Having Fun While Learning: Pedagogical Techniques for Teaching Contract Drafting

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PROFESSOR BOYLE: Welcome everyone. Thank you very much for coming. It’s so exciting that we’re all together. I was looking forward to this conference. I’m Robin Boyle and I haven’t been here in a long time, unfortunately. So, it’s wonderful to come back and to see all of you.

My foray into contract drafting began about twenty years ago, when I started teaching Drafting Litigation Documents and Contracts (3 credits), which had a contract drafting component. The school also created a standalone Contract Drafting course (2 credits). The books that I’ve been using over the years have been very helpful. I started with George Kuney’s book, and I moved into Tina Stark’s book. Then this past month, Edward Elgar, a U.K. publisher, published my book called Teaching Contract Drafting. I’m here today to talk about the fun stuff! I thought to myself, “I want to present at this conference. What am I going to present on?” It’s going to be pedagogy because I think that is what brings us the most joy in some ways. I will be talking about the testing effect and “flipped classroom.” I’ll touch on learning styles—I know that’s a bad word right now, but I’ll get to that in a moment. I’ll touch on growth mindset. A lot of you are using these tools in the classroom, so that’s what I’m going to be talking about.

This material comes from neuroscience and a book that has made this very popular is called Make It Stick. The authors are Peter C. Brown, Henry L. Roediger III, and Mark A. McDaniel. Their premise is that students should create mental models in their minds that enable them to reason, solve, and create. And they found some myths on websites of colleges. It is a myth that students learn if you just expose students to something enough. For instance, a college posted that the key to learning something is repetition.

2 TINA STARK, DRAFTING CONTRACTS: HOW & WHY LAWYERS DO WHAT THEY DON’T (2d ed. 2013). The third edition was published after this conference—in the Spring 2024.
3 ROBIN BOYLE-LAISURE, TEACHING CONTRACT DRAFTING (2023)
4 PETER BROWN ET AL., MAKE IT STICK (2014).
Does this sound familiar? Probably from grammar school? The more times you go over the material the better chance you have of storing it permanently. Another website from a college says that if you intend to remember something, you probably will. That’s a good hope, but it doesn’t work. And a newspaper article said, “Repeat, Repeat, Repeat: Repeating What You Have to Remember Can Help Burn It into Your Memory.” Well, the authors say that all of those premises are false and that the better way—really what we should be doing with knowledge—is to be gaining right retention of material. *Make It Stick* is based on neuroscience and studies within the field of neuroscience and cognitive psychology. The authors’ premise is that all new learning requires a foundation of prior knowledge.

In order for students to have prior knowledge and foundation, teachers are advised to help build it in the sense of enlightening students and doing that through testing. The premise is that the brain is capable of expanding. And I think you’ve all heard the theory that the brain isn’t rigid, but it’s mutable, and students should utilize their brains in such a way as to improve memory. Looking into neuroscience, the theory is that there are gaps between these connections, and we wish to incite chemical neurotransmitters to jump across these gaps from axon to axon, and that that will start to lay the foundation of learning. That’s the theory. How do we do it? We want to stimulate 100 billion neurons. We might not be able to get to 100 billion. But we might be able to stimulate a few through three main techniques: (1) frequent retrieval, (2) spacing out the retrieval, and (3) interleaving the retrieval.

First, frequent retrieval, also known as the testing effect, involves having students recall what you’ve already taught them, or what they’ve tried to digest in the interim since the last time you saw them through homework. Retrieval, in other words, causes students to recall up from their memory into the current moment. The theory is that the more they do that, the better they get at doing it.

Second, frequent retrieval is frequent tapping into what they knew or what we hope that they learned, or we hope that they had read before coming
to class. Then spacing it out and giving the brain time to recover and process and giving the mind time to sleep. It’s suggested not to do frequent retrieval multiple times within a day but to space it out, giving students time to digest the material.

Third, interleaving is a technique of integrating new material before the first initial material is completely absorbed. The reason for that is, it increases challenge. To make this easy would be ineffective. We want to increase challenge to make it effective. To give effort to the process is the goal. Which might make you all feel better to know that sometimes failure is a good thing, right? Because if they didn’t do well, they can look towards improving performance and learning new skills. Thus, the concept is quizzing, spacing, and ingesting new material before the initial material is fully mastered.

Now there are ways to do this. One way is within class. You can incorporate short quizzes into your class time. James Lang wrote a book called Small Teaching: Everyday Lessons from the Science of Learning. That book takes the Brown material that I just talked about and gives a lot of practical suggestions. I would suggest reading Brown’s book. It’s a quick, easy, fun read about pedagogy and neuroscience. And then I suggest reading James Lang’s book about how to work that into your classroom. Lang suggests, for instance, you don’t need extensive tests. We’re talking short quiz in the beginning of class, or at the end of class, and that tiny test is not going to take a lot of time. It is either going to prompt what the students learned last time or what they learned in that class. It can be done with multiple choice questions, but they are not preferred. Short essay, short answer are preferred, where the students are using words. This could be done with a PowerPoint with questions that are prompting them to respond. The concept is you’re working the students to pull back learned material from memory. How often do we say to ourselves, “I thought I taught them that?” or “didn’t I say that?” or “how many times have I said that?” What this technique is doing is helping students to retrieve memory by pulling out of long-term memory as opposed to short term.
A problem occurs when short-term memory only is utilized. For instance, cramming for an exam. The information is in short-term memory. The student may do well on an exam that they crammed for. In fact, they may do better on a quiz of that nature than the ones that these authors are suggesting. But the problem is, it’s not going into retention. So, what they crammed for and what they did well on, they’re not learning in the real sense, because it evaporates.

The other way to look at quizzing is in terms of formative assessment, which I know you’re all involved with at your respective schools on some level. You’ve heard of formative assessments and the need to do that. There are platforms that have formative assessment questions, and West Academic is one of them that has a module on transactional drafting (which I authored). It costs $10 for students to purchase the module and it is broken down into two parts. The first part is asking, “What is the difference between litigation documents and contracts?” So, it’s transitioning from what they’ve learned first year—a lot of memos and briefs—transitioning that concept into contracts. And then the second module tests the core concepts of contract drafting: representations, warranties, etc. The interactive modules are, I think, very fun. They’ve got great visuals. They were done with a visual artist. Great interactive questions on all of the West Academic modules. And they help students learn because they also give correct answers. The students are interacting with the modules. Topics available not only include transactional concepts, but they also cover legal research in writing, objective writing, and persuasive writing. I highly recommend these modules by West Academic.

Avoid cramming; make it challenging. Effort is a good thing; easy is not a good thing. Next, create variation with your new material. In other words, if you were covering five topics, you want to start with topic one. But before you’re done completely with topic one, start working on topic two to

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increase that challenge. The role of the instructor is to stimulate the brain’s pathways. But in a way, in the classroom, it’s really the student who has to do the work right? The work comes from the student and to do that they’re building memory.

Another suggestion, and this came from Lang’s book, is to make your syllabus come alive. He says that a lot of professors give out their syllabi on day one, and you know how in class, you say, “it’s on the syllabus,” and you get the sense that the students never look at it again. Well, Lang suggests having the students pull up the syllabus in class. Have enough detail on that syllabus so that the topics are explained in the syllabus, causing students to absorb what’s on the syllabus. Quiz them on the last class. You can pull up your syllabus and take a look at what the topics were, and then have a question for them about that topic on the syllabus. A live syllabus makes it a working document.

The students, I notice, enjoy questions that are open-ended. “What did you learn in last class?” They like that challenge. I see a smile go across their faces. Or “what did you learn in this class? What’s your takeaway from this class?” Very often we are assessed, with our peer evaluations. One of the questions, “Did the professor start class with a review of last time? And did the professor sum up at the end of the session?” That shouldn’t really be on us. Right? It should be that the students are prompted to retrieve what you did in the last class, and the students are asked to reflect on what their takeaway is as opposed to being told. In this way, have a student-centered learning, as opposed to top-down learning. Engaging students to make it a more active experience—that should be the goal.

I wrote an article titled, Didn’t I Cover That In Class? When my dean read the name of the title at the Faculty Council meeting they all laughed because the title summons an age-old problem. The flipped classroom, I think, is a real breath of fresh air because we all know intuitively that if we’re standing in front of the room lecturing, lecturing, and lecturing, they’re not

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absorbing. It’s too passive. Right? Because a lot of us at this conference are in skills or all of us are teaching skills, we’re looking for the active learning technique. And James Lang’s book, Small Teaching, has a section on the flipped classroom. In another article, by Rory Bahadur and Liyun Zhang, the authors pointed out that law students are spending 30 hours a week reading and doing homework outside of the classroom. That means that the bulk of the learning is not going on so much in our classroom but it’s happening outside. Outside is a lot of where learning should be occurring. We can bring that into the classroom by utilizing what students were absorbing outside of the classroom and using time for contract negotiation and drafting within the classroom.

For my contract drafting class, for the past two decades, I’ve been using Tina Stark’s book and lately, material from my recently published book. I’ll assign the section of the book for homework reading. In class, I show a PowerPoint that I created. I write my own just because it feels more familiar to me to have my own material. In my PowerPoint, I show a few key concepts. And we might use a couple of exercises. But then the student’s need to engage in that material, and I think to myself, “This is a valuable resource. This is contract negotiation and contract drafting time.” Each of them is a gem for each other. The students go into groups in every class of mine. And Contract Drafting is absolutely right for it, and if we set this up properly, they’ll really enjoy it.

For the flipped classroom, it’s not, “Here’s material,” and the professor steps back, and two hours later you check in on them. You have to guide them. Maybe take breaks, pull them all back together, ask questions, walk from group to group, see that they’re doing and what they need to do. Maybe have them send you drafts. But you are involved in their classroom group experience. For my first class of Contract Drafting, students have to negotiate a contract. Of course, they haven’t had a lot of prep for this because

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8 STARK, supra note 2. Lately, I have been integrating material from my book, see BOYLE-LAISURE, supra note 3.
it’s class one. It’s low stakes, non-graded. I give them a fun topic, such as a movie deal. All students want to negotiate a movie deal—that sounds so fun. Well, I make it very, very straightforward. I make it law-based. Somehow, it’s involving a documentary of a law firm. I try to put some legal biz in there, but I keep it really isolated in terms of what is expected of them. They’re not expected to draft the whole contract. They just need to really hone in on the representations and covenants during those two hours. Just two concepts. Why? Because it’s very easy for first time learners to mix up those two concepts. I give them a foundation in representations and covenants and then give them a fun fact pattern. They have to confer one on one with their partner, then negotiate as a group.

Then, it becomes an individual assignment. At least three assignments in my semester are individual. They work in teams but at least three of the assignments are written after students leave the classroom as homework. I say, “Do not worry about your being in line with someone else’s” or “what did we agree on?” “Write it from your memory. Do not contact your fellow teammates.” The reason for that is, I want them to work on it themselves after class. The first assignment, the movie deal, is not graded, but the others are. They will have three graded assignments that started in the classroom as negotiation in progress and then they go home and they write it up, and their contracts are different from each other. They submit the individual assignments to me, and then I give them feedback and a grade. Whereas, the final assignment is 100% group work—the final capstone assignment. They need to negotiate and talk as a group and then draft one contract that is submitted per group. One contract per group that comes in that is graded. The reason for that is, in practice they have to work with each other, they have to agree on minutia, and they have to be in agreement. It forces them to simulate practice. And they turned that group-written contract in for a grade.

Inside the flipped classroom, students should be working on problem solving, critical thinking, and writing. I try to give them very little reading while in the classroom. This is in all of my classes. I teach Legal Writing for 1Ls and I also teach scholarly research and writing, and I have taught the
Doctrine of Contracts for seven years. In all of my classes, students need to problem solve in class, trying to engage the critical thinking skills—skills which law students coming in these days really have to focus on because they’re lacking. Students in contract drafting can write using a platform, such as Google, where they can share their writing. That would be for their capstone project, where they’re writing together. They find a platform where each is taking a section of the contract; they’re drafting it. Then they confer, they revise, they proofread, and they look it over. They’re all responsible for that one contract. So that’s a flipped classroom.

Next, we will discuss differentiated learning, another way of saying learning styles. There is a very interesting article that’s out right now by Rory Bahadur and Liyun Zhang. Their premise is that educators will be further perpetuating implicit bias and racism if they deny the efficacy of utilizing learning style theory. I highly recommend taking a look at this article. Now let me backtrack. A couple of decades ago, I was introduced to the late Dr. Rita Dunn, who was famous in the field of learning styles. She was leading the graduate center at my school, St. John’s. I was in the law school and she was in the education school. Together we collaborated on testing my law students’ learning styles. It was the first empirical study that had been done with law students on learning styles. It was published in the Albany Law Review, and I get more downloads on that article than probably anything I’ve written since then. And it’s cited for one sentence. And that one sentence is that students are diverse in their learning style preferences. Dr. Rita Dunn always said, “it’s preferences.” She would always correct my work. It’s preferences. I went on to collaborate with other graduate students. And we did various learning styles studies, using statisticians, empirical studies, and so forth. And more recently you may have caught the drift that learning styles were under attack as a theory. People were saying that they’re a myth and that they don’t exist.

9 See generally id.
10 Id. at 114–15.
11 Robin Boyle & Rita Dunn, Teaching Law Students Through Individual Learning Styles, 62 Alb. L. Rev. 213, 216 (1998) (“We tested Legal Research and Writing classes at St. John’s University School of Law and found that, like undergraduate students, law students were diverse in their learning styles.”).
Bahadur and Zhang’s article takes that backlash head-on and says that it’s a strawman argument. The naysayers portray learning style proponents as advocating that individuals have a single learning style and that their materials should be directed to that singular learning style. That was really never the case, and if anything, it was just the opposite. As a matter of fact, when I came into the classroom decades ago, a classroom would be taught just with Socratic method and the case method. There were no PowerPoints. If a professor picked up a piece of chalk and wrote that was a rare moment. And it was completely auditory. The premise was that they’re law students. They’re all auditory learners. But we know that’s not true. Bahadur and Zhang’s article busts open the naysayers, I think. The authors equate learning preferences with culture. Learning really includes how we’ve acculturated. And culture is how we interact with our family or social groups. And it’s important to realize that students bring their culture to our class and that we should be teaching across various learning preferences. We want to engage all students in various ways and to recognize that we are teaching to diverse learning preferences. Bahadur and Zhang advise to avoid top-down teaching because the premise of that Socratic method is that the professor is leading the student to the correct answer.

So that’s top down—the professor knows what the correct answer is. Maybe there is no single correct answer. Maybe the answer is a combination. Maybe the students together are going to create whatever it is that needs to be created. That it’s not necessarily that the professor has all the answers. Consider multiculturalism learning preferences and avoid the top-down approach where the professor knows the best answer. Engage students into their creative modes.

For the end-of-the-semester capstone project, I give students control of the facts. In the beginning of the course, I give a short fact pattern, with that first negotiation of the movie deal. I’ll give them different facts for the first graded contract assignment, and different facts for the second and for the third. The contracts grow longer and become more complex. Then, for the final one, I say, “You’re creating your facts and I want you to create
something of a deal that you think is enjoyable and fun to work on, and fantasy is a permitted.” How did I come up with this idea? Years ago, students came up to me and said, “Can we create facts that are not based in reality.” And it was something in the Science Fiction realm. And I thought to myself, “Why not?” It’s class. I’m the professor. I’m not co-teaching this. If I want to let the students do it, I’ll let the student do it. So I’m thinking, “I hope they don’t tell too many people. But go ahead, go do it.” And so over time students started to catch on to that. And I would give a list to my class of all the different topics that students have used for their capstone project. Some were very straightforward, such as an asset purchase sale of a restaurant with a special ingredient for a spaghetti sauce that needed confidentiality, or the sale of a condominium of a celebrity, but others were very engaging in terms of fantasy.

I truly believe that when students engage in that part of their brain that they are absorbing these concepts in ways that are not rote and standard. If they say, “If we’re selling the Hogwarts Castle and there is a spell—how are we handling material defects? And what does that do for our indemnity clause? What are they exchanging for currency? And how does that work?” And so, they start to think about our regular standard provisions in a different way, and they come up with their own questions. They stumble into these paths themselves and question and look at these concepts that could be straightforward. But they’re looking at these provisions in three dimensions. They’re turning it around in their fingers. And they’re asking about these provisions, and how the provisions fit in. So using fantasy in fact patterns is engaging for students by letting them come up with their own questions and letting them try to solve their questions. And of course, they come to me with questions about special spells and things like that.

Now, Dean Karen Sneddon, who’s also presenting here at this conference, wrote an important article on learning preferences, *Square Pegs and Round Holes: Differentiated Instruction and the Law Classroom.* Her article goes into how giving students choices is an important aspect in learning, as well

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as having and working in assessments. While working in the learning objectives that you are trying to achieve with your curriculum and assessing those objectives, also try incorporating space for allowing students choices within their assignments.

Dean Sneddon goes into detail about performance criteria. and, she suggests, when you are stating learning objectives, use active verbs, such as “the learner will employ effective reading strategies to identify,” etc. This is a detailed and well-written article that I highly recommend. To achieve multiculturalism and incorporate different aspects of learning styles in some ways—it is important to invoke active engagement. Contract drafting is kinesthetic learning. You’re experiencing it. You’re engaging students. Students are moving around the classroom and they’re negotiating. Thus, contract drafting really does engage all aspects of learning and avoids the top-down approach where the professor has all of the answers.

Now, let’s discuss growth mindset. I’m sure you’ve all heard about growth mindset and the psychologist and author Carol Dweck’s seminal work where she advocates that we focus on positivism. I relate to this theory because over my years I’ve had various bosses, as we all have. And think about the supervisor or the boss that you’ve had where you feel as if you flourished under their leadership—I think of one of the jobs in which I truly flourished. I was paid $12,000 a year to do this job back in the day. It was for a nonprofit, and I had two bosses because I combined two part-time positions of a nonprofit agency, each paying $6,000. I was an advocate. I was a lobbyist. And these bosses were terrific. They just said, “Robin, whatever you want to do we’ll support the project.” I’d call them in the morning and say, “I have an idea about a public service announcement on this or that bill that’s coming up before the New York State Legislature.” They’d say, “Oh, I think that’s wonderful. I think that’s great, Robin, whatever you want to do.” They had my back. and I was very young—in my early twenties. But they really supported me and spoke my praises, and I felt valued. and I flourished in that job. Unfortunately, I had to move out of the area. So, I moved on, and I ended up in law school and so forth. I’ve also had bosses

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where the opposite occurred. For the first time and only time in my life, with one boss I would speak with a stutter. I never had a stutter before that and never had one since. But when I spoke to this particular boss, I was stuttering. That’s not positivism at all, and an employee can’t grow that way. Think about your bosses, the ones that helped you feel as if you really grew. And then also think about the bosses where you were not growing. Where you would walk away from that encounter with them feeling bad about yourself. Now think about your approach in the classroom and how we want students to thrive.

The old adage is, if you think you can or you think you can’t, you are right. Are we approaching our students with positivism? Now this does not mean just telling them they’re smart. Sometimes in conference, I have to admit, “Oh, you’re smart.” is something that I utter. Telling a student that he or she is smart is not advised because they feel as if that is something they can’t control. You want to give them strength about things that they can control. What can they control? They can control effort. They can control determination. They can control grit. That’s what they can control. Give them the ability to learn in an environment within their control—within what they can do. That doesn’t mean you’re patting them on the back all the time and saying, “Good job, good job.” In fact, make it hard. Don’t make it easy, make it challenging.

In a related course, Legal Writing, I very often would go in when we reviewed the first memo with a pretty strong showing “what they did wrong, what they did wrong, what they did wrong” approach. But this demoralized a lot of the students. This time I tried a different approach. I didn’t show them a hammer. Instead, I said, “Let’s look at what the court said in our two main precedent cases. We’re going to chart that. Let’s look at the rule.” And their mouths dropped because they hadn’t really focused enough on the rules of the cases. No big surprise. It’s only a month into law school. Then charting what should have been applied to the precedential case, mouths dropped again because they had all sorts of twinkly things out there in their memos that were not based on any of those things. I didn’t hit them over the head with a hammer this time. Instead, I just focused on the rules of what should
have been caught and what key facts should have been applied. And I gave a brief explanation about what the effects are, if you’re out here with the twinkle of other things, and that that’s not what the assignment was.

Same thing with Contract Drafting—I try focusing on what they did right, but also pointing out where improvement is needed. Often improvement is needed in terms of sorting out, “What is a fact? What is the covenant?” What category do these things go in? There is a lot of flexibility in contract drafting. Not everything goes in those buckets. You could have a heading that says “conditions.” But you could also not. You could have a heading that says “buyers covenants” or not, and those covenants can be scattered. There’s a lot of choices and your task is really to guide them, to make good choices, but also point out that there’s a variety of answers here. There’s no one answer.

Incremental steps are advised with growth mindset and also process-oriented assignments. With the process-oriented assignments, you’re asking the students to be involved and navigate the achievement of improvement. The other concepts that I wanted to talk about are how assessments work, but also portfolios. In Contract Drafting as in other courses, a lot of us are on Canvas. We have these different learning platforms. It is much easier now to use those as portfolios. In the past you may have had a hard copy folder, and asked students to put their work in portfolios and review the portfolios. I know some professors would have the portfolios in their office and review them when the student came in. With the online learning management systems, now you can more easily go back and pull up your comments and discuss with the students.

You can also do this on Zoom, WebEx, or in person. I try to memorialize those conversations. For instance, Canvas has this function. You can pull up the document. It has your comments, which seems kind of static right? Because it happened in the past. You’re now having a present-time conversation with the student. I start typing what we’re talking about within that document. I’ll explain to the student that I am doing this. Sometimes I put the new material in caps. If I’m working on that document
and they’re on Webex, they might not be able to see what I’m doing, depending upon how I access the document. I’ll say to them, “I’m typing now,” because I’m recording what we’re saying and memorializing this conversation, and when we get off, you should be able to see what we’ve discussed. They appreciate that their questions are being heard. and that together we sometimes create something new. They could reply on Canvas as well with questions or a statement. That’s a modern-day tip that I came up with. What I leave you with is be creative and you’ll be fine.

Any questions? We have some remaining time.

AUDIENCE MEMBER: What led you to decide to use the flipped classroom idea?

PROFESSOR BOYLE: I really started using that concept before we put a name to it, nearly 30 years ago when I started teaching Legal Writing, even before I started teaching Contract Drafting. Because I would walk into the classroom and say to myself, “I have two hours. What am I going to do with them?” I’m not going to talk for two hours about what a memo should look like. It will put anybody to sleep and they’re not going to absorb that at all. I started to create more and more handouts to the point where I created so many handouts that office services started charging the students for the copies because I was way over my professor limit of handouts for the classroom. I then decided, okay, “Well, my handouts aren’t looking too pretty, and the students are being charged for them anyway.” I eventually asked Carolina Academic Press if I could put them in a workbook form, and they said yes. They’re now in a nice shiny cover and I got to work with two fabulous co-authors.¹⁴

AUDIENCE MEMBER: How do you make the flipped classroom effective and have the professor not be bored while students are working?

¹⁴ ROBIN BOYLE-LAISURE, CHRISTINE COUGHLIN & SANDY PATRICK, BECOMING A LEGAL WRITER: A WORKBOOK WITH EXPLANATIONS TO DEVELOP OBJECTIVE LEGAL ANALYSIS AND WRITING SKILLS (2019).
PROFESSOR BOYLE: In doing the flipped classroom, one way to counteract boredom is to pull the students back and put material on the board. But then the students might be sitting around waiting for the professor to put the material on the board. How do you counteract that? I let my students go anywhere in the building to do their negotiations for their shorter contract assignments and for the capstone project because they will find chairs in the hallway. There’s a courtroom that’s always empty. There are empty classrooms in my hallway. They don’t all have to sit on top of each other. But that also means I’m walking around the building looking for them and I’m trying to sit in during their negotiations. I sit down with them and listen and interject some questions. They are often relieved to see me and say, “Oh, good! I’m glad you’re here. We just came up with this question.”

I also try to direct students to Lexis and Westlaw for sample contracts and explanations about best practices. I’m sure you know they have wonderful resources, such as Practical Law (Westlaw) and Practical Guidance (LexisNexis). These are platforms with so much information, and I always have the representatives come into class and demonstrate these platforms. I don’t think students tap into them enough. So, I redirect them back to those platforms to say, “Okay, you’ve got a question about an indemnity clause. Let’s take a look at these platforms to look for examples or to answer the question of what is it? When do we use it? Why do we use it?” And so that’s one use of that time—to sit down, engage with them, ask some questions, try to direct them to various places where they can find the answer, flipping through the textbook, and trying to find examples. That’s how I use that time.

AUDIENCE MEMBER: I wanted to add something. We do some of the flipped classroom where I have them work in teams, and I give them the hypo, and they work on a specific provision together. And we use Google Docs a lot in class. Before class, I’ll create a folder. And in that folder, I’ll create several Google documents for each team. They’re blank documents so each team can come up with a provision and use that document to write it. Then I can go through while they’re working on it for twenty minutes and just see them writing in real time and see what they’re doing. So that’s a way
that I can keep track of what they’re doing while I’m waiting twenty minutes for them to finish.

Professor Boyle: That’s great. So, you’re engaged—you’re on the Google platform. You’re watching what they’re producing and then you can put that up on the screen. You can ask each student questions like, “Tell us what you did here.” And we can compare right? That’s perfect.

Audience Member: How do you give good feedback? How do you handle feedback?

Professor Boyle: That’s a really good question. Does anybody have suggestions on how they’ve done that?

Audience Member: I try to make it a point to not just point out all criticism but to try to point out the good. Sometimes I find myself in a situation where a student has done something that’s a disaster, and I really want to tell them this is a disaster. I’m worried that I’m being too soft. I’m trying to be supportive, but I don’t want to let somebody down when it really isn’t fine, and they sort of need to know that. So, one question also is how to deliver bad news when something is really not well-written and you don’t want to crush the student’s spirits? Do you have a suggestion?

Professor Boyle: Empathy. Meeting the student with empathy and giving direct feedback lends itself really well to this. The first step is, asking the student, “How are you solving this problem? What is it you’re trying to say? How did you start your draft? What were your goals?” Those are great questions, because after the student responds, then you can say, “I see where you were going. I see what you were trying to do. Now let’s talk.” Ask the student questions to try to induce the student to think about how to make corrections. Another suggestion, I heard someone in my hallway saying is, “I see you did X. What I’d like to see is that you accomplish Y.” And I just thought that that was a really good, straightforward maneuver to get the students to see how to improve. You can comment on the student’s good instinct while also having them consider if the execution is ideal. Pointing to
the strong parts of their document and reinforcing that there’s something
they can replicate, pointing out what they did well. Sometimes I actually like
to start with questions that are even more open, like “What do you think
happened? How do you think landed here? What do you think went wrong?”
Sometimes it turns out the issue is actually something tangential to what the
student had been assigned, such as time constraints and needing to learn
improved time management.

AUDIENCE MEMBER: How do you handle student pushback to critique?
What if a student is not participating as much as other students in the group
while negotiating and drafting a contract?

PROFESSOR BOYLE: So, two points were made. The first question is about
student pushback—if a student’s paper is subpar and the student is not
absorbing the critique that you feel that paper deserves. My response is that
I often tell students that there’s a lot to learn in law school. We can’t all put
it in writing in a textbook. I’m sharing with you years and decades of
experience. It’s like learning a new language. So, I’m going to speak in this
new language. And this is what it sounds like. And I hope that you absorb it.
I realize you’re not going to get all of these intricacies from the book or from
me at once. But I will be correcting you as I hear you speak. It’s as if I am
teaching French. It’s a different language.

The other question is about groups. It’s rare, but what do you do
when you have a student who’s not performing or pulling his or her own
weight in the group? What I’ve done over time is to have students give an
evaluation, a peer evaluation of each other. Those worked for a while until
all of my students made a pact that they would only say positive things. They
made this pact blatantly in front of me. It was a rebellion. Now, I check in
with the groups. I will sit in with them to see if they are participating. I will
ask for their explanation of who is contributing what. They have to tell me
about their work in progress. In other words, what is your process? They
have to report that to me, and that usually spurs them to work cooperatively
together. Also, they all have to do a class presentation in front of the class,
and I told them no one person speaks for everybody. Everybody has to talk.
I try to equalize it with participation that way. One of the presenters needs to explain their group process for drafting. Realizing that the group has to present on their mode of cooperation, and participation, keeps the drafting efforts equally balanced.

I’m afraid I should turn the room over to whoever’s next. But thank you very much. I really appreciate that. Thank you.