Would You Say That To Your Children? Enhancing Learning Through Improved Communication

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When I began teaching in 1990, I was twenty-seven years old, barely older than most of my students and much younger than some. I had a youthful appearance and demeanor that made me seem like a teenager. I was high energy, sharp-witted, and, similar to my age contemporaries, relatively anti-establishment. I was far from an authority figure and tended to use the similarities with my students to my advantage as a teacher. For the most part, we grew up with the same types of parents in the same types of neighborhoods. We tended to watch the same television shows and listened to the same type of music. We were all familiar with the same movies and laughed at the same jokes. These similarities provided for an analogy and a connection. They served me well in the classroom.

Fast-forward twenty years. Although I see myself as the same person when I look in the mirror, the reality is I have a twenty year-old daughter who is more connected to the interests of my students than I am. Instead of looking at me as a buddy, my students look at me as an authority figure—a person who holds their employment future in her hands. Even though I still see myself as a pal who can plop down beside any of my students and make jokes about professors or other topics of concern to college kids, such behavior would be about as inappropriate as the behavior of my mother trying to join in with my own group of friends when I was in junior high. The reality of the situation is that the age dif-

* Professor of Legal Writing, Cleveland-Marshall College of Law. I would like to thank my Research Assistant Matthew Harris and Law Librarian Sue Altmeyer for their invaluable assistance.

1. For discussions about effective teaching through connecting with students, see Kristin B. Gerdy, Making the Connection: Learning Style Theory and the Legal Research Curriculum, in Teaching Legal Research and Providing Access to Electronic Resources 71, 74 (Gary L. Hill et al. eds., 2001); Mary Bernard Ray, How Individual Differences Affect Organization & How Teachers Can Respond to These Differences, 5 J. LEG. WRITING INST. 125, 130 n.18 (1999) (noting that students must be able to relate newly acquired knowledge to their existing structure of knowledge); Anne Enquist, Critiquing Law Students' Writing: What the Students Say Is Effective, 2 J. LEG. WRITING INST. 145, 160-64 (1996) (noting that legal writing students demand explanations and examples in comments on their papers).
ference is just too great for one to be the same type of teacher I was when I began.2

I do not believe I became a poor teacher over time, but I do believe it took me some time to make up for the adjustment between my advancing age and the change of expectations of children in school these days. Add to the mix the pressure of sending “messages” to some of the poorer students that law school might not be for them and I must admit that, about fifteen years into things, my teaching was somewhat out of synch in relation to what it should be.

I had a few wake up calls suggesting that I needed to make a few adjustments in order to end my own frustration and the frustration of many of my students. During the fall of 2005, I was having a particularly bad day when a student, who never seemed to understand anything, approached me for the third time in one day to ask the same very basic question. I thought I was tempering my words when I told him that there were just some things that he needed to figure out on his own, but he looked at me with wide-eyed terror and I never heard from him the remainder of the year. That same year, I had a student who stopped coming to see me (and scrupulously avoided most classes) after I made what I thought was a clever joke about a poorly constructed sentence he had written.3 After those and a few other episodes, it began slowly

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2. See generally Paul B. Baltes & Peter Graf, Psychological Aspects of Aging: Facts and Frontiers, in THE LIFESPAN DEVELOPMENT OF INDIVIDUALS 427 (D. Magnusson ed., 1997); see also Carl Smith, When a Professor Ages . . . and His Students Don’t, THE CHRONICLE OF HIGHER EDUC., Feb. 9, 2001, at B20 in which the author comments:

Things were not always so. Once, I had what I (perhaps mistakenly) felt was a special rapport with my classes, by dint of earning my doctorate and beginning teaching when I was in my mid-20’s. I remember growing a beard and wearing a tie on the campus, so I could look a little older than my students. In spite of that, just after I arrived, I was asked by a senior colleague at a reception for undergraduates what courses I was taking. In those days, I seemed to be able to communicate more easily with the students. When I tried to explain Walt Whitman by pointing out that his poetry was one of the antecedents of Bob Dylan’s “Mr. Tambourine Man,” the allusion drew a knowing nod rather than the blank looks it would elicit a few years later. Even when those looks began, I still felt some kind of connection, a mutual understanding based on the fact that, even if my students and I did not share a frame of reference, I could still recall what it was like to see the world through their eyes.

Id.

3. The student was researching whether a police officer must stop questioning a defendant after the defendant had asked for an attorney. The student had written (in a research log), “I started my research on secondary interrogation after original Miranda warnings were administered in the library.” I wrote a comment asking him something like whether the librarians had now started administering Miranda warnings in the library before students started doing research.
dawning on me that my vision of what I was portraying was not necessarily the vision that was being received.

One day I was in my office with my daughter, who at the time was a freshman in college. While she was there, one of my students walked in to ask me questions. I happened to be on the phone at the time and so while the student waited, she struck up a conversation with my daughter. Although I was half-listening to my phone call, what I was hearing in the office was growing more and more amazing and gaining more of my attention. The student who had come to see me was a shy student who seemed scared to utter a sound unless given permission. And yet, in the two or three minutes that I was on the phone, she and my daughter were talking about college classes, majors, homework, and iTunes. It was then that I had an epiphany about my teaching—something needed to be done to evoke that level of familiarity and minimize the intimidation factor that I had seemed to develop over time.

Although I have never completely bought into the philosophy that we are entering a new era of education—one in which “millennial children” require a certain level of coddling and diminished expectations—it is my personal opinion that there is much truth to the belief that the students who are in school today are much more sensitive to receiving and reacting to critique. Most learning experts would agree that the best methods of teaching involve engaging the student, developing a personal connection with the students, and fostering a non-intimidating educational environment in the classroom that makes the student feel comfortable asking questions and receiving feedback. This has always been true, even prior to the emergence of the millennial generation.

However, in generations past, the concept of having a “non-intimidating educational environment” was scaled up a notch. Schools, more like the parenting models of previous generations, focused more on rigor and imposing appropriate discipline for in-
appropriate behavior and assignments. There were more definite winners and losers, and little fear that poor grades or reprimands would scar the students for life. For many of us, our parents were not our friends, and our teachers were not expected to reward us for a good effort if the final product was subpar.

Whether those in higher education today believe that the millennials have been coddled and not been forced to perform to the highest standards possible is irrelevant. The fact remains that, in order to create an appropriate educational environment, it is the teacher who must be attentive to the needs of her students, and also introspective enough to recognize that whatever message she thinks is being communicated is not necessarily the message being received by students.

As I have indicated, I was never a harsh teacher who achieved results by chastising and penalizing students, but I was a bit reluctant to accept that I had to make a few changes in order to better accommodate the shift in the collective psyche of my students.

Compare three emails I sent to first-year legal writing students during a ten year time span. All three were sent at approximately the same time period during the year—after I had finished grading the students' first rough draft of their first memo assignment. Although students are not given a final grade on these rough drafts, they are given an advisory score. Traditionally, the advisory score is very low in comparison to what the students typically received in undergraduate school. More than fifty percent of the class typically receives a score that, percentagewise, is in the "D" range. The score has little to do with ability, but is usually the result of the students not understanding the necessary structure for legal analysis (despite being given paragraph-by-paragraph examples), or, quite often, procrastination (despite numerous explanations that law school will be different than undergraduate school).

The advisory score for the first memo draft is usually a wake-up call for first year students. The score sends the message that law school is not like undergraduate school—that there is a definite
format that must be followed, that writing the papers will require more effort than was previously expected, and that good grades will not be earned merely for good thoughts. Normally students will respond to the occasion once we have the opportunity to go over the papers.

In sending out emails to the students after I have graded the papers, I have tried to achieve multiple purposes. These include: (1) Preparing them for what may be a disappointing score. (2) Letting them know that low scores on the first assignment in law school is not out of the ordinary. (3) Sending a message that many of the low scores were caused by ignoring some of the things that we went over in class and were included in their materials. (4) Trying to let them know that a low score is not the end of the world.

As the emails demonstrate, how I conveyed this information shifted over the course of my career.

The email sent in 1998 (short and sweet):

Memo drafts are now available for pick-up. They are on the door of my office.

The scores on the draft averaged about 65/100, typical for a first assignment in law school. The major problem was understanding the proper analytical format, although several of you need to work on the basic structure of sentence and paragraph construction.

Memo finals (and these will count for a final grade) will be due during class in two weeks.

The email sent in 2005 (a/k/a “Don't bother me with inane questions.”):

Graded memo drafts are now available for pick-up. If you are here today, you may see me in my office to pick up yours.

The grades (and remember, these are advisory grades only) ranged from excellent to very bad, with about half of the papers falling above what might be considered a "C" and half below. As I reiterated in class, the major problem was understanding the proper analytical format. We've gone over the format
in every class, and it should not be a problem at this point. If format was your problem and/or your score was below 70, it would probably be a good idea to start the memo over from scratch. All of the format (and sample memo) documents we used in class have been emailed to you. I would suggest that you review these as you do your rewrite.

In the coming week, neither I, nor the TA, will see anyone in person to answer general questions about "What did I do wrong?" on the memo. Rather, when you see either of us, I would like for you to have in hand some writing so that we can tell whether you are on the right track.

The email written in 2008:

Graded memo drafts are now available for pick-up. You may pick them up from the Legal Writing secretary at any time from 8:30 until 4:30.

The overall quality of the drafts was very good for a first assignment (and recall that the score you received is an advisory score that is not recorded). As I've mentioned in class, the main challenge in first year Legal Writing is understanding how to properly format written legal analysis. We'll be working on that throughout the year and spending additional time on formatting analysis during our next class. Remember that all of the samples and format documents are emailed to the listserv and always available on the course website. If you are still having trouble seeing the patterns, try to review the format documents (especially "Step-by-Step Legal Memorandum Format").

I will be available to answer questions during office hours next week or you may schedule an appointment outside of office hours. In addition, I am always available by email and encourage all of you to submit segments of rewritten portions of your memo so I can let you know whether you are on the right track. In addition, my teaching assistants will be available to answer questions. Their hours are
posted on the course website and also on the door of Room 41B. You may also contact any of them individually to schedule tutoring outside of regularly scheduled hours.

Certainly there is a vast difference in tone between the email written in 1998 to the ones written in 2005 and 2008. In 1998, I would not have given a second thought to universally reprimanding students for failing to follow the proper format or failing to follow the rules of grammar. Had I written something that warranted such a reprimand, I would have expected to have been told that, and I would not have felt in any way permanently scarred. I would have felt that I really needed to review my notes and figure out how to do what was correct. As a teacher, I would have expected that my students would have reacted in an identical way. I believe, in large measure, they did. I do not recall any students who began to fear me, or any who dropped out of law school because of the harshness of my tone.

However, there was a noticeable shift within about five or six years. Law schools had not yet reached the point where millennials were the majority of the class, but I did realize that students had a different expectation about the type of interactions they would have with their professors, or at least viewed me in a much different way than I had viewed myself.11 I believed I had accommodated that shift, and when I wrote the second email, I believed that I had struck the appropriate balance between reassurance and reality—many of the memo drafts were not good. A substantial amount of the students had not adhered to the required format. Although the drafts received advisory grades only, there was much work to be done by some, and they had to take responsibility for that work on their own. I would not be there to tell them exactly what to do to receive a higher grade on the final.

Although most of my students were likely not permanently scarred by my email in 2005, I do have to admit that it gradually became clear that a fair amount of students decided that I was not very approachable and would likely be unhelpful when approached. Even though I never turned a student away and probably was more than very liberal in the help that I did provide if a

student came to see me, I was aware that I was striking somewhat of discordant chord with my students such that they would never know how helpful I could really be. I had definitely made the switch from being everyone's friend to being the authority figure. And while that switch was probably inevitable as the gap between our ages grew, I realized that some changes were in order, otherwise I would be reaching only parts of the class for the remainder of my career.

By the time I wrote the email to my students in 2008 (shortly after I witnessed the encounter between my daughter and one of the students in my class), I believed that I had hit upon what was necessary in making myself the best teacher I could be. I sought to foster a welcoming environment where the students were open to suggestions for improvement as opposed to fearful and defensive about being chastised for what they did wrong. I also sought, subtly I believed, to make the students responsible for improving their own work incrementally. I encouraged them to bring me their improved work, but also indicated there would be a step-by-step process and some boundaries within that process.

In winter of 2008, the Association of American Law Schools' Section on Teaching Methods published my short piece on what our children can teach us about being better teachers.\textsuperscript{12} The advice I have to give on being a better teacher incorporates some of those concepts and extends them. During the last couple of years, I have learned to keep in mind the following:

1. When communicating with students, be encouraging where possible, and use intensifiers to emphasize improvement. This is especially beneficial when a student has been struggling and is finally understanding what is necessary. For example, while a student might be encouraged by a statement pointing out, “The format is better,” a student (especially a struggling student) will be more encouraged by a statement reading, “The format is \textit{much} better!” Too often, teachers tired out by long hours of grading unfortunately have just enough energy to “fix” problems rather than applaud non-problems. Encour-

\textsuperscript{12} Karin Mika, \textit{What Teenagers Can Teach Us About Good Teaching}, \textsc{Teaching Methods Newsletter} (Ass'n of Am. L. Sch., Wash., D.C.), Winter 2008, at 8.
agement is often as beneficial, if not more beneficial, than pointing out what might be wrong.\textsuperscript{13}

2. Never underestimate the value of “please.” Declarations often sound like orders, and most people do not respond very well to numerous orders.\textsuperscript{14} Thus, it would be more appropriate to say, “Please do not wear hats in class,” as opposed to saying, “Do not wear hats in class.”

3. Avoid sarcasm as a teaching tool and avoid sarcasm during student interactions\textsuperscript{15} unless you know the student well enough to believe that you will not create a defensive reaction. Given the “power” difference between the teacher and student, a timid or unconfident student might take a greeting of “You again?” as a teacher’s directive not to take up too much time or not to ask additional questions in the future. A student who does not feel welcomed (even if a greeting was intended as a joke) might come to believe that he/she has become notable for asking stupid and taxing questions.

4. Explain “why” and the “because.”\textsuperscript{16} For instance, rather than telling students that they must proofread their papers, explain that errors in documents demonstrate to the reader that the writer was inattentive to detail and that a reader might also infer the student is inattentive to other, more substantial, matters. Rather than demanding compliance with Bluebook rules and deducting points for citation errors, explain that pouring over the Bluebook is good practice in reading carefully and understanding the nuances of rules. Rather than requiring a certain format for a document and deducting points for not following the format to the letter, explain that the format is being used to teach an organization that will be beneficial for other


\textsuperscript{15} See Richard Delgado & Jean Stefancic, Scorn, 35 WM. & MARY L. REV. 1061, 1099 (1994), in which the authors comment on the “scornful humor” of the United States Supreme Court by saying, “[S]atire, sarcasm, scorn, and similar tools only should be deployed upward, at actors and institutions more empowered than oneself. The sharp tools of scorn and irony rarely, if ever, should be used against the weak and lowly.” Id.

\textsuperscript{16} See Richard K. Neumann, Jr., A Preliminary Inquiry into the Art of Critique, 40 HASTINGS L.J. 725, 768 (1989)
classes. Rather than telling students that they need more citations, tell the students that citations add credibility to a position, and that citations will make it more convenient for the reader (especially the court!) to find the precise place where information is found.

5. Avoid general indictments spoken to the entire class unless they are positive. Telling the class, “Most of the papers need substantial work on English grammar” frightens and upsets those students who did quite well on the paper. Although many teachers use general statements to avoid embarrassing students by singling out the few who may have had a problem, an opposite problem is caused—the better students are momentarily frightened and then upset to have been lumped into a deficient category. General announcements should be avoided entirely unless used to praise a class for something well done by most students (e.g., “It looks as though most of you are really understanding how to use the facts of these cases to your client’s advantage.”). Students who have individual problems should be dealt with individually.

17. See LINDA H. EDWARDS, LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION 185 (4th ed. 2006) (“Your citations should prove that the law is what you say it is and that it means what you say it means.”).

18. Attorneys may be reprimanded, sanctioned, or publicly embarrassed for poor and inaccurate citation format. See, e.g., Espitia v. Fouche, 2008 WI App 160, ¶ 14 n.5, 314 Wis. 2d 507, ¶ 14 n.5, 758 N.W.2d 224 (Wis. Ct. App. 2008) (unpublished table decision). The court stated:

Counsel for Espitia cites to an unpublished case assertedly upholding a stipulated damages clause due to the difficulty of ascertaining “the exact amount of income certain vending machines would produce.” The cite provided is “Buellesbach v. Roob, 2005 AP 160 (Cl.App.Dist.D.).” Buellesbach indeed is unpublished but it has nothing to do with liquidated damage clauses or vending machines; it is a misrepresentation case brought by newlyweds against a wedding photographer. Also, “2005 AP 160” is the docket number, which we discovered only after reaching a dead end at 2005 WI App 160, 285 Wis.2d 472, 702 N.W.2d 433. At last we located the unpublished case that addresses the subject matter for which counsel cited Buellesbach: Stansfield Vending, Inc. v. Osseo Truck Travel Plaza, LLC, 2003 WI App 201, 267 Wis.2d 280, 670 N.W.2d 558. Different name, different citation, different district (District IV) but, as promised, unpublished. It is a violation of Wis. Stat. Rule 809.19(1)(e) to provide citations which do not conform to the Uniform System of Citation and of Wis. Stat. Rule 809.23(3) to cite to unpublished opinions. One reason may be that they can be time-consuming to locate. A $100 penalty is imposed against Espitia’s counsel.

Id.

19. For an interesting discussion about how society erroneously targets large groups to solve problems that only a few have, see Malcolm Gladwell, Million Dollar Murray, Why Problems Like Homelessness May Be Easier to Solve than Manage, in WHAT THE DOG SAW 177-198 (Malcolm Gladwell ed., 2009).
6. Similarly reward the students with some praise, even though the results of the project might not be as great as expected. Rather than say, "Most students just did not understand what was necessary on this assignment," it might be more appropriate to say, "The research on the memo was overall very good, and in the coming weeks we're going to work on discussing the strategy for addressing an issue of this type." Sometimes, the results of an assignment are the professor's own fault; sometimes other factors. The problem may have been too difficult, or there might not have enough time because of other assignments in other classes. Unless we are absolutely sure that the faulty product was the result of the class alone, without contributing factors from the professor, we should refrain from concluding (and announcing) our disappointment.

7. Disappointment in the results of a particular project should be used for introspection and revision. There are a lot of reasons why the results of a project might be poorer than expected, including teaching deficiencies. The reasons for the results of a project should be diagnosed and either the project, the teaching, or even the syllabus should be revamped to address the deficiency. For example, if possible, the teacher could decide that a portion of a project be rewritten, or to hold an additional class to address a matter that seemed to be the prevalent problem on a project.

8. Avoid making comments that stem from frustration. There are a lot of things that can get us going, including issues about our jobs that have nothing to do with student performance. Students perceiving anger, even if it has nothing to do with the individual student present, will be reluctant to seek advice or critique.

9. Revamp your expectations the longer that you teach. It's often hard for us to remember how little we knew, not necessarily as first-year students, but at any point in our lives when we were starting out learning a new skill. The more we know and the more distant we get from that time, the more it is difficult to put ourselves back into that situation. We see all of our assignments as very "do-able," and all of our teaching as crystal clear. It is very
easy to decide that any deficient performance is "them" and not "us." It is a good idea not only to relook at assignments to determine whether they are truly "do-able" in the way that we envision, but perhaps allow those closer in time to being first-year students to review the assignments given. To that end, it might be a good idea to have research assistants complete first-year assignments. However, it is important to note that the research assistants that we hire tend to be our best students who did believe our assignments are very "do-able" with material presented in a crystal clear fashion. It is important that we retain some perspective about what students who might not be in sync with our teaching might perceive.

10. If at all possible, be nice, and when you think that you are, think again and perhaps try to be a little bit nicer. For many years, legal writing professors have talked about being nice, and we often have discussions, serious and otherwise, about what positive comment can we possibly write on a paper that has no redeeming qualities (e.g., "Great margins!" or "I like that font!"). However, this is not exactly the type of "nice" that I'm talking about. There will always be students whose papers are so bad, or are so difficult personally, that being nice might not accomplish anything except exploitation and continuous subpar performances. These students may need a degree of "tough love," or a kick now and then. There are also some students who will simply (and purposely) push the professor's cordiality and patience over the edge so that a stern approach is necessary and appropriate. The lesson there is, "know your audience," and, yes, similar to a parent, a professor must decide what is the appropriate way to deal with a particular situation, even if the reaction is punitive in nature.

My lesson learned over the years has been that, while we may intend one thing or make assumptions about the message being

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received, we are not always correct. There are other matters that may come into play, such as a predisposition to be defensive, or a knee-jerk reaction to one word, or even a font \(^{21}\) used in an email. Thus, my suggestion is not that we should be nice for the sake of being nice, but to think carefully about how a message is being received. An angry or insulted student is not a receptive student, thus making our jobs much more difficult than they need be.

Although I do not necessarily believe that teaching millennials calls for an entire revamping of one's teaching style, I do believe that good teaching requires that a student be open to communication and critique. To that end, I believe that fostering that communication and openness requires introspection into the type of communication that is going on and potentially revamping one's teaching methodology to accommodate shifts in the expectations of the students. Although not all of us have children, I do believe it is important to always rethink our interactions with students in the way that we would with any child whose trust and confidence we seek to gain. I also believe that this is even more appropriate as we become more seasoned teachers and are less connected to our students' day-to-day base of information that is being used for the context of their learning.

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