Beyond the Laws: Undergraduate Legal Instruction and the Development of Cognitive Behavior

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For more than 100 years much complaint has been made of the unmethodical way in which schools are conducted, but it is only within the last 30 years that any serious attempt has been made to find a remedy for this state of things. And with what result? Schools remain exactly as they were.

John Amos Comenius
The Great Didactic, 1632

Business law professors, as I have previously argued, should search beyond tradition for a systematic method for discussing and formulating educational objectives.[1] They should state their educational objectives[2] in behavioral terms: that is, educational objectives should be phrased in terms of the student behavior or activity which the instructional process seeks.[3] In order to facili-

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[1] Wolfe, *Expressing the Educational Objectives of Business Law: A Proposed Method and Framework*, 12 AM. BUS. L. J. 1 (1974).

[2] The term "educational objective" as used in this and the previous article denotes instructional objectives and not the broader institutional or departmental objectives.

[3] There are many excellent sources available which describe how to derive and phrase behavioral objectives. *See* R. ARMSTRONG, T. CORNELL, R. KRANER & E. ROBERSON, THE DEVELOPMENT AND EVALUATION OF BEHAVIORAL OBJECTIVES (1970); N. GRONLUND, STATING BEHAVIORAL OBJECTIVES FOR CLASSROOM INSTRUCTION (1970); R. MAGER, PREPARING INSTRUCTIONAL OBJECTIVES (1962); H. MCASHAN, WRITING BEHAVIORAL OBJECTIVES (1970); P. PLOW-

tate the discussion of student behavior, I have proposed that we utilize the systematic classification of student behavior provided in *Taxonomy of Educational Objectives, Handbook I: Cognitive Domain*,[4] and, *Taxonomy of Educational Objectives, Handbook II: Affective Domain*.[5] By using these sources[6] to develop a vocabulary and style of thinking about student behavior, professors may learn to communicate more effectively with one another, with students, and, most importantly, with scholars in the field of educational psychology and related disciplines who are attempting to develop the same or related intellectual skills and attitudes in students.[7]

MAN, BEHAVIORAL OBJECTIVES (1971); D. TANNER, USING BEHAVIORAL OBJECTIVES IN THE CLASSROOM (1972).

[4] A COMMITTEE OF COLLEGE AND UNIVERSITY EXAMINERS, TAXONOMY OF EDUCATIONAL OBJECTIVES, HANDBOOK I: COGNITIVE DOMAIN (1956), hereafter referred to as HANDBOOK I.

[5] D. KRATHWOHL, B. BLOOM, & B. MASIA, TAXONOMY OF EDUCATIONAL OBJECTIVES HANDBOOK II: AFFECTIVE DOMAIN (1964), hereafter referred to as HANDBOOK II.

[6] These two handbooks are not the only models of the instructional process, but they are the most widely used and are the only sources focusing specifically on the categorization of student behavior. For related discussions on the instructional process *see* S. FARNHAM DIGGORY, COGNITIVE PROCESSES IN EDUCATION: A PSYCHOLOGICAL PREPARATION FOR TEACHING AND CURRICULUM DEVELOPMENT (1972); and J. TRAVERS, LEARNING: ANALYSIS AND APPLICATION (1965). Curiously, not one reference to the cognitive domain classifications propounded in HANDBOOK I and their obvious applicability to legal instruction can be found in the JOURNAL OF LEGAL EDUCATION. Only a few articles in the JOURNAL OF LEGAL EDUCATION have attempted to create a comprehensive model for use in understanding graduate law instruction. *See* Gross, *On Law School Training in Analytic Skill*, 25 J. LEGAL ED. 261 (1973); Peden, *Goals for Legal Education*, 24 J. LEGAL ED. 379 (1972); and Redmount, *A Conceptual View of the Legal Education Process*, 24 J. LEGAL ED. 129 (1972). In my opinion, none of these sources provide the clarity and utility of the scheme suggested by the authors of HANDBOOK I.

[7] Focusing on the intellectual skills of application, analysis, synthesis, and evaluation reveals that which the more traditional disciplines all have in common: the development of qualities of thought which will be of some permanent value to the student. Some disciplines already provide a behavioral approach for study. An economics supplementary text presently available acknowledges that the intellectual skills acquired by the study of economics is of prime importance and therefore presents the subject matter under the following chapter headings: Ch. 3, Memorization; Ch. 4, Comprehension; Ch. 5, Application; Ch. 6, Analysis; Ch. 7, Synthesis; and Ch. 8, Evaluation. N. TOWNSHEND-ZELLNER & J. POTNEY, INTRODUCTORY ECONOMICS, 1970.

It appears that the study of law as compared with the study of other disciplines is particularly suited to the analysis of cognitive development and value formation, especially in junior high and secondary schools. *See* Grannis, *Case Studies of Children's Thinking About Social Phenomena* (Center for Research and Development on Educational Differences, Harvard University, Monograph #1, 1967; Tapp, *A Child's Garden of Law and Order*, 2 LAW IN AM. SOCIETY 13 (1973).

This article will focus on the categories of student behavior which describe intellectual skills (the cognitive domain).[8] More specifically, the six primary categories of cognitive behavior described in *Handbook I*[9] will be used as focal points to discuss instruction. These categories are as follows: knowledge (or recall of facts and ideas, comprehension, application, analysis, synthesis and evaluation. These six categories of student behavior described in *Handbook I* are arranged in a hierarchy from the simplest behavior, recall, to the most complex behavior, evaluation. The more complex behavior is achieved only after mastery of the less complex behavior.[10] Hopefully by discovering how undergraduate instruction in law (primarily business law) can produce cognitive development described by the above terms, professors will develop a positive preference, firstly, for using this terminology in their discussions of instruction, and, secondly, for developing instructional strategies which produce appropriate behavior in each of the categories.

Knowledge (or, Recall of Facts and Ideas)

The primary behavior described by the term knowledge is the recall of facts and ideas.[11] This simplest of all student behavior

[8] Every student behavior can be categorized in one of three domains. The cognitive domain describes behavior which is primarily intellectual, the affective domain describes behavior which is primarily emotional or value oriented, and the psychomotor domain describes behavior which is primarily manipulative. Focusing on just one of the domains must be done with caution because any given student behavior may have elements of behavior from each.

For a more thorough explanation of the differences between the cognitive and affective domains *see* Wolfe, *supra* note 1, at 11-12.

Psychomotor skills are related and perhaps underlie most of the activity of the educational process. Writing and speaking, the primary means by which the attainment of educational objectives is measured, are psychomotor skills which can be developed. Work on the classification of behavior in the psychomotor domain appears to be a fairly recent phenomenon. For an overview of the current thinking on psychomotor instructional objectives *see* THE PSYCHOMOTOR DOMAIN—A RESOURCE BOOK FOR MEDIA SPECIALISTS (published by Gryphon House, Inc., Washington, D.C., for the National Special Media Institutes, 1972).

[9] Each of the primary cognitive behaviors described in HANDBOOK I is divided into subcategories. A full outline of these categories can be found in the previous article by the author, Wolfe, *supra* note 1, at 6-7.

[10] HANDBOOK I, *supra* note 4, at 18.

[11] It has been suggested this first category should be labeled "Recall" instead of "Knowledge" since recalling is the primary behavior described. *See* TANNER, *supra* note 3, at 21.

has been, unfortunately, the primary behavior required by instructors in many disciplines.[12] Admittedly, some information must be memorized before application, analysis, synthesis and evaluation are possible, but the memorization should be viewed as only the first step in cognitive development, not the desired ultimate objective. Focusing on this first step, recall, the most crucial question is, *which specific bits of information should be memorized by students of business law?* While some disciplines yield a neat list of the principles, methodologies, structures or generalizations which represent the broad substantive outlines of the discipline, law does not yield to such an easy approach. To prove my point, let us consider several suggestions for creating such a list.

The content of the business law section of the CPA exam[13] or studies indicating laws which employers think every business graduate should know[14] provide an easily accessible list of laws to be memorized. However, many professors have argued that instruction in undergraduate law should be much broader than the focus on rules which affect business operations.[15] These professors

[12] HANDBOOK II, *supra* note 5, at 57.

[13] Recently the business law portion of the CPA exam included these areas: Accountants' Legal Responsibility, Antitrust, Bankruptcy, Commercial Paper, Contracts, Federal Securities Regulation, Forms of Business Organizations, Insurance, Property, Regulation of the Employer-Employee Relationship, Sales, Secured Transactions, Suretyship and Wills, Estates, and Trusts. American Institute of Certified Public Accountants, *Information for CPA Candidates* (1970). The basic legal rules in these areas are the same ones which make up most of the subjects in business law texts. Whether the content of business law instruction was first defined by business law professors and then incorporated by the CPA examiners or whether the business law "discipline" merely adopted the subjects on the CPA exam is not clear. It is clear, however, that many business school deans and business law professors view the mission of business law as one which supplements the accounting curriculum. As long as this perception prevails, the integrity of the "discipline" will be open to question. Can any discipline which defines its existence in terms of marginal contributions to other disciplines ever be accorded the status of a first rank "body of knowledge" or "discipline"? Yet, changing this conventional perception of the mission of business law is an uphill battle. The demand for accountants continues to grow, thus the continued demand (in many universities) for business law instruction. Thus it seems more and more acceptable to define our mission in terms of service to the accountants.

[14] *See* Donnell, *The Businessman and the Business Law Curriculum*, 6 AM. BUS. L. J. 451 (1968).

[15] *See, e.g.*, Allan, *Organization Theory, Sociology of Law and Business Law: Divided Parts of the Same Field*, 4 AM. BUS. L. J. 39 (1966); Anderson, *Collegiate Law, The Citizen and Business*, 5 AM. BUS. L. BULL. 9 (1961); Anderson, *Social Forces and the Teaching of*

argue that law is not only a universe of rules and principles which represent the "applied" aspect of many of the conventional disciplines such as economics, political science, and sociology but, most importantly, a process for generating these rules. The legal process, not rules, should be the focal point of our discipline.[16]

Many business law professors become frustrated when they strive to define "business law" as a discipline in terms of the information which is to be committed to memory because there are an infinite variety of laws and processes which could be memorized by business law students. Additionally, focusing on memorization has one established drawback. One study showed that 76 percent of the factual information memorized by college-age students is forgotten one year after the memorization.[17] Thus, rule memorization and recall have very short-term educational consequences. It should be re-emphasized that although memorization is needed for the development of more complex intellectual activity, it must not be viewed as an end in itself.

A key to the muddle which surrounds discussions of undergraduate law instruction is to shift the focus from which information is to be memorized to what use is to be made of the information presented. Intellectual skills of application and analysis, once developed, are retained to a much greater degree than the ability to recall given facts.[18] Therefore, attempting to develop student

Business Law, 6 AM. BUS. L. BULL. 8 (1962); Berman, *The Future Legal Education of American Businessmen*, 5 AM. BUS. L. BULL. 3 (1961); Carter, *The Objectives of a Course in Business Law*, 5 AM. BUS. L. BULL. 26 (1961); Gillam, *Business Law Faces the Future*, 3 AM. BUS. L. BULL. 31 (1958); Joyce, *Business Law in Higher Education, A Plea for Reform*, 6 AM. BUS. L. J. 575 (1968); Kirkpatrick, *Law and the Liberal Education*, 3 AM. BUS. L. J. 363 (1965); Lavine, *Major Functions of Business Law*, 2 AM. BUS. L. J. 313 (1964); Pearson, *Education for Business and Its Legal Environment*, 6 AM. BUS. L. BULL. 1 (1962); Raphael, *The Plight of Business Law—And a Recommendation*, 3 AM. BUS. L. BULL. 13 (1958); Zelermyer, *A New Approach to Business Law*, 3 AM. BUS. L. J. 352 (1965).

[16] *See* articles by Berman, Joyce, and Raphael, *supra* note 15. *See also* Raskind, *A Proposal for Teaching Administrative Law in the Business Law Curriculum*, 2 AM. BUS. L. J. 79 (1964).

[17] 2 THE ENCYCLOPEDIA OF EDUCATION 198 (L. Deighton ed. 1971).

One professor suggested that six months after the termination of a course in business law, students remember about 25 percent of the information memorized; in some cases it might be as low as 10 percent. Erickson, *A Communications Teacher Looks at Business Law*, 6 AM. BUS. L. BULL. 14 (1962).

[18] THE ENCYCLOPEDIA OF EDUCATION, *supra* note 17. Also, it has been argued that teaching using "problems" and "cases" results in better student performance than using the lecture method to present information. *See* Dry, *A Study to Determine the Relative Effectiveness*

behavior in the higher categories of the cognitive domain should be the profession's ultimate objective, and the rules and processes to be memorized could be selected on the basis of how readily they stimulate the development of more complex cognitive behavior.

The following discussion assumes the memorization of some information. The answer to the initial question of this section, which information should be memorized, remains illusive. What is important, however, is to isolate this question, to separate it from discussions of instruction, because how a student is required to perform once the information is given is a separate, more important matter.

Comprehension

Comprehension of subject matter is the second step in developing intellectual skills. Student behavior in this category is relatively easy to evoke. There are two key features to comprehension. The first is that the student is prompted as to which principle he is to comprehend;[19] that is, the communication (usually a lecture question, a problem, or test item) reveals by direct reference the name or symbol to be comprehended. The second feature of comprehension is achieved when the student uses his own words, not those of the original definition, to express the concept.[20] Thus, comprehension is similar to recall in that the concept to be recalled is identified by the professor, but it is different in that the student must change the concept to some form of communication which is more familiar. Any time a student defines in his or her own words a principle, process, or pattern, comprehension is the resultant behavior.

Comprehension could be easily worked into a professor's instructional scheme by asking students to "brief" the assigned cases (*see* "Analysis," *infra*) and write in their own words the holding or point of law. Quoting from the text should be specifically forbidden.[21] This directive requires the student to perform

of Three Teaching Methods for a Beginning Course in Business Law at the College Level, 1 AM. BUS. L. J. 121 (1963). *See also* Lees, *Increased Motivation: By the Case Method*, 2 AM. BUS. L. J. 77 (1964).

[19] HANDBOOK I, *supra* note 4, at 89. 120.

[20] *Id.*, at 89.

[21] A similar practice has been suggested before; *see* McKitrick, *A Technique for Evalu-*

a *translation*, the simplest form of comprehension.[22]

If a student is asked to explain the relationship between two identified principles, he is being asked to *interpret*, a more difficult form of comprehension.[23] For example, explaining the difference or similarity between "consideration" and "mutuality of obligation" would require such activity.

The most complex form of comprehension is *extrapolation*. This behavior includes elements of translation and interpretation, but requires the student, given one basic communication with several elements, to extend the trends, if any, which are apparent from the communication.[24] The student uses only the material in the communication for this trend development. If the student used material not presented in the course in creating the trend, the student would be synthesizing, a much more complex behavior than comprehending. This level of comprehension may be used in instances where the case book has cases or material arranged to illustrate a trend in the law.[25]

Application

Application is distinguished from comprehension by the fact that the student is not prompted as to which principle or process is appropriate for solving a problem, nor is the student prompted as to how to use the principle or process.[26] The problem must be so new to the student that mere recall of the answer is not sufficient, yet the problem type must be so familiar that the student can recognize and classify the major elements of the problem.[27] The process of application is presented diagrammatically by the authors of *Handbook I* as follows:[28]

ating Business Law Briefs, 3 AM. BUS. L. J. 83 (1965).

[22] HANDBOOK I, *supra* note 4, at 91-93.

[23] *Id.* at 93-94.

[24] *Id.* at 95-96.

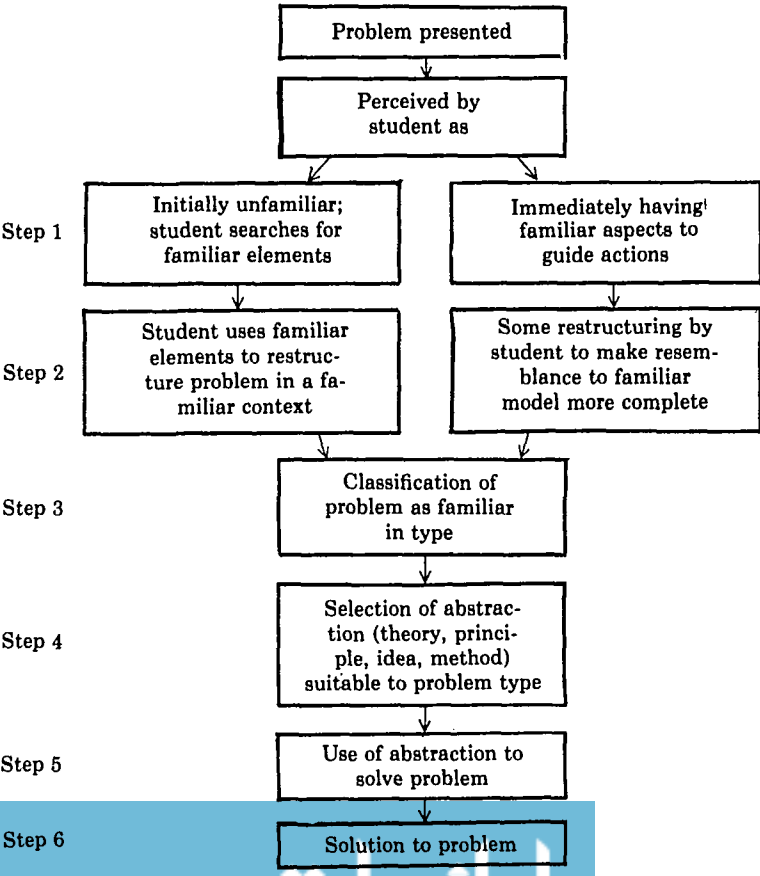
[25] One of the generally recognized series of cases revealing a common law trend concerns the liability of a manufacturer for injury caused by a defective product. See E. LEVI, AN INTRODUCTION TO LEGAL REASONING (1948). This same series of cases appears in at least one text. *See* L. HAZARD, LAW AND THE CHANGING ENVIRONMENT (1971).

[26] HANDBOOK I, *supra* note 4, at 120.

[27] *Id.* at 125.

[28] *Id.* at 121.

Diagram 1



Step 1 of the diagram illustrates, I believe, a basic fault of the classifications of the taxonomies. While the recall and comprehension of knowledge do appear to represent distinct intellectual phases, application, analysis, synthesis, and evaluation appear to be involved in the solution to every problem in which the student is not prompted as to which principle should be used to reach a solution. In Step 1, the student must break apart the problem into recognizable elements before it can be classified as familiar or unfamiliar and the relationships between these parts detected. This activity of breaking apart or classifying is primarily analysis, a more complex behavior than application.

In Step 4, the student is to select the suitable abstraction, presumably the best abstraction, and thus evaluate several alternatives. Evaluation is also a more complex behavior than application. Given the definitions of application, analysis, synthesis, and evaluation developed by the authors of *Handbook I*, it would make sense to put analysis and evaluation before application because application appears to be the byproduct of successful analysis and evaluation. This observation points to the conclusion that application is the most difficult part of legal training. At the very least, it appears that the process of application may be best represented by a circular form and not a linear chart. In each instance of application, the distinct activities of analysis, synthesis, and evaluation all occur time and again in a process which may have no clear starting point.

Regardless of the arrangement of the hierarchy of cognitive classifications, it must be emphasized that application should be at the heart of the instructional process. The success of the educational experience in law is, to a great extent, determined by how successful the students are in transferring the application of legal principles, processes, and patterns of thinking from the context in which they were learned to situations never faced in the classroom.[29] The best instructional method for achieving this result is to constantly require the student to apply the principles learned.

Professors should recognize that a student's ability to recall and comprehend is not an adequate predictor of one's ability to

[29] The authors of HANDBOOK I point out, "The effectiveness of a large part of the school program is . . . dependent upon how well the students carry over into situations applications which the students never faced in the learning process." *Id.*, at 122.

apply, since application is a different and much more complex skill.[30] However, we cannot forget that the ability to recall and comprehend the appropriate principle is a prerequisite to application. Thus, instructional strategies should emphasize recall and comprehension before application is tried. For example, in a lecture on "consideration," a business law professor should begin by asking a student to recall the text's definition of the principle. Then one or more members of the class should be asked to explain in their own words what the principle means to them. Then, and only then, should the professor provide new factual patterns in which the student is to apply the principle of consideration. A professor who launches into complex applications of legal principles before he or she is assured the class can recall and comprehend the principles when prompted to do so runs the risk of discouraging student application.

The evaluation of application through examinations should reveal the cognitive category in which the student is having difficulty. An inability to apply a legal principle may be the result of at least one or a combination of the following: inability to recall the appropriate principle or not properly recalling it (not remembering the definition); inability to comprehend the principle once it is recalled; or, inability to apply it correctly.[31] Therefore, it is prudent to ask the students, at least on the first exam they take in a course, to indicate in the beginning portion of their answer to an essay question their definition of the appropriate legal principles which they have recalled. This would reveal to the professor whether or not the student recalls and comprehends the appropriate principle. If a significant portion of the class does not comprehend a principle by defining it in their own terms, the professor should adjust the instructional strategy to emphasize comprehension. Also, if the class comprehends, but does not apply, the professor should emphasize application.

Analysis

Analysis is the activity of dividing a communication into its constituent parts and detecting the relationships, if any, of the

[30] *Id.*, at 122.
[31] *Id.*, at 126.

parts or the pattern of organization.[32] It is distinguished from the activity of comprehension in that when analyzing, the student is not told in the particular communication how to break it apart or which relationships or patterns exist. It differs from application in that the major emphasis in application is on *recalling* the proper abstraction to solve a particular problem, whereas analysis is the process of *discerning* similarities or differences between elements of a communication.

Again, these categories of activity do not appear to be sharply defined; they are generalizations about behavior which are intended to facilitate communication about instruction. Thus, some aspects of analysis may involve evaluation. It would be very difficult, for example, to break apart an appellate decision into its constituent elements without evaluating which elements are distinct and separate and which are interconnected and cannot stand alone. Nevertheless, it is agreed that one who may analyze a communication with skill may evaluate it poorly.[33]

Assigning appellate decisions and requiring the student to "brief" each one is an assignment in analysis. This instructional method, like application, is at the core of legal education, and it represents an opportunity for training and development of an intellectual skill which certainly has the potential to be transferred to other disciplines or to other forms of communication.[34]

There have been numerous discussions and material on how to brief an appellate case.[35] Since a legal dispute necessarily involves adverse parties, a logical starting point for briefing a case is to identify the parties and state the name of the case. Next, students are usually directed to state the "facts" or "relevant facts." This seemingly simple directive requires the student to engage in a complex form of analysis. The student must first distinguish fact

[32] *Id.*, at 144.

[33] *Id.*, at 145.

[34] The extent to which the analysis of appellate decisions does develop analytical skills which can be transferred to other disciplines or circumstances should be explored. If it can be proved that this instructional method does develop these skills, our profession's future will be assured.

It has long been assumed that the case method does have desirable cognitive results. *See* Dry, *supra* note 18, and Lees, *supra* note 18.

[35] I believe one of the best appears in a past issue of the ABLJ. *See* Fox, *Nurturing Systematic Analysis*, 3 Am. Bus. L. J. 235 (1965). *See also* M. Rombauer, Legal Problem Solving 7-9 (1973).

from hypothesis or opinion, and, in some instances, must detect unstated facts or assumptions which may be involved. Also, when stating the "relevant facts," the student must distinguish the "relevant" from the "extraneous." This process, by which the student is to separate the relevant from the extraneous, a combination of analysis and evaluation, is the most important element of analysis.

A key issue in any statement of facts is, what is the standard of relevancy? Or, to what are the "relevant facts" relevant? The "relevant facts" are those which evoke the application of a particular abstraction or principle in a case. "Relevant facts" should be relevant to the key legal principles used by the court to resolve the dispute before it. But, these relevant facts can not be detected until the student is aware of the principle applied in the case. Therefore, the student should perhaps be directed to look first for the discussion of the so-called applicable principle before he states the "relevant facts." This is counter, however, to most "briefing" instructions, which state the relevant facts are to be first. Where, then, should the briefing process begin? How can a student discern the relevant facts without first knowing the principles used by the court? Yet, a student can hardly be expected to immediately comprehend a principle without first knowing the facts which prompted its use. It would appear this process of separating relevant facts from irrelevant ones is, like application, circular or reiterative. There is no logical starting point; the process of reading, recalling, analyzing and evaluating may occur numerous times before the "relevant facts" are stated. In other words, the analysis of an appellate opinion is not a linear process; rather, it is one in which induction and deduction alternate: a few facts suggest an operative principle which, once located in the opinion, leads to the identification of other facts which then become relevant. This should be pointed out to the student, and he should be instructed to read a case at least twice to complete the briefing process.

Briefing usually calls for a statement of the legal principle. This should be stated in the student's own words and not copied from the opinion, thus requiring comprehension, and it should be stated in a form which is divorced from the facts of the case; that is, stated as an abstraction, not a statement of circumstances. Such a statement will enable the student to free the principle

from the facts which initially generated it and thus will facilitate application to new factual patterns. For example, in the often cited case of *Hadley v. Baxendale*,[36] the principle involved is that money damages for breach of contract are to be limited to an amount which could have been reasonably foreseen by both parties at the time the contract was made. If a student states that the principle involved in this case is that a miller who sends the shaft for his steam engine to be repaired in another city must tell the carrier that he will lose profits if the carrier does not deliver it as promised, he has failed to perceive the principle involved in a form which can be of further use to him.

Finally the student is instructed to state the legal reasoning or conclusion. This requires a student to discern the difference between a conclusion and different types of supporting material. Moreover, a court does much more than simply recall the applicable principle. It explains why the principle applied in a given case is the appropriate one. This requires the court to evaluate other opinions of a similar nature, or the reasons for the statute, or whatever the court deems sufficient evidence to support the application of the principle. It is this process which is to be summarized, thus compelling the student to copy the same cognitive process used by the court.

Much more work needs to be done on the intellectual activity involved in the briefing of an appellate case. It seems that the process required of the student is extremely complex and for this reason needs to be explained very carefully and in behavioral terms to the student.

Synthesis

Synthesis is the assembling of parts or elements to form a new pattern or structure.[37] This is an activity which involves a limited degree of originality. It is limited in that the student is to work within the constraints set by the professor, but it is original or creative in that the student is encouraged to go beyond the specific material presented in the course and recall and apply whatever material is appropriate for the answer.[38]

[36] Hadley v. Baxendale, 156 Eng. Rep. 145 (Ex. 1854).
[37] HANDBOOK I, *supra* note 4, at 162.
[38] *Id.*

Comprehension, application and analysis differ from synthesis in that in the former behaviors, the student is given material, a principle or factual pattern which constitutes a whole in itself, and in the latter the student creates the whole.[39] Synthesis (creating) is clearly distinguished from analysis (tearing apart) but has some characteristics similar to application. Both application and synthesis require the student to provide a response which he originates and which is more than mere recall or comprehension. The only difference between application and synthesis is the range of material drawn upon for the answer. If a student applies many of the principles learned in a course to a new problem (thus creating a new answer—at least for him), the student is applying. If the student goes beyond the material presented in the course and thus applies principles learned elsewhere to the problem, or if the student applies to one problem several separate principles learned in the course which the instructor or text has not presented as a coherent whole, then the student is synthesizing.

Synthesis, like the other categories of educational objectives, is developed and refined only through student practice. If synthesis were the primary educational objective of a course, as it is in many so-called "capstone" courses, then the knowledge objectives should be conducive to such an approach. For business law, the antitrust area seems to be one of the most suited for developing synthesis objectives. This subject provides an opportunity to synthesize answers to problems presented by recalling, comprehending and applying principles from economics, marketing, statistics and business strategy course. Moreover, analyzing three or four U.S. Supreme Court decisions and then synthesizing a statement of the law in this area in order to generate a workable rule can be very demanding.

By the widespread use of the Socratic method and the case approach, traditional business law instruction has emphasized application and analysis, but synthesis should be stressed as well. In this journal a professor of business law, Glen Bowen, described an experimental program in which synthesis objectives were sought.[40] In this program a student was given a case to research

[39] *Id.*

[40] Bowen, *Back to the Primary Source: A Devised Method of Teaching Business Law*, 4 Am. Bus. L. J. 293 (1966).

by reading the full text in the reporter. The student briefed the case and then presented it to the class.[41] The author states:

> Particular emphasis is placed upon and credit given for integration of the outside cases in text reference, the relation of cases to business, and the student's statements regarding the correctness of the court's decision, with special stress on the framing of personalized examples to be posed to the class for solution.[42]

Another student who has also prepared the case then presents a critique.[43] By requiring the students to integrate outside cases with the textual material and business experience, Professor Bowen was clearly demanding student synthesis. This strategy has another desirable result. Professor Bowen concludes that it has, ". . . generated a class interest and understanding of the basis of the cases themselves almost beyond belief."[44]

This result of attempting synthesis objectives was predicted by the authors of *Handbook I.* They state:

> Especially important . . . are the tremendous motivational possibilities in synthesis activities. Such tasks can become highly absorbing, more so than the usual run of school assignments. They can offer rich personal satisfactions in creating something that is one's own. And they can challenge the student to do further work of a similar sort.[45]

Developing synthesis behavior is not easy to accomplish because of the special effort it takes, as illustrated by Professor Bowen's experiment. Material apart from that provided in the text must be made available, and, more importantly, a student must have freedom from pressure to adopt a particular viewpoint and must have adequate time to generate the communication.[46] Creative efforts rarely bear fruit in the space of a one-hour class period.

[41] *Id.*
[42] *Id.*, at 295.
[43] *Id.*, at 294.
[44] *Id.*, at 296. This experimental program involves a further phase wherein the student is encouraged to do independent research in the form of preparing a legal case note. The instructors involved in the program work individually with the students. This has resulted in many well-written research papers. Such student interest was generated that the students proposed the publication of a business law review and at least one edition was published.
[45] HANDBOOK I, *supra* note 4, at 167-168.
[46] *Id.*, at 173.

Evaluation

Evaluation is the activity of making judgments about the value of ideas, solutions or the material presented.[47] These judgments may be made in terms of evidence presented in the communication itself, such as requiring the student to judge whether or not the conclusions in a case follow logically from the arguments presented,[48] or, the judgment may be made using external criteria.[49]

Evaluation is the most complex category of cognitive activity because it requires analysis of the situation to be judged, the recall, comprehension, and application of specific standards or principles, and, finally, the synthesis of the judgment itself.[50] As stated above, evaluation activity is found in the behavior of application because when one is applying, one may be required to judge which of several similar principles is appropriate.

Evaluation provides a link with the affective domain of educational objectives (developing or changing values, perceptions or emotional sets or biases) in that the ultimate judging will take place within the emotional framework of the student and this will, to some degree, color his judgment. This emotional element, however, should be minimized by emphasizing that evaluation is, primarily, an intellectual skill which can be developed through proper training.[51]

Conclusion

Our common interest in the extremely complex process of collegiate instruction in law can be, and should be, a subject of research followed by discussion both in this journal and at our regional and national meetings. One way to begin is to focus upon the goals or objectives of our instruction. To this end, I have

[47] *Id.*, at 185.
[48] *Id.*, at 188.
[49] *Id.*, at 190.
[50] One business law professor has observed that a distinctive contribution of business law is that it gives a student experience in the selection and evaluation of data, and experience in the forming of judgments. *See* Anderson, *Collegiate Law*, *supra* note 15.
[51] Evaluating a factual pattern objectively rather than subjectively is doubtlessly a desirable objective. For an explanation of how "objectivity," as an instructional goal in itself, may be taught *see* Reitzel, *Business Law—Construction Guides for the Essay Test*, J. Bus. Ed. (Part I, at 157, Jan. 1971, Part II at 206, Feb. 1971).

suggested six key terms which can be used to describe the cognitive behaviors which should be the result of the instructional process.

Some very important questions, however, remain to be answered: Which of the conventional legal topics most readily stimulate student behavior in the higher categories of the cognitive domain? Which affective-domain behaviors (expressions of value or emotional bias) are we developing by our current instructional methods?[52] What cognitive and affective behaviors are most desirable?

The purpose of this article is not to suggest that we all adopt the same teaching methods or styles; rather, the suggestion is that the profession can and should agree on some common educational goals phrased in behavioral terms consistent with those in *Handbooks I* and *II*. Form this statement of goals may arise a more precise understanding of the discipline and its distinctive mission in undergraduate instruction.

[52] Implied in this question is the assumption that the development of cognitive behaviors has an impact on one's values complex. Indeed, this is the case. *See* discussion of relationship between cognitive and affective behavior in Wolfe, *supra* note 1, 11-12. *See also* HANDBOOK II, *supra* note 5, at 48.