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CENTERING STUDENTS' RHETORICAL KNOWLEDGE: THE COMMUNITY OF INQUIRY AS FORMATIVE ASSESSMENT

Brian N. Larson¹

In her book, *Strategies and Techniques for Integrating Diversity, Equity, and Inclusion into the Core Law Curriculum*, Professor Teri McMurtry-Chubb suggests a wide variety of interventions for law teachers seeking to “acknowledge the experiences of minoritized students and faculty and [to] seriously grapp[le] with their legal and societal implications.”² She also expressly embraces the “community of inquiry” framework,³ which has received attention in the scholarly literature relating to the pedagogy of writing.⁴ This essay describes an approach to peer review

¹ Associate Professor of Law and Arts and Humanities Fellow, Texas A&M University School of Law, ORCID: 0000-0001-9806-726X. I presented a version of this essay as a talk during the LWI One-Day Workshop at Stetson University College of Law, December 3, 2021. I am particularly grateful for the comments of Dean Teri A. McMurtry-Chubb and Professor Elizabeth E. Berenguer during that session and for comments that Professor Sha-Shana Crichton provided separately. Of course, the biggest thanks should go to my students, who face my teaching-methods experimentation with great equanimity given their other 1L stressors.

² TERI A. MCMURTRY-CHUBB, *STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY, AND INCLUSION INTO THE CORE LAW CURRICULUM* 62 (2022).

³ *Id.* at 89–90.

⁴ *See, e.g.*, Mary K. Stewart, *Cognitive Presence in FYC: Collaborative Learning that Supports Individual Authoring*, 38 *COMPOSITION FORUM* (Spring 2018) (noting that “collaborative learning theory robustly supports

and classroom workshopping intended to develop a community of inquiry in the classroom, center students' own rhetorical knowledge, and establish the authority of students—especially minoritized students—as rhetorical agents. It is not about grading or summative assessment but rather about formative assessment and how teaching students to give and receive it in this environment communitizes (for lack of a better term) the legal writing classroom.

The technique described in this essay works from the presumption that each student who comes to law school comes with rich *rhetorical experience*. In other words, they have extensive experience constructing discourse suited to certain audiences and certain contexts. They use a variety of tools to construct such discourse, including linguistic registers (or styles) and rhetorical genres (such as the academic paper).⁵ On one hand, it is possible that (some of) our marginalized and minoritized students are less familiar with certain formal and academic registers and genres than (some of)

the notion that learning is a fundamentally social activity” but that “the task of designing successful collaborative activities remains challenging”). Stewart performed an IRB-approved study with two first-year composition sections using the methods of grounded theory, concluding that the community of inquiry framework explained relative failures and successes. *Id.* (citing Antony Bryant & Kathy Charmaz, *Grounded Theory Research: Methods and Practices*, in *THE SAGE HANDBOOK OF GROUNDED THEORY* 1 (Antony Bryant & Kathy Charmaz eds., 2007); Kathy Charmaz, *Grounded Theory: Objectivist and Constructivist Methods*, in *HANDBOOK OF QUALITATIVE RESEARCH* 509 (Norman K. Denzin & Yvonna S. Lincoln eds., 2d ed. 2000)).

⁵ Linguistic register is the style or variety of a speaker or writer's language. *Register*, OXFORD ENGLISH DICTIONARY, <https://www-oed-com.srv-proxy2.library.tamu.edu/view/Entry/161292?rskey=hd2R5I&result=1&isAdvanced=false> [<https://perma.cc/8XQC-H7M6>] (last visited November 3, 2022). Genre can be defined as “a recurring document type that has certain predictable conventions” and “conventions” as “*parts* of a genre and the *ways* that audiences expect a genre to be written.” ALEXA Z. CHEW & KATIE ROSE GUEST PRYAL, *THE COMPLETE LEGAL WRITER* 4 (2016); see also Brian N. Larson, *Gender/Genre: The Lack of Gendered Register in Texts Requiring Genre Knowledge*, 33 *WRITTEN COMMUNICATION* 360, 364 (2016).

our nonmarginalized and nonminoritized students.⁶ On the other hand, it is likely that (many of) our minoritized students are skilled at shifting register and genre based on social context (code switching, style shifting, etc.) in ways that (many of) our nonminoritized students are not.⁷ As McMurtry-Chubb notes, “Minoritized students . . . come to law school with wisdom from their lived experiences on how to minimize the effects of their identity contingencies”⁸

The approach I recommend here fits with the community of inquiry framework. Under that model, according to writing researcher Mary K. Stewart,

in a functioning community of inquiry, teaching presence and social presence support cognitive presence. In other words, when students experience a sense of community (social presence) and when the course design and instructor feedback guides students toward collaborative learning (teaching presence), then knowledge construction can result from interaction (cognitive presence).⁹

To meet these requirements, the professor must set the stage for a community where students offer each other supporting discourse by setting the climate in the classroom and selecting content for their discussions.¹⁰ This approach calls on legal writing professors to create a suitable climate: They decenter their own rhetorical authority in the classroom while retaining their professorial authority, but they emphasize students' rhetorical authority so that they recognize it in

⁶ It's critical that we not stereotype our students here, however. In my anecdotal experience, some apparently minoritized students come to our classes with more familiarity with formal writing than many apparently nonminoritized students.

⁷ Again, there is a risk of stereotype here. As a gay, first-gen college graduate from a Midwestern blue-collar family of Northern European origins, I also style shift when I attend family gatherings, putting away the vocabulary and articulation of the academy and the catch phrases and mannerisms of the gay bar.

⁸ MCMURTRY-CHUBB, *supra* note 2, at 5.

⁹ Stewart, *supra* note 4.

¹⁰ *Id.*

each other. This builds a community of supporting discourse. The selection of materials—here, students’ own writing—is critical to making participation in the community salient to students. When properly executed (and when the stars align to provide a good teaching day), this approach can “motivate students by encouraging positive emotions, such as confidence, by stimulating their interest, and by showing them how to use their skills to change their experiences and to help others.”¹¹

I. De-center the Professor’s Rhetorical Authority While Retaining Classroom Authority

More than any other class in the first-year curriculum, legal analysis and communication focuses on teaching students a “how,” rather than a “what.” More than any other class, it implicates knowledge the students already have about how to communicate, creating a tension between what students think they know and what the professor wants to teach. This can lead to more-or-less assertive students attempting to challenge the professor’s authority.

One way through that tension is for legal writing professors to emphasize the variations in what counts as correct in different legal work contexts. Professors should emphasize that they are in charge of the class and control the grading. But it’s helpful to have students see the professor also as their supervising attorney. The professor may acknowledge that in many places, what a supervisor prefers is merely that, a supervisor’s preferences: In my experience plenty of competent lawyers write memos and briefs using contractions, starting sentences with “However,” and using “and/or.” Other attorneys (and some law professors) dislike those practices. What’s critical is that students cultivate register and genre awareness, that they know when to adapt or adjust their style in response to the preferences of their audience or supervisor. We can aid them to see early in their education how to navigate these relationships.

¹¹ Sha-Shana Crichton, *Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. OF RACE & L. 251, 256 (2019) (citing MARY HELEN IMMORDINO-YANG, EMOTIONS, LEARNING, AND THE BRAIN 28 (2016)).

This simultaneously increases and decreases the professor's authority in the classroom: Here, the professor doesn't need to prove they are right about anything once they've expressed a preference; professor preferences are the law, just as future supervising attorneys' preferences will be. But the professor's experience as a legal practitioner justifies that preference being the law *in this classroom*; the professor can assert with confidence that it is what *they* would have expected in a real work context. Even if students have related work experiences, such knowledge cannot trump the professor's authority to set this classroom's expectations.

Students' questions about the preferences of the professor may be challenges to professorial authority, but they are best seen as opportunities to teach. Here is a paraphrase of an exchange that happened in my classroom.¹²

Student 1: I was a paralegal in a law office for several years, and our memos never included question-presented, brief-answer, and conclusion sections. They just had an introduction paragraph. Why do we need to have separate QP and BA sections at the beginning of our memo and why must they follow the patterns in the text?

Teacher: Student 1 has made an important observation. Remember: When you are first finding your way around a new environment, it's wisest to model your communication after what you see happening around you. Use the format your employer prefers unless you can make a strong case for varying from it. In this class, the textbook and my statements to you express our "office's" usage. My preferences for the memos in this class stem from two things: first, my own preferences as a supervising attorney, which I try to identify to you as contingent and likely to change in other environments; and second, the learning outcomes of this course.

¹² I've changed a number of details here, because the student identified as Student 1 did not consent to me telling this story about her. I've also collapsed a number of conversational "turns" into a rather long monolog spoken by "Teacher."

(Teacher, continuing) Let's try an exercise. Student 1, look at what the textbook requires for QP, BA, and the formal conclusion, and compare it to what you remember from your former legal experience. Do they do the same rhetorical or communicative work, similar, different? The rest of you, go to the learning outcomes page on the course website, particularly the skills list, and see what purposes you think assigning the QP, BA, and conclusion serves, if any. I'll give y'all a few minutes before we reconvene.

After this exchange and the ensuing silent work time, we reconvened. Students knew that I would "cold call" on them at this point, so they came back from quiet time prepared. We first discussed the extent to which Student 1's work genres did the same or similar rhetorical work as the QP, BA, and formal conclusion in our memo. In an extended survey at the semester's beginning, Student 1 had identified as a Latina whose first oral language was Spanish and whose only written language was English. This discussion centered her experience as rhetorical expertise. We also discussed the learning outcomes and skills identified at the course's beginning, thus justifying (at least to students' satisfaction that day) that my requirements for the memo were plausible. I then reiterated that for this assignment, as supervising attorney, I was requiring QPs, BAs, and formal conclusions. I always invite students to note this as a thing they'd like changed for future assignments, and we always debrief each major assignment after students submit it.

II. Emphasize Students' Rhetorical Authority so that They Recognize it in Each Other

This pedagogy emphasizes the personal experiences of professor and students. It then calls on students to join a community of their peers for exploring the rhetorical possibilities of the texts they are creating. This typically places minoritized students on as strong a footing as non-minoritized students in terms of their rhetorical authority in the classroom.

The example exchange in the previous section would not have been possible if Student 1, a member of a commonly minoritized

group,¹³ had not felt safe asking her question. I start emphasizing early in the semester the value of personal experiences—using my own experiences as a first-gen, queer student with mental health issues and a family history of receiving public assistance.¹⁴ I frequently ask students questions about course materials using the lenses of my experiences, encouraging them to do the same. I recognize that my privilege as a tall, middle-aged, White, cismale teacher makes it easier to disclose these facts to students without playing into stereotypes, and I often explain that I don't expect them to disclose such facts about themselves.

But the key activity for establishing this community is the peer-review workshop in class sessions. For “completion points,” students write short snippets of work, usually parts of a larger work that I will grade, and they subject them to peer review. For further completion points, a group of three or four students anonymously reviews work from each other.¹⁵ On the peer-review platform, I identify criteria (effectively a rubric) for evaluation, but students must also make a free-form comment using the Describe-Evaluate-Suggest approach.¹⁶

¹³ This is true even in Texas, where folks of Hispanic or Latino descent make up more than 40% of the state's population, and more than 35% of persons above age five speak a language other than English at home. UNITED STATES CENSUS BUREAU, Quick Facts Texas, <https://www.census.gov/quickfacts/TX> [<https://perma.cc/5VL5-6K3J>](last visited Aug. 10, 2022).

¹⁴ I begin the semester by having students read a case that involves one of my relatives, a pedagogical approach that I discuss in a blog post. Brian N. Larson, *What my 88-year-old aunt can help teach my law students*, RHETORICKED.COM, Sept. 22, 2021, <https://rhetoricked.com/2021/09/22/what-my-88-year-old-aunt-can-help-teach-my-law-students/> [<https://perma.cc/SF4H-862F>].

¹⁵ I used to have students' names visible during peer review, but Professor Tracy Norton's demonstrations of peer-review platform Peerceptiv persuaded me to change this practice. See Tracy Norton, *LWI Peerceptiv Demo, Pre-Assignment Zoom* (Apr. 30, 2020), YouTube, May 1, 2020, <https://youtu.be/-3BcSu2nKKU> [<https://perma.cc/4Y2B-M6DX>]; Tracy Norton, *Peerceptiv Demo, Second Session* (May 7, 2020), YouTube, May 8, 2020, <https://youtu.be/PnYwL6OS8VQ> [<https://perma.cc/SRS2-M2ED>].

¹⁶ I describe the Eli Review peer-review platform and the D-E-S approach in a blog post associated with demonstrations of Eli Review I performed in

Each such comment first describes the peer's work. This helps to ensure the reviewer engages with what their peer actually did. For evaluation, they may use the textbook or classroom discussions to identify evaluative criteria, but I also encourage them to "put yourself in the shoes of the audience and identify something you think would matter to them and why"—in other words, "think rhetorically." The suggest step requires a reviewer to come up with a possible alternative, even if they believe the reviewed paper was already very good.

Once or twice in nearly every class session for the first semester, I project an example of a current student's snippet, this time with the author identified. I warn students at the beginning of the semester that I'll do this. I believe it makes them more invested in and accountable for what they submit for these otherwise-ungraded completion exercises. I remind students that I always choose a competent performance, but one that can use improvement. I note the suggestions that peers made—also identifying them by name—which sometimes conflict, for example with one saying "you should have done *more* X," and the other "you should have done *less* X." I sometimes ask the author or commenter to explain one of their choices. Other students ask questions, often contrasting something the projected author did with their own writing, considering the alternatives.

I facilitate the conversation, often expressing satisfaction when students identify considerations that I have in mind—and even delight when they identify something I had *not* considered. I rarely intervene with a preference, unless what a student proposes is something that I have never seen in legal writing. (Even then, I emphasize that it might be appropriate for *some* context.) Again, this is a place where I de-center my own rhetorical authority and center the students'. At the same time, I have a strongly felt sense that I am building my ethos with them, and theirs with each other. Students may disagree with advice they receive from peers (and from me), but they recognize its value.

summer 2020. Brian N. Larson, *Demo of online peer-review tool Eli Review*, RHETORICKED.COM (June 19, 2020), <https://rhetoricked.com/2020/05/26/eli-review-demo/> [https://perma.cc/Q9VE-N835].

Critically, I ensure that I project on the screen and workshop some snippet from nearly every student in the course section during the first six weeks of the semester. For most students, it is the first time in their lives that their writing has been the center of a classroom discussion. I also ensure that the work of minoritized students is featured alongside that from nonminoritized students from the beginning. I don't need to tell students there is no difference in quality, because our discussions establish that amply. The classroom sessions allow all the students to show off their rhetorical instincts, honed by their diverse experiences.

III. Challenges to this Pedagogy

There are challenges to this pedagogy. This approach requires painstaking preparation and artful improvisation. Some other professors have expressed concerns about plagiarism or an imposed uniformity that using this approach might cause, as we use snippets that will become part of graded assignments. Finally, I have not performed empirical study to verify that my impressions of how the students are doing match their own.

This pedagogy requires last-minute preparation. For example, typically, we use this schedule:

- Students submit their snippet of writing by Saturday at 10:00p.m.
- Peer reviews are due Monday by 10:00p.m.
- We have class at 10:30a.m. (one section) and 1:30p.m. (second section) on Tuesday and Thursday.

For this pedagogy to work, I must read through all the reviews (and some of the original submissions) and use the peer-review tool to identify good examples to discuss in the class session between 10:00p.m. on Monday and 10:30a.m. on Tuesday. I check the reviews to ensure they are civil and professional, intervening if a student moves into snarky territory. (That hardly ever happens.) I use the peer reviews and peer-review tool to identify candidates to project on the screen during class.

In the class sessions themselves, the workshop effort usually takes twenty to forty-five minutes (of a ninety-minute class session). Note that I do not address grammar, punctuation, and other mechanical issues at this time, and students are prohibited from addressing them in their peer reviews (with certain express exceptions). In my view, allowing a focus on these matters at this stage gives the students too easy an avenue for providing feedback and does not force them to think about the bigger-picture, rhetorical issues. But these samples do provide evidence to me of problems the students have in those mechanical areas, and they often shape at least a portion of the balance of the class session. A fringe benefit of Eli Review is that it tells me how the students think other students are doing on meeting rubric expectations. Where there are “low scores” from peers across the class on a topic, I know that’s a topic I need to address expressly in class.

The improvisation element in this pedagogy is critical. Professors must use all their communicative instincts to put students at ease with receiving formative feedback in front of and from their peers. As Professor Sha-Shana N.L. Crichton warns: Our students crave “constant and immediate feedback. Also, they are typically accustomed to being praised for being bright. Anything that falls short, including constructive feedback, sends their stress response into high gear. Consequently, they either push back (fight), shut down (freeze), or ignore the comments (flight)”¹⁷ Our goal for feedback should be “to help them to build critical legal skills, not to add to their stress levels.”¹⁸

As a result of successful management of this workshop, the projected author must feel supported and counseled, not attacked or ridiculed. The other students must feel motivated to speak up with their own questions and discuss. The key is to avoid students trying to shut other students down or trying to make stereotype challenges.

¹⁷ Sha-Shana Crichton, *Teaching in the Time of Disruption: A Case for Empathy and Honoring Diversity*, 25 *LEGAL WRITING* 4, 9 (2021) (citing CATHERINE M. PITTMAN & ELIZABETH M. KARLE, *REWIRE YOUR ANXIOUS BRAIN: HOW TO USE THE NEUROSCIENCE OF FEAR TO END ANXIETY, PANIC, AND WORRY* 15, 92 (2015)).

¹⁸ *Id.*

In this sense, the class does not just permit all students to have equal voice, it requires them to exercise those voices.

All this is hard work. The improvisational energy required to create and sustain social presence and teaching presence in the classroom cannot be underestimated. I'm never more exhausted than after a good day in my classes. This pedagogy also intensifies the already-common problem that class prep for legal communication is at best contingent, requiring continuous adjustment right up to and through the class period. And this effort lies on top of "the enormous and unique workload of a legal writing professor, the competing and sometimes conflicting needs an original legal writing problem must address."¹⁹

Some have expressed concerns about using this pedagogy with snippets of writing that will eventually become parts of students' graded assignments. They worry students will plagiarize from each other or that students will settle on a uniform response to the problem based on the class discussions. Some professors have told me they use samples of students' writing from previous years to address these concerns. I believe that solution completely misses the point of centering the work of the students in the current class, and it lowers the stakes of the present students in the workshop discussion. As for plagiarism and uniformity, my "Plagiarism, collaboration, and copying policy" includes the following language:

You may not work on writing your own assignments while directly referencing the work of other students. That means you may not (1) copy and paste anything from another student's work; or (2) view another student's work while you are writing or editing your own work. You may make notes of the things that other students do in their writing, and after closing their files, you may refer to your own notes while you are writing and revising your own work. "Making notes" about what other students do in

¹⁹ Christine Tamer, *Small Tweaks, Big Effect: Fitting Diversity and Inclusion into the "Puzzle" of Any Legal Writing Problem, Involving Any Legal Issue*, in *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM* 331, 332 (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, & Genevieve B. Tung eds., 2021).

their writing is not the same as copying down their words, though.

In five years of using this pedagogy, I have not witnessed students plagiarizing each other. It's possible one or two have slipped by, but I typically know students' writing very well by the time we reach the end of the semester.²⁰ As for concerns about uniformity, there is hardly any risk of it, because the workshops never settle on *the* right answer. Students leave with choices to make, not answers to questions.

Finally, there has been no empirical study of how students experience this pedagogy. The evidence I have is from my own experience, the observations of peer teaching observers, formal student course evaluations, and informal anonymous surveys I ask students to respond to during the semester. All of those are consistent with my theses, but those data are not collected with the purpose of evaluating the pedagogy. A qualitative study that examines student experiences and attainment is fairly easy to conceive, but it would take considerable time to design and carry it out properly. What's more, I would be uncomfortable being the researcher with my own students, which would raise concerns of research ethics because students might feel compelled to consent to participation in the study.

IV. Conclusion and Next Steps

Now that I feel my practice of this pedagogy has stabilized, I believe it can serve as a useful foundation for engaging with other ideas for making my classroom actively antiracist. This includes the many proposals from McMurtry-Chubb²¹ and those such as Pham's

²⁰ I never grade students' minor assignments and usually do not grade students' major assignments anonymously. In the latter case, I say "usually" because I will often ask students to vote (on a secret online ballot) whether they *want* me to grade the final semester project anonymously, and the answer has been "yes" only once. In any event, even with anonymous grading, I would likely notice closely parallel approaches across student papers, simply because I end up reading each paper at least three times while grading.

²¹ See MCCURTRY-CHUBB, *supra* note 2.

“critical case briefs”²² or using the *Feminist Judgments* series to teach first-year legal writing.²³

Nothing works in the classroom every time I try it. From my breathless exposition here, you can guess that my approach is in some cases aspirational. There are low points, where the concepts I hoped students would get don't seem to come across. But there have not so far been low points of the kind I most seek to avoid: students behaving disrespectfully toward each other during these discussions. The high points have made me grateful for the exhaustion I feel at the end of a good day of teaching.

²² Hoang Pham, *The Critical Case Brief: A Practical Approach to Integrating Critical Perspectives in the 1L Curriculum*, in *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM* 93 (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, & Genevieve B. Tung eds., 2021).

²³ Kathryn Stanchi, Bridget Crawford & Linda Berger, *Teaching with Feminist Judgments*, in *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM* 343 (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, & Genevieve B. Tung eds., 2021).