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THE COGNITIVE POWER OF ANALOGIES IN THE LEGAL WRITING CLASSROOM*

Patricia Montana**

New law students traditionally learn better when they can connect what they are learning to a familiar non-legal experience. Therefore, the use of an analogy, which can be defined as a comparison showing the similarities of two otherwise unlike things to help explain an idea or concept,¹ is an obvious way to facilitate a student's connection between the new and what is already known.² An analogy is a logical step in introducing the complex processes of legal research and analysis by attempting to simplify the alien structure of summarizing that legal research and analysis into a coherent piece of predictive or persuasive legal writing. Analogies allow students to build on a familiar network of knowledge, making the learning more comfortable and the material more accessible. Analogies also stimulate a genuine interest in the task and promote a culture of supportive learning due to the many connections the students forge to diverse and wide-ranging, non-legal experiences.

Integrating the use of analogies into the teaching of legal analysis and writing in a systematic way is a powerful teaching device. It is one that easily can break down the processes of legal research, analysis, and writing into simpler terms, thereby helping new law students understand, develop, and ultimately master these essential lawyering skills.

This Article therefore proposes that faculty incorporate analogies into their classroom teaching by experimenting with interesting and engaging ways to connect all parts of the curriculum to the students' existing knowledge base. This proposal has its roots in cognitive learning theory, which expounds that experts use prior knowledge or contexts, referred to as

* This Article is based on my presentation at the Legal Writing Institute's One-Day Workshop on Developing Life-Long Learners held at St. Mary's University School of Law on December 13, 2019. The presentation had the title of *Diving, Not Cannonballing, Into A Case*, inspired by one of the analogies I often use in my legal writing teaching.

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¹ Jacob M. Carpenter, *Persuading with Precedent: Understanding and Improving Analogies in Legal Argument*, 44 CAP. UNIV. L. REV. 461, 464 (2016) ("An analogy is a non-identical or non-literal similarity comparison between two things, with a resulting predictive or explanatory effect.") (internal citation omitted).

² *Id.* (discussing how analogies, like metaphors, "involve comparing a new, abstract concept to an old, understood concept to help the reader understand the new concept in a certain way").

schemata by cognitive psychologists, to facilitate problem solving.³ When analogies are applied to student learners, students will assign a new experience meaning according to how the analogy fits into their existing schema. As students refine their understanding of the new information, they begin to identify connections between the concepts. This, in turn, enables them to expand or modify existing schemata or create new ones. Then, as they recognize the relationships among these concepts, they begin to develop domain-specific patterns of thought and eventual mastery over the relevant domain with practice.⁴ Thus, the basic principles of cognitive learning theory confirm not only the relevance but the great value of utilizing analogies as a teaching tool.

By way of context, this Article begins by discussing the most pervasive problem that the use of analogies is intended to address: the extreme cognitive burden that new law students face when first introduced to the processes of legal reading, legal research, legal analysis, and legal writing. Next, the Article examines the basic tenets of cognitive learning theory, focusing especially on schema theory research. Then, the Article explains how the use of analogies directly supports the type of understanding cognitive learning theorists advance. Relevant analogies indeed enhance a student's learning experience by fostering deep and meaningful connections to previously stored and developed concepts. Finally, the Article explores several successful analogies that I have used in my first-year legal writing courses over the years. These are analogies that I introduce early in the first semester as a scaffold to all facets of the course. These analogies assist students in all areas from reading cases to synthesizing rules to preparing a written analysis, as well as all the steps that occur in between.

I always begin with my dive, don't cannonball, into a case analogy, which essentially reinforces the fundamental lesson that students must read purposefully.⁵ This analogy coincidentally serves as a metaphor to my approach in writing this Article too. We will dive, gracefully and deliberately, into the pool of water that supports the Article's thesis. We will not cannonball in haphazardly splashing everywhere. The thoughtfulness and precision of this deep dive will hopefully encourage other faculty to embrace

³ See generally Stefan H. Krieger & Serge A. Martinez, *A Tale of Election Day 2008 Teaching Storytelling through Repeated Experiences*, 16 LEGAL WRITING 117, 125-28 (2010) (applying cognitive science principles to the teaching of storytelling and describing how students' repeated experiences of representing several clients in rapid succession on election day 2008 created an effective learning situation).

⁴ See *id.*

⁵ See RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* 97-101 (2d ed. 2014). In Chapter 7 of her book, titled "Always (Always!) Read with A Clear Purpose", McKinney demonstrates the importance of reading a text with a purpose, as expert readers know why they are reading and modify their reading strategies accordingly to fit their purpose. Her lessons on this topic served as inspiration for my *dive, don't cannonball, into a case analogy*.

analogies as a powerful teaching tool. This tool is one that not only helps new law students understand how to competently navigate the sea of legal reading, research, analysis, and writing, but also teaches them how to do so confidently.

I. THE PROBLEM: LOST AT SEA

Learning legal research, analysis, and writing in the first year of law school is a challenging undertaking. For one, students grapple with a range of emotions: they feel overwhelmed by the denseness of the reading, confused by the many legal rules and countless exceptions, unsure about their progress and success, unclear about how to approach a legal problem, and perplexed by the new way to write, among other things. These emotions leave so many students feeling disoriented and bewildered.

This disorientation and bewilderment can create a serious barrier to learning. When compounded with the many other academic and nonacademic factors that impede learning, including, cultural differences, financial difficulties, motivational problems, medical and psychological concerns, not to mention the pressures of daily life, students quickly can feel lost at sea, or worse, like they are drowning in its waters.

While faculty must be cognizant of all these barriers (and any others) in their teaching, the focus of this Article is to assist in alleviating the stress of learning new concepts and eliminating any confusion it presents. This Article examines how faculty may be able to eliminate the confusion by giving students both a context and method to process the important skills of legal research, analysis, and writing.

Cognitive psychologists suggest that the “mental burden” students experience when “learning complex new information can exhaust a student’s finite working memory”, causing what they term a “cognitive load.”⁶ A student’s working memory is “only capable of holding” a limited number of

⁶ Terri L. Enns & Monte Smith, *Take a (Cognitive) Load Off: Creating Space to Allow First-Year Legal Writing Students to Focus on Analytical and Writing Processes*, 20 J. LEGAL WRITING 109, 110-11 (2015) (explaining the cognitive load problem and offering ways a legal writing course can be adapted to lighten that load on students); *see generally* Serge A. Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching*, 26 KAN. J. L. & PUB. POL’Y 24, 40-43 (exploring theories from educational research, including cognitive load theory, and applying them to clinical pedagogy to argue in favor of more directive supervision in clinical education); *see also* Hillary Burgess, *Deepening the Discourse Using the Legal Mind’s Eye: Lessons from Neuroscience and Psychology That Optimize Law School Learning*, 29 QUINNIPIAC L. REV. 1, 6 (2011) (exploring neuroscience and cognitive psychology literature and applying it to the law school setting, suggesting that “professors can improve student understanding and retention by adding more visual aids and exercises into their classrooms”).

“pieces of information at the same time.”⁷ In essence, it “acts as a bottleneck that channels all new information processed in the brain.”⁸ While students have a “vast capacity” to retain information that has been processed and moved into long-term memory, “new information taxes the working memory and can result in cognitive overload when too many pieces are competing for limited space.”⁹ In short, their brains “turn off” when presented with too much new information.¹⁰ As a consequence, in a cognitive overload situation, students lack the mental resources to process and store the new information, ultimately compromising the effectiveness of any teaching on that subject.¹¹

Without a doubt, in a first-year legal analysis and writing course, a student’s working memory can easily be “stretch[ed] [to] its limits.”¹² In the early days of law school, students must toggle multiple advanced analysis and writing processes. For example, on the analysis end of the process, students must learn to read statutes and cases, synthesize explicit and implicit rules, apply legal rules to new fact scenarios, reason by analogy, predict outcomes, and advocate positions. On the writing end, students must master legal prose and a new form of citation, learn to organize an analysis into a specific structure, and write with precision, clarity, and brevity, among other things. To complicate matters, students are expected to “generalize rules and procedures from the process of writing” in one type of legal document and then “transfer that generalized learning to the next document they must compose.”¹³ In fact, legal “writing students expend so much of their mental energy on completing an assigned document that they have little to no mental energy left to reflect and learn from the writing experience itself, which would help them in future writing assignments.”¹⁴ In the end, this continual

⁷ Rosa Kim, *Lightening the Cognitive Load Maximizing Learning in the Legal Writing Classroom*, 21 PERSPECTIVES, 101, 101 (2013) (offering several ideas for how faculty can help reduce cognitive overload on legal writing students).

⁸ *Id.*

⁹ *Id.*; Burgess, *supra* note 6, at 27 (“Cognitive load refers to the amount of information currently active in a student’s working memory. When cognitive load is high, students often find it more difficult to learn information. When the amount of information that students are integrating exceeds the maximum capacity of working memory, students are unable to learn the information.”).

¹⁰ Krieger & Martinez, *supra* note 3, at 128.

¹¹ *Id.* Cognitive load theory suggests that “knowledge acquisition can be impeded” also when the format of the instruction “requires students to engage in cognitive activities that are irrelevant to the pedagogical goals.”

¹² Kim, *supra* note 7, at 101.

¹³ Terrill Pollman, *The Sincerest Form of Flattery Examples and Model-Based Learning in the Classroom*, 64 J. LEGAL EDUC. 298, 299 (2014) (discussing how cognitive load theory is “especially important in classes where students write” because students must perform multiple simultaneous tasks, and urging faculty to provide more models and examples to help “lighten” the load on student learning and processes).

¹⁴ *Id.* at 307.

multitasking is simply too much for a new law student's limited working memory to handle.¹⁵

Any task switching “results in loss of time and attention, and negatively affects [a student's] ability to learn complex information.”¹⁶ Indeed, “the complicated process of analyzing legal problems, researching their possible solutions, and communicating that analysis in writing can overwhelm students' working memories, leaving no space for the conscious acquisition of more broadly-applicable writing doctrine.”¹⁷ Thus, it's not surprising that cognitive overload is a reality for so many beginning law students.

II. THE THEORY: AN ANCHOR

According to schema theory, there are three important stages of cognitive learning that occur after a student's attention has been captured that elucidate the cognitive load problem.¹⁸ The first involves the brain's working or short-term memory that includes the “cognitive resources” students “use to execute mental operations and to remember the results of those operations for short periods of time.”¹⁹ Because the working memory, as discussed *supra*, is “limited in scope and time,” the second stage in cognition, encoding, which involves categorizing information and then transferring it to be stored in long-term memory, is crucial for meaningful learning.²⁰ Stated differently, “knowledge exists [only after] it has been stored.”²¹ When students organize information in “coherent knowledge structures that are stored in memory,” they are organizing it into what cognitive psychologists call schemata.²²

Importantly, students arrive at a new experience with existing schemata, or contexts, based on their past experiences.²³ As they receive new information, they make sense out of it and give it meaning according to how

¹⁵ Kim, *supra* note 7, at 102 (“[M]ultitaskers are likely to lack the ability to focus deeply and engage in complex analysis.”).

¹⁶ *Id.*

¹⁷ Enns & Smith, *supra* note 6, at 111.

¹⁸ Cara Cunningham Warren, *Achieving the American Bar Association's Pedagogy Mandate Empowerment in the Midst of a “Perfect Storm”*, 14 CONN. PUB. INT. L. J. 67, 87 (2014) (discussing cognitive learning theory and its application to the ABA's 2014 pedagogy mandate reform).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 88 (internal citation omitted).

²² *Id.* (internal citation omitted); Krieger & Martinez, *supra* note 3, at 127 (“Schemas are ‘ordered patterns of mental representations that encapsulate all our knowledge regarding specific objects, concepts, or events.’”) (internal citations omitted).

²³ Krieger & Martinez, *supra* note 3, at 127 (“Developed from repeated encounters with similar experiences, [a] schema can be viewed as a coded expectation about any aspect of an individual's life, which dictates which characteristics of a given event are attended to, which are stored for the future, and which are rejected as irrelevant.”) (internal citations omitted).

it fits into their existing schema.²⁴ In other words, they sort it based on prior knowledge, thereby “connect[ing] it to something already known.”²⁵ “The more easily the information can be connected to an already existing framework of knowledge, the more easily new information will be learned and retained.”²⁶ Moreover, as students refine their understanding of the new information, they identify relationships between the concepts. This enables them to expand or modify existing schemata or create new ones.²⁷ As students construct schemata, they begin to develop domain-specific patterns of thought.

The final stage of the cognitive learning process involves the retrieval of information from the relevant domain for use in a future situation.²⁸ “Cognitive scientists have found that expert problem solving involves a process of recognizing patterns and retrieving solutions from a stored repertoire acquired by encountering similar problems in the past.”²⁹ “The repeated retrieval and application of encoded material leads to ‘automaticity,’

²⁴ Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE UNIV. L. REV. 1, 5-6 (1996) (presenting results on a survey of teaching methods used at American law schools and arguing that teaching methods should be “consciously related to the learning process”) (“Once a structure is in place, information is encoded to fit cleanly into the structure in accordance with one’s expectations, much like clothes stored in dresser drawers.”); 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, 373 (2001) (examining what the author terms the “Vicarious Learning/Self-Teaching Model” method of teaching, which has persisted in law schools since Christopher Columbus Langdell’s tenure at Harvard Law School, and proposing a new approach to law school instruction based on various learning theories, including cognitivism); Carpenter, *supra* note 1, at 465 (“[H]umans ‘make sense out of new experiences by placing them into categories and cognitive frames called schema or scripts that emerge from prior experience.’”) (internal citations omitted).

²⁵ Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 MAINE L. REV. 163, 165, 174 (2013) (exploring cognitive learning theory and urging faculty to teach students metacognition and to incorporate “more visual aids, visual exercises, and assessments to help students better learn the material”); Schwartz, *supra* note 24, at 373 (cognitive learning theorists believe that schemata contain “slots, theoretically organized like a card catalog, for each of a countless number of specific situations.”).

²⁶ George, *supra* note 25, at 174-75.

²⁷ Warren, *supra* note 18, at 88; *see also* Lea B. Vaughn, *Feeling at Home: Law, Cognitive Science, and Narrative*, 43 MCGEORGE L. REV. 999, 1013-14 (2012) (hypothesizing that the use of stories helps law students “encode the general meaning of information” and recall it later, thus “facilitate[ing] the move from novice[s] to expert[s]”).

²⁸ Friedland, *supra* note 24, at 6 (“Once stored, the information can be readily retrieved and reconstructed in light of the same expectations.”).

²⁹ Linda L. Berger, *What is the Sound of a Corporation Speaking? How the Cognitive Theory of Metaphor Can Help Lawyers Shape the Law*, 2 J. ASS’N LEGAL WRITING DIR. 169, 173-74 (2004) (arguing the use of metaphor by lawyers as a useful persuasive tool because a metaphor is “a stored structure that makes a new concept meaningful by mapping or transferring relationships and inferences from one concept to another”); *see also* Krieger & Martinez, *supra* note 3, at 127 (“[A]s a result of greater experience in a particular domain, experts use their well-developed schemas to reflexively filter out irrelevant data and focus on relevant information to come to a solution.”).

and the amount of repetition is related directly to the speed of retrieval.”³⁰ Mastery of these thought patterns is ultimately what distinguishes a novice from an expert in a particular domain.³¹ In other words, experts use schemata to facilitate problem solving.

III. THE SOLUTION: A ROUTE TO FOLLOW

According to cognitive psychologists, there are ways to not only lessen the “cognitive load” a student might experience but also to enhance the encoding and retrieval stages of cognitive learning, thereby improving students’ working memories and ability to learn complex tasks.³² In other words, professors, through their teaching, can cultivate in students the expert use of schemata. To that end, “educational experiences should be fashioned in ways that do not impose a heavy extraneous cognitive load but instead help [] student[s] develop sound schemas for tackling similar situations in the future.”³³ Critical to that process is assisting the connection between what students are learning (i.e., the target) to what they already know and have previously stored in their long-term memory (i.e., the source).³⁴ That is the case because, in contrast to working memory, long-term memory can store “vast amounts of information by linking it in ‘chunks’ or ‘schema’.”³⁵ Thus, the goal of teaching should be to facilitate “mov[ing] information from [a student’s] working memory into [that student’s] long-term memory.”³⁶

This can be accomplished by creating context for any new concept—one that neatly matches with a student’s pre-existing schema. It’s important that professors “build effectively on” a student’s pre-existing schema and “model and reinforce the need to make connections between acquired and

³⁰ Warren, *supra* note 18, at 88 (“As with a computer, the care with which one names the file and organizes it in the folder is related directly to the ease with which one will later retrieve the file.”) (internal citation omitted); *see also* Krieger & Martinez, *supra* note 3, at 127 (“Experts automatically use their schemas to identify the deep structure of a situation (its systematic properties) and seek to reformulate it to reach a decision based on previous experience.”).

³¹ Burgess, *supra* note 6, at 31 (“Novices tend to learn very differently from experts, in part because they do not have a foundational schema within the discipline that they can use to incorporate their new knowledge. Thus, when novices encounter new knowledge, the new knowledge tends to create a higher cognitive load because each part of the new knowledge uses working memory, and novices cannot yet chunk information efficiently.”).

³² Enns & Smith, *supra* note 6, at 113-14.

³³ Krieger & Martinez, *supra* note 3, at 128.

³⁴ Carpenter, *supra* note 1, at 465 (“Humans understand new concepts by comparing them to already-established concepts, an idea that is ‘deeply embedded in our consciousness.’”) (internal citations omitted). According to Carpenter, the “source” is the schema or “concrete image or the prior, familiar concept [the student] understands from past experience” whereas the “target” is “the new legal concept” the [student] must learn and apply.” *Id.*

³⁵ Enns & Smith, *supra* note 6, at 112.

³⁶ *Id.*

new learning.”³⁷ Indeed, “[r]elating new concepts to ideas that have already been mastered is a key way to increase [a student’s] working memory’s capacity.”³⁸ Notably, “[m]aking connections to information that does not have to compete for space in the working memory [also] helps the information ‘stick’ better.”³⁹

This theory thus underscores the importance of creating context to help students develop confidence and sophistication as their learning progresses. Professors must “deliver material to the learner with the aim of the material being ‘encoded’ in the learner’s long-term memory and later retrieved and applied to future [like] situations.”⁴⁰ Many “students grasp a new subject more readily if the [professor] introduces the subject in terms that relate to the students’ differing backgrounds and life experiences.”⁴¹

Therefore, creating context through the use of analogies—which easily connect new information to more familiar information that has been previously stored in long-term memory—will accelerate the learning process. “By relating a new concept to a student’s existing intellectual foundation, [professors] can help the student to assimilate the new concept more quickly.”⁴² “With each such learning experience, the student’s

³⁷ Warren, *supra* note 18, at 95, 96 (“Professors [can] create [a] learner-centered environment by connecting legal material to other real-world experiences.”).

³⁸ Deborah J. Merritt, *Legal Education in the Age of Cognitive Science and Advanced Classroom Technology*, 14 B. U. J. SCI. & TECH. L. 39, 46-47 (2008) (discussing the cognitive load problem and suggesting ways professors can reduce that load and thereby “amplify[] opportunities for their messages to reach the brain” namely through the effective use of PowerPoint). One way for professors to “enhance students’ working memory” is “by relating new information to data already stored in long-term memory.” *Id.* at 46; *see also* Kim, *supra* note 7, at 102 (“[W]hen teaching a new concept, [professors should] relate new information to data that is already learned and stored in the long-term memory.”).

³⁹ Kim, *supra* note 7, at 102 (“Knowing that new information must compete for limited working-memory space, the way [professors] impart information to [] students should include teaching techniques that reduce cognitive load and promote effective learning.”).

⁴⁰ Warren, *supra* note 18, at 93 (proposing that faculty can facilitate learning by “teach[ing] concepts and build[ing] students’ ability to conceptualize material”). “In other words, students are more likely to understand what they learn and recall it if the material is part of a conceptual framework.” *Id.*

⁴¹ Brian S. Williams, *Road Maps, Tour Guides, and Parking Lots: The Use of Context in Teaching Overview and Thesis Paragraphs*, 7 PERSPECTIVES 27, 27 (1998) (underscoring “the importance of context in helping students learn new material” by sharing a road map analogy to teach the overview and thesis paragraphs). Professor Williams’s road map analogy invites law students to think about the overview paragraph “as a description of a trip the reader [is] about to take, highlighting the important stops along with the way (i.e., the various legal elements) and identifying the traveler’s final destination (i.e., the overall conclusion).” *Id.* He similarly “encourage[s] students to think of the thesis paragraph for each subissue as a brief description of the trip the reader will take with respect to that subissue.” *Id.* Because the lesson is “[p]resented in terms that appeal more directly to the students’ life experiences,” the students more quickly understand the role of these sections in their own legal writing. *Id.* at 28.

⁴² Charles R. Calleros, *Using Classroom Demonstrations in Familiar Nonlegal Contexts to Introduce New Students to Unfamiliar Concepts of Legal Method and Analysis*, 7 LEGAL WRITING 37, 38-39, 62 (2001) (explaining two examples of classroom demonstrations set in a familiar nonlegal context

foundation of knowledge grows incrementally, providing a stronger basis for assimilating more new concepts, including increasingly complex ones.”⁴³

Analogies that relate new concepts to “familiar, nonthreatening, nonlegal contexts” are particularly helpful.⁴⁴ Such analogies require less effort for students to create connections between the new concepts and their existing schema, thereby making the new information meaningful.⁴⁵ An analogy also allows students to develop confidence in their abilities before moving on to more complex applications of their learning.⁴⁶ In a sense, an analogy “activates” schemas and stimulates “intellectual growth.”⁴⁷ This

designed to help first-semester law students “see the uncertain nature of law and fact analysis,” initially very difficult concepts for new law students to comprehend).

⁴³ *Id.* at 39.

⁴⁴ Charles R. Calleros, *Using Both Nonlegal Contexts and Assigned Doctrinal Course Material to Improve Students’ Outlining and Exam-Taking Skills*, 12 PERSPECTIVES 91, 91 (2004) (reflecting on the strengths and limitations of an academic success program workshop involving a combination of exercises set both in nonlegal and legal contexts); see also Pollman, *supra* note 13, at 298 (“[C]ognitive load theory suggests that novices learn more easily and better when teachers use examples.”).

⁴⁵ See Bruce Ching, *Nonlegal Analogies in the LRW Classroom*, 8 PERSPECTIVES 26, 26 (1999) (describing the success of using non-legal analogies in the legal writing classroom to help students understand the processes of legal analysis). Ching describes several non-legal examples including grouping stars into a constellation to create a “coherent pattern” and evaluating several teen driving scenarios to illustrate precedent distinctions, equity and policy arguments, and mandatory and persuasive authority. *Id.* “The familiar content [of these examples] allowed [the law] students to recognize more easily the steps involved in analysis and argument.” *Id.*

⁴⁶ *Id.* at 29 (“The use of analogies to nonlegal situations seems to remove one layer of difficulty in students’ learning the processes of legal analysis and argument.”); see also Clifford S. Zimmerman, *Creative Ideas and Techniques for Teaching Rule Synthesis*, 8 PERSPECTIVES 68, 70 (2000) (explaining the creative use of a nonlegal synthesis problem to teach students rule synthesis). Professor Zimmerman’s problem involves a high school student who wants to know his parents’ rules for how often he can go out and how late he can stay out at night. *Id.* To teach the process of rule synthesis, he supplies five scenarios illustrating the parents’ reactions to the student’s varying behavior. *Id.* The law students easily distill a “clear pattern.” *Id.* The problem is thus successful in teaching rule synthesis, in part, because “all students can relate to the experience, either because high school is not so distantly past for them or because they have children of their own.” *Id.* In other words, the context allows the students to comfortably navigate the process of the rule synthesis. It also helps “build[] their confidence in their analytical abilities” as the students turn to legal rule synthesis. *Id.*

⁴⁷ James B. Levy, *A Schema Walks into a Bar . . . How Humor Makes Us Better Teachers by Helping Our Students Learn*, 16 PERSPECTIVES 109, 109-10 (2008) (discussing the benefits of using humor in the classroom and illustrating Professor Sheila Simon’s humorous ‘lasagna in a blender’ analogy as an effective way to “activate[]” and “broaden[] students’ existing schemas”). Professor Simon’s ‘lasagna in a blender’ analogy “makes the point to students that it’s important for them to not only include the right ‘ingredients’ in their office memorandum and briefs (i.e. issue, rule, application, and conclusion), but that those ingredients must also be ‘prepared,’ or organized, according to the audience’s expectations.” *Id.* Professor Simon accomplishes this by showing the students a slide of “the appalled reaction from dinner guests who are served lasagna made in a blender rather than layered and baked in a pan” as guests would expect. *Id.* Most significantly, this example “helps students develop a new schema for IRAC beyond the need to memorize it by showing them the [similarly] appalled reaction they will get” from legal readers if their writing is “not organized according to professional norms.” *Id.*

activity, in turn, helps students commit the information more efficiently and effectively to long-term memory, thereby building mental models needed for deeper learning.⁴⁸ These mental models invariably help students process and apply complex legal reasoning, and eventually commit that reasoning to writing in a form that expert legal readers demand.

IV. THE TEACHING METHOD: USING ANALOGIES AS A COMPASS

Incorporating analogies⁴⁹ into the classroom is a remarkably simple, yet dependable and highly effective, way to support the mental modeling students require to meet the challenges of learning legal analysis and writing. Importantly, selecting analogies that are relatable, draw on common experiences, and use vivid examples and imagery⁵⁰ are most successful in creating the connections needed to move the new “target” information from a law student’s working memory into that student’s long-term memory. Moreover, by connecting lessons on critical reading, rule synthesis, and rule

⁴⁸ The more scientific explanation of using an analogy involves three steps: retrieval, mapping, and then extension. See Claire Hill, *Reflections of a Recovering Lawyer: How Becoming a Cognitive Psychologist—and (In Particular) Studying Analogical and Casual Reasoning—Changed My Views About the Field of Psychology and Law*, 79 CHL.-KENT L. REV. 1187, 1193 (2004) (reflecting on personal experience in cognitive and social psychology and noting their application to the law); see also Carpenter, *supra* note 1, at 466 (detailing the two steps of retrieval and mapping to explain how an attorney can use metaphor to persuade a judge on an “unfamiliar and abstract concept”). Once a student finds “relevant source analogs in memory”, that student then creates a mapping—a set of connections between elements of the source analogs and the new information. Hill, at 1193. In the last step of analogical transfer, the student uses the mapping and knowledge of the source to “construct inferences” about the new information. *Id.*

⁴⁹ This Article focuses on the use of analogies, not metaphors, as a teaching tool. When viewed through a “cognitive science lens,” metaphors and analogies are “largely alike” in that they both “involve comparing a new, abstract concept to an old, understood concept to help the reader understand the new concept in a certain way.” Carpenter, *supra* note 1, at 464. However, a metaphor involves an “implied comparison” whereas an analogy entails an explicit one. It is the explicit association between the “target” information and “source” information that is most useful pedagogically. Obviously, the impact that a metaphor might have on a legal reader is similar to that of an analogy on a new law student: they both provide “concrete images that make it easier to think about and manage abstract or unfamiliar concepts.” *Id.* (internal citation omitted). Specifically, they “draw emphasis” to an otherwise unknown concept, making the learning of that concept a “memorable” one. *Id.* at 476; see also Kirsten Konrad Tiscione, *Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making*, 54 WAKE FOREST L. REV. 1159, 1192 (2019) (“[W]e feel the magic of the metaphor before we think it and then we are unable to forget it.”). While metaphors have a very important place in legal writing, particularly in storytelling and analogical reasoning, for example, the use of metaphors for these purposes is outside the scope of this Article. See, e.g., Tiscione, at 1192 (discussing how metaphor contributes to emotion-based decision-making, which is an important part of what Professor Tiscione terms as “feelthinking”—thinking like a lawyer and feeling the role that emotion plays in the practice of law).

⁵⁰ See Kim, *supra* note 7, at 103 (“A well-chosen, simple image in conjunction with narration that associates the concept will be far more effective in helping the student grasp and retain the concept.”).

application to familiar and common experiences, law students become increasingly more comfortable with the process, more open to the challenge, and ultimately more engaged with the material, again spurring long-term retention.

I had always used analogies in my teaching but it did not crystallize for me how important they were to presenting a clear path for learning until students began repeating my analogies and reporting back to me just how successful they were in creating meaning for them. In other words, they were memorable experiences for the students—that is, experiences that helped them remember a concept and then appropriately and competently apply what they learned to the next similar problem. The analogies were memorable too because they were often accompanied by some sort of engaging visual. The visuals were intended to illuminate the connections between the “target” and “source” concepts. By using a clear analogy and a vivid visual, the import of the lesson was more likely to have a long-lasting effect. The lesson then could be easily filed into a student’s long-term memory. Needless to say, a key objective was for students to be able to re-see the visual and then re-imagine the analogy when they were working independently. Later, the analogy could be used to facilitate the easy retrieval of the newly learned and stored information and subsequent application of it to a new scenario.

Specifically, I introduce a series of simple analogies during the first weeks of legal writing class that focus on the foundational stages of legal analysis and writing. The students track what I consider to be the life cycle of legal analysis and writing, beginning with reading a case, moving on to synthesizing a rule from several cases, applying the synthesized rule to a new problem, drawing comparisons between the problem and synthesized cases, predicting, or advocating for, an outcome, and eventually addressing all aspects of structuring that analysis into a cogent written form.⁵¹ This deliberate use of analogies provides the “support and guidance” beginning law students need, thus creating a robust scaffold of learning.⁵²

Notably, scaffolding is “one of the chief means of reducing cognitive load” for students.⁵³ “By retaining the complexity and integrity of the whole but providing support for those parts of the task that the student cannot yet accomplish, scaffolding permits the student to accomplish a task that the student could not accomplish” independently.⁵⁴ “As the student progresses,

⁵¹ To start, the students are instructed to follow the basic CREAC structure when organizing a single analysis in writing. CREAC = Conclusion, Rule, Explanation, Application, and Conclusion.

⁵² Enns & Smith, *supra* note 6, at 114.

⁵³ *Id.* at 114, 140 (“By clearing space for students to focus on processes of analysis and writing, [professors] can come closer to ensuring that cognitive load does not interfere with students’ acquisition of foundational doctrine” and other important learning).

⁵⁴ *Id.* at 114.

the [professor] fades the scaffolding until the student can accomplish the whole task unassisted.”⁵⁵ In class, even though I might not revisit or build on the specific analogies as we advance further into a lesson, the analogies are always available as useful prompts. Oftentimes, a simple reminder of the relevant analogy is a sure way to reactivate a student’s long-term memory if a student’s understanding of the concept has been muddled or otherwise buried. The analogy serves as a perfect, quick refresher since the student can quickly retrieve the analogy and the knowledge corresponding to that related schema. In remembering the analogy and recalling the information, the student regains confidence and emerges with a genuine readiness to engage in deeper learning as well as a willingness to confront more complex legal problems.

A. The “dive, don’t cannonball, into a case” analogy: reading cases

The dive, don’t cannonball, into a case analogy is something that I use in one of my very first classes in the fall semester of legal writing at the point where I am emphasizing the importance of reading cases carefully and with a clear purpose. It is an analogy that is helpful in laying the foundation on how to build strong legal reading and analytical skills. Here is a summary of the analogy, as expressed to the students:

The sport of diving requires an expert balance of grace and athleticism. It also is physically demanding, requiring stamina and strength as well as speed, agility, and flexibility. Thus, an exceptional dive requires substantial practice and experience. In contrast, a good cannonball requires little effort and is far from graceful. No training or experience is needed. The objective of a cannonball is to produce the biggest and loudest splash possible (or, for many, to have the most fun possible).⁵⁶ So, now imagine cannonballing into the reading of a case—that is, jumping into the reading without any technique or preparation. The resulting splash of information would be wild, perhaps even arbitrary, and consequently unreliable. The jump, even if extraordinarily fun, would lack the precision and grace required for proficient legal reading.

In other words, to become an expert legal reader, students need to prepare for a dive, not a cannonball, into the cases. They need to practice, build stamina and strength, and eventually read with some speed and flexibility,

⁵⁵ *Id.*

⁵⁶ The PowerPoint that would accompany this analogy narration includes an illustration of an Olympic forward dive producing minimal splash as well as pool party cannonball creating maximum splash (and obvious poolside entertainment).

but always committed and ready to modify their reading strategies to fit their goals.

This analogy allows me to discuss with students the in-depth preparation required to become an expert reader (diver) and then share with them the techniques for a successful read (dive). We discuss the fundamentals first, such as the concept that legal reading is unlike any other reading. In addition to the enormous volume of reading in law school, the content itself can be very dense. Judicial opinions, for example, are riddled with legal jargon, complex procedural histories, and lengthy discussions of assorted issues. Therefore, students should not assume that what worked for them previously, in undergraduate school or in another discipline or profession, will work in law school. In other words, in keeping with the analogy, recreational diving is not the same as competitive diving. In law school, the reading likely will be more challenging than any other reading experienced before and thus will require thorough preparation.

Next, I emphasize the importance of ascertaining and understanding a text's context as an integral first step in that preparation. Because law students spend most of their time working with cases in the first semester, all context for a judicial decision is significant. Therefore, I urge students to investigate a decision's context before reading the opinion. Analogously, before a competitive diver prepares to dive in a competition, that diver asks questions, such as, "where will I be diving?" "how deep is the pool?" "what is the water temperature?" and "have I dived here before?" The answers to these types of questions provide contextual information that can greatly aid the diver's preparation for the dive. As a result, the diver's preparation is much smarter, focused, and leads to a much more efficient and successful dive.

Likewise, in legal reading, contextual clues as to a case's origin, date, author, etc. can shed light on a text's meaning and similarly help the reader prepare better for the impending read, focusing the reader's attention more immediately on the relevant facts and reasoning. To be sure, "it is critical to take the time to get oriented to a case before plowing into reading it."⁵⁷ In fact, expert legal readers will look at the historical context of a decision and information, such as the date of the opinion, location, and presiding judge, to evaluate the court's written opinion.⁵⁸ Furthermore, expert legal readers will not begin annotating a text until after they have read it through once first and

⁵⁷ MCKINNEY, *supra* note 5, at 105 ("[T]here are all kinds of external cues (cues outside the case) that you can use to quickly get situated.").

⁵⁸ *Id.* ("A skilled reader would never (or hardly ever) jump into a text without testing the waters first. We have to know something about what we're going to read or the task would be completely overwhelming. Research shows that the more we know ahead of time, the more effective our reading will be.").

developed an impression as to what is important; in other words, they first figure out the “main idea” of the case before reading it in full.⁵⁹

Therefore, I instruct students not to dive right in. They should not highlight or otherwise mark up a decision until after they have read it once. Without first knowing what a decision is about, it is hard to determine what is important or not. As such, novice legal readers tend to over-highlight or over-annotate, including information that is irrelevant or inconsequential.⁶⁰ Therefore, during their first dive (read) into a case, students should be reading solely for the purpose of understanding the issues and main points.⁶¹ They should use this time also to decode any words that are confusing, like legal jargon or procedural history language. Students should think of this read as a practice, or a warm-up dive. It gets students ready for the real thing.

It is only during the second and subsequent dives (reads) into a case should students begin marking up and annotating the text for its specifics. Though this process takes time, it also ensures that students distill the most important and relevant information from the text from the start. Further, as students become more expert in their reading, it will take less effort to do these multiple reads. In short, the dives will get easier.

Finally, I instruct students that they should read with “a clear purpose.”⁶² While most students have been programmed to read for the main idea of a text, they have not been trained in reading with a purpose. Therefore, I pose the following questions, continuing to build on my diving analogy: Is the dive for the smallest splash? For the greatest height? For the best form? For the fastest speed? These are obviously very different purposes and competitive divers would adjust their preparation as well as their performance accordingly. The same applies to reading. “It is hugely inefficient—and often counterproductive—to read a text for one purpose when you ought to be reading it for another.”⁶³ Not only do I caution students in this regard, but also, I show them the difference by modeling effective reading strategies in class and demonstrating specific ways that expert legal readers engage with a text. In other words, I show them how to dive.

⁵⁹ *Id.* at 110 (“There are external cues within the cases themselves that can help [students] develop educated guesses about the ultimate ‘main idea’ of the case. It is critical to take advantage of these external cues to speed up your reading and get more from a case.”) (emphasis omitted).

⁶⁰ *See id.* at 82-83 (“Inexperienced readers, or less proficient readers, [] march with determination through a text – methodically and carefully reading for detail that may be superfluous or unimportant in the end.”). “The challenge for beginning law students is that they don’t have enough experience in the field of law (and law study) to know (at first) what may wind up being superfluous.” *Id.* at 83.

⁶¹ *Id.* at 82 (“Exceptional readers with experience in a particular field cut to the chase as they read. They look for large themes and important principles in their reading, actively pursuing ‘the main idea’ of a text.”) (internal citations omitted).

⁶² *Id.* at 97-98 (“Choosing the right purpose of your []reading is a critical threshold decision for all law students, and one that has a major impact on how effective your reading will be.”).

⁶³ *Id.* at 97.

We then discuss other techniques for precise reading. Here is where I would expand on my analogy again by talking more about diving with a purpose. When a single decision addresses multiple issues, the students will have to dive into that case multiple times, but with each dive, students should be reading with only one issue in mind at a time. For one of my early ungraded practice assignments, I assign a New York consumer fraud problem, including the relevant statute and a handful of cases.⁶⁴ The students have to decide whether two tutors—formerly au pairs, with limited teaching experience and virtually no mastery over the English language—who represented that they could prepare a five-year old child to pass a prestigious nursery school entrance interview engaged in consumer fraud when they offered their services to a group of parents at a set price but none of the children passed.⁶⁵

The claim has three elements regarding what the conduct must entail: (1) consumer-oriented conduct; (2) materially misleading; and (3) result in injury or some harm to the plaintiff.⁶⁶ The cases address all these elements but, obviously, to varying degrees. It quickly becomes clear that diving into the cases for all three issues at once is the equivalent of belly flopping into the water. It is going to hurt and, worse than that, not yield complete and accurate results. Therefore, the students need to prepare for analyzing the elements separately first, developing a rule for each, and applying each rule to the facts separately. Accordingly, there will be three separate analysis and if each issue is disputed, three separate CREACs.

So, I present the following analogy to underscore the need to dive into a case with a clear purpose:

Imagine pool dive toys⁶⁷—the hoops or wands or torpedo ones. They could be different shapes and colors. When diving with others, each diver is typically responsible for collecting a single color or single-type dive toy. When you dive into the cases, you should think about diving for the toys (information) that correspond with your assigned goal (legal issue). Leave the other dive toys (irrelevant information) alone for the moment. While that other information might be relevant to the larger claim or defense, if it

⁶⁴ Specifically, the assigned statute is Section 349 of the New York General Business Law.

⁶⁵ The entirety of this problem, which was designed in collaboration with Professor Elyse Pepper, my colleague at St. John's University School of Law, is explained in detail in an article we co-authored. See Patricia Montana & Elyse Pepper, *Getting it Right by Writing it Wrong Embracing Faulty Reasoning as a Teaching Tool*, 46 OHIO N. UNIV. L. REV. 369 (2020).

⁶⁶ *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank*, 647 N.E.2d 741, 745 (N.Y. 1995).

⁶⁷ This analogy also would be accompanied with a picture of various pool dive toys, again to help reduce cognitive load. See Kim, *supra* note 7, at 102-03 (“[T]he research suggests that people process complex concepts more readily if they receive information both visually and aurally. It follows that legal writing professors should incorporate more visual images and less text to illustrate an idea.”).

is not relevant to the issue for which you are reading, do not pick it up on that read—wait until the read assigned with that purpose.

Applying this analogy to the problem, students need to dive into the cases first to determine what constitutes consumer-oriented conduct—grabbing all of those colored and particular shaped dive toys, and then dive back in to the cases grabbing the ones associated with the materially misleading conduct element, and so on. Each read has its own clearly defined, and very different, purpose. The reads must be targeted to organize the information completely and correctly around the various issues.

I then explicitly model how this is done by working through a sample annotation of a case—annotating it for only one of the issues.⁶⁸ I will take one of the assigned cases and walk through each paragraph of the opinion and ask questions about whether the text is relevant to the issue and, if so, how, and if not, why not. Together we will annotate the opinion based on whether the text corresponds to background or pertinent facts, the court's holding, or the court's reasoning. We also will discuss what information should be included in the analysis and what information should be omitted. The students benefit tremendously from knowing my process in reading the material and reaching the understanding of the law that I did.⁶⁹ Simultaneously, this transparency takes the mystery out of the process and helps students see that it is an entirely doable activity; all that is required is time, care, and patience.⁷⁰ Even if they have never dived for pool toys before, they can imagine the game. The simplified explanation helps them realize it. Also, because this process is so integral to eventually charting cases and then developing rules that are sound and reliable, it is worth spending the time developing an analogy that gives it meaning.

In the end, the diving example is a terrific analogy for the work of a new law student learning how to read cases and distill the correct information from them. It is also a springboard to discussing the subsequent steps in legal analysis and writing: charting cases, synthesizing rules, and applying them to the facts.

⁶⁸ See Warren, *supra* note 18, at 92 (“Professors should be explicit. They should state why it is important to learn the material and in which context it will be applied. Educators should discuss the relationship between the learning goal and the means chosen to achieve that goal. In this way, the students will be motivated to make connections because they understand the value of the information.”).

⁶⁹ See *id.* at 93 (“[S]tudents are more likely to understand what they learn and recall it if the material is part of a conceptual framework.”).

⁷⁰ See MCKINNEY, *supra* note 5, at 62 (“Effective reading requires action. It requires the reader to have the ability—both the physical and psychology energy—to connect with the text being read and to interact with it.”).

B. The “simple recipe” analogy: synthesizing rules

The dive, don’t cannonball, into a case analogy addressed the foundational skill of reading cases. The next analogies I use in my legal writing class address the steps of rule synthesis, application, case comparison, research, and writing generally. My recipe analogy, which compares rule synthesis to creating a recipe for a cake that can be shared and followed by friends and families, is clearly not novel.⁷¹ Undoubtedly, many legal writing professors use some version of a recipe analogy to teach rule synthesis—that is, how to take a series of cases and determine what the rule is that courts apply in certain situations.

Returning to my New York consumer fraud example from earlier, as part of that project, the students need to synthesize a rule for consumer-oriented conduct. Before doing so, I explain to the students that when they read cases on an issue, they are in effect tasting their dessert options. The decisions represent different cakes.⁷² They sample them to determine the ingredients used to make them. There will be essential ingredients, such as, eggs, flour, and sugar—which equate to the required elements or components of a court’s decision. However, there also might be non-essential ingredients that change from cake to cake, like vanilla, ground cumin, cinnamon, frosting—which equate to factors or points of consideration that might impact a court’s decision but are not necessary.

Once the students discover the recipe from a series of cases, they have synthesized the legal rule on an issue. Hence, a legal rule is the equivalent of a simple recipe. For the project at hand, the recipe represents the pattern that the courts follow in deciding whether conduct is consumer-oriented or not. As it happens, New York courts always take into account whether the consumer had access to the information relevant to the alleged fraudulent transaction (an essential ingredient) but only consider the amount at stake (a non-essential ingredient) with the less at stake more indicative of consumer-oriented behavior. The leading case on the issue—Oswego—perfectly elucidates this point.⁷³ Even though the transaction involved a large amount of money, thus seemingly appearing to fall outside the scope of the consumer

⁷¹ See, e.g., John D. Schunk, *What Can Legal Writing Students Learn from Watching Emeril Live?*, 14 PERSPECTIVES 81, 82 (2006) (describing the success of an analogy learned from watching Emeril Live—a popular cooking show—about how a good legal argument follows more of a casserole recipe than a cake recipe because a cake recipe is too rigid of a formula whereas a casserole recipe can be modified and even “spice[d]” up if needed); see also Levy, *supra* note 47, at 109-110 (describing a ‘lasagna in a blender’ analogy to teach IRAC).

⁷² This analogy presents a fun opportunity to talk cake with the class. By spending a few moments pulling up images of different cakes and comparing ingredients for them, the students have yet another memorable experience to draw on when engaging in rule synthesis in the future.

⁷³ *Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank*, 647 N.E.2d 741, 745 (N.Y. 1995).

fraud statute, because the complaining consumers had no access whatsoever to the information material to the transaction, the conduct was considered consumer-oriented nonetheless.⁷⁴

Afterwards, students must express this pattern—the synthesized rule—as they would a recipe, informing the reader (a friend interested in baking a similar cake, let's say) as to what is needed (i.e., essential ingredients), what is discretionary (i.e., non-essential ingredients), and how much weight to give each of those components (i.e. the measurements).

Students oftentimes think of rule synthesis as a mechanical, rigid process where there is one right answer—a formula—that can be expressed only in a singular way.⁷⁵ This view typically leads students to try to express that formula in a single sentence too, even if it involves multiple parts and results in an unwieldy and ungrammatical sentence. Therefore, the recipe analogy helps students see rule formation and expression differently. It frees them to think more deeply about what the courts are holding and why. It frees them to write the rule more simply and with more space, if needed. They are encouraged to create a recipe that can be passed on from generation to generation. In other words, they begin to develop rules that have some depth and general applicability but also are useful in solving their pressing legal problem and future ones like it.

C. The “click through” analogy: explaining rules

After teaching how to synthesize rules, I move to lessons on rule explanation.⁷⁶ I spend much time in the early weeks discussing how rules must be developed. A rule must be understandable to the legal reader, whether that is a judge, colleague, or supervisor. Even when the audience is a lawyer and has some basic legal knowledge, that person might not be an expert in the law and the analysis that the student reviewed and learned. The student is the one who dove into the material, uncovered the ingredients, and created a reliable and usable recipe. Therefore, the student is in the best position to explain that recipe. For it to be useful, however, the student must explain it in clear and simple terms, so that the reader seamlessly can follow the student's guidance (and bake without any glitches).

To that end, the student should not write too generally, skip steps, or use terms with loaded meaning or other shorthand. To drive home this point, I ask students whether telling someone to flute a pie before baking it would

⁷⁴ *Id.*

⁷⁵ See Schunk, *supra* note 71, at 82 (describing how a casserole recipe, which is not as fixed as a cake recipe, is successful in “convincing students that a good legal argument follows a general recipe and dissuading students that legal writing exists as a formula”).

⁷⁶ Rule explanation is the “RE” in CREAC and is oftentimes referred to by other names like rule illustration or case illustration.

hold any meaning to an average baker. Essentially, would using the term “flute” be helpful? An experienced baker might know that fluting means to use two hands to pinch the edge of a crust,⁷⁷ but the average person might not. Therefore, the term fluting becomes a term that needs to be clicked through. Hence, my click through analogy. Any word or concept that does not have meaning without context or where its meaning is inherently rooted in the research the student did, should be clicked through—elaborated on—for the reader.

The click through analogy is an unquestionably familiar one. Students simply need to reflect on their own experiences navigating webpages.⁷⁸ There are words or phrases they might encounter that are hyperlinked and the only way for them to learn more is to click on the hyperlink.⁷⁹ By clicking on a hyperlink, the viewer is brought to a more detailed and focused explanation. In the same way, any time a student comes across a legal term, phrase or concept that cannot stand on its own, it must be clicked through and explained further. The student must say more by providing the necessary context, details, or other additional information.

Returning again to the New York consumer fraud example, when the students begin working with the rule for whether the conduct was materially misleading, they quickly see that there is an explicit rule in the cases: acts or omissions that are likely to mislead reasonable consumers acting reasonably under the circumstances.⁸⁰ This is a phrase that seems plainly simple at first glance. But quickly it becomes clear that without further explanation, it is unhelpful. For instance, when do consumers act like reasonable consumers acting reasonably under the circumstances and when do they act unreasonably? The phrase is thus the equivalent of telling a novice baker to flute a pie. The phrase must be clicked through for it to be meaningful.

D. The “spotlight” analogy: applying rules and reasoning by analogy

When it comes to application and case comparison⁸¹, new law students frequently struggle with balancing the precise amount of information they

⁷⁷ Yet again a visual of someone fluting a pie provides the necessary imagery.

⁷⁸ In class, a quick look at any webpage with embedded hyperlinks presents a good visual.

⁷⁹ In keeping with the simple recipe analogy, this might be a term of art that has an asterisked explanation or where the plain meaning or definition would be included in a parenthesis next to the word.

⁸⁰ *Oswego Laborers’ Local 214 Pension Fund v. Marine Midland Bank*, 647 N.E.2d 741, 744 (N.Y. 1995); *Stutman v. Chemical Bank*, 731 N.E.2d 608, 611-12 (N.Y. 2000); *Gaidon v. Guardian Life Ins. Co. of Am.*, 725 N.E.2d 598, 607 (N.Y. 1999); *Oswego*, 647 N.E.2d at 745; *Gomez-Jimenez v. New York Law Sch.*, 956 N.Y.S.2d 54, 59 (N.Y. App. Div. 2012); *Teller v. Hayes, Ltd.*, 630 N.Y.S.2d 769, 774 (N.Y. App. Div. 1995).

⁸¹ This is the “A” in the CREAC. In addition to applying the rule, a well-supported written analysis oftentimes requires a comparison or reasoning by analogy to the rule cases.

need from the precedent or rule cases to make the comparison effective. Most often students will use the case comparison space to re-explain the rule cases, even though they adequately addressed them earlier in the writing as part of the rule explanation. The result is a very weak or superficial case comparison—one that sets out a likeness or difference between the legal problem and rule cases but does so with only a bare analysis of the problem's specific facts. Consequently, the reader is forced to accept the student's application of the rule without any real proof that the student applied the rule correctly or appropriately.

So, here, is where I introduce the spotlight analogy. When developing a case comparison, the "spotlight" should be focused most on the problem's facts, not the facts of the rule cases.⁸² If CREAC was a stage performance, a physical spotlight would shift its focus from one scene to the next. In an earlier "scene" of legal analysis, specifically the rule development, the spotlight should be on the rule cases, explaining the relevant facts, holding, and rationale of each one. However, in the later "scene" of case comparison, the spotlight must move to project light on the significant relationships between the problem and the rule cases. The redirected spotlight should highlight the application of the rule to the problem and not what happened in the rule cases and why.

To underscore this point, I have the students work on an exercise so that they "see" where the spotlight is on their facts.⁸³ I have them highlight (in yellow of course) the facts relating to the rule cases so that they can see how much attention they are giving to the development of the problem versus a regurgitation of what happened in the rule cases. So often students will insist that they must spend time telling the reader what happened in a rule case as part of the case comparison because they did not do so earlier in the CREAC. This is always an exciting teaching moment, as the students learn that that information might have been more helpful earlier in the rule explanation section to give meaning to the rule case. It is not that students should refrain from mentioning rule case facts or reasoning in a case comparison; obviously, references to the rule cases will be needed to effectively compare the problem to the rule cases. But the "spotlight" needs to be properly adjusted and illuminate the problem's facts the most.

E. The "continuum line" analogy: connecting the rule and application

Another analogy that I use to support the students' understanding of both rule development and case comparison is the concept of a continuum.

⁸² Again, I incorporate an image of a spotlight casting a bright yellow light to illuminate this analogy.

⁸³ This is an effective exercise to use after the students have completed a written draft of an analysis and before a rewrite of it is due.

For rule development, when explaining the rule cases, I tell students that part of what they are doing is plotting what they have read on a continuum. On the far-right end is what absolutely or so clearly satisfies the standard and on the far-left end is what absolutely or so clearly does not meet the standard. When reading the rule cases, they need to plot their location on the continuum, considering not only on which side of the continuum the cases might fall but their relationship to each other.

In the New York consumer fraud example, as discussed *supra*, *Oswego*, the leading case on consumer-oriented conduct in New York, is a case where the conduct was consumer-oriented despite the fact that there was a large sum at stake—a factor typically weighing in favor of a private transaction, not a consumer-oriented one. As a result, this case is plotted just left of the midpoint because it shares an important quality with those cases where the conduct was not consumer-oriented, but ultimately that factor on its own is not enough for the case to cross over. To aid in understanding the continuum analogy, as a class we will plot all the cases on the continuum, adjusting as needed. The concept of a continuum is a simple variation on the technique of charting cases. It is invaluable in helping students recognize a pattern in the rule cases and ultimately state a synthesized rule.

I return to this analogy when teaching case comparison as well. After plotting the rule cases, the students must decide where their current legal problem fits on the continuum. In other words, I ask the students to assess which case or cases is the problem most like and most unlike. The problem's location on the continuum and proximity to other cases will inform how a court will likely rule on that legal problem. In the first semester of legal writing, my students are predicting how a court would likely resolve a client's legal problem.⁸⁴ This placement of the client's problem on the continuum (if done correctly) really helps the students write an effective case comparison. They move beyond superficial "like" and "unlike" comparison statements to far richer comparisons, focusing on the significant similarities and differences in facts and reasoning. Because the analogy is straightforward and the visual is so clear, students grasp its significance immediately.

F. The "wrap it up with a bow" analogy: concluding

Finally, the last step in a written CREAC is the conclusion. Typically, I do not spend much time talking about writing the conclusion until the students are nearly done working through the written paradigm. This is because, just like putting a bow on a gift package, it is the final touch. Students relate to this analogy because they most definitely have lived it at

⁸⁴ This analogy also can be used to help support an argument of facts as well if working with students on persuasive writing, rather than predictive writing.

one point. The hardest part of gift giving is selecting the right gift and then packaging and wrapping it. A bow, though a nice touch,⁸⁵ is an ornament and thus not essential. The gift will do without one. Yet, the addition of a bow certainly will be admired.

The same applies for the conclusion to a legal analysis. A clear concluding statement is an elegant way to wrap up an analysis, and the reader will very much appreciate it, but it should not become the focus of the student's writing at the start. It should be designed at the end, after all the other hard work is done. Students enjoy this concluding analogy, as it also marks their successful journey through the process of legal analysis and writing.

V. GOOD LEGAL WRITING IS LIKE A BOX OF CHOCOLATES

In addition to using analogies to demonstrate the phases of legal analysis, I also use analogies when discussing elements of good writing generally. One such example is my chocolate bunny analogy. I use this when discussing how readers like their information in small bite-sized pieces.

For this concept, I share a personal family tradition of picking out a chocolate bunny at a local homemade chocolate shop for the Easter holiday. The available bunnies range in size from six inches all the way to three feet tall.⁸⁶ My family usually settles on a chocolate bunny that's about 18 inches tall. For this part of the story, I will display a picture of the bunny we chose. When it is time to eat the chocolate on Easter, I ask the students to imagine how we might share it. Do we pass it around the table, holding it from ear to paw, taking turns biting into it? The students instantly know that is not the case; that would be ridiculous (in addition to gross). Importantly, it is not practicable for a family to eat a single chocolate bunny in that way. So, instead, we break it up into nice chunks—that is, bite-sized pieces of chocolate that are easy for us to pass around and eat. This is analogous to how legal readers like their pieces of information too: in nice small, easy to digest chunks.⁸⁷

This analogy allows me to talk about paragraph lengths and sentence lengths too, and the goal of trying to keep them at a readable length. It is important to simplify the writing and keep ideas organized. To amplify this point, I ask the students to imagine two different flavored chocolate bunnies: a white chocolate one and a dark chocolate one. It is not typical for someone

⁸⁵ Selecting a visual to accompany this analogy is an easy task, as there are so many wonderfully decorative bows available online.

⁸⁶ In fact, Harvey, the tallest of the bunch each year, costs approximately \$200.

⁸⁷ This analogy is so effective that many times when commenting on student papers, I can simply insert a picture of a chocolate bunny to provide the feedback that the information is not chunked small enough for the reader.

to grab one of each and try both at the same time. They are different flavors and invoke different tastes. Someone interested in chocolate would most likely want to savor the taste of both, but individually. In the same vein, expert legal writers keep distinct concepts separate, organizing multiple disputed issues into different CREACs. Expert legal writers also use new paragraphs to separate topics and limit a single sentence to a single idea. Mixing up unrelated ideas or multiple concepts into one place, whether it is in a single paragraph or sentence, is confusing and oftentimes unwieldy. In short, legal readers enjoy their information in simple bites instead.

VI. RESEARCHING WITH A BETTER VISION

Lastly, I use analogies when teaching research for the very first time as well. I ask the students to imagine a scenario where they are looking for a Lasik eye surgeon in Manhattan but have no leads. How would they go about finding a surgeon? The students quickly list several possibilities, including, for example, contacting an insurance company, asking a friend, or talking with doctors. The most popular response, and the one many students perceive to be the most attractive one, is using google (or a similar search engine) to find one.

To create a memorable experience, I then run a google search using volunteered search terms and together we begin examining the hundreds of thousands of results that pop up. It becomes immediately apparent that the open-ended google search might not be the most effective or efficient research path. This recognition allows us to discuss how different research paths can lead to the same result, but some paths are more efficient because they get a researcher to the desired result faster and are more reliable (such as, starting with a recommendation from a friend or an insurance website database). Additionally, I mention how no one suggested walking the uptown and midtown grid of Manhattan searching for door plates advertising Lasik surgeons. That is intuitively a ridiculous suggestion.

Analogously, students must not aimlessly search online without first deciding on a proper research path. My goal is for students to appreciate that they must think creatively when researching. They also must consider the time and expense of their legal research in the same way they would in a quest for a reputable Lasik eye surgeon. Merely typing in a search term in an open dialogue box on Lexis Advance or Westlaw Edge or any another online legal search engine can be the equivalent of the Lasik eye surgeon google search or the crazy decision to walk the streets of Manhattan in quest of one. In these types of searches, the search engine is scanning all documents for matches; it is usually more valuable to begin searching in a database designed to store materials related to a specific purpose instead. The researching with a better vision is thus a memorable one, not only because the purpose behind

the sample research problem is to improve the students' vision, but also because it allows the students to see on their own the value of a research plan that produces efficient and reliable results.

VII. THE DRAWBACKS OF USING ANALOGIES: PREPARING FOR POSSIBLE ROUGH WATERS

Without question, the success of using nonlegal examples or analogies as a teaching tool depends on the ability of students to "transfer the skills that they have developed in the nonlegal contexts" to the legal contexts.⁸⁸ This is why it is integral that professors support that transfer by fully explaining the analogy, pairing it with helpful visuals, and following it up with a modeling or application exercise. These techniques should cultivate long-term retention, retrieval, and transfer of new learning to the legal context.

Moreover, because students will arrive to legal writing class with a unique set of experiences, the schemata that forms their knowledge base will absolutely vary.⁸⁹ As such, professors must "recognize the diversity of schemata that students bring to the classroom" when designing context and selecting analogies.⁹⁰ Not all students will have shared experiences, nor will the experiences of the professor necessarily match that of their students. Therefore, professors "can minimize [the] risk of leaving students behind by relating new concepts to familiar events that all students have likely shared."⁹¹ This might require additional research, but it will mean that professors can "more reliably build upon everyone's starting schema", making the use of analogies more effective.⁹²

Finally, the overuse of analogies as a teaching tool certainly runs the risk of annoying or boring students.⁹³ This can happen when an analogy is not used appropriately or effectively. For example, when the connection between the new information and compared source is not obvious, it can confuse and frustrate students. This annoyance and frustration can make it more difficult to learn the new concept or worse might dissuade a student from even trying. The same is true if the analogy is too simple or basic. Students might resent the lack of challenge and, as such, turn off to the

⁸⁸ Calleros, *supra* note 44, at 91 (suggesting that professors use "a combined approach of assigning exercises in both legal and nonlegal settings" to "bring out the maximum benefits of both kinds of exercises").

⁸⁹ Calleros, *supra* note 42, at 39 ("Because law students are the products of diverse intellectual and cultural backgrounds, they bring a wide variety of schemata to the classroom at the beginning of the first semester.").

⁹⁰ Calleros, *supra* note 42, at 39.

⁹¹ Calleros, *supra* note 42, at 39.

⁹² Calleros, *supra* note 42, at 39.

⁹³ See, e.g., Carpenter, *supra* note 1, at 477-78 (explaining how the use of metaphors can "annoy a reader" and "may alienate the reader who feels annoyed that he does not 'get it'").

learning, counteracting any progress the analogy was intended to make. Therefore, it is crucial that professors select meaningful analogies and not invest too much time developing a straightforward analogy. For an analogy to be successful, students need to appreciate it as well as engage with it.

VIII. CONCLUSION

Without much effort, analogies can be integrated into the teaching of legal writing, improving students' learning experience. Analogies effectively create context for beginning law students, which help them move new information into their long-term memory. This transfer ultimately assists students in becoming stronger problem-solvers and more skilled legal researchers and writers. In sum, it alleviates the heavy cognitive load students bear in their first year of legal research and writing.

The use of analogies has the added benefit of making lessons livelier and more enjoyable too. Vivid images can make an analogy more long-lasting, appealing to the different types of learners in the classroom, as much of the law school experience is text-based and thus naturally favors the verbal learner. Even if the use of analogies merely amuses the student learner, there is still value in varying the mode of learning in the classroom.

The "charming and entertaining effect" of an analogy can lift a student's spirit, putting them in a more "positive and receptive mood."⁹⁴ This changed mood can lead to a more open and welcome attitude toward learning new skills that are not intuitive and are likely very different from past experiences. In the end, using analogies to teach the important skills of legal reading, research, analysis, and writing is an effective way to make the unfamiliar more comfortable and the challenges more manageable for new law students.

⁹⁴ See *id.* at 478 (discussing how incorporating metaphors into legal writing for the purpose to "simply entertain the reader" has a positive effect on the reader and can make the reader much more receptive of the writer's "substantive point" as well).

