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# This Time It's For Real Continued: More Ways to Use Law-Related Current Events in the Classroom

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## This Time It's For Real' Continued: More Ways to Use Law-Related Current Events in the Classroom

By Amy R. Stein

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Using news stories in the classroom can help you introduce your students to basic legal skills, create a sense of professionalism, raise ethical issues that may arise in practice, and increase student engagement all in less than five minutes per class. There are two different ways I use news stories—as “investigative journalism” pieces and as “hot off the press” stories. In the Fall 2011 edition of Perspectives, I wrote an article that focused on how I use investigative journalism in the classroom.<sup>2</sup> I use this term to describe a news topic that I use throughout the semester and integrate deeply into the fabric of the class. The series of stories I discussed in my prior article involved a dead schoolmate’s brain discovered in a jar on a class trip to the medical examiner’s office<sup>3</sup> and the ensuing lawsuit under the obscure “right of sepulcher”

doctrine.<sup>4</sup> The article also discussed research, writing, and oral advocacy exercises that I created integrating the Shipley facts throughout the semester.<sup>5</sup>

Since some professors may lack the class time to incorporate a lengthy series of exercises into their curriculum, this article will address effective ways to use hot off the press stories in the classroom in a more compressed fashion. Every morning, I read a variety of legal and nonlegal news sources. Without fail, I discover at least one tidbit that I will share in class that day. These types of items are a great way to start off your class. However, they do more than just elicit a laugh, they also provide the opening to a discussion of more serious matters such as legal ethics or putting out a work product that you can be proud of.

I start every class with a brief current events discussion. This becomes an established part of the routine, which students seem to like. Many comment favorably on this “real world” aspect of the course in the teaching evaluations at the end of the semester. More significantly, students become so invested in this facet of the course that they start sending me stories. Anytime that I use a story sent to me by a student, I make certain to acknowledge their contribution in class. Generally, they look both embarrassed and pleased. After I introduce the story of the day, I solicit class input. This is generally a wonderful opportunity to

<sup>1</sup> Southside Johnny and the Asbury Jukes, *This Time It's for Real*, on *This Time It's for Real* (Epic Records 1977).

<sup>2</sup> Amy R. Stein, *This Time It's for Real: Using Law-Related Current Events in the Classroom*, 20 *Perspectives: Teaching Legal Research and Writing* 1 (2011).

<sup>3</sup> Doug Auer & Dareh Gregorian, *Family Sues ME Office After Discovering Son's Brain was Removed*, N.Y. Post, October 1, 2010, [http://www.nypost.com/p/news/local/staten\\_island/family\\_sues\\_me\\_office\\_after\\_discovering\\_w3kzyPQ2nvV51MOaKcEh6O#ixzz1Ruv9kBdB](http://www.nypost.com/p/news/local/staten_island/family_sues_me_office_after_discovering_w3kzyPQ2nvV51MOaKcEh6O#ixzz1Ruv9kBdB); Doug Auer & Dareh Gregorian, *Dead Staten Island Teen's Brain on Display at Morgue*, N.Y. Post, October 2, 2010, [http://www.nypost.com/p/news/local/staten\\_island/brainless\\_move\\_by\\_the\\_coroner\\_QUIOnajLCVtBIpOBtrVL5O#ixzz1RuvqwQ4Z](http://www.nypost.com/p/news/local/staten_island/brainless_move_by_the_coroner_QUIOnajLCVtBIpOBtrVL5O#ixzz1RuvqwQ4Z); Reuven Fenton & Dareh Gregorian, *Parents' Haunted by 'Brain in Jar'*, N.Y. Post, October 8, 2010, [http://www.nypost.com/p/news/local/staten\\_island/frankensteintqPx1hyTwp6bZ0hLnXrbeL#ixzz1RuwEVyx5](http://www.nypost.com/p/news/local/staten_island/frankensteintqPx1hyTwp6bZ0hLnXrbeL#ixzz1RuwEVyx5)

<sup>4</sup> “The right of sepulcher seeks to assure the right of the decedent’s next of kin to have immediate possession of the body for preservation and burial, and it affords damages when there has been interference with that right. In such cases, the recovery of damages for emotional distress is permissible where it is alleged to have been caused by the negligent mishandling of a corpse.” *Shipley v. City of New York*, No. 101114/06, 2009 WL 7401469 (N.Y. Sup. Ct. March 4, 2009)(Trial Order).

<sup>5</sup> *Supra* note 2.

“[T]hey do more than just elicit a laugh, they also provide the opening to a discussion of more serious matters such as legal ethics ...”

encourage quiet students to speak. Since the news discussion involves “soft” knowledge, reticent students are more willing to venture an opinion since they are less concerned with being wrong.

Using interesting news stories in the classroom serves a legitimate pedagogical purpose. These stories provide a simple, basic introduction to skills training in the first year. Talking about a newsworthy case gives students the opportunity to apply their shiny new legal skills to a real life factual scenario. For example, if you are using a news story involving the death of a child, it might be useful to prepare the students to speak with the grieving parents by pairing them up and doing a mock client interview. It will be important to make them understand that they must do more than express sympathy to the parent for the loss. It will also be crucial to elicit enough information to determine whether or not the child’s death is the result of a compensable wrong or merely a tragic accident.

First-year students can also be introduced to concepts of ethics and professionalism through the use of news stories. There are any number of cases that contain comments by the court as to the poor research and writing skills of the attorneys, as well as the tale of the hapless law firm that was chastised for poor stapling.<sup>6</sup> Ethical issues students may face can also be illuminated through real stories, such as a recent Utah ethics opinion in which a lawyer was censured for hiring a student as an unpaid intern solely for the purpose of using her free Westlaw and Lexis access.<sup>7</sup> These opinions are powerful messages to students about the kind of lawyers they should aspire to be.

When I find a particularly relevant news story, I turn it into an “evergreen.”<sup>8</sup> Evergreens are items that you can use year-after-year on a certain topic (a gooey Mother’s Day poem every May, for example). I keep a file of articles/cases by topic so that I can use them at the appropriate point

in the semester. For example, if I find a terrific article about techniques for effective appellate arguments in the fall when I am teaching office memos, I save it until we are working on appeals. In the spring, I have some articles I have collected which I share with students about preparing effective writing samples. While this takes some level of organization, the payoff is well worth it.

The rest of this article will discuss the various ways in which I utilize “hot off the press” news in the classroom through examples of fun articles I have collected over the years.

### Interesting Cases

Once you start looking, the number of cases that make excellent classroom fodder will amaze you. Following is a discussion of some of my favorites. An Illinois appellate court ruled that an 18-year-old man who was struck and killed while running to catch a train was responsible for injuries caused by his flying body parts.<sup>9</sup> Hiroyuki Joho was dashing through pouring rain with an umbrella when an Amtrak train travelling at 73 mph struck him. A “large part of his body was propelled” onto the opposite train platform, where it hit the plaintiff from behind, causing her to suffer wrist and leg fractures.<sup>10</sup> In reaching its decision in this case, which the court termed “tragically bizarre,” the panel found the few other Illinois cases involving flying bodies not to be factually analogous.<sup>11</sup> Rather, the court chose to apply a traditional duty analysis, leading them to find that “the trial court erred in concluding that Joho could not reasonably foresee that his negligence in the active train station would cause injury to someone standing in the passenger waiting area.”<sup>12</sup> A close reading of the decision will make students realize that while the outcome may seem counterintuitive, the opinion is well grounded in the law.

“Talking about a newsworthy case gives students the opportunity to apply their shiny new legal skills to a real life factual scenario.”

<sup>6</sup> *Jones v. Fuentes*, N.Y.L.J., Sept. 24, 2009, at 1 (N.Y. Sup. Ct. Sept. 11, 2009).

<sup>7</sup> Utah State Bar Ethics Advisory Opinion Committee, Op. 11-03 (2011).

<sup>8</sup> My thanks and gratitude to the late Deborah Hecht, Ph.D., Director of the Writing Center at Touro Law School, for introducing me to the term evergreen.

<sup>9</sup> *Zokhrabov v. Park*, 963 N.E.2d 1035 (Ill. App. Ct. 1<sup>st</sup> Dist. 2011).

<sup>10</sup> *Id.*, at 1038.

<sup>11</sup> *Id.*, at 1044.

<sup>12</sup> *Id.*

“A blog post such as this can provide a springboard for an interesting discussion of storytelling.”

Unsurprisingly, this ruling attracted attention outside of the legal world. In an article in the *Chicago Tribune*, the appellate attorney for the plaintiff was quoted as saying that despite the somewhat unusual nature of the facts, this is ultimately a straightforward negligence case because, “if you do something as stupid as this guy did, you have to be responsible for what comes from it.”<sup>13</sup> The website Gawker.com subsequently picked up on the story, with author Adrian Chen noting the lesson to be learned from the case, “if you die in a horrific train accident, be sure to aim your severed body away from any bystanders.”<sup>14</sup> A blog post such as this can provide a springboard for an interesting discussion about storytelling. Comparing the discussion of this story on blogs as opposed to how it is discussed in the *Chicago Tribune* provides a terrific lesson in thinking about tone, audience, etc., in the written documents that students will be preparing.

This next case will hopefully encourage students to reflect on how use their law degrees.<sup>15</sup> A Manhattan attorney sued the very upscale Setai Wall Street Club and Spa because the club broke its promise to provide yogurt, juice, and coffee for breakfast.<sup>16</sup> Annual club dues were \$5,000. The plaintiff sought more than \$100,000 in damages, as well as an additional \$5,000 against the spa manager who, he claimed, had “libeled” him.<sup>17</sup> The manager submitted an affidavit claiming the plaintiff had been “obnoxious, boorish and harassing” and used “profanity and threatening

language” in his complaints, including an email which stated in part, “WHAT THE F--- IS GOING ON?”<sup>18</sup> The case was dismissed after a hearing and the plaintiff was ordered to pay \$440 in legal fees to the club.<sup>19</sup> The attorney for the club manager lauded the court’s decision, terming the plaintiff’s actions an “embarrass[ment] to the profession.”<sup>20</sup>

Finally, the next two cases involve interesting facts and a novel application of the law that should get students thinking. In the first, a Texas appellate court reversed the dismissal of a case brought by Kathryn and Jeremy Medlen, dog owners whose pet was erroneously euthanized.<sup>21</sup> The Medlen’s pet escaped from their yard and was picked up by animal control. Jeremy Medlen did not have sufficient money to pay the fee when he initially went to retrieve the animal. He was informed by the shelter that they would mark the dog “hold for owner,” which they did. Inexplicably, the dog was euthanized the next day. The Medlens sued, seeking compensation for the sentimental value of their pet.<sup>22</sup> The trial court dismissed the case, relying on a 120-year-old Texas precedent that allows dog owners to receive only the replacement value of their dogs, which in most cases is minimal. The Court of Appeals reversed and remanded, rejecting defendant’s contention that they were overturning 120 years of precedent, but rather were reversing one 120-year-old case. In reaching its decision, the Court examined two lines of cases, those relating to damages paid for loss of a pet and those relating to damages paid for the loss of sentimental personal property. In opting to follow the line allowing recovery for the intrinsic value of personal property, the Court noted that the law relating to intrinsic damages has been refined during that lengthy time period, a development that the Court is bound to respond to.<sup>23</sup> The Court stated:

<sup>13</sup> Steve Schmadeke, *Death of Man Struck by Train Leads to a “Bizarre” Civil Case*, *Chicago Tribune*, December 29, 2011, [http://articles.chicagotribune.com/2011-12-29/news/ct-met-train-fatality-suit-20111229\\_1\\_amtrak-train-high-speed-train-metra-train](http://articles.chicagotribune.com/2011-12-29/news/ct-met-train-fatality-suit-20111229_1_amtrak-train-high-speed-train-metra-train).

<sup>14</sup> Adrian Chen, *Man Killed in Train Accident Sued by Woman his Flying Body Parts Injured*, *Gawker.Com*, December 29, 2011, <http://gawker.com/5871847/man-killed-in-train-accident-sued-by-woman-his-flying-body-parts-injured> (last accessed July 11, 2012).

<sup>15</sup> Barbara Ross, *This Breakfast Club is Closed: Manhattan Lawyer Sues Posh Spa for Yanking Morning Cereal and Yogurt, but Ends up with Egg on His Face*, *New York Daily News*, May 23, 2012, <http://www.nydailynews.com/new-york/breakfast-club-closed-manhattan-lawyer-sues-posh-spa-yanking-morning-cereal-yogurt-ends-egg-face-article-1.1083484#ixzz20M1QbEJX>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Medlen v. Strickland*, 355 S.W.2d 576 (Tex. Ct. App. 2011).

<sup>22</sup> *Medlen*, 355 S.W.2d at 577.

<sup>23</sup> *Id.* at 580.

According to [defendant]’s position, intrinsic damages could be awarded for a sentimental photograph of a family and its dog, but not for the dog itself. [Defendant]’s position might also allow intrinsic damages for a pet that had been inherited from a loved one, but not a pet that had been purchased. We find little reason in this argument and do not believe that it reflects the attachment owners have to their beloved family pets.<sup>24</sup>

This next case may reflect an evolution in how court’s view suits by bereaved pet owners. Although Colorado courts generally adhere to the traditional replacement value rule in suits involving pets, a judge in that state recently awarded \$65,000 to Robin Lohre, whose 18-month-old dog was hit by a car after being accidentally let out by housecleaners she had hired.<sup>25</sup> Rather than call the homeowner or call for help after the accident, the cleaners placed the dog under the dining room table. They claimed that the dog was “whimpering,” though the homeowner returned a short time later to find the dog dead.<sup>26</sup> The judge was presented with very specific evidence of damages suffered by the woman and her young daughter, including therapy bills. The award is believed to be the largest ever in the state for the death of a pet.<sup>27</sup>

Students struggle mightily with the idea that the law develops over time and having them read a case like *Medlen* illustrates how courts wrestle with that evolution. The *Medlen* case may also be used in conjunction with the *Lohre* case as a simple in-class exercise demonstrating how foreign precedent can be used to argue for a change in the law. Tell your students that they represent Robin Lohre in a matter in the Colorado state courts and give them the *Lohre* facts (without telling them the outcome); give them an excerpt from a Colorado case that lays out the traditional limited pet recovery rule, and also

provide them with the *Medlen* case. Ask them to work in groups to prepare arguments to convince a Colorado court to apply *Medlen*’s intrinsic value argument. Then, share the actual *Lohre* outcome and ask them whether they agree or disagree.

### Cases Related to Ethics and Professionalism

The press is filled with stories about lawyers who manage to get themselves into various forms of mischief. These stories serve as a cautionary tale and also as a way to start class off with an entertaining morsel, which will hopefully warm the class up for the rest of the session and give students a useful takeaway.

The Utah State Bar Ethics Advisory Committee recently addressed the question of whether it violates state ethics rules if an attorney asks a law student to use their free law student account to do firm related work. The answer was a resounding yes, finding that a lawyer who encourages or participates in such behavior runs afoul of the rules.<sup>28</sup> The Committee reported that “numerous students” have reported that their employment has been conditioned on their violation of the agreements. The opinion quotes extensively from both the Westlaw and Lexis use agreements, both of which make clear that the free access is granted only for “academic purposes,” which specifically exclude work conducted for a law firm or other entity that is paying the student.<sup>29</sup> The Committee stated that law clerks should be hired for their abilities, and not for their access to the research services. Not only should the lawyer expect the student to abide by the agreement, it is “... the lawyer’s obligation ... to make certain that the law clerk does not violate any of the contractual duties and responsibilities.”<sup>30</sup> A lawyer who “require[s], encourage[es] or even tolerat[es]”<sup>31</sup> such behavior

“The press is filled with stories about lawyers who manage to get themselves into various forms of mischief.”

<sup>24</sup> *Id.*

<sup>25</sup> Jenna Greene, *Setting Precedent, Judge Awards Owner of Deceased Dog \$65,000 for Emotional Distress*, *The National Law Journal*, April 20, 2012, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202549698990&sslreturn=1>.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Utah State Bar Ethics Opinion, *supra* note 6; James B. Levy, *Utah Opinion Notes “numerous law students report employment is conditioned upon criminal misuse of free Wexis access,”* Legal Skills Prof. Blog (Jan. 4, 2012), [http://lawprofessors.typepad.com/legal\\_skills/](http://lawprofessors.typepad.com/legal_skills/).

<sup>29</sup> *Id.* The opinion does not address the potential ethical violations raised by students using paid research services at volunteer positions.

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

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

“Because of our class discussion, she was able to make an appropriate response to his comment, and even volunteered to provide him with a copy of the Utah opinion.”

is participating in a theft of services by the student “which reflects adversely upon the lawyer’s honesty” if the lawyer directly or indirectly encourages the behavior. Encouraging “or even tolerating” such a violation of the law violates the ethical canons.<sup>32</sup>

Interestingly, the opinion does not discuss any possible ramifications to the student for the improper usage. We had a lively class discussion on that issue which was, of course, of far more interest to the students than the lawyer’s ethical breach. Several weeks later, a student raised her hand in class to say that the issue of her Lexis/Westlaw access came up during a recent interview she had. In a discussion that was stunning in its inappropriateness (the interviewer commented about the student’s physical appearance and complimented her for “rising above her middle class upbringing”), she reported to me that the attorney who interviewed her had “jokingly” referred to her free computer research access. Because of our class discussion, she was able to make an appropriate response to his comment and even volunteered to provide him with a copy of the Utah opinion. This led into a longer class discussion about how to behave when an interview is going astray. It also gave me the opportunity to urge students to let the Office of Career Services know when inappropriate things happen. Indeed, the student and I went to OCS together right after class to address what had occurred.

The last group of cases involves the judicial response to perceived professionalism issues by lawyers. Lawyers from Patterson Belknap raised an argument in federal court that will sound hauntingly familiar to legal writing professors. The Patterson lawyers argued that lawyers from Fross Zelnick had changed the line spacing on their brief in such a way as to give them “about four extra lines per page.”<sup>33</sup> Patterson Belknap lawyers claimed that they used a computer program to

determine that the brief was spaced at “1.75.” The judge requires that briefs be double-spaced and not more than 25 pages. Despite Fross Zelnick’s denial that it had improperly spaced its brief, Judge Paul Engelmayer of the Southern District of New York granted the request for the five additional pages.

Finally, the Fifth Circuit lambasted the plaintiff’s attorneys in an order that addresses both technical and grammatical errors.<sup>34</sup> In dismissing a Title IX claim, the Court criticized the attorney’s unprofessional attacks on the Magistrate Judge assigned to handle the matter. The Court was highly offended by the attorney’s implication that the Magistrate Judge was “incompetent, a proposition that is absurd in light of the correctness of his impressive rulings,” and deems the attorneys’ attack “reprehensible.”<sup>35</sup> The Court notes the following in a footnote: “Usually we do not comment on technical and grammatical errors, because anyone can make such an occasional mistake, but here the miscues are so egregious and obvious that an average fourth grader would have avoided most of them ... the sentence containing the word ‘incompetence’ makes no sense as a matter of standard English prose, so it is not reasonably possible to understand the thought, if any, that is being conveyed. It is ironic that the term ‘incompetence’ is used here, because the only thing that is incompetent is the passage itself.”<sup>36</sup> The takeaway moment from both of these cases focuses on reputation—as a lawyer, your reputation is critical to your ability to practice. Once it is gone, it is virtually impossible to resurrect. A lawyer must always produce a work product that will withstand judicial scrutiny.

It is not only lawyers who worry about how they are perceived within the profession. Judges, too, share this concern as the final two opinions illustrate. A trial court judge in Queens, N.Y. denied a motion for a default judgment both because counsel did not sign the notice of motion and because “the papers lacked

<sup>32</sup> *Id.*

<sup>33</sup> Chad Bray, *Get Out Your Rulers: Lawyers Spar Over Line Spacing*, wsj.com (May 3, 2012), <http://blogs.wsj.com/law/2012/05/03/get-out-your-rulers-lawyers-spar-over-line-spacing/?KEYWORDS=get+out+your+rulers>.

<sup>34</sup> *Sanches v. Carrollton-Farmers Branch Independent School District*, 647 F.3d 156 (5<sup>th</sup> Cir. 2011).

<sup>35</sup> *Id.* at 172.

<sup>36</sup> *Id.* at fn. 13.

any affidavit by the plaintiff as to her injuries.<sup>37</sup> The short opinion then noted that “the poor stapling of the papers was so negligent as to inflict, and did inflict repeatedly, physical injury to the court personnel handling them. Such negligence on the part of counsel shows a lack of consideration.”<sup>38</sup> The *New York Law Journal* carried an article about the opinion on page one in the “News in Brief” section.<sup>39</sup> The next day, a correction of the earlier blurb appeared,<sup>40</sup> and a few days later a letter from the judge who wrote the opinion was published.<sup>41</sup> In that letter, Supreme Court Justice Charles J. Markey stated his desire to “set the record straight,” because of the “rather negative comments and queries” that he had received regarding the opinion. Justice Markey notes that the motion was denied without prejudice based on “deficiencies” in the papers submitted, with leave to renew with the submission of appropriate papers. He further comments that “[w]hat excited everyone’s attention was the reference to the drawing of blood as the result of sloppy assembly of the papers. The commentary in the decision was meant to be instructive and cautionary. That’s all.”<sup>42</sup>

Finally, in a widely reported decision, U.S. District Judge Sam Sparks invited two lawyers to a “kindergarten party” at which they will learn such skills as “how to telephone and communicate with a lawyer, how to enter into reasonable agreements

about deposition dates [and] ... [a]n advanced seminar on not wasting the time of a busy federal judge and his staff because you are unable to practice law at the level of a first year law student.”<sup>43</sup> The Chief Judge of the U.S. Circuit Court of Appeals for the Fifth Circuit, Judge Edith Jones, characterized Sparks’ opinion as “demeaning and gratuitous.”<sup>44</sup> Sparks was unfazed by her comments and says that he has no plans to change his writing style.<sup>45</sup> Jurists will often respond to comments about their opinions not only to preserve their personal reputations, but also out of a larger concern for the bench on which they sit.

### Conclusion

One does not have to look far to find interesting news stories with a legal twist that provide a “teachable moment.” Whether a story is used one time only or integrated more fully into the fabric of the class, infusing law-related current events into the classroom on a regular basis significantly enhances the learning experience in a fun and creative way. It is also a great way to engage first-year students, as well as to help them develop the habit of keeping up-to-date on the current state of the law.

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“[I]nfusing law-related current events into the classroom on a regular basis significantly enhances the learning experience in a fun and creative way.”

<sup>37</sup> *Supra* note 6.

<sup>38</sup> *Id.*

<sup>39</sup> *Lawyer’s Poor Stapling Provokes Motion’s Dismissal*, N.Y.L.J., September 24, 2009, at A1.

<sup>40</sup> *Correction*, N.Y.L.J., September 25, 2009, at A2.

<sup>41</sup> Hon. Charles J. Markey, *Letter to the Editor: Correcting the Record*, N.Y.L.J., October 2, 2009.

<sup>42</sup> *Id.*

<sup>43</sup> *Morris v. Coker, et.al.*, No. A-11-MC-712-SS, Order at 1-2 (W.D. Tex. August 26, 2011).

<sup>44</sup> Debra Cassens Weiss, *Judge Who Wrote Kindergarten Order Says He Won’t Change His Style*, ABA Journal, September 28, 2011, [http://www.abajournal.com/news/article/judge\\_who\\_wrote\\_kindergarten\\_order\\_says\\_he\\_wont\\_change\\_his\\_writing\\_style/](http://www.abajournal.com/news/article/judge_who_wrote_kindergarten_order_says_he_wont_change_his_writing_style/).

<sup>45</sup> *Id.* The ABA Journal article also notes that Jones was forced to apologize to a judicial colleague after telling him to “shut up” during oral arguments. *Id.*