

Real Collaborative Context: Opinion Writing and the Appellate Process

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I. Introduction

Collaboration in legal writing classrooms has become increasingly common.¹ Faculty around the country are asking students to work in small groups to solve problems, review each other's writing, and help ease each other into talking freely about the law.² The ultimate pedagogical goals of such an approach are ambitious. Student-to-student discourse in law classes can help to build sophisticated analytical and rhetorical skills by providing students with a context in which to construct, debate, and assess legal arguments. Collaboration can also empower students by de-emphasizing the centrality of the teacher as an authority figure in the classroom and by inviting students to participate in legal discourse as critical and independent legal professionals. Finally, working in small groups can help students learn how to collaborate — an independent skill that law practice will require — and may even equip students to improve the many legal processes that involve collaboration. From these perspectives, it is no exaggeration to say that collaboration plays a key role in legal education and professional formation.³

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¹ See Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U. L. Rev. 1, 29-30 (1996) (reporting that forty-nine percent of first-year skills professors employed small groups or dyads in their classes); but see Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation:" Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum, 31 Ariz. St. L.J. 957, 965-66 & n. 29 (1999) (lamenting paucity of well-developed applications of collaborative learning in legal writing courses and proposing increased use of collaborative teaching techniques in law schools).

² See Krista Riddick Rogers, *Promoting a Paradigm of Collaboration in an Adversarial Legal System: An Integrated Problem Solving Perspective for Shifting Prevailing Attitudes from Competition to Cooperation Within the Legal Profession*, 6 Barry L. Rev. 137, 148-50 (2006) (describing various reforms designed to "humanize" legal education, including emphasis on cooperative learning); Alison Greig, *Student-Led Classes and Group Work: A Methodology for Developing Generic Skills*, 11 Leg. Educ. Rev. 81, 93 (2000) (noting students' increased levels of confidence to present material and interact with groups after doing collaborative projects); Zimmerman, *supra* n. 1, at 999-1004 (discussing general pedagogical advantages of collaborative learning).

³ Given the importance of collaboration to professional formation, it is striking that the

Yet something about the form of collaboration we typically adopt has always produced the sense that collaborative learning has failed to achieve some of its most ambitious goals. Part of the problem is that collaboration is often not as engaging as it promises to be. For all it has to offer, the act of splitting into groups and working together in a room with other people who are working in small groups can seem contrived. Small-group work often seems to supplement rather than complement the learning process. When perceived as a contrivance, it can hinder full engagement with a complex legal problem — making the group's legal analysis seem more like a classroom exercise than a method for learning sophisticated analytical and rhetorical techniques, or for engaging in jurisprudence. Such artificiality is intensified when small-group work is paired, as it ordinarily is in legal writing classes, with a task like memo writing, which is rarely approached in small groups in legal practice. These negative effects are redoubled, in our view, because the legal writing assignments in most textbooks unduly emphasize nasty, impatient, formalist bosses (for whom legal writing professors, at least in many students' minds, are obvious stand-ins) — and thus neutralize the very sense of rhetorical agency that collaborative work seeks to nurture.⁴

Can we find more empowering forms of collaboration? Can we find ways to fulfill the promise of collaborative learning without accepting its more hokey incarnations? Can we update group work by making it at once more realistic and more engaging? Most importantly, can we use collaboration to help students learn something deeper about legal processes and decision making, something that will help them emerge from law school as critical and creative legal professionals with the knowledge and skills necessary to make extraordinary contributions to law and society?

These questions motivated us to begin experimenting with new and more ambitious forms of collaboration in our teaching. We aimed to infuse the classroom with what might be called “real collaborative context.” We looked for instances of collaboration that actually occur in the legal process and asked students to participate in those processes in order to gain a better understanding of the social aspects of legal practice and jurisprudence. Our hope is that students will experience collaboration not so much as a classroom performance whose main goal is to assist in learning *something else* that could also be taught in a non-collaborative way — for example, legal analysis, the structure of legal documents, or editing strategies. Rather, we hope to encourage students to experience the *fusion* of collaboration and the legal process — and to use that experience to see how social interaction shapes legal decision making and to gain a deeper

Carnegie Foundation's recent report gives the subject little explicit attention. See William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 35 (Jossey-Bass 2007) [hereinafter *Carnegie Report* because the study was undertaken by The Carnegie Found. for the Advancement of Teaching].

⁴ See Jessica E. Price, *Imagining the Law-Trained Reader: The Faulty Description of the Audience in Legal Writing Textbooks*, 16 *Widener L.J.* 983 (2007).

understanding of the law.

Our initial experiment focused on appellate judicial decision making, an area whose study has been central both in jurisprudence and education, and which can therefore provide students with key insights into the legal process that are particularly relevant to their academic work in the first year of law school. However, a contextually rich approach to collaboration has broader applications as well. In our view, such an approach can be extended fruitfully to other educational projects such as public interest law office simulations, explorations of evidentiary inferences in factual investigation, or scenarios in which lawyers work together to evaluate cases in a law office setting. Each of these legal processes draws extensively on group decision making. By experiencing each form of such decision making, students will be able to learn fundamental lessons about legal reasoning and practice.

We hope that broader integration of real collaborative context in law school classes will eventually help introduce innovative approaches to group decision making back into law practice.⁵ Ultimately, students and teachers who experience (and experiment with) contextually rich collaboration in the classroom will be in an ideal position to help improve collaborative decision-making processes in legal practice.

II. Judicial Decision Making: Legal Collaboration in Practice

So many legal processes involve collaboration that it seemed likely we would find a number of different possibilities for integrating collaborative decision making and drafting into our course. One of our most intensive experiences with the relationship between collaboration and legal process occurred during our judicial clerkships at the Oregon Supreme Court and the United States Court of Appeals for the Ninth Circuit. On the one hand, the level of isolation that appellate judges experience was astounding. The hushed hallways of an appellate court can be reminiscent of a library or even a monastery. Law clerks as well as judges experience this isolation when working intensely on drafting an opinion or other absorbing analytical tasks. On the other hand, the judicial decision-making process was also enormously collaborative. Before working at a court, one tends to think of opinions as just another form of literary authorship, as the product of a single mind and hand. Law clerks are often, therefore, surprised to see how much group work is actually involved in judicial decision making and in drafting the opinion that ultimately explains the court's justification for its decision.

⁵ See Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology* 4, 16 (Berkman Ctr. for Internet & Socy. Research Paper No. 2007-4) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=976646) (noting that “traditional law school classes rarely promote teamwork” and urging law schools to develop “best practices for attorneys to follow in using technology to organize their teams”).

A. Prehearing Memoranda and Circulating Opinions: Collaboration at the Oregon Supreme Court

At the Oregon Supreme Court, law clerks drafted preliminary analyses, after first debating the merits of a case among themselves and staff attorneys. They enshrined those analyses in prehearing memoranda, which they then discussed with their justices. The justices discussed the memoranda with staff attorneys, interns, and other justices to get a sense of where they and their colleagues stood on the question. And these steps all occurred before the oral argument and the opinion-drafting process, which are also intensely collaborative.

The justices conferred before, during, and after the oral arguments (where, of course, the parties' attorneys had the opportunity to provide their input).⁶ After the oral arguments, the justices held their first formal conference about the case and took straw votes. Those votes helped the Chief Justice assign the case, but they did not bind the justice assigned to write the first draft of the opinion. This justice had free rein to write the opinion in a way that was consistent with the law and his or her legal values. Working closely with staff attorneys and law clerks, the justice produced a first draft to circulate to the whole court, including all the staff attorneys and law clerks. Each reader commented on the draft, both its substantive analysis and its style. (A favorite activity was to provide "nits" — grammatical or stylistic corrections to the opinion.) When possible, justices reviewing a colleague's draft opinion tried to indicate whether they agreed with the analysis, the result, both, or neither. When that level of certainty was impossible, they simply indicated they would like to see another draft and spelled out specific concerns with the draft under consideration.

Either the law clerk or the justice assembled the dozen or so commented-upon drafts that came back. (Although the draft would be circulated to far more people at the court, not everyone had time to read and comment on each draft.) The justice added whatever new analysis seemed necessary or desirable. Then, the whole collaborative process began anew. On controversial opinions, it was not uncommon to see nine or ten drafts before the opinion reached the status of a "down draft," meaning that barring any last-minute changes of mind, it had enough votes to be finally approved and, ultimately, published.

B. Bench Memos and Draft Opinions: Collaboration at the Ninth Circuit

Collaboration among judges and law clerks at the U.S. Court of Appeals for the Ninth Circuit occurs in much the same way as at the Oregon Supreme Court. The slight variations result from the Ninth Circuit's status as an intermediate appellate court whose judges fan out across the western United States in three-judge panels each month to hear a week's worth of oral arguments. "Riding

⁶ See Or. R. App. P. 6.15 (describing oral argument procedures).

circuit” now takes place by airplane or car instead of on horseback, but the tradition remains the same: judges are randomly assigned to sit with two colleagues each month,⁷ and they are also randomly assigned to hear cases at the courthouses in California, Oregon, Washington, Arizona, Alaska, and Hawaii.⁸

Once the presiding judge (the most senior active member of the panel) designates which of the three panel members will take primary responsibility for each case, each judge’s law clerks divide up their share of the labor as well and begin working in earnest once the briefing and records arrive.⁹ Despite the designation of a “writing judge” and a primary law clerk for each case, there are multiple points in the process where intense collaboration occurs. Among all the law clerks for the judges on a particular panel, one clerk typically takes the lead on working up a bench memorandum that evaluates the parties’ arguments and recommends how the panel should decide the case. Every case requires a different level of collaboration at this stage. Judges may provide their initial reactions to the law clerk either in conversation or in writing, and a law clerk may discuss aspects of a case with fellow law clerks or with the law clerks for the other judges on the panel.

The chambers of the three judges exchange bench memos approximately one to two weeks before oral arguments, so that every judge will receive a bench memo about each case either from his or her own law clerks or from colleagues’ law clerks.¹⁰ Particularly contentious cases might provoke a flurry of e-mail messages, phone calls, or shorter memoranda among the clerks in each chambers, as they each work to assemble materials for their judges to review before oral arguments. Many judges schedule meetings with their law clerks the week before oral arguments to review each case, which allows further collaboration as the judge and clerks debate the issues and decide which questions to focus on during oral argument.

Some judges may discuss pending cases among themselves before oral argument, but most of their discussion occurs in private conferences held

⁷ See U.S. Court of Appeals for the Ninth Circuit, *Introduction: Court Structure and Procedures* in *Federal Rules of Appellate Procedure; Ninth Circuit Rules; Circuit Advisory Committee Notes* § E(5), xxviii, [http://www.ca9.uscourts.gov/ca9/Documents.nsf/c9254affb51940d288257316006b454d/\\$FILE/FRAP_0707.pdf](http://www.ca9.uscourts.gov/ca9/Documents.nsf/c9254affb51940d288257316006b454d/$FILE/FRAP_0707.pdf) (July 1, 2007) [hereinafter *Ninth Circuit Rules Pamphlet*] (describing how the Ninth Circuit Clerk selects the judges to serve on each panel).

⁸ *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at § E(4), xxvii-xxviii (describing how cases are assigned to different calendars, and how the monthly oral argument sessions are divided among the circuit’s courthouses in different states).

⁹ *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at § E(6), xxix (explaining that briefs arrive in a judges’ chambers approximately six weeks before oral arguments).

¹⁰ Some judges choose not to participate in this “bench memo pool,” instead asking their law clerks to write up bench memos for their personal use for all the cases to be heard during a week of oral arguments. This practice has the effect of reducing the amount of interaction and communication between the law clerks from the various chambers because they are not reading and evaluating each other’s bench memoranda.

immediately after the day's arguments.¹¹ Depending on the judges' initial votes in each case, the presiding judge assigns writing responsibilities for the majority opinion and any dissent.¹²

In the weeks and months following arguments and the judges' conference, collaboration in and among the chambers continues. The first level of shared work takes place within chambers, as a judge and law clerk work together to polish a draft opinion. Multiple revisions and back-and-forth editing sessions occur at this point; for example, Judge Alex Kozinski has noted that it is not unusual for him to exchange 20 to 30 initial drafts with a law clerk, and sometimes up to 50 to 60 by the time he finishes polishing and revising an opinion.¹³

The second level of collaboration takes place when a judge decides that a draft opinion is ready to share with the other judges on the panel. Once the opinion is circulated, further drafts (and the unavoidable "nit memos" to correct spelling, grammar, usage, punctuation, citation form, and other minor defects) are exchanged among the judges. Some judges require a final piece of collaboration, requiring law clerks to read opinions out loud to one another before sending them off for publication, as a final way to guard against errors.

Because cases in the Ninth Circuit are initially heard by three-judge panels, the court uses its limited en banc process to ensure that each opinion reflects the views of the majority of the members of the court.¹⁴ Once a three-judge panel issues an opinion, members of the court may call for a vote about whether to hear the case en banc.¹⁵ A judge who calls for a vote does so by circulating a private memorandum internally to fellow judges, explaining why the three-judge panel's decision should not be allowed to stand. Each judge must then evaluate whether the "call" is meritorious and decide how to vote. Both the creation of the "call memo" and each judge's decision about the case involve further in-chambers briefing and collaboration among judges and law clerks. For cases that are eventually selected to be heard en banc, the process of creating bench memos, debating the issues, and exchanging draft opinions begins anew.

¹¹ *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at § E(8), xxix (describing the conference and writing assignments that take place after oral arguments).

¹² *Id.*

¹³ Alex Kozinski, *Confessions of a Bad Apple*, 100 Yale L.J. 1707, 1711 n. 9 (1991).

¹⁴ Ninth Cir. R. 35-3, in *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at 147 (describing the Ninth Circuit's limited en banc process); *see also generally* Fed. R. App. P. 35, in *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at 145-46 (setting forth the basic requirements for hearing a case en banc, either initially or to rehear a three-judge panel's decision).

¹⁵ Circuit Advisory Note to Ninth Cir. Rs. 35-1 to 35-3, in *Ninth Circuit Rules Pamphlet*, *supra* n. 7, at 148 (describing the court's internal en banc procedures).

C. Reflections on the Role of Collaboration When Judges Decide Cases

The degree of collaboration at the Oregon Supreme Court and the Ninth Circuit relates closely to each court's view of its own role as a lawmaking court and its sense of institutional legitimacy. For example, unlike some courts, the Oregon Supreme Court has generally placed a very high value on unanimity. Chief Justice Carson has said many times in the newspaper that his goal is to have the court speak with one voice.¹⁶ That goal often means that a great deal of negotiation has to occur in order to get all seven justices to sign a single opinion, especially if that opinion is controversial. Chief Justice Carson explains, "It takes time to reach an accord on what the law ought to look like. I think it is a better service to the people of Oregon and the lawyers and courts" when the justices reach an agreement.¹⁷ But unanimity has costs. For example, one Oregon Supreme Court Justice described the process of reaching a unanimous decision as "a bit like participating in a seven-legged sack race where all the participants, each with one leg in the same sack, must cross the finish line together."¹⁸

By contrast, judges sitting in three-judge panels on the Ninth Circuit are often acutely aware that if a majority of their colleagues decide to rehear their decision en banc, or if the U.S. Supreme Court decides to grant certiorari, their decision could be reversed. This lack of finality, ever-present at an intermediate court of appeals, seems to give judges less incentive to issue unanimous opinions and leaves them perhaps a bit more free instead to issue concurrences or dissents that more accurately reflect each judge's own views.¹⁹

Though somewhat screened from the details of these processes, law clerks at both courts generally knew enough about the analytical negotiation process to find it thoroughly fascinating, even from a distance. As the judges and justices worked within what must be called an area of "discretion" or ambiguity, they struggled to define the bounds of their own legal method and jurisprudence. The

¹⁶ See e.g. Peter Wong, *Chief Justice Is Retiring*, Statesman J. 1C (Dec. 30, 2006) ("Carson took pride in the fact that 94 percent of the opinions issued while he was chief justice were unanimous."); Wallace P. Carson, Jr., & Susan P. Graber, *A Tribute to the Work of Edwin J. Peterson*, 73 Or. L. Rev. 731, 736 (1994) (praising Chief Justice Peterson for striving to reach consensus and reducing the number of separate opinions written by individual judges).

¹⁷ Peter Farrell, *Oregon Supreme Court Decides Fewer Cases, Struggles to Do More; Reviews of Death Sentences, Bar Group Disciplines and Ballot Title Challenges All Bog Down the Justices' Docket*, The Oregonian C04 (Mar. 8, 2001).

¹⁸ *State v. Dameron*, 853 P.2d 1285, 1297 n. 8 (Or. 1993). Though it may take a long time to achieve unanimity, it may take even longer to issue non-unanimous decisions. See Roger A. Hanson, *Appellate Court Performance Standards and Measures* (Natl. Ctr. for St. Courts & App. Ct. Performance Standards Commn. 1999) (available at http://www.ncsconline.org/WC/Publications/Res_AppPer_PerformanceStandardsPub.pdf).

¹⁹ For an intriguing discussion of "dissensus" in the federal appellate courts, see Virginia A. Hettinger et al., *Judging on a Collegial Court: Influences on Federal Appellate Decision Making* (U. Va. Press 2006).

process raised important questions: How much were judges or justices willing to change their original judgments in order to reach a unanimous opinion? How much were they willing to stretch their understanding of the law? How much “stretch” did the interpretive norms of the law allow? How did judges view the role of a dissent? When, given all the other constraints, did it make sense to write one? At the Oregon Supreme Court, how highly did the justices value the Chief Justice’s goal of having the court speak with one voice — either as a matter of court policy or as matter of court politics? All of this thinking took place within the confines of the judges’ and justices’ own previous decisions — which potentially acted as a sort of personal precedent. Would judges’ reputations suffer if they took a position contrary to one taken in a previous case? Would the court’s legitimacy suffer if they didn’t? At the Ninth Circuit, judges conducted their analyses with the added constraint of having to honor binding, higher authority, which raised interesting questions about when a three-judge panel was required to follow, or could depart from, prior decisions by other Ninth Circuit panels or by the U.S. Supreme Court.

As the law clerks watched this fascinating legal process unfold, they began to realize how closely the drama of judicial decision making was tied to the social aspects of judging — the dialectic of individuality and personal integrity on the one hand, and consensus and institutional legitimacy on the other. Within this dynamic, the various players built consensus through written and spoken persuasion. And all of this persuasive activity was situated within a larger social framework — that of lawyers and other judges and justices who employed interpretive and discursive standards by which they judged the members of the court. Opinions that, when well packaged, seemed inevitable and univocal in fact resulted from a truly extraordinary collaborative process, filled with debate and compromise.²⁰

III. Pouncing on Happenstance: Making the Most of Good Luck

Our experiences clerking motivated us to create a collaborative project in which students could see — or, better yet, experience for themselves — the debate, persuasion, and compromise that lurks below the surface of many judicial decisions. We believed that doing so would put students in a better position to critique judicial decisions and deepen their understanding of judicial decision making. Further, the experience would empower students, counteracting some of the negative forces students traditionally experience during their first year in law school. Legal writing assignments that place law students in the role of “lowly summer clerk” working for an impatient and demanding “senior partner” — though they might imitate some students’ first jobs — somehow don’t seem as

²⁰ For a general discussion of some of these dynamics, see Ruth Bader Ginsburg, *Remarks on Writing Separately*, 65 Wash. L. Rev. 133, 141-43 (1990) (discussing effect of writing separately on judges’ reputations and on courts’ legitimacy).

inspiring as ones that let students play the role of a judge.²¹

Good teaching surely requires preparation, but it also benefits from being ready to take advantage of the occasional felicitous surprise.²² In this case, our good luck arose from participating in moot courts for two students who, under a colleague's supervision, had briefed a statutory interpretation case before the Washington Supreme Court and were planning to argue that case several weeks later. When we participated in the moot court, we discovered that the case would present an ideal vehicle for students to learn about the collaborative process of judging.

A. Deductions from Inmate Trust Accounts: A Vehicle for Collaborative Work

The case, *Anderson v. State*, involved a challenge to the Washington Department of Corrections' (DOC) policy for deducting money from inmate trust accounts.²³ The case had the makings of a great classroom collaboration project for many reasons. It had equities on both sides: the inmates who challenged the DOC policy had been convicted of committing truly horrible crimes.²⁴ Yet the DOC policy still seemed harsh — it resulted in taking as much as 20 percent of the money that inmates' family members deposited in their loved ones' trust accounts, for the purpose of paying back the costs of prosecution and public defense.²⁵ Legally, the case also had good arguments on both sides: the DOC's textual argument was weak, at least at first glance.²⁶ Nonetheless, it was hard to imagine that the legislature intended the result that the inmates advocated — which would have treated the state's "worst" criminals less harshly than those who had committed run-of-the mill crimes.²⁷ This was just the sort of case a law clerk — and presumably a judge — at a court of last resort loves: a hard case that provides a methodological workout and fertile

²¹ See Price, *supra* n. 4, at 990-1004, 1011 (critiquing the typical scenario of legal writing problems on the ground that they risk disempowering some students because of the extent to which they represent law-trained audiences as scary, grammar-obsessed formalists).

²² In fact, luck isn't completely based on chance. We have found that more good luck happens when we are actively engaged with other events happening at our law school, particularly with clinical or real practice experiences.

²³ *Anderson v. State*, 154 P.3d 220, 221 (Wash. 2007); see also Wash. Rev. Code § 72.09.480 (2007); Wash. Dep't of Corr. Policy 200.380, *Legal Financial Obligations and Costs of Supervision*, <http://www.doc.wa.gov/policies/showFile.aspx?name=200380> (Mar. 30, 2007).

²⁴ See *State v. Anderson*, 129 Wash. App. 1012 (Div. 1, 2005) (unpublished) (conviction of one plaintiff for aggravated first-degree murder and conspiracy to commit first-degree kidnapping); *State v. Nordlund*, 121 Wash. App. 1076 (Div. 2, 2004) (unpublished) (conviction of other plaintiff for indecent liberties with forcible compulsion, unlawful imprisonment, and second-degree attempted rape).

²⁵ *Anderson*, 154 P.3d at 224-25.

²⁶ *Id.* at 228-30 (C. Johnson, J., dissenting).

²⁷ *Id.* at 227-28.

ground for debate.

The best thing about this case, though, was that at two different levels, it presented a remarkable story about the potential strength of the “underdog” in our legal system. The inmates noticed the deductions in their trust accounts and, using rather sophisticated textual arguments, challenged them in a series of “kites” (or official inmate requests) to prison officials and letters to the DOC. At one point, the inmates secured a favorable ruling from the DOC, and the DOC stopped making the questionable deductions. Apparently someone at the DOC agreed with the inmates’ reading of the statute. At a later point, however, the DOC received advice that it could continue making these deductions, and it decided to do so. A second round of complaints ensued, and the inmates filed pro se briefs in state superior court and then in the Washington Court of Appeals (where they lost). The Court of Appeals did not even write an opinion. When the inmates themselves petitioned for review in the Washington Supreme Court,²⁸ they did a good enough job on the briefing that the Washington Supreme Court Commissioner’s office recognized the potential merit of their argument and its importance for other inmates in the state. The court granted review based on the pro se materials, something it rarely does.

This is where the second level of “underdogs” comes into play. Although the inmates’ briefing was quite good, especially for pro se work, the Washington Supreme Court apparently believed that it would benefit from a more professional presentation of the arguments. The court thus contacted our colleague, Prof. Helen Anderson, an appellate specialist who had worked for many years as an appellate public defender and now taught legal analysis and writing and criminal law.²⁹ The court asked whether she would be willing to participate in briefing, perhaps using the case as a vehicle for teaching students about appellate law.

Prof. Anderson recruited two third-year students — Ben Stafford and Loren Joner — to help brief and to argue the case.³⁰ The case was scheduled for argument just before winter break, and as we sat in the moot court Prof. Anderson arranged for the day before the argument, a light bulb went on: this would be the perfect problem for the winter quarter.³¹ Having students brief and argue the case made it particularly intriguing; we thought that involving third-year students in our class might show our first-year students a very positive picture of what they would be capable of accomplishing in a couple of years if they worked hard, and might help alleviate some of the disenchantment — let’s call it the 1L

²⁸ Appellant’s Opening Br., 2005 WL 4656039 (Dec. 15, 2005).

²⁹ Helen Anderson is an Assistant Professor of Law at the University of Washington School of Law.

³⁰ Appellants’ Supp. Br., 2006 WL 3910772 (Oct. 26, 2006).

³¹ Because we used publicly available documents from the case file, we did not need to seek the court’s permission to use this case as a teaching tool.

Winter Blues — that affects some students during the first year.³²

B. Combining Individual and Collaborative Work in the Classroom

We worked with the materials before winter break and devised a multipart assignment that would unfold over the course of the quarter. In the first stage of the project, we gave students excerpts from the appellate record, specifically the inmates' account statements showing the deductions, their "kites" complaining about the deductions, the prison officials' responses, the formal complaints to the DOC, the DOC's responses, and the trial court's judgment. We first asked the students to figure out the chronology of the story and to conduct preliminary research, which mainly involved pulling the statutes governing deductions from inmate accounts and looking up any relevant case law. We also asked students to identify the main legal issue and think about how they might try to solve it.

Students were ready to shift to the role of the judicial law clerk — the next phase of our project — once they had mastered the facts and roughly outlined the legal arguments that would be made. We gave the students the briefing submitted to the Washington Supreme Court, which consisted of the inmates' pro se opening brief,³³ the DOC's response,³⁴ the inmates' reply brief,³⁵ and the student-written supplemental brief.³⁶ In class, we discussed the role of law clerks at appellate courts, and asked each student to draft a bench memorandum summarizing the parties' arguments and his or her recommendation for how the court should resolve the issue. We allowed students to discuss their analyses with their classmates and to work in groups during class, which simulated the collaborative nature of judicial law clerks' working relationships with one another.

One of the fascinating parts of the drafting process was that it enabled students to draw on the theoretical work they had been doing with statutory interpretation and required them to frame the case in a way that was consistent with their methodological preferences.³⁷ We encouraged students to try to find

³² We viewed the bench memorandum and judicial opinion writing assignments that resulted from this project as simply different forms of the standard research memorandum common to all 1L legal writing curricula. Both writing assignments required students to identify and articulate the legal issue, to present the facts in an objective manner, and to explain how the governing legal authorities applied to the facts of the case. Evaluating the actual briefs the parties submitted to the Washington Supreme Court gave students a preview of future persuasive writing assignments and courses.

³³ Appellants' Opening Br., 2005 WL 4656039 (Dec. 15, 2005).

³⁴ Answering Br. of Respt., 2006 WL 2303743 (Jan. 19, 2006).

³⁵ Appellants' Reply Br., 2006 WL 3327893 (Feb. 13, 2006).

³⁶ Appellants' Supp. Br., 2006 WL 3910772 (Oct. 26, 2006).

³⁷ Previously, we had done several short assignments that required students to assess the weight they would give to the text, context, legislative history, and general purpose of a statute

cases in the jurisdiction that supported their preferred approach to statutory interpretation, and to assist them we handed out a 100-page Washington statutory interpretation manual that students in one of our advanced classes had created. At the end of this process, students committed themselves to a methodological approach that they could support with relevant authority and to an interpretation of the statute based on that approach.

The class divided in the ways one might expect: some students were more strongly committed to a textualist approach to discerning statutory meaning, and this generally led them to side with the inmates, who arguably had the more straightforward reading of the text; other students weighed legislative history and purpose more heavily, which, in most cases, led them to support the DOC's reading. The interpretive question in this case was particularly interesting because it placed students in a sort of political pickle: the method generally favored by conservative judges tended to lead to a win for the inmates, an approach that required a form of leniency for those who had been convicted of the state's most heinous crimes; on the other hand, the more purposive or policy-oriented approach generally favored by liberal judges tended to favor the DOC's more law-and-order-oriented position.

This tension between method and outcome was highly valuable from a pedagogical standpoint. It gave students a way to gauge the extent to which their decisions were results oriented or the extent to which they could base their decision making on arguably more neutral methodological commitments. The key to this part of the project, though, was for students, much like judges in a similar position, to commit themselves strongly to a particular reading of the statutes and to be able to defend that reading by referring to an interpretive method that was supported by Washington Supreme Court precedent.³⁸ Forcing students to commit early to an interpretation primed them for vigorous debate in the next stage of our project, which involved having students draft a collaborative judicial opinion or opinion set.

Once students were committed to a particular approach and reading, they were in roughly the same position as a judge whose law clerk had reviewed the case and provided a bench memo. They had read the arguments and supporting materials and reached a preferred outcome that they believed was correct or best based on the law and how they thought the law should work. We next placed students in the position of the judge at the oral argument conference: that is, in the position of a professional who is confronted by others who have different preferred outcomes to which they also are strongly committed based on both the law and their views about the proper role of courts when engaging in statutory

when confronted with a thorny problem of statutory meaning. For these assignments, we rely heavily on two theoretically rich texts: Lon L. Fuller, *The Case of the Speluncean Explorers*, 62 Harv. L. Rev. 616 (1949); and William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 Stan. L. Rev. 321 (1990).

³⁸ We collected these bench memos and graded them, but did not return them right away.

construction. The students would have to do just what appellate judges have to do in a real case: reach some kind of consensus (or at least partial consensus) about the result and reasoning, or decide that consensus cannot be reached and write separately. Throughout this process, we encouraged students to think about the role of their decision and the extent to which they felt it would be appropriate to compromise on a legal or methodological point in order to achieve majority status for their preferred outcome or to achieve unanimity.

For practical reasons, students worked in three- or four-judge panels instead of the nine-judge panel on the Washington Supreme Court. These smaller panels ensured that students would not drift into the background of the conversation and would have to participate actively in drafting the final opinion or opinion set. During class discussions, we explained what a typical oral argument conference might look like and drew on our own clerkship experiences to help students understand the ways in which a panel of judges might tackle the collaborative drafting and revision process. We asked students to devise their own drafting and revision process.

In an in-class workshop, our “judicial panels” held formal argument conferences in which they explained to their colleagues how they thought the case should be resolved, and discussed any misgivings or differences among their approaches. By the end of the class, each group of students needed to decide whether they were writing a unanimous opinion, a majority and a concurrence, a majority and a dissent, or a plurality opinion. We also asked the student panels to take a straw vote about their preferred result. It was fascinating to see how many combinations came out of this process. As predicted, students were strongly committed to the result and reasoning they had previously advocated in their individually written bench memos. This meant that most panels were divided and that the student judges would have to engage each other and try to persuade each other to commit to a different analysis.

Because our case involved larger theoretical and methodological issues (and associated case law), these panel discussions quickly became quite sophisticated and treaded into debates about the extent to which the Washington Supreme Court had committed itself to a particular statutory interpretation scheme. Even the panels whose members agreed on the result often had very different ideas about how to reach that result. In those groups, the conversation centered on the extent to which an individual judge, in good conscience, could sign onto an opinion containing reasoning with which the judge disagreed — again, a high-order question about legal process.

Students then went about the drafting process, which required them to draw upon, and in some cases, rethink, the analyses in their bench memos — just as a judge would have to do. After several revisions and peer reviews — again, much as would take place at a court — the students on each panel filed their set of opinions.

C. Students' Deepening Understanding of Legal Process

Students raised interesting questions about various theories of the case, assessing the relevance of statutory context, legislative history, and subsequently enacted legislation. Throughout this process, the students displayed ingenuity and energy. One student decided to travel sixty miles to the state capitol in Olympia to listen to tapes of the floor debate that occurred when this statute was passed, and returned with creative theories for why such and such legislator's oblique statement about such and such meant that the legislature intended to give the DOC authority to deduct these monies. Another student researched subsequent legislative history — and found a bill pending at the legislature that would clarify that the DOC definitely had authority to deduct these fees from the inmates' trust accounts.

That latter discovery, which the student shared with the class, prompted a heated debate about the relevance of subsequent legislative history when discerning legislative intent. Some students decided it would be reasonable to treat the Washington Attorney General's request for a change in the statute as an admission that the previous version of the statute — namely, the one that applied to this case — did not mean what the State argued it meant in its briefing! Others decided that events that took place many years after the legislature passed the original statute could not reasonably bear on the legislature's past intent. Still other students decided that the case law in Washington was unclear and that the court's current plain meaning approach did not focus on what the legislature intended — but rather what it actually *said*. This last approach ruled out both regular and subsequent legislative history and created yet another defensible approach to the problem.

Throughout this collaborative project, students absorbed strategies of statutory interpretation that could not be taught as effectively without a hands-on approach that pitted their individual analyses (to which they were strongly committed) against other persuasive accounts of statutory meaning. Students also learned some important big-picture lessons about judicial decision making and the legal process more generally. For example, they were beginning to understand the contours of the legal audience, what counts as a strong legal argument among members of that audience, and how members of that audience can reasonably disagree. They were also learning how a court's supposedly objective analysis draws heavily on the rhetorical conventions of persuasion: the need to persuade other judges, to persuade the parties to accept the result, and to persuade future courts and attorneys to adhere faithfully to the intended holding and rationale. In other words, they were learning about the convergence of advocacy and analysis. Other big-picture lessons that students absorbed during the course of this project related to the intertwined and recursive relationship between courts and legislatures — a concept that became very clear after students realized that the state's Attorney General approached the legislature to amend the statute *after* the

inmates' lawsuit had been filed.³⁹ Students also had the opportunity to consider the concept of mootness and the intricacies of the petition review process, as they grappled with the potential ramifications for the inmates' appeal if the pending legislative amendment were to be enacted. Would the Washington Supreme Court simply dismiss the inmates' appeal as having been "improvidently granted"? Or would it proceed to issue a decision narrowly focused on the events occurring before the legislative amendment passed, perhaps ordering that the funds withdrawn from the inmates' accounts before the amendment became effective should be returned?

One somewhat anachronistic highlight in the late stages of the project was the day we showed our students the videotape of the oral arguments, in which the two third-year students argued on behalf of the inmates before the state supreme court.⁴⁰ We showed this video after the oral argument conferences rather than before because we believed that the students would be in a better position to understand and decode the judges' questions after they had had the chance to formulate their own questions about the case. The presentation was particularly engaging because we were able to persuade one of the third-year students to take a break from bar study to talk about what it was like to brief the case, prepare for oral argument, and finally argue this case in front of nine inquisitive justices. This student's candid discussion of the process showed students what a large measure of collaboration had been required. His comments were thought-provoking and riveting, as the first-year students in the audience asked him question after question about the experience: why he thought the judges were focused on different aspects of the case, whether he was nervous during the argument, and what he would do differently if he could argue the case again.

This learning experience was all the more engaging because during it, the Washington Supreme Court had the inmates' case under advisement. The simultaneity of the students' and the court's analyses dramatized the judicial decision-making process. Students knew that within a few months, they would see how the court resolved the legal question and how well the court justified its result.⁴¹

³⁹ The Washington State Legislature ultimately enacted the proposed legislation, clarifying that inmates with sentences of life in prison or death could indeed have their legal financial obligation deductions taken from the funds sent to them by friends and family. Wash. Rev. Code § 72.09.480 (2007). Washington Governor Christine Gregoire signed the bill about a month after the Washington Supreme Court issued its opinion and after our class had concluded.

⁴⁰ Wash. St. Pub. Affairs TV Network, *Washington State Supreme Court Oral Arguments, Anderson v. State* (Nov. 28, 2006), <http://www.tvw.org/media/mediaplayer.cfm?evid=2006110041C&TYPE=V&bhcp=1> (last accessed June 8, 2008).

⁴¹ For us, the fact that a decision might come out any day was dramatic in a slightly less positive way. We felt as if we were, in some sense, playing chicken with the court. We were concerned that students might see the court's actual opinion before they turned in their own opinions, and that we might be stuck spending our spring breaks reading monolithic sets of

By the time students had drafted their opinions, they were so solidly entrenched in their own compromises and their own reasoning, which in many instances went well beyond the parties' briefing, that we think they might have mustered the hubris to think that the Washington Supreme Court — though Supreme — would not necessarily do any better than they could with the case. This palpable sense of confidence and empowerment may have been fueled by seeing law students with just two years of additional experience under their belts hold their own so well in front of the justices.

The Washington Supreme Court's decision came down during spring break, just after exams were finished. A purposive interpretation of the statute prevailed. A bare majority of the court held that despite the apparently plain meaning of the text of the statute in question, the legislature had not intended to exempt inmates incarcerated for life from the account deductions at issue in the case.⁴² Four justices dissented, arguing that the legislature had not given the DOC authority to make these deductions.⁴³

When we read the court's opinion — and quickly sent it out to our classes — we knew that students would be delighted and reassured by the nearly even split on the court. The court's division confirmed that the students' debates were real. We also knew that the learning experience would continue for several more days as students digested and debated the majority's result and justification, and the dissent's critique. Though we were in the midst of spring break, it took just a few minutes for our inboxes to begin filling up with students' sophisticated comments and questions about the decision. The students' curiosity, confidence, energy, and spirit of critique were truly exhilarating. Equally exhilarating to us was this confirmation that our attempt to infuse our first-year legal research and writing class with real collaborative context had been a success.

IV. Conclusion: Broader Lessons About Legal Collaborative Processes In and Outside of the Classroom

Our project has both pedagogical and practical lessons. One lesson is that professors who want to integrate collaboration into their classes can avoid some of the contrived feelings associated with group work by injecting in-class collaboration with "real collaborative context." These projects are demanding, engaging, and help students gain a sophisticated understanding of the dynamics

opinions that mimicked the court's analysis instead of the wonderful array of defensible analyses we hoped for. We took some precaution by declaring the real opinion officially off limits if it was published at an inopportune time. But the truth is that we don't believe it would have mattered if the decision had come out before students finished their drafts because they were already strongly committed to their individual and creative analyses.

⁴² *Anderson*, 154 P.3d at 223-28 (Bridge, Owens, Madsen, Fairhurst, J. Johnson, J.J.).

⁴³ *Id.* at 228-30 (Alexander, C.J., Chambers, Sanders, C. Johnson, J.J., dissenting).

of legal processes.⁴⁴ A second lesson is that in addition to teaching law students about law and legal processes, experimenting with collaboration in legal education can provide a mechanism to reflect on and enhance the role of collaboration in legal decision making. Below, we offer some tentative thoughts about additional ways in which projects with real collaborative context can enhance both law students' understanding of legal processes and the legal profession's use of collaboration.

Contextually rich approaches to collaboration are not limited to appellate opinion drafting projects like the one described here. Appellate opinion drafting is an excellent teaching vehicle in legal writing classes because working on judicial opinions in groups helps students — especially first-year students — understand core judicial processes. But many other legal processes also involve group decision making and lend themselves to this approach. For example, law professors might also base such projects on decisions that groups of lawyers must make together. Lawyers routinely meet to discuss litigation strategy in groups, especially in offices — such as an Attorney General's office — that need to coordinate litigation strategy (or legal positions) among many lawyers. Law teachers might set up a collaborative project in which students have to read and analyze a series of briefs in different cases employing diverse legal strategies and then decide, as a group, which strategy the office as a whole should take given the nature of its caseload.

Courses also might explore the possibilities of large-group collaboration, both as a tool to increase productivity and as a way to reach better-reasoned results. One legal context in which large-group collaboration seems particularly relevant is public interest law. Because of scarce resources, the need to work together takes on special importance in public interest advocacy. Public interest advocates organize into task forces, and pool knowledge and experience, to develop litigation strategy and policy solutions. Policy problems, in particular, lend themselves to collaborative projects and enable students to sense first-hand how collaboration can lead to a more complete understanding of complex problems and, eventually, to greater social progress.

At the University of Washington, we have experimented with several projects involving this sort of collaboration. In one class, approximately thirty students worked together to address a thorny law and policy problem in the housing law context: lawyers at a local legal aid office had experienced difficulty with eviction cases involving tenants who compulsively hoard possessions, filling up their homes with worthless items and violating lease provisions and safety standards. In consultation with a lawyer in this office, students in the class researched social science relating to compulsive hoarding and relevant disability defenses to eviction, and developed training and educational materials, legislative suggestions, and community advocacy strategies. Students learned not only about

⁴⁴In this sense, our approach is consistent with some of the suggestions in the recent *Carnegie Report*, *supra* n. 3.

disability law but also about how advocates can use technology to work together in a large group to tackle a seemingly insurmountable problem.⁴⁵ Building on this approach, other classes at our law school are using similar techniques to collaboratively draft a judicial training manual addressing legal issues faced by homeless lesbian, gay, bi-sexual, and transgendered youth.⁴⁶ Yet another class (taught by one of the authors) is working together to compile a set of model briefs for various categories of asylum law claims for use in an ABA–Microsoft-sponsored pro bono asylum law project.⁴⁷

Factual problem-solving is an area that most law schools do not emphasize but which offers tremendous possibilities for context-rich collaboration and for helping students understand important aspects of the legal system. For example, an evidence or factual investigation course could ask students to play the role of jurors and to analyze and evaluate complex chains of inference that flow from a body of evidence.⁴⁸ Students could then play the role of jurors to get a better understanding of how groups of laypersons work together to make sense of a set of facts with multiple possible inferences. Students could also experiment with innovative collaborative problem solving techniques — for example using charts or other visualizations to facilitate collaborative thinking about complex evidence networks — that might have applications in real court rooms.⁴⁹ Factual problem-solving can also take place from an investigator's standpoint, and students can work together to plan an investigation that will uncover the facts necessary to prove a particular legal standard. At a recent conference about the visualization of evidence in legal settings attended by one of the authors,⁵⁰ a current U.S. Attorney expressed his wish that law schools would help develop techniques to facilitate collaborative collection and analysis of evidence in complex criminal cases.

Finally, courses might develop a project in which students play the roles of law partners in a private firm and have to review cases and debate whether to

⁴⁵ One of the authors has discussed this project in more detail in a recent article. See Tom Cobb, *Public Interest Research, Collaboration, and the Promise of Wikis*, 16 Persps. 1 (2007) [hereinafter Cobb, *Public Interest Research*]. This legal writing class also published some of its research. See Tom Cobb et al., *Advocacy Strategies to Fight Eviction in Cases of Compulsive Hoarding and Cluttering*, 41 Clearinghouse Rev. 427 (2007).

⁴⁶ Our colleague, Prof. Theodore Myhre, developed this innovative legal research and writing course in concert with our child advocacy clinic and several non-profit organizations.

⁴⁷ For a remarkable set of community-based research projects along similar lines, see James H. Backman, *Law Schools, Law Students, Civil Engagement, and Community-Based Research as Resources for Improving Access to Justice in Utah*, 2006 Utah L. Rev. 953.

⁴⁸ For fascinating projects along these lines, see Terence Anderson, David Schum & William Twining, *Analysis of Evidence* 46-77 (Cambridge U. Press 2005).

⁴⁹ See Peter Tillers & David Schuman, *A Theory of Preliminary Fact Investigation*, 24 U.C. Davis L. Rev. 931 (1991).

⁵⁰ See Peter Tillers, *Introduction: Visualizing Evidence and Inference in Legal Settings*, 6 Law, Probability & Risk 1 (2007) (introducing special issue of journal publishing conference proceedings addressing this topic).

accept or pursue them. A project like this would require students to make an independent assessment of the legal strength of a case and then to negotiate a cluster of issues related to the case's value, each lawyer's level of comfort with risk, and the relative importance of justice-related factors — all tasks that would teach students about important aspects of legal practice not often taught in law schools.

Although projects involving real collaborative context serve important pedagogical goals (both to teach collaboration as a skill and to teach about legal processes that involve collaboration), such projects (as some of our comments above suggest) also have applications outside the classroom. One concrete effect is that they improve students' awareness of the collaborative nature of legal processes and hone their collaboration skills. The law school experience can tend to make students think of law as a highly adversarial and competitive process. But students who experience law as a collaborative enterprise while in law school are likely, when they begin practicing law, to have a heightened awareness of the benefits of collaboration.⁵¹ Because of this perspective, they may do a better job of collaborating than their colleagues. Or they may simply be better prepared to improve those processes. Appellate opinion writing provides a good example. Students who understand in a tangible way how judges read and use briefs, debate amongst themselves, and make compromises about how an opinion is drafted may be able to read opinions in a more sophisticated way and write more effective appellate briefs than peers who have not experienced the collaborative aspects of opinion writing.

A more remote — though possibly more important — effect is that students' self-reflective efforts to collaborate in particular legal processes, and law teachers' efforts to incubate such collaboration among students, can ultimately serve to teach legal professionals something about how best to work together. Perhaps the most exciting aspect of contextually rich collaboration is that it offers not merely the opportunity for law students and teachers to understand how legal institutions function, but also the opportunity for both students and faculty to help those institutions function more effectively.

Even our limited and experimental approach to collaboration had some lessons for decision makers who are called upon to collaborate in similar circumstances. Students in our classes found that collaborative decision making worked best when the judges involved had a clear sense of their values going into the case and had articulated to themselves and each other the relative importance of those values. Indeed, the groups that seemed to be most effective had strong positions going into their opinion conferences. For example, students found that collaboration was most efficient and least likely to lead to a result they would

⁵¹ *But see* Catherine Gage O'Grady, *Preparing Students for the Profession, Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 Clin. L. Rev. 485 (1998) (questioning whether collaborative pedagogy really does prepare students for the competitive environment and hierarchies typically present in legal practice).

later regret if they openly defined and discussed their commitment to a methodological approach or to unanimity. In addition, students found that their decision making benefited from candor about all of the considerations — including normative ones — that were part of the decision. Disclosing these commitments enabled compromise to move forward in a principled way and revealed areas, at a fairly early stage, where no compromise was possible. In some cases, unexpected and creative solutions emerged from this initial self-awareness and candor.

Similarly, our students quickly learned that the collision between competing points of view during a collaborative project forces individual attorneys and judges to critically examine, and then attempt to bolster, the weaknesses in their respective positions. Writing after considering and weighing all possible counterarguments tends to make the final written product (a memorandum, brief, or judicial opinion) more persuasive and stronger than it would have been if all participants had shared a uniform perspective. Collaboration should not be primarily about negotiation or reaching compromise. Sometimes the combination of multiple strong points of view ferrets out arguments that otherwise might have remained dormant. Likewise, sometimes the passion of an initial commitment reflects a participant's strong sense of responsibility for the decision — and so ought to be encouraged, not tamped down.

Another lesson is that collaborative drafting seems to benefit from early conversations about what to concentrate on during different stages of the collaborative or editing process. In our view, groups did best when they “bracketed” sentence level writing issues and matters of legal “voice” until late in the process. Suspending these editing issues seemed to allow the students to focus on substance. Once the substance was in place, student-judges were able to move through the editing process more efficiently and mechanically without spending much time on details that were of little importance. Interestingly, this is one area in which courts, in our experience, could improve. We have both seen instances where sentence-level editing was mixed with more substantive edits, resulting in excessive nit-picking too early in the drafting process, creating unneeded distraction and tension.

Other lessons that emerged from a contextually rich collaborative project in a different class involved the innovative use of technology. Researchers in a number of different fields have emphasized how collaboration can reinforce problem-solving, improving its quality. For example, scholars of artificial intelligence have suggested the possibility that charting and visualization — techniques that facilitate a group's ability to perceive and discuss complex relationships among arguments — may enable groups to make more reasonable decisions.⁵² In our class, we encouraged students, some of whom were more

⁵² See Simon Buckingham Shum, *The Roots of Computer Supported Argument Visualization in Visualizing Argumentation: Software Tools for Collaborative and Educational Sense-Making* 3 (Paul A. Kirschner, Simon J. Buckingham Shum & Chad S. Carr eds., Springer 2003).

technically savvy than we were, to develop innovative collaborative strategies to tackle legal problems. For example, some students used collaborative drafting software such as Google Docs or other shared workspaces to facilitate working together. Still other students maximized the value of their group's work by sharing information on a "wiki," a type of software that facilitates mass collaboration.⁵³ Legal professionals who do not know about the new array of software that aids collaborative work would do well to learn about it. As our students discovered, these can be powerful tools to open up new ways for legal professionals to work together (and with other advocates in the community). Students who have experimented with this software in law school will be poised to integrate it into their legal practices or to draw on collaborative techniques to improve legal institutions.⁵⁴

If our experience with collaborative decision making offers any lessons for legal professionals, these lessons are, at most, only tentative at this point. Law professors need to work more with these teaching techniques before making grandiose claims about what our limited experience in the classroom can teach legal professionals who struggle regularly with these difficult processes — and presumably learn from that struggle. Nonetheless, it is clear that widespread experimentation with collaboration in specific legal contexts can lead to greater understanding of the dynamics at work in those processes and can lead to the development of new techniques to facilitate collaboration. The classroom is the perfect place to explore these dynamics and techniques. In other words, the classroom can and should be a laboratory — or "collaboratory" — for the legal profession. The ultimate promise of collaborative work in and out of the classroom is to improve the legal process and lead to better reasoned and more just results.

⁵³ For a detailed description of a project involving the use of wiki technology in a legal writing classroom, see Cobb, *Public Interest Research*, *supra* n. 45.

⁵⁴ Koo, *supra* n. 5.