full work day. Goddard, *supra* note 64, at 136.

<sup>220</sup> Traditional full-time day students also appreciate the flexibility of scheduling and managing their appointments online.

<sup>221</sup> See Goddard, *supra* note 64, at 146.

that can be downloaded for free, such as AOL's Instant Messenger,<sup>222</sup> Yahoo Messenger,<sup>223</sup> and Moodle.<sup>224</sup> TWEN also has a chat room<sup>225</sup> that can be used in conjunction with a legal writing course. Electronic office hours allow part-time students to access their legal writing professor any time of day. Conferencing can be done at the part-time law student's convenience. For an example of the flexibility of electronic office hours, a part-time law student who works full-time can conference in real time with his or her professor during a lunch break at work. All students, whether attending law school full-time or part-time, appreciate the flexibility of electronic office hours and increased accessibility to their professors.

- Accept rough drafts or completed assignments or quizzes through an assignment drop box on TWEN or via email. By allowing the submission through the assignment drop box on TWEN or by email, the time-crunched, part-time law student may avoid a trip to campus simply to turn in a hard copy of a draft paper, a final paper, or quiz. However, the use of assignment drop boxes is just as useful for other students. They may conveniently submit assignments as completed. Since assignments are recorded, date stamped, and are turned in at different times, they are easier for the professor to grade and track as well.
- Offer all law students parking spots close to the law school building during non-peak hours of the day such as evenings, and on weekends so that they can productively and safely meet with their professors, attend events, and go to the library. Parking spots close to the law school building meets the convenience and safety concerns of part-time law stu-

<sup>222</sup> AIM, <http://www.aim.com/> (last visited Feb. 27, 2011).

<sup>223</sup> YAHOO! MESSENGER, <http://messenger.yahoo.com/> (last visited Feb. 27, 2011).

<sup>224</sup> *Instant Messaging in Moodle*, MOODLE, <http://www.ion.uillinois.edu/resources/tutorials/software/Moodle/Messaging/index.html> (last visited Feb. 27, 2011).

<sup>225</sup> See Robert E. Oliphant, *Using "Hi-Tech" Tools in a Traditional Classroom Environment—A Two Semester Experiment*, 9 RICH. J.L. & TECH. 5, 87 (2003) (stating that chat rooms are "probably the most underutilized of all electronic educational tools available to law faculty").

dents, but also benefit all law students.<sup>226</sup>

- Set up online and CD-ROM tutorials and webcasts for part-time law students. When law students learn independently and at their own convenience by using online tutorials, the need to meet with their professors during inconvenient times is less. For example, both Lexis<sup>227</sup> and TWEN offer online tutorials through which law students can learn actively and conveniently. Some writing manuals offer students interactive writing tutorials and exercises on CD-ROM.<sup>228</sup> Online and CD-ROM tutorials allow all students to independently learn when it is most convenient for them.
- Record classes and important events for later viewing by students who cannot attend.<sup>229</sup> Since all students can benefit from reviewing classes, programs, and events outside of class, even if they initially were in attendance, the professor could incorporate recordings as a universal design tool.
- Increase the number of online courses, and post exam review sessions and lectures online. Online courses and postings provide frequent assessments and feedback to students and reduce commute time. Although this can be most beneficial to part-time students,<sup>230</sup> online courses and posts can benefit all students as an ingredient of universal design of instruction.
- As adult learners and nontraditional students, part-time students can benefit from role playing and assignments that are

<sup>226</sup> See Goddard, *supra* note 64, at 147 (suggesting security guards and better parking lot lighting).

<sup>227</sup> LEXISNEXIS, <http://www.lexisnexis.com/lawschool/login.aspx> (last visited Feb. 27, 2011).

<sup>228</sup> See, e.g., *Aspen Handbook for Legal Writers: A Practical Reference*, ASPEN LAW SCHOOL, [http://www.aspenlawschool.com/books/bouchoux\\_aspenhandbook/default.asp](http://www.aspenlawschool.com/books/bouchoux_aspenhandbook/default.asp) (last visited Feb. 23, 2012).

<sup>229</sup> Goddard, *supra* note 64, at 145 (suggesting that part-time students ask their professors and the law school to record “classes, program, [and] events outside of class” as an extra effort to capitalize on their law school opportunities. However, all students can benefit from reviewing recordings, whether or not they attended the “class, program, or event.” Therefore, the professor could easily incorporate recordings as an aspect of his or her universal design of instruction); see also Kathleen Elliott Vinson, *What’s On Your Playlist? The Power of Podcasts as a Pedagogical Tool*, 2009 U. ILL. J.L. TECH. & POL’Y 405, 409-10 (2009) (describing podcasting).

<sup>230</sup> Goddard, *supra* note 64, at 147.



relevant to their real-life work outside of the law school.<sup>231</sup> However, law students will universally benefit from these teaching techniques. A recent survey of law students reveals that law students often do not feel that the work they do in law school is relevant to their future careers.<sup>232</sup>

The challenge for law schools and law professors is to design law courses so that part-time law students can successfully juggle the demands of law school, work, family, and friends, while offering accessibility and educational opportunities. However, all students will benefit from a course design that universally recognizes individual law students' unique gifts and refuses to require law students to totally "put aside their personal li[ves] and health" in exchange for a law school diploma.<sup>233</sup>

### VIII. CONCLUSION

Tolerance and inclusiveness in the legal profession begins at the law school and with the law professor. Law students, law professors, the law school, and the legal profession benefit from law school instruction that meets the needs of a great variety of law students and models the tolerance and adaptability required of today's global lawyer.

Through universal design, law school education will be more accessible to all students, regardless of their learning preferences, strengths, and weaknesses. ESL law students, law students with disabilities, part-time law students, and any law students who struggle for academic or personal reasons will benefit from the professors' adaptability and tolerance of diversity.<sup>234</sup> All law students will bene-

<sup>231</sup> *Id.* at 146.

<sup>232</sup> See *Student Engagement in Law School: In Class and Beyond*, *supra* note 57, at 8.

<sup>233</sup> Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 118 (2002) (Law school "teaches many students to put aside their personal lives and health and accept persistent discomfort, angst, isolation, even depression as the cost of becoming a lawyer.").

<sup>234</sup> Universal design of instruction will not completely eliminate the need for some more individualized accommodations to students. For example, students who are deaf will need the specific accommodation of a sign language interpreter. However, universal design will minimize individualized accommodations.

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fit from the variety of teaching tools and strategies used by the law professor.

Law professors will benefit from designing their courses to accommodate the universe of law students in the classroom, rather than one or two students with unique needs. Universal design principles, once incorporated in the design of instruction, will reduce the time necessary for class preparation from year to year, as sporadic, individualized accommodations are minimized.<sup>235</sup> Incorporating universal design principles into instruction will allow law professors to find new ways of reaching the many students in the law school classroom.

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<sup>235</sup> “For example, designing web resources in accessible formats as they are developed means that no redevelopment is necessary if a blind student enrolls in the class.” Burgstahler, *supra* note 132, at 3. Planning ahead can be less time-consuming in the long run.