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What's on Your Playlist? The Power of Podcasts as a Pedagogical Tool

*Kathleen Elliott Vinson

It is six in the morning and a law student is walking her dog before beginning a full day of classes. Across town a few hours later, a classmate rushes onto a crowded subway train, forced to stand sandwiched between strangers during his commute to school. That afternoon, an evening student sits in rush hour traffic, hoping to make it into the city in time for class. Later that night, a student jogs on a treadmill at the gym after a long day of school. What do all of these students have in common? They are learning by listening to their professors' podcasts. Even though they are located in different places, at different times of the day, while their hands or eyes may not be free to open a book to study, they can still listen and learn. This article discusses how and why professors can use podcasts to supplement their classroom instruction to enhance their students' education. Podcasts provide students with an opportunity to listen to their professor outside of the time and space constraints of the classroom. This article discusses the accessibility, portability, and simplicity of using podcasts. Whether a student is a night owl or a morning person, whether she prefers to listen to a podcast on her iPod or MP3 player, burn a CD, or listen to it on her computer, the student decides when, where, and how she will listen to the podcast on her own terms and timetables. The article also examines the benefits and challenges of using podcasts. Finally, it illustrates how professors can use podcasts as a teaching tool to reach today's multi-tasking, technology-savvy student in a different way than traditional classroom teaching methods. Now instead of just listening to rock, pop, jazz, country, or any other musical genre, students can add their law school podcasts to their playlist.

Introduction¹

Law students have a diverse collection of music on their iPods—The Rolling Stones, Coldplay, Kelly Clarkson, Rascal Flatts, Mary J. Blige and James Taylor, just to name a few—but they could also listen to podcasts related to their law school courses. After all, the use of iPods

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¹ This article derives from several presentations: Kathleen Elliott Vinson, *The Power of Podcasts*, Legal Reasoning, Research, and Writing Section of the American Association of Law Schools, New York (January 2008) (poster presentation); Kathleen Elliott Vinson, Andy Perlman, & Andrew Beckerman-Rodau, *Teaching with Technology*, Suffolk Faculty Colloquial (January 2008); Kathleen Elliott Vinson, *Podcasting in LRR&W: Downloading the Greatest Hits*, Legal Writing Institute Biennial Conference, Indiana (July 2008).

or MP3 players by today's law school students is ubiquitous.² Students can now download "The Greatest Hits" of Legal Writing, Contracts, Torts, or other classes to "take their legal education on the road."³

While the basic curriculum of the first-year of law school that developed more than 100 years ago has remained mostly the same over the last century,⁴ the use of technology has increased in academia⁵ and law practice.⁶ Using podcasts is an example of this increased use of technology.⁷

² April Fehling, *Podcasting the Professor: American University Law Students Can Download Classes and Other Events*, LEGAL TIMES, Sept. 4, 2006, at 34, 34 (explaining how the director of technology at American University's Washington College of Law immediately noticed how many students owned iPods or MP3 players); *Podcasting in the Classroom*, TECHNIQUES: CONNECTING EDUC. & CAREERS, March 2008, at 7.

³ See Fehling, *supra* note 2, at 34 (noting how law students using iPods are doing more than listening to music, they are "tak[ing] their legal education on the road."). "The iPod isn't just for music anymore." Sharon D. Nelson & John W. Simek, *Cool Technology Tips for Hot Lawyers*, N.J. LAW., August, 2007, at 34, 35.

⁴ But see John Palfrey, *What is Technology's Role*, NAT'L L.J., Nov. 13, 2006, at 30, 30 (Harvard Law School faculty voted in favor of substantial changes to its first-year curriculum including requiring a course in international law). Palfrey also explores whether there is a place in the law school curriculum for technology and whether technology will transform legal education on a systemic level. *Id.* at 30

⁵ Some examples of the increased use of technology used in academia include, but are not limited to: wikis; blogs; real-time polling tools, such as clickers; course web pages, such as Blackboard and Twen; Lexis and Westlaw; laptops; online class discussion boards; online video and virtual worlds; and podcasts. *Id.* at 30 (discussing Professor Charles Nesson as a pioneer in using technology and noting how experimental uses of technology will lead to greater uses of technology in law school). Charles Nesson is the founder of the Berman Center for Internet and Society at Harvard Law School and teaches a class in Second Life, a virtual world. *Id.* at 30; Rob Hudson, *A Little Grafting of Second Life into a Legal Research Class*, LLRX.COM, May 9, 2008, <http://www.llrx.com/features/secondlife.htm> (discussing ways using Second Life in a research course enhanced the instruction that could be hard to replicate in the classroom). Hudson used Second Life to complement classroom instruction in three ways: for a virtual field trip, a guest lecture, and a student presentation. See *id.*; Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 Santa Clara L. Rev. 1, 9-12 (2002); Roy Balleste, Jason Rosenberg, & Linda Smith-Butler, *Podcasting, Vodcasting and Law: How to Understand the Newest "it" Technology and Use it in*

Law professors should consider using podcasts for a variety of reasons, but perhaps most importantly, because podcasts can be a powerful teaching tool that enhances their students' legal education.⁸ A professor's use of podcasts also utilizes technology students already use and meets student demand for use of technology by their professors.⁹ Podcasts are exciting and the

Your Library, AALL SPECTRUM, June, 2006, at 8, 8-9; Colette Vogele & Elizabeth Townsend Gard, *Podcasting for Corporations and Universities: Look Before You Leap*, 10 NO. 4 J. INTERNET L. 3, 5 (2006); Yoany Beldarrain, *Distance Education Trends: Integrating New Technologies to Foster Student Interaction and Collaboration*, 27 DISTANCE EDUC. 139, 140-42 (August 2006); Richard P. Mikat, Raymond D. Martinez & James A. Jorstad, *Podcasting For Your Class*, J. PHYSICAL EDUC. RECREATION & DANCE, May/June 2005, at 14, 14; Howard Harris & Sungmin Park, *Educational Uses Of Podcasting*, 39 BRIT. J. EDUC. TECH. 548, 548 (2008).

⁶ See Kristin B. Gerdy et al., *Expanding Our Classroom Walls: Enhancing Teaching and Learning Through Technology*, 11 LEGAL WRITING: J. LEGAL WRITING INST. 263 (2005) (highlighting how technology fits well in legal research and writing course because the nature of law practice is becoming more technical); Al Podboy, *Podcasting: What is it Good For?*, PRAC. INNOVATIONS, July 2006 at 16, 17; Frederick L. Faulkner IV, *Faulkner's Practical Web Strategies for Attorneys: I'll Take My Legal News to Go Please – A [sic] Intro to Podcasting*, LLRX.COM, <http://www.llrx.com/columns/faulkner3.htm> (last visited Feb. 3, 2009); Robert J. Ambrogi, *Could Podcasting Be CLE's New Wave?*, 62-APR BENCH & B. MINN. 16, 16 (2005) (Ambrogi I); Robert J. Ambrogi, *Ten Essential Podcasts for Lawyers*, 63 BENCH & B. MINN. 14, Feb., 2006 (Ambrogi II); Michelle Lore, *Podcasting: A New Way To Communicate With Clients*, MINN. LAW., Mar. 26, 2007, <http://www.minnlawyer.com/article.cfm?recid=75131>; Eriq Gardner, *Lawyers Podcast a Wide Net*, 182 N.J.L.J. 577, 577 (2005); Michael J. Tonsing, *Blogging, Podcasting (the Next "Big Thing"), and Beyond*, FED. LAW., Sept. 2005, at 14, 14.

⁷ See *supra* note 5 (discussing different examples of technology used in academia); Roger V. Skalbeck, *Law and Technology Podcasts*, N.J. LAW., Dec. 24, 2007 at S4; see also Diane Murley, *Podcasts and Podcasting for Law Librarians*, 99 LAW LIBR. J. 675, 676 (2007); Lydia Lum, *The Power of Podcasting*, DIVERSE ISSUES IN HIGHER EDUC., March 9, 2006 at 32, 33; Tonsing, *supra* note 6, at 15-19.

⁸ Karen J. Sneddon, *The Potential of Podcasts*, THE SECOND DRAFT, Vol. 22 No. 1 at 11 (August 2007) ("professors in all fields are capitalizing on the potential of podcasts as teaching tools"); Mikat, *supra* note 5, at 15; *UB Law School Podcasts Focus on Law and Society*, DAILY RECORD (Rochester, NY), April 17, 2007. Palfrey notes how the practice of law requires extensive use of technology and how raising the question of the use of technology in law schools poses another question of whether law schools are connected to the practice of law and legal professionals. Palfrey, *supra* note 4; Beldarrain, *supra* note 5.

⁹ See Gerdy, *supra* note 6, at 264-65 (noting Generation X students learn differently because of their technical experience); Sneddon, *supra* note 8. Evening students and international students

technology may appeal to this generation of students.¹⁰ Professors should consider using podcasts as a teaching tool because it allows professors to deliver information that appeals to different learning styles and student-centered learning by utilizing the best qualities of print and face-to-face communication.¹¹

Podcasts should not be used to replace class or as a substitute for good teaching in the classroom.¹² Instead, podcasts should supplement classroom instruction.¹³ Finally, the ease of podcasts' accessibility, portability, and simplicity, not just the novelty, maximizes the potential of podcasts and its usefulness as a teaching tool to enhance students' law school experience.¹⁴

may especially find the podcasts of professors useful. *See* Fehling, *supra* note 2, at 34 (recognizing that because evening law students often have to miss campus events and international students often found professor's speech during lectures too rapid they would find podcasts a great resource); Joanna Weiss, *In an On-Demand World, Can Parents Retain Control?*, BOSTON GLOBE, June 15, 2008, N1 at N6 (describing youth today as customer-driven, see-it-when-you-want TV children, born into an on demand world, resulting in the notion that every form of media-not just tv-seems always available and changeable). Not a lot of research exists yet on the effects of media-at-will on growing minds. "If school doesn't live up to TV's song-and-dance routine...some kids seem inclined to tune out." Kids are the ones that are earliest to adapt to latest technology. Weiss, *supra*, at N6.

¹⁰ Fehling stresses that the usefulness of podcasting in the classroom is not the novelty of the technology. *See* Fehling, *supra* note 2, at 34; Palfrey, *supra* note 4 (warning that "[t]echnology for technology's sake, even if it's cool, is not the point. Technology in law schools makes sense only in the service of pedagogy.") *But see* Hudson, *supra* note 5 (suggesting that the novelty of using Second Life in his legal research course provided a novelty that may inspire students' interest and enthusiasm in the subject area and classroom and lead to a better learning engagement).

¹¹ Murley, *supra* note 7, at 680; *see* Lasso, *supra* note 5, at 3-12; Balleste, *supra* note 5, at 8-9; Mary Lou Santovec, *The Seven Myths of Online Learning: Which do you Believe?*, 6 DISTANCE EDUCATION REPORT 1, 1-6 (Nov. 2002); Lum, *supra* note 7.

¹² Just like reading a headnote would not replace reading the case, this Article does not advocate the use of podcasts to replace class. *See* Sneddon, *supra* note 8; Lum, *supra* note 7, at 33-4; Mikat, *supra* note 5.

¹³ *See* Palfrey, *supra* note 4; Mikat, *supra* note 5.

¹⁴ Sneddon, *supra* note 8. *See supra* note 10; *UB Law School Podcasts Focus on Law and Society*, *supra* note 8.

Students have the power to take podcasts anywhere and listen to them anytime, at their convenience, without the space or time constraints of a classroom.¹⁵ For example, students can listen to podcasts and keep their eyes and hands free for other tasks, while commuting on a subway or train, exercising, or doing other activities where reading would be impractical.¹⁶ Podcasts provide students with a great resource to review material when, where, and as often as it is convenient for them.¹⁷ Podcasts may appeal to students' different learning style as well as when they learn best.¹⁸

This Article will discuss the use of podcasts in legal reasoning, research, and writing courses.¹⁹ Part I of this Article explains how to create, post, and access podcasts. Part II

¹⁵ Sneddon, *supra* note 8 (emphasizing how podcasts can be used outside the professor's office hours or students' conferences); *see* Fehling, *supra* note 2, at 34 (noting how podcasting is being used more frequently in academia to expand the reach of education beyond the classroom walls); Nicholas P. Cannon, *Podcasting For Lawyers*, L.A. LAW., Feb. 2006, at 47, 47-48.

¹⁶ *See* Fehling, *supra* note 2, at 34 (illustrating the convenience of podcasting, noting law students could listen to podcasts while at the gym or at a different campus of the school); Skalbeck, *supra* note 7 (lamenting that during his commute on the metro he rarely has enough space to open his newspaper or get a seat but he can listen to a podcast instead); Murley, *supra* note 7, at 676 (noting you can listen to podcasts on your computer but you lose the portability that makes podcasting so useful); Lum, *supra* note 7 at 33-34; Tonsing, *supra* note 6, at 15.

¹⁷ Sneddon, *supra* note 8. *See* Fehling, *supra* note 2, at 34 (explaining that students not only learn in different ways but they prefer to learn at different times); Gerdy, *supra* note 6, at 270; *supra* note 9 and accompanying text; Lum, *supra* note 7, at 33-34; *Podcasting in the Classroom*, *supra* note 2, at 8; Tonsing, *supra* note 6, at 15.

¹⁸ Sneddon, *supra* note 8; *see* Fehling, *supra* note 2, at 34 (explaining that students prefer to learn at different times so if a student wants to listen to a podcast in the middle of the night she can); Gerdy, *supra* note 6, at 270; Craig T. Smith, *Technology and Legal Education: Negotiating the Shoals of Technocentrism, Technophobia, and Indifference*, 1 J. ASS'N LEGAL WRITING DIRECTORS, 247, 250-51 (2002); Harris, *supra* note 5.

¹⁹ Although this Article will use the author's experience using podcasts in legal research and writing courses, many of the uses are analogous to other courses. *See* Palfrey, *supra* note 4 (suggesting an easy place to start teaching students to think about using technology in the practice of law is integrating technology into research and writing courses). *See also* Gerdy, *supra* note 6 (describing technology as a useful tool to help teach students how to become effective legal writers and researchers); Harris, *supra* note 5, at 548-49.

examines the benefits and challenges of using podcasts and discusses why legal writing professors should consider using podcasts to provide meaningful pedagogical advantages. Finally, Part III illustrates how and when faculty can effectively use podcasts as an educational tool to supplement their legal writing classes.

I. What is a Podcast?

The word podcast is derived from a combination of the words iPod and broadcast; however, students do not need an iPod or MP3 player to listen to a podcast.²⁰ A podcast is a digital media file that students can listen to on an iPod, other portable media player or a personal computer.²¹ Students can play podcasts directly from within a web browser or subscribe to a podcast²² and receive and download new podcasts automatically when new ones are published.²³ The method by which a podcast is distributed is called podcasting.²⁴

²⁰ See Sneddon, *supra* note 8 (defining podcasts); Skalbeck, *supra* note 7 (providing alternatives to iPods to listen to podcasts, such as Creative Labs Zen or Microsoft Zune); Murley, *supra* note 7, at 675-76 (explaining you can listen to podcasts on a computer or burn them onto a CD, instead of listening on an iPod or MP3 player); Russell Morgan, *Podcasting: Believe The Hype*, PC MAGAZINE, Feb. 21, 2007, <http://www.pcmag.com/article2/0,1895,2097337,00.asp>; Balleste, *supra* note 5, at 8-9.

²¹ Skalbeck, *supra* note 7; Robert J. Ambrogi, *Attorney Podcasts Range from Substantive to Musings*, TEX. LAW., Jan. 2, 2006, at 21; Nelson, *supra* note 3, at 35 (describing podcasts as “a web feed of audio or video files placed on the Internet for subscribers to download to their iPods”); Morgan, *supra* note 20; Connon, *supra* note 15, at 47; Beldarrain, *supra* note 5, at 141; Tonsing, *supra*, note 6, at 15; *What’s on Apple TV*, available at <http://www.apple.com/appletv/whatson/podcasts.html> (last checked Feb. 3, 2009) (defining podcast as video or audio series like a TV or radio show that can be downloaded to your TV, computer, iPod, or iPhone).

²² Listeners can subscribe to an RSS feed with a specialized podcast aggregator or “podcatcher,” like Apple’s iTunes U. See www.apple.com/itunes. iTunes U is a section of Apple’s popular music and video downloading service. iTunes U hosts material from numerous colleges and law schools. iTunes U is a distribution mechanism to push the content. Morgan, *supra* note 20; Mikat, *supra* note 5.

²³ Skalbeck, *supra* note 7 (noting you don’t have to synchronize your podcasts using iTunes software because alternatives are available, such as Zencast organizer

Podcasts are simple to create, deliver, and access.²⁵ The host or author of a podcast is often called the podcaster.²⁶ Podcasts can be created by professional news and broadcast organizations or by anyone who can record an audio file.²⁷ Podcasts can be created using a digital voice recorder or by using free software, such as Audacity, with a microphone and computer.²⁸ Once created, podcasts are uploaded to a media server or podcasting hosting

(<http://www.zencast.com/>), NewsGator's FeedDemon (<http://www.newsgator.com/Individuals/FeedDemon/Default.aspx>), an open source program called Juice (<http://juicereceiver.sourceforge.net/>) and other RSS readers. He notes that synchronizing podcasts with software is particularly helpful for podcasts that are not released on a specific schedule. *Id.* See also Murley, *supra* note 7, at 675 (reporting that "12% of internet users have downloaded a podcast" according to a Pew Internet Project Survey). She also notes you can subscribe to a podcast feed with feed aggregators such as Bloglines (www.bloglines.com) or My Yahoo (<http://my.yahoo.com>). "[A] podcast is distinguished from other digital media formats by its ability to be syndicated, subscribed to, and downloaded automatically when new content is added, using an aggregator or feed reader capable of reading feed formats such as RSS or Atom." See Murley, *supra* note 7, at 675 (comparing podcasts to portable radio programs that you can listen to any time any place). See also Ambrogi, *supra* note 21, at 21 ("[P]odcasting is a means of automatically publishing and distributing digital audio files, usually MP3 files. Listeners subscribe to a podcast in much the same way they subscribe to a news or blog feed."); Gardner, *supra* note 6.

²⁴ See Ambrogi, *supra* note 21 at 21; Tonsing, *supra* note 6, at 15.

²⁵ See Sneddon, *supra* note 8; Balleste, *supra* note 5, at 10; Mikat, *supra* note 5; Tonsing, *supra* note 6, at 15.

²⁶ Cf. Dr. Jim Wolfgang, *Podcasting 101: An Introduction to Their World*, Increasing Enrollment and Retention via Technology: Recruit, Retain, Reconnect, Colorado (November 2007) (analogizing podcasting service to an "electronic butler").

²⁷ See Murley, *supra* note 7, at 679. Examples of podcasts include news, sports, talk shows and even continuing legal education classes. Nelson, *supra* note 3, at 35-6. *What's on Apple TV*, <http://www.apple.com/appletv/whatson/podcasts.html> (last checked 1/31/09) (iTunesU includes free podcasts from HBO, NPR, ESPN and the New York Times as well as independents). Listening to different podcasts can provide ideas for ways to use podcasts. To find more podcasts, see directories of legal blogs as a resource. Justia's Blawgs.FM (<http://blawgsfm.justia.com/>) is a directory and search engine for law-related podcasts; Blawg.com's Blawg Directory has podcasts categories. (<http://www.blawg.com/Listing.aspx?CategoriesID=160>); Morgan, *supra* note 20; Tonsing, *supra* note 6, at 15.

²⁸ Ambrogi, *supra* note 21, at 21. Sneddon, *supra* note 8; Murley, *supra* note 7, at 679 (explaining how podcasts can be basic or sophisticated, the audio recording can be done by an IT

service.²⁹ Podcasts can be posted in different places, such as a course web page or iTunesU, depending on whether the podcast is open to only individual students, all the students in a class, or to the public.³⁰

The prevalence and quality of law-related podcasts has increased in the last few years. In February 2005, only a handful of legally related podcasts existed.³¹ Since then, podcasts have become mainstream, especially when in June 2005 Apple added podcasts to iTunes.³² Now a range of good quality podcasts on various topics are produced for and by lawyers.³³

department or individual). For more information on getting started in creating your own podcasts, see J. Angelo Racoma, *Beginner's Guide to Podcasts and Podcasting (Plus: How to Create a Basic Podcast of Your Own)*, FOREVER GEEK, April 6, 2006, http://forevergeek.com/geek_articles/beginners_guide_to_podcasts_and_podcasting_plus_how_to_create_a_basic_podcast_of_your_own.php; Connie Crosby, *Are you Ready for Podcasting?* LLRX.COM, March 15, 2006, <http://www.llrx.com/columns/tao4.htm>. Sometimes a podcast may provide even more current reporting on technology cases. See Murley, *supra* note 7, at 679 (suggesting using Camtasia for teaching legal research when a simple audio recording may not be enough; Camtasia records what is on the computer screen and synchronizes it with the audio). Other software can also coordinate audio files with PowerPoint or screenshots. *Id.* at 679. Depending on how you record the audio file for a podcast, it may need to be converted to an MP3 file using software such as SWITCH. For more information on Audacity, see <http://audacity.soundforge.net>.

²⁹ Murley, *supra* note 7, at 679; Balleste, *supra* note 5, at 10.

³⁰ Sneddon, *supra* note 8 (explaining podcasts can be posted in different places, such as a course webpage); Connon, *supra* note 15. For an overview of iTunesU, see <http://www.apple.com/education/mobile-learning/>

³¹ Ambrogi, *supra* note 21, at 21 (stating that podcasting would be the next big thing in continuing legal education); *id.* at 21.

³² See <http://news.softpedia.com/news/Apple-Unveils-New-iPods-and-Puts-Podcasts-in-iTunes-3920.shtml> (June 29, 2005; last checked October 14, 2008) (stating how Apple puts podcasts in iTunes and how this association represented the beginning of content-distribution revolution); see also www.iTunesU.com. See *supra* note 22. iTunesU gives 500 gigabytes of free space to Suffolk on iTunes. American University's Washington College of Law was the first law school to offer podcasts through iTunes U in the Fall of 2005. Fehling, *supra* note 2, at 34. One hundred forty countries downloaded their podcasts in 2006. *Id.* at 34. There were more than 77,000 downloads of the school's 270 public podcasts and student's downloaded class lectures approximately 50,000 times in 2006. *Id.* at 34. At that time approximately two dozen faculty were recording their lectures for podcasting. *Id.* at 34; Vogeles, *supra* note 5, at 5; Brock Read,

II. Why Use a Podcast?

Before creating podcasts, professors should carefully review and consider the benefits and challenges.³⁴ Numerous pedagogical and practical reasons support a professor's use of podcasts to supplement students' learning. While some challenges exist, overall, the benefits outweigh the possible drawbacks.

A. Benefits

Podcasts can appeal to students' different learning styles as the increased use of technology has influenced the way students learn.³⁵ A professor's use of podcasts recognizes and

Abandoning Cassette Tapes, Purdue U. will Podcast Lectures in Almost 50 Courses This Fall, CHRON. OF HIGHER EDUC., Sept. 9, 2005 (Read I); Brock Read, *Lectures on the Go: As More Colleges Use 'Coursecasting,' Professors are Split on its Place in Teaching*, CHRON. OF HIGHER EDUC. Oct. 28, 2005 at A39 (Read II); Jeffrey R. Young, *Stanford U. Makes Podcasts of Lectures, Games, and Music Available Through Apple's iTunes*, CHRON. OF HIGHER EDUC., Nov. 4, 2005; Brock Read, *Berkeley Offers Free Podcasts of Courses through iTunes*, CHRON. OF HIGHER EDUC., May 5, 2006 at A44 (Read III); See Robert J. Ambrogi, *Ten Legal Podcasts to Keep You Informed*, Law Technology News available at <http://www.law.com/jsp/legaltechnology/pubArticleLT.jsp?id=1202425163749> (last checked 1/31/08) (noting how podcasts often have a short life and come and go, recognizing that five of the ten podcasts listed in his 2005 articles had disappeared or been dormant); *What's on Apple TV*, <http://www.apple.com/appletv/whatson/podcasts.html> (last checked 1/31/09) (noting more than 130,000 audio and video free podcasts are available on iTunes).

³³ Ambrogi, *supra* note 21, at 21 (providing examples of law-related podcasts); Ambrogi, *supra* note 32 (noting how podcasting is still "alive and well" in the legal field and recommending ten podcasts as essential for lawyers); See Skalbeck, *supra* note 7; Fehling, *supra* note 2, at 34 (noting how many continuing education events are podcast); Podboy, *supra* note 6, at 16, 17; *UB Law School Podcasts Focus on Law and Society*, *supra* note 8; Ambrogi I, *supra* note 6, at 16; Ambrogi II, *supra* note 6, at 14; Cannon, *supra* note 15; Lore, *supra* note 6; Read III, *supra* note 32; Young, *supra* note 32.

³⁴ See Jane Kent Gionfriddo, Daniel L. Barnett, & E. Joan Blum, *A Methodology for Mentoring Writing in Law Practice: Using Textual Clues to Provide Effective and Efficient Feedback*, 27 QUINNIPIAC LAW REVIEW (forthcoming January 2009) (manuscript at 38, available at <http://ssrn.com/abstract=1264390>). Harris, *supra* note 5, at 551; Read I, *supra* note 32; Read II, *supra* note 32.

³⁵ Gerdy, *supra* note 6, at 265; see *supra* no. 20. Trends of technology use are increasing in undergraduate and secondary education. See *supra* note 9 and accompanying text; Tracy L.

utilizes the use of technology in academia and the legal field. Teaching through podcasts is consistent with the trend of increased use of technology in law practice and academia.³⁶ The use of podcasts harnesses the technological experience and expertise of today's students.³⁷ In addition, podcasts also meet students' increasing demand for use of technology by their law professors.³⁸

Teaching through the technology of podcasts is most effective if it serves a pedagogical goal, not just for the sake of using technology.³⁹ The improper use or abuse of technology can hinder students' learning.⁴⁰ Depending on the particular use of podcasts, the pedagogical goals

McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?* 9 LEGAL WRITING: J. LEGAL WRITING INST. 119, 133-34 (2003). *Podcasting in the Classroom*, *supra* note 2, at 8.

³⁶ Gerdy, *supra* note 6, at 263; *see supra* notes 5, 6, & 10 (discussing increased use of technology in practice and academia). Lasso, *supra* note 5, at 47-52; Voegelé, *supra* note 5, at 3; Lum, *supra* note 7; Mikat, *supra* note 5; *Podcasting in the Classroom*, *supra* note 2, at 7-8.

³⁷ Gerdy, *supra* note 6, at 263; *Podcasting in the Classroom*, *supra* note 2, at 8.

³⁸ Gerdy, *supra* note 6, at 263; *see supra* n. 11. Trends of technology use are increasing in undergraduate and secondary education. *See supra* note 9 and accompanying text. *See also* McGaugh, *supra* note 35, at 143-44; Balleste, *supra* note 5, at 8-9; Smith, *supra* note 18, at 253; *UB Law School Podcasts Focus on Law and Society*, *supra* note 8.

³⁹ Molly Warner Lien, *Technocentrism and the Soul of the Common Law Lawyer*, 48 AM. U.L. REV. 85, 89-90 (1998); Jill Schachner Chanen, *Profs Kibosh Students' Laptops: More Law Schools are Banning Them as a Distraction--or Worse*, 93 A.B.A. J. 16 (2007); Francis J. Carney, *A Few Words of Caution About Computer Presentations*, 15 Utah Bar J. 14 (criticizing the use of Powerpoint); *See Gerdy*, *supra* note 6, at 293 (describing factors supporting a decision to use technology in law teaching as: trends in law practice, technical experience of law students, and cognitive processing). Gerdy advocates that the use of technology should have a specific learning objective, must meet that objective, and be suited for that objective. *Id.* at 273-74; Beldarrain, *supra* note 5, at 139-40.

⁴⁰ Lien, *supra* note 39, at 85-6; Nancy G. Maxwell, *From Facebook to Folsom Prison Blues: How Banning Laptops in the Classroom Made Me a Better Law School Teacher*, 14 RICH. J.L. & TECH 4, 1 (2007); Ray Fisman, *The \$100 Distraction Device: Why Giving Poor Kids Laptops Won't Improve Their Scholastic Performance*, SLATE, June 5, 2008, <http://www.slate.com/id/2192798/>. Francis J. Carney, *A Few Words of Caution About Computer Presentations*, 15 Utah Bar J. 14 (discussing Powerpoint); *see also* Thomas Benton, *On Academic in America, On Stupidity, Part 2*, available at

may be different; however, the general goal should relate to enhancing students' law school experience.⁴¹

Podcasts supplement students' learning in numerous ways. The simplicity, portability, and convenience of podcasts provides a service for law students by increasing the accessibility of educational instruction on students' own timetables and terms outside of the classroom and after professors' office hours or student conferences.⁴² Students' schedules are busy and different, resulting in students multitasking.⁴³ Students can listen to podcasts anytime and anywhere in an environment and time that they choose, i.e, while at the gym, walking a dog or commuting.

Podcasts appeal to different learning styles⁴⁴ and can increase students' ability to comprehend material and their satisfaction with the learning process.⁴⁵ Podcasts promote student-centered learning and allow students to listen when they are ready to learn.⁴⁶ Students

<http://chronicl.com/jobs/news/200809/2008090501c.htm> (discussing how technology is a contributing factor to the intellectual degradation of the youth today but also part of the solution); Santovec, *supra* note 11, at 1.

⁴¹ Cf. Gerdy, *supra* note 6.

⁴² Sneddon, *supra* note 8. Gerdy, *supra* note 6, at 273 (discussing student-centered learning); Kirsten A. Dauphinais, *Valuing and Nurturing Multiple Intelligences in Legal Education: A Paradigm Shift*, 11 WASH. & LEE R. & ETHNIC ANC. L.J. 1 (2005).

⁴³ Gerdy, *supra* note 6, at 263 (2005). Trends of technology use are increasing in undergraduate and secondary education. See McGaugh, *supra* note 35, at 125.

⁴⁴ See generally Robin A. Boyle & Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 Alb. L. Rev. 213 (1998); Robin A. Boyle & Lynne Dolle, *Providing Structure to Law Students--Introducing the Programmed Learning Sequence as an Instructional Tool*, 8 LEGAL WRITING 59 (2002); Robin A. Boyle, *Applying Learning-Styles Theory in the Workplace: How to Maximize Learning-Styles Strengths to Improve Work Performance in law Practice*, 79 ST. JOHN'S L. REV. 97 (2005); see Gerdy, *supra* note 6, at 267 (explaining that no single teaching method works for all students).

⁴⁵ Gerdy, *supra* note 6, at 273-74; Harris, *supra* note 5.

⁴⁶ Gerdy, *supra* note 6, at 270 (discussing how "point-of-need learning" aids students' comprehension at the point of their greatest need when they are truly "ready to learn" such as when they are sitting down and struggling with writing a draft of a memorandum). See Mikat, *supra* note 5.

who learn best through auditory instruction or students that need to hear things more than once will benefit from using podcasts as a teaching tool. Students can listen to podcasts or a portion of a podcast as many times as needed, at their own pace.⁴⁷ They can self-select the timing and order of their learning to reinforce or clarify a point, to review material or to receive feedback.⁴⁸ Students who understood material discussed in class or from assigned reading can move forward while other students can spend additional time listening to podcasts.⁴⁹ Students can fast-forward, rewind, or repeat a podcast as needed.

Students can actively engage and take ownership for their understanding of the content in the podcast in several ways. Through listening to the podcast, taking notes or writing important content from the podcast in a format or way that makes the most sense to them, and then reading their notes, students can confirm their understanding. This allows students to actively engage instead of just passively listening.⁵⁰ Podcasts can provide more in-depth suggestions for students in a more conversational tone outside of class that is not overwhelming and does not take up class time.⁵¹ Thus, the material in podcasts is meant to supplement, not replace class or good teaching, so students will not stop going to class.⁵²

⁴⁷ Sneddon, *supra* note 8; *see supra* note 46 and accompanying text.

⁴⁸ *See supra* note 47.

⁴⁹ Gerdy, *supra* note 6, at 273.

⁵⁰ In large law school classes, the Socratic method does not lend itself to having conversations with each student. Even though Socratic method may seem interactive, as opposed to a lecture, students can tune out if they are not called on. *See* Herb Ramy, *Success in Law School* (Carolina Academic Press 2007); Fehling, *supra* note 2, at 34 (reporting students in courses that were podcasts were liberated from taking notes and became more engaged in class).

⁵¹ Types of critique and the format they take are varied. Most often professors either type or give hand written comments. Daniel L. Barnett, *Form Ever Follows Function: Using Technology to Improve Student Writing in Law School*, 42 VAL. U. L. REV. (forthcoming 2008) (Barnett I); Daniel L. Barnett, *Triage in the Trenches of the Legal Writing Course: The Theory and Methodology of Analytical Critique*, 38 U. TOL. L. REV. 651, 652 (2007) (Barnett II). Critiquing

Students who learn best from listening may benefit from the use of podcasts. The tone, inflection, and emphasis in a professor's voice may indicate importance of material a student may not get from a handout or reading text. Through a podcast a professor is able to give a student the reader's perspective by placing the student in the audience's role.⁵³ A student may be able to comprehend material better when listening to a podcast without taking notes, compared to worrying about taking notes while also trying to listen to a professor during class.⁵⁴

Other practical reasons support using a podcast when providing a critique or feedback on a student's memorandum. If a professor's handwriting is not legible and a professor does not want to type comments because she does not want to be tied to a computer when giving feedback, a podcast is another option. Podcasts allow a professor to spend less time repeatedly answering questions to decipher their handwriting or explaining what a comment means.⁵⁵ In addition, a new teaching tool, such as podcasts, can invigorate an experienced teacher with new

a memorandum via a podcast means the memorandum still looks like what the student handed in instead of a sea of red ink or several typed or handwritten pages of comments attached to the memorandum. When podcasting, a professor is less likely to edit. Elisabeth Keller, *Audiotaped Critiques of Written Work*, THE SECOND DRAFT Vol. 14 No. 1 at 13-14 (November 1999).

⁵² Professors' concerns regarding the use of podcasts may include decreased attendance or lack of attention; however, this concern has not been validated. John P. Mayer, *2007 Law Student Podcast Survey Results*, May 24, 2007, http://caliopolis.classcaster.org/blog/legal_education_podcasting_project/207/05/24/20007podcastsurvey (on file with author).

⁵³ For example, in a podcast critiquing a student's memorandum, a professor can read back a student's awkward or run-on sentence to enable the student to identify or recognize his problem.

⁵⁴ See Fehling, *supra* note 2, at 34 (reporting students in courses that were podcasts were liberated from taking notes and became more engaged in class).

⁵⁵ Instead of answering questions regarding what the professor's handwriting says, a professor can answer more substantive questions about the critique or how to incorporate the critique into the next writing assignment.

ideas and enthusiasm.⁵⁶ Podcasts are simple and convenient for professors and students to use. Finally, podcasts involve modest amounts of time and money.⁵⁷

In addition to the pedagogical and practical benefits, podcasts have great marketing potential for the law school, law professor, and legal writing course. The public relations factor should not be the only reason to use podcasts, but it may be an ancillary benefit.⁵⁸ The U.S. News and World Report rankings of law schools and specialty programs have driven marketing efforts of many law schools.⁵⁹ Indeed, the battle of the brochure has been just one result. Thus, marketing a law school, a specialty program, or faculty members in a unique and innovative way, such as through podcasts, appeals to incoming students, as well as current students, alumni, practitioners, and judges around the world. Also, podcasts provide accessible and portable marketing potential.⁶⁰

⁵⁶ When faced with a pile of papers to grade or entering a new academic year or semester, experienced teachers may find new teaching tools and new ways to connect with students a welcome relief. See McGaugh, *supra* note 35, at 144 (warning that if professors fail to connect with Generation X students it will result in a wider gap between professors and students).

⁵⁷ Costs involved in using a podcast are minimal because of free software, such as Audacity, the cost of a microphone or a cost of a digital recorder. The time involved in creating a podcast is minimal, depending on if you are using a script or recording a class where lecture notes are already created. In the long run, even if creating a podcast takes time, the professor may find she will have to take less time to answer students' questions because there may be less confusion about an assignment or material if students listen to a podcast.

⁵⁸ *UB Law School Podcasts Focus on Law and Society*, *supra* note 8; Lum, *supra* note 7; Harris, *supra* note 5, at 550.

⁵⁹ See <http://grad-schools.usnews.rankingsandreviews.com/grad/law> (listing rankings of law schools). Many of the law schools with free public podcasts available on iTunesU are also in the top ten of law schools ranked by U.S. News and World Report. See <http://www.iTunes.com>.

⁶⁰ See <http://www.law.suffolk.edu/itunes> for examples of Suffolk's admissions office's podcasts. Podboy, *supra* note 6, at 17; Balleste, *supra* note 5, at 9; Lum, *supra* note 7; Ambrogi, *supra* note 32 (last checked 1/31/09) (ranking a law firm's weekly legal update podcast in top ten, noting how it demonstrates how law firms can use podcasting as a marketing strategy).

Podcasting provides some unique marketing features. Unlike other marketing efforts, podcasting services, such as iTunes, provide tracking statistics of how many people downloaded or listened to the podcasts.⁶¹ In addition, if the professor's podcasts are available on the iTunes store, they may be featured as the most downloaded or a new and noteworthy podcast.⁶² This spotlight highlighting a professor's podcasts may appeal to listeners that a law school may not have reached through traditional marketing efforts.

In addition, podcasts provide a subtle marketing effort. For example, the marketing brand of a law school is often inserted in the podcast as album art, bumpers or bookends.⁶³ A consistent voice can introduce and conclude a podcast with the name of the podcast and the school and/or professor.⁶⁴ This gives different podcasts consistency and branding.⁶⁵

B. Challenges

Although many benefits result from using podcasts, challenges may also occur. Some students may be skeptical of podcasts or perceive it as more work for them or too high tech.⁶⁶

⁶¹ iTunes U provides schools with statistical reports each week tracking the number of downloads. (on file with author)

⁶² iTunes U ranks the most downloaded podcasts and highlights new and noteworthy podcasts. See www.iTunesU.com. For example, the podcast of Kathleen Elliott Vinson's annotated sample good memorandum was the second most downloaded podcast in the law category (last checked Oct. 10, 2008). Also, the weekly legal writing tips were featured in the new and noteworthy section on the main page of iTunes U.

⁶³ See www.law.suffolk.edu/itunes (podcasts include weekly legal writing tips, legal research refresher, and advice regarding transitioning from One-L to summer legal employment). "Bumpers" are used at the beginning and end of each podcast.

⁶⁴ See www.law.suffolk.edu/iTunes/.

⁶⁵ See www.law.suffolk.edu/iTunes/. Dean Fred Aman, the Dean of Suffolk University Law School is an accomplished jazz musician and plays the jazz drums in the music at the beginning of the Suffolk LPS podcast series, "Transitioning from One-L to Summer Legal Employment." Harris, *supra* note 5, at 550.

⁶⁶ Distributing directions for students regarding how to access and listen to the professor's podcasts as well as offering training for professors regarding how to create podcasts can alleviate

Creating and using podcasts involves a small learning curve for the professor and student. Professors and/or students may need technical support at their institution. With any use of technology, technological glitches can also occur.⁶⁷ Also, some content used within podcasts may be subject to copyright law.⁶⁸ Finally, when recording classes for a podcast, concerns regarding inhibiting class discussions, FERPA, privacy, confidentiality and permission to record may need to be reviewed, such as in states like Massachusetts where all parties to a conversation must agree to the recording.⁶⁹ Professors might also want to include copyright/use restrictions to bar a student from selling the class podcasts via the internet.

Using a podcast may not be quicker or more convenient than conveying the same information in a traditional way. Recording a podcast requires the professor to be in a quiet location to record instead of grading papers in a public location with noise, such as a Starbucks or on a train or in an airport.⁷⁰ Also, unlike typing comments, a professor cannot use a template

concerns and diminish any learning curve. See Kathleen Elliott Vinson, Andy Perlman, & Andrew Beckerman-Rodau, *Teaching with Technology*, Suffolk Faculty Colloquial (January 2008); Kathleen Elliott Vinson, *Podcasting in LRR&W: Downloading the Greatest Hits*, Legal Writing Institute Biennial Conference, Indiana (July 2008). When giving the choice of receiving voice comments in personal podcasts or receiving more traditional critiques, such as type written comments, 100% of students in my class chose to receive voice comments because they found them helpful.

⁶⁷ For podcasts of individual student memoranda, professors should give students a deadline or date to listen to comments to confirm students received their voice comments without any problems (preventing a situation such as the following: a student waited to listen to voice comments until weekend before the paper was due and realized it was the voice comments for another student).

⁶⁸ Voegelé, *supra* note 5, at 5-6.

⁶⁹ These concerns may depend on whether the podcast of the class is available only to students within the class or to the public. Also, a professor could record a part of her class, such as the beginning few minutes of class when the professor reviews concepts or sets the context or goals, instead of the whole class involving student participation.

⁷⁰ This problem could be considered a benefit; however, because it requires the professor's sole attention in a quiet setting.

when podcasting a critique of a memorandum.⁷¹ Depending on the type of podcast, professors may need to make a script before recording. If a professor does not use a script, she may not have a hard copy of her podcast, although she would have a copy of the media file.⁷²

Issues or challenges specific to audio files may need to be considered. Professors should be careful of their tone. If they are tired or frustrated, the student will hear this inflection in her professor's voice.⁷³ Depending on how long or how often the professor records a podcast, a professor's voice may become hoarse or if a professor has a cold or is sick, it could affect the quality of the sound of the podcast. A professor may also want to make a twenty second test recording to make sure everything is working. This avoids making long recordings and then discovering something was not working properly.

Overall, the numerous benefits and the potential to use podcasts as a teaching tool outweigh the challenges. Podcasts have the power to benefit students, professors, and the law school because it enhances teaching, learning, and marketing. The possible uses of podcasts and the times they are used are only limited by the professor's imagination and innovation.

⁷¹ When typing comments on a student's memorandum, a professor could create macros or use copy and paste instead of retyping the same or similar comments. Podcasting requires comments to be completely individual because a professor cannot use templates; however, a professor could write down or have a checklist of common critiques.

⁷² Not having a typed copy of comments for a students' memorandum may seem disconcerting to a professor who may be meeting with students for conferences; however, voice recognition software may help or a professor can make a checklist or listen to comments again before meeting with a student. Another option is for the student to email the professor the media file of the specific comments he has a question about. Because podcasts allow professors to offer in-depth critiques, such as alternative suggestions to a student's writing problem or a reference back to something discussed in class, rarely do students have questions about what the professor meant in the comment. Also, voice comments require students to take ownership of the comments instead of merely checking a list of critiques made by the professor.

⁷³ Some may view tone as a benefit of the podcast because a student would not pick this up in a written or typed critique. This is true because research shows most communication is not just the words used; inflection often communicates more than the words.

III. How and When Faculty Can Use Podcasts

Professors can use podcasts in various ways and at different times throughout the semester. This section of the Article will provide different ideas of effective uses of podcasts in legal writing courses and discuss when they are used.⁷⁴ The examples track the chronological order of a typical course. Specific examples and illustrations of podcasts in legal writing courses include, but are not limited to, the following: recording a “think aloud” podcast--modeling how to analyze a case or statute during Orientation or the first days and weeks of school; using general podcasts to review class discussions, assignments, or instructions for a memorandum; using podcasts to annotate a sample good memorandum by discussing the good aspects of the organization, analysis, and writing; creating podcasts discussing common problems or pitfalls in memoranda; using personal podcasts to give individualized critiques/feedback on students’ memoranda; and using podcast series to provide tips on discrete topics, such as weekly writing tips, research refreshers, and advice regarding transitioning from law school to legal employment.

A. “Think Aloud” Podcast

One of the most important skills in law school is students’ ability to read the law efficiently and accurately.⁷⁵ Students entering law school generally do not have familiarity with

⁷⁴ Analogous uses of podcasts exist in exam or seminar courses. *UB Law School Podcasts Focus on Law and Society*, *supra* note 8.

⁷⁵ Leah M. Christensen, *Legal Reading and Success in Law School: An Empirical Study*, 30 SEATTLE U. L. REV. 603, 606 (2007) (Christensen I) (discussing reading strategies employed by law students); Leah M. Christensen, Assistant Professor of Law, Univ. of St. Thomas Law Sch., *Legal Reading and Law School Success: An Empirical Study*, Institute of Law School Teaching, (June 8, 2007) (Christensen II); Ruth Anne McKinney, *Reading Like a Lawyer* (Carolina Academic Press 2005) (explaining reading strategies needed to read law like an expert).

legal discourse,⁷⁶ working with legal sources, assessing legal materials, or engaging in the analytical process involved in “thinking like a lawyer.”⁷⁷ Thus, at the beginning of the first semester of the first-year of law school, students often struggle with reading a case or statute efficiently and accurately.⁷⁸

To be proficient at reading, law students should follow four steps: 1) read for context; 2) skim; 3) actively read (by taking notes, looking up words, questioning and predicting); and 4) engage in post-reading exercises to confirm their understanding.⁷⁹ According to an empirical study, a correlation exists between reading strategies and law school success.⁸⁰ Higher performing students employed different reading strategies than less successful students.⁸¹ Higher performing students connected reading a case to a purpose, established the context of the case,

⁷⁶ Kathleen Elliott Vinson, *Improving Legal Writing: A Life-long Learning Process and Continuing Professional Challenge*, 21 *Touro L. Rev.* 507, 531-32 (2005) (discussing novice discourse theory).

⁷⁷ Gerdy, *supra* note 6, at 275-76.

⁷⁸ McKinney, *supra* note 75 (discussing efficient and effective reading strategies to read law like an expert). *Cf.* In his book, *One-L*, in describing his first year of law school at Harvard, Scott Turow stated that “reading cases is like stirring concrete with my eyelashes.” Scott Turow, *One-L* (Grand Central Publishing 1997).

⁷⁹ McKinney, *supra* note 75 and accompanying text.

⁸⁰ Christensen I, *supra* note 75, at 603-04; Christensen conducted an empirical study by asking twenty-four first-year students (twelve higher performing=top 50%) and 12 lower performing (bottom 50%) to read an appellate case as if they were a practicing attorney reading the opinion to prepare for a meeting with a client. Students then recorded their thought process as they read the case. She then identified what type of reading strategies students were utilizing and the frequency with which each student used a particular strategy. She then reviewed whether there was a connection between their use of strategies and their law school GPA. The results showed a statistical correlation between the way in which students read and their law school GPA. *Id.* at 615-16; *see also* Gerdy, *supra* note 6, at 278-79 (explaining research has tied critical reading to students’ skills to write analysis of complex legal issues).

⁸¹ Christensen I, *supra* note 75, at 625.

resolved confusion, and used various reading strategies.⁸² In contrast, lower performing students relied too much on default reading strategies, such as overusing highlighting, underlining, margin notes, and paraphrasing.⁸³

Thus, to help students succeed in law school, professors can teach students by modeling effective and critical reading strategies used by high performing students.⁸⁴ Professors can model reading strategies in a “think aloud” in class where the professor spends part of class showing the students how the professor would read a case by stating her thought process as she reads.⁸⁵ This technique can be helpful, but it takes class time and only benefits students sitting in class, paying attention, and understanding the concept and how to apply it in the future.

Instead of, or in addition to, a “think aloud” demonstrated in the classroom, creating a “think aloud” podcast can model effective reading strategies outside of class during the first few weeks of the semester.⁸⁶ To show students how to critically read a case or statute, a professor records her thought process and reactions as she reads a case or statute, to demonstrate for

⁸² *Id.* at 625. Higher performing students used the following reading strategies: they spent 21.43% of time using default strategies (highlighting, underlining, making margin notes, paraphrasing) and 45.70% in problematizing reading strategies (hypothesizing, problem posing, synthesizing, questioning) and 32.87% in rhetorical reading strategies (connecting to purpose, connecting to prior knowledge, evaluating). In contrast, lower performing students spent 77.48% engaged in default strategies; 12.54% in problematizing strategies, and 9.56% in rhetorical strategies. *Id.* at 625.

⁸³ *Id.* at 629-630.

⁸⁴ See Christensen I, *supra* note 75, at 633; Christensen II, *supra* note 75.

⁸⁵ See Christensen I, *supra* note 75, at 617-19; Christensen II, *supra* note 75. In addition to performing a “think aloud” in class, other suggestions to help students read like a lawyer are: 1) provide background knowledge and context when introducing a case, 2) give students a purpose for which to read, and 3) revise your case brief format. Christensen II, *supra* note 75.

⁸⁶ *Cf.* Gerdy, *supra* note 6, at 278-85 (explaining the idea of creating or using a reading cases video to teach student how to read cases like lawyers to emphasize how lawyers read cases differently than undergraduates or other graduate students). To listen to a “read aloud” or “think aloud” podcast, see <http://www.law.suffolk.edu/iTunes/>.

students how to employ critical reading skills.⁸⁷ A professor may want to use a case the students were recently required to read, such as a closed memorandum case.⁸⁸ It also helps motivate students to listen to the “think aloud” podcast because it is a case they are responsible for reading and understanding to write the closed memorandum.

In the “think aloud” podcast, a professor can model numerous critical reading skills. A professor could connect the case with a purpose, giving the reader a focus, both at the outset of reading the case and throughout reading the opinion.⁸⁹ Another reading strategy that professors can demonstrate in the think aloud podcast is how to use context to understand how and why the case is important.⁹⁰ For example, the professor could record the following thoughts as she read the case: what court decided the case, was the case was binding or persuasive, when was the case decided, was there a dissent, who wrote the opinion, and what is the overview of the subject matter or main issues involved in the case.⁹¹ Another example would be demonstrating how the reader voices and resolves confusion.⁹² The professor could record in the podcast what she does when she gets confused at some point in the opinion.⁹³ For example, the professor could “talk back to the text,” by summarizing the facts of what happened in the case, hypothesizing about what the issue seems to be about, noting when to look up an undefined term, rereading parts of

⁸⁷ See Christensen I, *supra* note 75, at 646.

⁸⁸ In her presentation at the Institute for Law School Teaching, Leah Christensen cautioned not to do the think aloud too early in the semester because it may increase the students’ anxiety as they struggle to read their first few cases of law school. Christensen II, *supra* note 75.

⁸⁹ Connecting the purpose behind reading the case shows students how the reader is not being overly distracted and overwhelmed by details in the opinion. Christensen I, *supra* note 75, at 636; Christensen II, *supra* note 75.

⁹⁰ Christensen I, *supra* note 75, at 636; Christensen II, *supra* note 75.

⁹¹ Christensen I, *supra* note 75, at 640; Christensen II, *supra* note 75.

⁹² See Christensen I, *supra* note 75, at 643-44; Christensen II, *supra* note 75.

⁹³ See Christensen I, *supra* note 75, at 640-44; Christensen II, *supra* note 75.

the opinion that are confusing, drawing tentative conclusions, and trying to clarify her understanding.⁹⁴

B. Review Podcast

A second example of an effective use of podcasts in legal research, reasoning, and writing is to create a podcast that reviews material discussed in class, as well as assignment instructions for an upcoming memorandum assignment.⁹⁵ For example, during the first few weeks of law school, many students discuss and analyze the law, for the purpose of making a prediction of a likely outcome in their client's case in an objective closed interoffice memorandum assignment.⁹⁶ In the first few weeks of classes, a professor can record a podcast, reviewing the organization and presentation of the objective analysis of the legal issues in the closed memorandum assignment. During the review podcast, the professor could review the organization of the analysis she recommends to follow, such as identifying the relevant issue or stating the conclusion regarding how the law applies to the client's facts, stating the relevant rules by synthesizing the law, and providing illustrations of how previous courts applied the law in different factual scenarios and why.

The podcast can further emphasize how students must show instead of merely tell the reader how they reached their prediction, by discussing what should be included in case illustrations to fully explain the law, including the relevant facts, holding, and explicit and

⁹⁴ See *supra* note 93 and accompanying text.

⁹⁵ The idea for a review podcast originates with Professor Judith B. Tracy, Boston College Law School.

⁹⁶ A typical closed memorandum assignment involves providing students with cases and/or a relevant statute and client facts. Students are then asked to write an objective interoffice memorandum to a senior partner predicting the outcome in their client's case. Often it involves an element test where students must analyze whether a client has satisfied one or all of the elements in order to have a cause of action.

implicit reasoning of the courts. A professor could emphasize how positive and negative cases should be included when giving a thorough explanation of the law.

After explaining the objective analysis of the law relevant to the client's issue, a professor could review how students should apply that law to their client's facts, showing the reader how their client's case is like or unlike the precedent. The podcast can guide the reader through the steps necessary to make a thorough application of the law to their client's facts. The professor can explain how to state the point of the case comparisons, make fact to fact analogies between the client's case and the precedent, and apply the reasoning of the courts. In the podcast, the professor can remind students to discuss possible counterarguments or counteranalysis.

The review podcast can also reassure students that the closed memorandum is their first attempt at legal writing, which may be a different type of writing than what students are used to in undergraduate or other graduate studies. It can also prompt the student with questions to consider as they are drafting their objective memorandum, which they could use as an editing checklist when writing, such as, "have you organized the explanation of the law around points/ideas instead of by case, and have you included the relevant facts, holding, and reasoning, if necessary, when explaining relevant cases?"⁹⁷

In addition to a podcast reviewing the presentation of the relevant law and how it applies to the client's case in the discussion section of a closed memorandum, another podcast could

⁹⁷ Other questions students could use as a guide when they are editing their memoranda include: have you stated the rule concisely and accurately, synthesizing the law; have you incorporated policy, where appropriate? If a thesis paragraph is necessary, have you given the reader a roadmap of the relevant issues and analysis of them?

review the format of an objective interoffice memorandum, review and explain the additional parts of the memorandum, such as the heading, question presented, brief answer, facts section, and conclusion. In the podcast, the professor can review what content should be included in each section, the order of the sections, the tone of the memorandum, as well as any convention or organization of each section they should follow.

For example, when reviewing the facts section of an objective memorandum, the professor can remind the students that they should focus on the legally significant facts, and any background or contextual facts. The podcast can caution students to state facts objectively, avoiding stating any legal analysis or argument in that section. Also, the podcast can remind students to check that any fact mentioned in the discussion section should first be included in the facts section.

Other format reminders such as font, page numbering, margins and page limits can be reviewed. This podcast will help students to understand the big picture and context for their analysis as well as help when they are at the final editing, proofreading stage. This type of podcast can supplement a format handout or sample memorandum.

C. Annotated Sample Good Memorandum Podcast

Students often want samples to use as a guide when they are writing their own memorandum assignments, but distributing or posting a sample memorandum for students may not be as effective as a podcast because often students try to mechanically emulate the sample because they do not understand why the sample is good.⁹⁸ A podcast discussing a sample good

⁹⁸ For example, if you provide students with a sample memorandum with the procedural posture of a motion to dismiss, even if students are writing a memorandum in support of a motion for summary judgment, they will often mechanically write the memorandum to support or oppose a

memorandum can aid the student's comprehension of the reasons the sample is good.⁹⁹ Students could use this podcast as a guide as they draft their memorandum assignment. Also, students can listen to the podcast several times or at different times in their writing process.

In the podcast, the professor could discuss the good characteristics of the memorandum, such as how the sample followed a logical organization, and then discuss each section, then each paragraph, down to highlighting particularly effective and concise sentences. The depth of the analysis can be examined, including whether the explanation of the law was thorough and accurate and whether the application of the law to the client's facts was fully developed and logical. The format of the memorandum can also be reviewed to show the correct order of sections as well as the correct font, page numbering, margins, page limit, and even correct placement and form of the citations. As students listen to the podcast, they can follow along by viewing the sample.

D. Common Problems Podcast

A professor could also create a podcast discussing the common pitfalls or problems in a poorly written memorandum.¹⁰⁰ In the podcast, the professor could point out examples of what

motion to dismiss. Another example is if you provide a sample on a civil case but the students are writing their memorandum on a criminal case, they will often state that the defendant will be liable instead of guilty. *See also* Gerdy, *supra* note 6, at 286 (cautioning that when a single sample memorandum was distributed students would copy the language from the memorandum without understanding its relevance or recognizing their memorandum assignment involved a different issue. Printing several different samples may help).

⁹⁹ Gerdy, *supra* note 6, at 285-86 (discussing annotated sample memoranda database serves as models for writing and analytical purposes and prepares students for the how their critique would look on their own memoranda). To listen to a podcast of annotating a sample good memorandum, *see* <http://www.law.suffolk.edu/iTunes/>

¹⁰⁰ The bad memorandum would not be a student's memorandum, but rather a compilation of common mistakes. Similarly, a professor could create a podcast listing common problems

needs improvement, explaining deficiencies in the analysis, logic, organization, grammar, citation, or syntax. Students could listen to this podcast to avoid making these same types of common mistakes when they are writing or editing their memoranda. The podcast could be based on the common pitfalls predicted by the professor based on prior student mistakes or based on drafts the professor has reviewed.

The podcast could also be posted after students receive their memoranda back from their professor. Sometimes professors may distribute a common problems handout and discuss common problems in class when returning student papers to supplement students' individual critiques regarding the memorandum, provided by the professor. Discussing it in class results in several drawbacks. It can take up valuable class time. Also, students may not listen or fully comprehend the content because they have not received their papers back yet until the end of class. If they have received their memoranda back, they may not have thoroughly reviewed their individual critique they received, or they could have already moved on to focusing on the next assignment. Even if not discussed in class, students may not read a common problems handout as a result of their satisfaction or dissatisfaction of their grade on the memorandum or the critique they received.

E. Personal Podcast/Critique of Student Memorandum

Critiquing memoranda is a major responsibility of legal writing professors and a task that professors spend a huge amount of time completing.¹⁰¹ Professors often examine and search

without referring to a memorandum, but rather briefly explaining each problem on the list along with some examples and recommendations to improve them.

¹⁰¹ Gionfriddo, *supra* note 34, at 32-41.

for the most effective and efficient way to provide helpful critiques for their students.¹⁰² Instead of giving written or typed comments, faculty can record “personal podcasts,”¹⁰³ providing each

¹⁰² *Id.* See Barnett II, *supra* note 51; Barnett II, *supra* note 51, at 652; Mary Beth Beazley, *The Self-Graded Draft: Teaching Students to Revise Using Guided Self-Critique*, 3 LEGAL WRITING: J. LEGAL WRITING INST. 175, 176 (1997); Linda L. Berger, *Applying New Rhetoric to Legal Discourse: The Ebb and Flow of Reader and Writer, Text and Context*, 49 J. LEGAL EDUC. 155, 183-84 (1999); Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 LEGAL WRITING: J. LEGAL WRITING INST. 57, 57 (2000); Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1-2 (2003); Anne Enquist, *Critiquing and Evaluating Law Students' Writing: Advice from Thirty-Five Experts*, 22 SEATTLE U. L. REV. 1119, 1119-20 (1999); Anne Enquist, *Critiquing Law Students' Writing: What the Students Say Is Effective*, 2 LEGAL WRITING: J. LEGAL WRITING INST. 145, 146 (1996); Jane Kent Gionfriddo, *The “Reasonable Zone of Right Answers”*: Analytical Feedback on Student Writing, 40 GONZ. L. REV. 427, 428-29 (2004/05); Jessie C. Grearson, *Teaching the Transitions*, 4 LEGAL WRITING: J. LEGAL WRITING INST. 57, 57-8 (1998); Elizabeth L. Inglehart et al., *From Cooperative Learning to Collaborative Writing in the Legal Writing Classroom*, 9 LEGAL WRITING: J. LEGAL WRITING INST. 185 (2003); Steven J. Johansen, *“What Were You Thinking?”*: Using Annotated Portfolios to Improve Student Assessment, 4 LEGAL WRITING: J. LEGAL WRITING INST. 123, 123 (1998); Mary Kate Kearney & Mary Beth Beazley, *Teaching Students How to “Think Like Lawyers”*: Integrating Socratic Method With the Writing Process, 64 TEMP. L. REV. 885, 885-86 (1991); Philip C. Kissam, *Thinking (By Writing) About Legal Writing*, 40 VAND. L. REV. 135, 136-37 (1987); Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725 (1989); Carol M. Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561 (1997); James F. Stratman, *Teaching Lawyers to Revise for the Real World: A Role for Reader Protocols*, 1 LEGAL WRITING: J. LEGAL WRITING INST. 35 (1991); Judith B. Tracy, *“I See and I Remember; I Do and I Understand”*: Teaching Fundamental Structure in Legal Writing Through the Use of Samples, 21 TOURO L. REV. 297, 297-99 (2005); Robin S. Wellford-Slocum, *The Law School Student-faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255, 256-57 (2004). Benjamin Opipari stated in the LWI list serve: “Writing is a conversation” between people, not “one person saying something and the reader passively accepting it. The reader is constantly questioning, agreeing disagreeing, and reacting . . . so try to model comments after this conversation.” Posted on <http://www.lwionline.org> (listserv of the Legal Writing Institute).

¹⁰³ This Article uses the term “personal podcast” in reference to providing an oral critique of a student’s memorandum. Technically, the audio file is not a podcast in the strict sense of the word because it is not being “pushed” to the student/listener; however, for the purposes of this Article, it will be referred to as a podcast.

student with an individual oral critique of her memorandum. A personal podcast consists of a series of audio files containing the professor's feedback on the student's memorandum.¹⁰⁴

1. How Professors Create a "Personal Podcast"

When creating a personal podcast critiquing a student's memorandum, the professor first receives a copy of a student's memorandum. The professor may want to skim a hard copy of a student's memorandum to get an overall impression of the organization and substance of the analysis. Then, as the professor reads the memorandum, she should write a number in the margin of the student's memorandum and record a corresponding audio comment.¹⁰⁵ The corresponding numbered audio files can then be posted on a website, e-mailed, put on a flash drive or transferred to a student via a third party, where access is limited to the student who wrote the memorandum.¹⁰⁶

¹⁰⁴ The feedback is completely personalized rather than generic because no templates exist (although a professor could make a script of standard comments). The professor will spend less time answering questions about comments and instead get to spend more time on how the student plans to correct the problems, rather than re-identify issues raised in the comments or answer questions about what the professor meant by a comment or how to read a professor's handwriting.

¹⁰⁵ Each time the professor puts a number in the margin on a student's memorandum, she records a new corresponding numbered audio file.

¹⁰⁶ A personal podcast may not be any quicker than typing or handwriting comments. For example, an average personal podcast critiquing a student's fifteen to twenty page memorandum would take approximately one hour to ninety minutes. Although it may not be quicker, the professor spends an inordinate amount of time critiquing the memorandum, and it is a shame if a student quickly glances at the professor's comments and then rewrites the memorandum without ever having to go back and interact with the critique. Sometimes, if critiques are handwritten, although the professor may have spent an inordinate amount of time and energy writing them, students may not even be able to read any of the comments because of the illegible aspect of them. By creating a podcast, the students must listen to the podcast in order to rewrite the paper. It almost allows the professor to have a conference with the students to make sure she is on the right track to prepare the final memorandum. For example, a professor could provide an oral critique of a student's memorandum such as the following: "Because the explanation of the law in the memorandum is organized by case instead of by points of the cases to illustrate or explain

Students will receive a hard copy of the memorandum back, with the numbered comments in the margins. Students then listen to the audio file or personal podcast, reviewing the memorandum and listening to the corresponding oral comments, allowing the professor to have a conversation with each student, via this type of personal podcast, regarding the student's writing.¹⁰⁷ Some professors may want to also write a few edits or comments regarding citation or grammar, on the hard copy of the memorandum. They should refrain from writing a lot of comments or edits on the memorandum, as this type of commenting on the hard copy defeats some of the benefits and purposes of providing an oral critique in a personal podcast.

2. How Students Listen to a Personal Podcast

Instead of being a passive experience for students when they receive comments, students take ownership of the comments and their areas of writing weaknesses because they listen to the comments in their personal podcast several times and summarize them in their own words. Students actively engage with the comments at least three times. First, student should listen to the last comment, which summarizes the professor's overall impression of the student's memorandum, including the strengths in the memorandum and the global suggestions for the rewrite or improvement on the next assignment. Second, students should listen to each comment consecutively, without stopping the podcast. Third, students should listen to each comment, stop the podcast, and take notes that make sense to them of what they need to revise.

the law, it is difficult for the reader to digest the explanations and understand a holistic picture of the law." Another comment could be "remember to educate the reader about the relevant law. By omitting relevant cases, the reader does not have a thorough and accurate understanding of the negative cases. Also, anticipate the counterarguments and include counter analysis to show the reader the strengths and weaknesses in your client's case."

¹⁰⁷ Gionfriddo, *supra* note 34, at 38.

Students then review their own notes¹⁰⁸ to confirm their understanding. By transforming the comments into a form that makes the most sense to the individual student, she will get the most out of the comments to effectively use the feedback to revise her memorandum. Students should not merely transcribe the comments because they may not be absorbing them. In contrast, with a written or typed critique, instead of a podcast, the students' learning is more of a passive learning experience that does not always require that they return to the comments or critique. When listening to a personal podcast, a student is not merely trying to make the changes marked; the feedback is more about the student than the professor.

F. Podcast Series

1. Weekly Writing Tips

Professors can also create podcast series on discrete topics.¹⁰⁹ For example, in January of 2008, the Legal Practice Skills faculty at Suffolk University Law School created a weekly legal writing tips podcast series, publicly available for free on iTunes U.¹¹⁰ It allows anyone to subscribe to the podcast and automatically receive new content each week. Each week, a different professor records the podcast, ranging from about four to ten minutes in length.¹¹¹ The

¹⁰⁸ Students' notes may include lists, charts, bullets, sentences, annotations on the memorandum, and margin comments on the memorandum.

¹⁰⁹ The Legal Practice Skills faculty at Suffolk University Law School has created numerous podcast series. See <http://www.law.suffolk.edu/iTunes/>

¹¹⁰ Thanks to Professor Gabriel Teninbaum who coordinates all of the Legal Practice Skills Suffolk podcasts. See <http://www.law.suffolk.edu/iTunes/>. See also Jeannie Greeley, *Podcasts Make Mark on iTunes U*, SUFFOLK LAW: SUFFOLK LAW ALUMNI MAGAZINE, Fall 2008, at 4.

¹¹¹ Sneddon, *supra* note 8 (suggesting podcasts range from two to ten minutes). Professors benefit because the time and responsibility of creating different podcasts each week are distributed evenly among the faculty in the program. Professors also benefit from listening and

topic for the writing tips corresponds to the topics covered in the legal practice skills course that week. Topics focus on objective writing in the fall semester and persuasive writing in the spring semester.¹¹² To keep a consistent thread in the podcast and for branding purposes, an introduction to the podcast with the same voice and music are used at the beginning and end of each podcast, serving as bumpers.¹¹³

2. Transitioning From One-L to Summer Legal Employment

If one professor or school does not want the task of creating an entire podcast series, faculty can collaborate. For example, in May of 2008, Suffolk launched a new podcast series on iTunesU: “Transitioning from One-L to Summer Legal Employment.”¹¹⁴ This series is hosted by the Suffolk University Law School Legal Practice Skills Program, and includes podcasts created by nineteen legal research and writing faculty from around the country.¹¹⁵ It provides students who have completed their first year of law school with advice on applying the skills they learned to summer legal employment and helps them succeed in the culture of legal employment. The response was overwhelming, including approximately 3000 tracks being downloaded in the first week, and the podcast series was blogged about in over a dozen blogs, such as the ABA Journal, Wall Street Journal, Law Prof Blog, and Law Librarian Blog.

learning from their colleagues. It also benefits students from hearing a topic or concept explained in a different way and in a different voice than the students’ own professor.

¹¹² Examples of topics of the weekly writing tips include, but are not limited to: an introduction to organization, an introduction to citation, synthesizing a rule, explaining the law, applying the law to a client’s case, dealing with negative authority, counterarguments, point headings, client letters, writing persuasively, and editing.

¹¹³ See *supra* note 63.

¹¹⁴ Even the school’s dean can get in the act. The introductory podcast in the series is by Suffolk Law School’s Dean Fred Aman, an accomplished jazz musician. You can hear his music playing in the background at the beginning of each of the podcasts in the series.

¹¹⁵ See <http://www.law.suffolk.edu/iTunes/>

3. Legal Research Refresher

Podcasts series can be about different topics. For example, in June 2008, Suffolk launched a research refresher podcast series. This series provides students with a review of research skills. Students can also review pdf documents as they listen to the podcast, as a quick reference.

4. Other Series

Numerous other ways podcasts can be effectively used include: answering frequently asked questions; discussing pet peeves regarding writing, providing a grammar refresher,¹¹⁶ reviewing citations, or even podcasting classes.¹¹⁷ Also, professors should consider the efficiency factor. A lot of these podcasts can be created once and re-used by the professor. For example, professors could use podcasts of a class for students who miss class due to being ill. Also, professors could record a review class at the end of every semester for each class. The session is not part of the scheduled classes so to be fair to students who are unable to attend the review class, the review class is available via a podcast.

IV. Conclusion

Podcasts offer professors an innovative teaching tool and provides a service to law students. It helps professors meet the challenge of communicating with students, getting them

¹¹⁶ See Grammar Girl podcast, <http://grammar.quickanddirtytips.com/>.

¹¹⁷ Some may be skeptical that students will skip class if it is being taped for a podcast; however, podcasts can liberate students from note-taking, allow them to become more engaged in class, provide a way to easily review difficult concepts through playback and keep up. See <http://www.cali.org> (reporting results of its survey of podcast classes). Also, the problem of skipped classes can be avoided by taking attendance. Other examples include podcasting the first five minutes of each class to help students review for exams and put content of classes in context. See also Ambrogi, *supra* note 32 (listing podcasts at Hamline University School of Law and the University of Chicago Law School in his top ten podcasts he recommends for lawyers).

excited about the content of the course, and ensuring they are listening and learning. It also recognizes that students may have learned differently than a professor learned when she went to law school. While podcasts should not replace class, skilled teaching, or access to professors, it can supplement students' in-class learning. The potential and creative¹¹⁸ uses for podcasting in legal education are exciting; however, professors should remember that podcasts should be used to achieve a particular learning objective or pedagogical goal.¹¹⁹

¹¹⁸ *Cf.* An innovative, low tech example to explain case synthesis can be made by making an analogy to creating playlists on iTunes for students' iPods. For example, your students may have diverse taste in music: Kanye West-Stronger Frank Sinatra-My Way, Daughtry-Home, Coldplay-What If, The Cranberries-Dream, Sheryl Crow-Leaving Las Vegas; ABBA-Dancing Queen. You can ask each student to write her favorite song and artist on a piece of paper. Then, list them on the board for the class to review. Ask students to group the songs or artists into playlists. For example, they could group by gender (female v. male artist), by size (group v. solo artist), by date (oldies or new releases), or by category (rock v. country, pop v. alternative music). Then the professor can explain how the synthesis skill they just used to create playlists is similar to case synthesis where they group cases around common ideas/points instead of explaining each case one at a time. Students love this exercise and realize they have already been synthesizing in their every day life and didn't know it.

¹¹⁹ Sneddon, *supra* note 8; Gerdy, *supra* note 6, at 274 (advocating using technology after identifying a learning goal).