

AALS SECTION ON ACADEMIC SUPPORT

The Learning Curve

Fall 2005

The Learning Curve is an informal newsletter reporting on issues and ideas for the AALS Section on Academic Support and the general law school academic support community. Please contact me with ideas, announcements, and article submissions. I anticipate publishing another issue in the spring of 2006 and welcome your ideas and submissions at any time. You may contact me at nattgan@regent.edu and at 757.226.4852 at Regent University School of Law in Virginia Beach, Virginia.

*Natt Gantt, Editor
Regent University School of Law*

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SECTION NEWS

News from the Section Chair: Update on the Section Program at the 2006 Annual Meeting

I hope to see all of you at the AALS Annual Meeting in Washington, D.C. from January 3-7, 2006. The theme of the meeting is "Empirical Scholarship: What Should We Study and How Should We Study It." The Section on Academic Support will sponsor a program on Thursday, January 5th from 4:00-5:45 p.m. (after the plenary session) and a continental breakfast on Friday, January 6th from 7:00-8:30 a.m.

Our program is entitled "The First R: The Role of Students' Reading Skills in Decoding the Law and Performing Well in Law School," and it promises to be a highly interesting session for all law teachers. The speakers are Dr. Dorothy Evensen, Ruth McKinney, and David Nadvorney. Ruth McKinney and David Nadvorney are well known to the academic support community. Ruth is the Director of the Writing and Learning Resources Center at the University of North Carolina School of Law. She is the author of the recently published *Reading Like a Lawyer: Time Saving Strategies for Reading Law Like an Expert*. David Nadvorney is Director of Academic Support Services at CUNY School of Law and came to academic support after many years as a college reading teacher. Dorie Evensen may be a new name to many of us. She is a professor of education at Pennsylvania State University and a member of its Center for the Study of Higher Education. Her research interest is the development of literacy associated with the study and practice of law. She is currently developing an instrument to assess case reading and reasoning in a project funded by LSAC. The speakers will review what we know about "expert" reading and how to help our students become expert readers. David will conduct a teaching demonstration of how to integrate the practice of critical reading into a doctrinal law school class. We have tried this year to design a session that illustrates how our work as academic support professionals is relevant to the rest of the faculty, so please encourage your colleagues to attend!

Our business meeting will take place immediately after the Thursday program. At the meeting we will elect new officers and board members. See the information below on the election.

This year we will have our continental breakfast the morning after our program, so we can easily continue our discussions about reading. Last year's breakfast gave us the opportunity to be together in an informal setting to share ideas and network. I believe that all who attended thought it was a great success. The cost for the breakfast will be \$27, and you can buy your ticket for the breakfast when you register for the annual meeting. If available, tickets will be sold on January 3 and up to 24 hours before the breakfast.

Again, I look forward to seeing you in D.C.

Carolyn Nygren
Chair, AALS Section on Academic Support
Assistant Professor of Law
Shepard Broad Law Center
Nova Southeastern University

Call for Nominations

At the 2006 Annual Meeting, the Section on Academic Support will have its business meeting at the conclusion of the section's program, scheduled for Thursday, January 5th from 4:00-5:45 p.m. A principal agenda item at the business meeting will be the election of the Section Chairperson-Elect, the Secretary, the Treasurer, and two Board Members.

The Nominating Committee is now accepting nominations for the positions of Chairperson-Elect, Secretary, Treasurer, and two Board Members to be elected at the 2006 meeting. The four elected Board Members serve staggered two year terms, with two members being elected in odd-numbered years, and two being elected in even-numbered years. The four Board Members, together with the Chairperson, the Chairperson-Elect, the Immediate Past Chair, the Secretary, and the Treasurer, constitute the Executive Committee of the Section. The Executive Committee is the key policy-making body of the section and acts on behalf of the section in the interval between annual meetings.

Who May Be Nominated:

Faculty members and professional staff of AALS-member law schools.

Who May Submit a Nomination:

You may nominate yourself or any other eligible candidate.

Contents of Nomination:

Nominations must be in writing and include:

1) the candidate's name; 2) the candidate's title, institutional affiliation, and business address; 3) the candidate's home/business telephone numbers and e-mail address; and 4) the candidate's professional role at his/her institution and connection with law school academic support.

If you nominate someone other than yourself, please indicate whether you have obtained the nominee's permission.

Positions to be Filled:

At the 2006 business meeting, Chairperson-Elect Marty Peters will succeed to the office of Chairperson, and current Chairperson Carolyn Nygren will succeed to the position of Immediate Past Chairperson, replacing Teresa Wallace. Board Members A and B (Pam Armstrong and Pavel Wonsowicz) continue in office until the 2007 meeting.

The positions to be filled at the 2006 meeting are the Chair-Elect (who will succeed to the position of Chair at the 2007 annual meeting), the Secretary (currently Ellen Suni), the Treasurer (currently Joanne Koren), and Board Members C and D (currently Kris Franklin and Nancy Soonpaa). The Chair, Chairperson-Elect, Secretary, and Treasurer serve one-year terms. Board Members C and D will serve two year terms, which will expire at the 2008 annual meeting.

Deadline:

Nominations must be received by Monday, December 19, 2005.

Where to Send Nominations:

Send nominations to Associate Dean Ken Rosenblum, Chair of the Nominating Committee, Office of Student Services, Touro Law Center, 300 Nassau Road, Huntington, Long Island, NY 11743, FAX: (631) 421-2675, e-mail: kenr@tourolaw.edu.

After the nominations close, the Nominating Committee will ask each nominee to express his/her interest in serving as a section officer, will review the nominations, and will recommend a slate of candidates at the business meeting.

Nominating Committee:

Ken Rosenblum (Touro), Chair
Paul Bateman (Southwestern)
Teresa Wallace (Widener)

ANNOUNCEMENTS

Report from the 2005 LSAC National Workshop

Ellen Y. Suni

Marvin Lewis Rich Faculty Scholar and Professor of Law
Dean, University of Missouri—Kansas City School of Law
Co-Chair, Planning Committee, 2005 LSAC AATW Committee

The Academic Assistance Training Workshop held in Las Vegas last June was very successful. It was well attended (in fact, not all who wanted to attend could be accommodated) and provided an important forum both for training of academic support personnel and for sharing of ideas and reinvigorating those in the field. The support of LSAC for regional and national workshops is very much needed and appreciated by the academic support community.

Much of this national conference was dedicated to providing in-service training to existing academic support professionals. The conference began with a newcomers' program that was well-attended and provided basic information and skills to new teachers and directors. Experienced academic support professionals came a day early to assist with this training. As the academic support

community continues to expand, both because of new programs and larger staffs within existing programs, the need for a newcomers' program remains strong.

An important part of this year's program was the focus on strategic planning. Growing out of comments and suggestions made at the previous national conference in Seattle, the strategic planning effort was designed to focus on our origins and look ahead to the future of legal education and the role of academic support in that future. The final sessions of the conference were dedicated to this effort; and the earlier sessions, focusing on, among other things, who we serve and why, were designed to lead up to this session.

At the strategic planning session, attendees discussed the origins of academic support and its original role in increasing minority admissions and retention. It was generally agreed that this remained an important role of current academic support efforts, although many factors, including concerns about the legality of limited programs and student demands, have caused most programs to become open to all students rather than just minority students. Attendees were very sensitive to their desires to impact positively minority retention and enrollment while at the same time becoming or remaining institutionalized and not being marginalized. This can often be a challenge.

In the course of our strategic planning discussions, it was noted that creation of an AALS section was helpful in our efforts to integrate academic support into the mainstream of legal education, but that this was a long term effort that, if successful, would take many years. The focus of the AALS section is reaching out to doctrinal faculty to help them see how to use the learning strategies and skills developed by ASP. The AALS section cannot serve as the clearinghouse for academic support activities because it lacks funds and the ability to take positions. For these activities to be successful, another venue and alternative forms of support are required.

It was also noted that, although eventually it is hoped that law schools themselves will provide more support for the national ASP movement, at the present time, many schools are unable to do so. Academic support is new at many schools and is under-supported at most. Much of the new funds in ASP at the school level have gone to bar support, and while this is helpful, it potentially redirects resources away from core ASP functions. Thus, to expect in the short run that law schools can or will support the national coordinating efforts of ASP is probably unrealistic.

The need for continued support of a coordinated national effort in academic support is great. As programs grow or change, new staff is recruited and needs to be socialized and trained. In addition, as schools develop "best practices," it is crucial that there be good mechanisms for sharing what has been learned and getting materials to other programs. The traditional vehicle for doing so has been the LSAC regional and national workshops.

As law schools face increasing pressure from ranking to increase

median GPA and LSAT's, minority enrollment has stagnated or decreased. More and more schools tend to compete for the same students, and even CLEO is currently taking fewer students with really low predictors. If we are truly to increase minority enrollment, graduation and bar passage, new mechanisms are needed, including effective pipeline programs. But these programs will likely increase, not decrease, the demands on law school academic support programs. While pipeline programs can increase interest in law careers and can help fill some of the gaps in preparation that keep students from disadvantaged backgrounds from entering and completing law school, they cannot do so alone. The need for strong academic support programs to assist these students is likely to be as strong as ever.

LSAC has been there from the outset, supporting academic support and helping to institutionalize it at many law schools. But if academic support is to continue both to increase the overall quality of legal education as well as to provide increased opportunities for success to minority and disadvantaged students, support from LSAC must continue. Continued support for regional and national conferences is essential, as is support to help broadly disseminate information about ASP.

Report from the November 18th New York-Area Academic Support Workshop

Dionne Koller
Assistant Professor and
Assistant Director for Academic Achievement
University of Maryland School of Law

Kris Franklin of New York Law School once again hosted a productive workshop for twelve Northeast-area ASPers who were eager to share their ideas and keep the positive energy from Las Vegas going. Dennis Tonsing of Roger Williams published the full story on the workshop on the Law School Academic Support Blog (http://lawprofessors.typepad.com/academic_support/), but for those of you who do not frequent cyberspace, this summary provides some of the highlights.

Kris's vision for the workshops she hosts is that everyone has something to contribute, and therefore everyone who attends has an opportunity to participate. To that end, Kris distributed in advance an exercise for everyone to work on to jump start the workshop. The exercise consisted of two sample student exams and the model answer, and we were asked to think about how we would diagnose each student's issues. We were also asked to consider how we would communicate our "diagnosis" to the students and why and how our program models affected how we approached the students.

This portion of the workshop generated an insightful, useful discussion of what we actually *do* with the students who seek our help and how our unique approaches were shaped by our institution's approach to academic support. Some of the issues we discussed included how much, if at all, we counseled students on the "substance" of the exam and how we assisted students with issues of structure and organization (thanks to Dennis Tonsing for the four-color pens which can be used to label the different components of an exam answer). The student profiles themselves generated lively discussion, as we considered whether and how we'd serve one student over another, or whether we had the resources and the inclination to serve both. The exercise was extremely useful in helping us identify what we do, with whom, and why.

After lunch, I explained how the University of Maryland's program incorporates a Teaching Fellow seminar to train selected students to assist with the academic support program. This presentation spurred a discussion on the different ways to use students to enhance an academic support program. I explained that one way to establish the credibility of the program, and its director, is to teach a for-credit course that draws from the academic support, legal writing, and learning theory literature to teach the teaching fellows how to work most effectively with struggling students.

In addition, Suzanne Darrow-Kleinhaus and Myra Berman from Touro Law Center explained a technique they use with students called "IRAC Diagramming." This way of visually labeling the components of an exam answer can be a very efficient and effective way of literally showing students what they have done on their exams. Moreover, by teaching students how to label, they can regulate themselves and see where they are missing the all-important analysis, for instance, or where they have left out the rule. Look for Suzanne's forthcoming book, which will explain IRAC diagramming, and her other tips for success, in the near future.

Finally, the workshop ended with a discussion led by Mark Padin of Pace Law School on serving students of color. Too often, these issues are not confronted adequately, or at all, at our institutions, and Mark's thoughts on doing more to serve these students, along with helpful suggestions by Lorraine Lalli of Roger Williams, gave us all more to consider as we think about improving our programs. Mark and Lorraine discussed their thoughts on the issue of stigma and backlash and helped us think through ways that we can productively serve students who too often feel that they are living on the outer edges of the law school community.

All of us left feeling energized by the opportunity to share ideas, and we were all grateful to Kris Franklin for continually taking the lead on organizing and facilitating a productive workshop.

New ASP Hires and Appointments

Campbell University School of Law—Juanita B. Twyford was recently appointed Associate Dean for Student Life at Campbell. In her role, she will be responsible for developing and implementing an academic support system there.

Please let me know of any new ASP hires or appointments so that I can include them in this section in the next issue. Thanks. --Editor

How to Get on the ASP Listserv

If you are interested in getting on the ASP listserv, send an e-mail to listproc@chicagokent.kentlaw.edu. In the text of the message, type only the following: subscribe ASP-L (first name, last name, position, school).

ARTICLES

The Bar Exam “Go/No-Go” Decision

Denise Riebe
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As legal educators, our mission is clear: provide educational programs that prepare our students for admission to the bar as well as effective participation in the legal profession.¹ Compliance with this mission is assessed by the rigor of law schools' academic programs and the bar passage rates of graduates.² Academic success professionals are some of the staunchest supporters of law schools' mission to prepare students for bar exam and professional success. Ironically, however, at times we best serve our students by advising them *not* to take a bar exam.

This article does not address the situations presented by students who don't know if they want to practice law, don't know in which jurisdiction they want to be licensed, or don't know if they want ever to take a bar exam at all. Instead, this article addresses situations involving when students should be counseled to defer their bar exam plans even when they know they want to take a bar exam and get licensed, and in which jurisdiction.

Not all law students graduate from law school ready to study for and take a bar exam. For example, students who have been categorized as “at-risk” during law school may need to perform

remediation in order to bring their knowledge or skills up to the point of being ready to begin their bar “review.” We largely know who these students are because we have already dealt with their issues during law school: they likely had relatively low LSAT scores, low first-year grades, and low law school grade point averages.³

In contrast to at-risk students, there are usually many students who are relatively well-situated to pass their bar exams. These students sign up for a bar review, graduate, and begin their bar exam preparation; but, then some of these students encounter a “crisis.” Such a crisis may take the form of either a “bad” event (a loved one's death) or a “good” event (getting married, moving to a new home). Students who experience a bad event usually recognize it as a crisis (although sometimes they are in denial or avoiding the situation). However, students experiencing a positive life transition may not recognize that they are experiencing a crisis.

No matter what type of crisis students experience during their bar preparation period, several characteristics are common. First, crises tend to cause anxiety, stress, and unstable emotions and interfere with students' abilities to focus. Crises also consume valuable time needed to prepare to pass a bar exam. Consequently, students who experience a crisis during their bar preparation have a decreased likelihood of passing their bar exams.

Few students who are at-risk or experience a crisis understand the full significance of a go/no-go decision. Many of these students press forward despite a reduced capacity to focus, study, and prepare adequately for their bar exams. Some just tell themselves, “It can't hurt to give it a try; I'll just wing it.” I disagree with this reasoning.

Some students who take bar exams, knowing themselves unprepared, may be engaging in self-handicapping—attempting to provide themselves a ready excuse for a feared failure. In essence, they tell themselves: “If I fail, it is because I did not prepare adequately, not because I am (as they fear) incompetent or undeserving.” Not surprisingly, without intervention, self-handicapping often leads to failure, an increased fear of failing, and more self-defeating behavior.

Other students who take their bar exams even though they are unprepared think there is simply no harm in trying. Even with a small chance of passing, they may get lucky and avoid a second bar preparation period. This perspective could be constructive,

³ Many studies have documented the correlations between bar exam passage rates and LSAT scores, first-year grades, and law school GPAs. See, e.g., Comm. on Bar Admissions & Lawyer Performance & Richard A. White, *AALS Survey of Law Schools on Programs and Courses Designed to Enhance Bar Examination Performance*, 52 J. LEGAL EDUC. 453, 454 (2002).

¹ ABA Standard 301(a).

² ABA Interpretation 301-3.

but for the fact that failing a bar exam becomes a risk factor for not passing a subsequent bar exam.⁴ Indeed, the passage rates for students repeating bar exams are significantly lower than first-time passage rates. For example, for the July 2004 bar exam, first-time and repeater rates for some sample states were: 63% to 17% in California; 80% to 45% in Washington, D.C.; 77% to 25% in New York; and 78% to 32% in North Carolina.⁵ Thus, failing one bar exam significantly reduces students' statistical likelihood of success.⁶

I am not suggesting that students avoid taking bar exams because they might fail and the repeater statistics are low. After all, failing a bar exam once does not necessarily cause a student to fail a subsequent exam; there is simply a statistical correlation. But, in order to succeed, students should understand the risks of taking a bar unprepared and the potential effects of failing—including the fact that failing one bar exam becomes a significant psychological hurdle that students must overcome before passing a subsequent exam in addition to the time, money, and work required to prepare for a bar exam.

So, how do professionals committed to academic success help students make the go/no-go decision that's right for them? First, I recommend counseling students that a crisis is a key decision point. Educational research demonstrates that students who take control of their own study and test-taking plans are more likely to be successful.⁷ Thus, students should be warned about just "winging it." Whether or not they eventually decide to go through with their bar exam plans, it's important that they regroup and make a solid game plan. Taking control of their own game plan—whether that game plan involves pressing forward or developing a longer-term study plan—empowers students.

Second, students should try to make a somewhat objective decision. This task is tremendously difficult for students experiencing a crisis. It becomes easier, however, if students are provided a list of factors to assess.⁸ For example, students can ask themselves some relatively objective questions:

- ✓ Are they consistently getting above fifty percent of their practice MBE questions correct? This is an objective way to assess students' readiness to succeed with their bar exams.⁹
- ✓ Have they worked out a system for approaching and answering essay questions, and can they do so within the time constraints that they will face on their exam? Students must be prepared to perform the tasks they will have to perform effectively to succeed on their bar exams.
- ✓ Are they studying at least forty hours a week? Most students study about fifty hours a week, so a student who isn't able to study at least forty hours will be disadvantaged.
- ✓ If they self-test themselves on a specific area of substantive law, can they recall most (above eighty percent) of the substantive law correctly? Simply put, students must know the law in order to succeed with their bar exams.

Students should also consider other, relatively subjective factors. For example:

- ✓ Will they be able to control their anxiety and focus? Uncontrollable anxiety interferes with focus and mental processing, thus causing a negative impact on performance.
- ✓ Do they still believe they can pass the bar exam? Self-efficacy studies demonstrate that students who believe they will succeed are, in fact, more likely to succeed.¹⁰
- ✓ Do they have the support of their significant others? Social support may increase students' likelihood of success.¹¹
- ✓ Is there some reason why they must press forward instead of deferring their bar exam plans? There is no statute of limitations running; thus, students may be better off deferring their bar exam plans unless there is a reason that they must pass it this time around.

Finally, I recommend that students talk through their go/no-go decision with a third party who understands the bar exam process, the preparation necessary to succeed, and the

⁴ Failing a bar exam does not necessarily cause a subsequent failure, but repeating a bar exam is a situation that correlates with a low statistical likelihood of passing a subsequent bar exam.

⁵ NCBE, *2004 Statistics*, THE BAR EXAMINER 6-16 (May 2005), available at ncbex.org/pubs/pdf/740205_2004statistics.pdf.

⁶ *Id.* In addition, some states limit the number of times a student may sit for a bar exam. Robert M. Jarvis, *An Anecdotal History of the Bar Exam*, 9 GEO. J. LEGAL ETHICS 359, 387 (1966).

⁷ *E.g.*, Barbara K. Hofer et al., *Teaching College Students to be Self-Regulated Learners*, in SELF-REGULATED LEARNING: FROM TEACHING TO SELF-REFLECTIVE PRACTICE 57, 68 (D.H. Schunk & B. Zimmerman eds., 1998). See also MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2005) (using self-regulated learning principles to build expert learning skills in law students).

⁸ A checklist for this purpose is provided in chapter 18 of *Pass the Bar!* by Denise Riebe and Michael Hunter Schwartz (2006).

⁹ All students should be tracking their scores on every set of practice MBE questions they complete so they know exactly where they stand.

¹⁰ Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?* 2002 J. LEGAL WRITING INST. 229 (2002).

¹¹ Many studies demonstrate the beneficial effects of social support. See, *e.g.*, MARTIN E.P. SELIGMAN, *LEARNED OPTIMISM* 174 (2d ed. 1998).

significance of the decision. Often, students in crisis are only able to respond to immediate, short-term concerns and are blinded to a long-term, big-picture perspective. An outsider who is not experiencing a crisis is often able to provide a valuable, long-term perspective.

In the last analysis, passing a bar exam depends on a combination of individual knowledge and skills. Students should be educated about the pros and cons of going forward with a bar exam; they should consider their own individual factors; and they should be encouraged to make a thoughtful decision that is right for them. And, whatever that decision, students should assume the responsibility for moving forward with a solid plan—thereby increasing their likelihood of exam success.

Denise is the author, with Michael Hunter Schwartz, of Pass the Bar! (Carolina Academic Press 2006) (available Dec. 2005 at www.cap-press.com).

Dissecting Problems Areas with Answering Multiple-Choice Questions

Suzanne Darrow-Kleinhaus
Director of Academic Development
Touro College, Jacob D. Fuchsberg Law Center

Students often find answering multiple-choice questions more challenging than writing essay exams. In contrast to essay questions where there's some leeway, you're either right or you're wrong with multiple-choice questions. Moreover, because multiple-choice questions are such an integral part of the bar exam and have come to figure more prominently in law school exams, students must learn to master them.

What follows is a step-by-step process—addressed to the student—showing how to practice multiple-choice questions and what to do when one has been answered incorrectly.

When practicing multiple-choice questions, if you answer a question incorrectly, you must go back to that question and re-read it to reflect on what you were thinking the first time you read the question. Specifically, your task is to recreate your thought process, retrace your steps, and compare your reasoning in the two instances to find the flaw in your analysis. This may be the only way to figure out how you made a mistake. And until you know why you select wrong answer choices, you can't make the necessary corrections. That's why it's essential—*absolutely essential*—that you answer only one question at a time when working with multiple-choice questions. If you try to answer more than one at a time, you won't remember what you were thinking when you selected an answer choice with respect to a particular question.

How to proceed:

1. Answer a question by:

- Reading actively from the stem (or call-of-the-question) and then to the fact pattern
- Finding the issue
- Moving from the issue to articulation of your own answer
- Translating your "answer" to fit an available "answer choice"

2. Check your answer.

(a) *If you answered correctly:*

Read the explanation for the correct answer choice if explanations are available. Even if you answered correctly, you want to make sure that you did so for the right reason. If you got the "right" answer for the "wrong" reason, proceed as if you answered incorrectly.

(b) *If you answered incorrectly:*

If you made an incorrect answer choice, you must go back to the question and read it again, beginning with the stem. As you read, pay close attention to what you are thinking and compare what you are thinking now to the first time you read the question. As you proceed, ask yourself the questions I've outlined below and really, really try to answer them.

What's most important in this exercise is the real-time feedback. If I were sitting with you while you were reading, I would stop you every 30 seconds or so and ask you to tell me what you were thinking. This process forces you to put into words exactly what's going on in your head at the moment, something you're probably not doing—at least not consciously—but that you must do. That's because the only way to identify if you've gone down a wrong path is to do so while your thoughts are fresh in your mind.

You can learn to see why a thought is the wrong one to be having at the time by answering the questions I've posed for you below. Even though I'm not with you to lead you through these steps, you can do it for yourself by asking the questions I would ask:

- (1) Look at the question stem: was my first answer choice one that answered the precise question that was asked?
- (2) As I re-read the fact pattern, am I noticing facts that I overlooked the first time?
- (3) Did I confuse the parties and that's why I evaluated the problem incorrectly?
- (4) Did I overlook legally significant words, such as "reasonable," "unexpectedly," or "accurately"?

- (5) Do I find my mind wandering as I read?
- (6) Am I re-reading the same sentence because I have trouble remembering what I've just read?
- (7) Am I reading into the problem words and facts that are not there?

The problem addressed in question #7 is difficult to detect, but it is a primary reason for incorrect answer choices. You therefore must find out if this is something you tend to do. This is how:

- Start by examining your incorrect answer choice. Re-read it and ask yourself what led you to choose that answer.
- This requires that you go back to the fact pattern and see if you can find which words or facts led you to select that particular answer choice.
- Identify the basis for your answer. There had to be a reason—some basis you relied on for selecting that particular answer. We know it was the wrong reason, but we still need to know what your reasoning was at the time in order to step in and correct it at that point.
- Determine whether you “read into the facts” or added your own. This alters the nature of the problem. *You must never “assume” facts.* Your professor has carefully constructed the question to contain all the facts you need to answer the question. You must rely solely on these facts and no others. Of course you may draw reasonable inferences, but you cannot fabricate your own facts or create “what if” scenarios. Unfortunately, far too many students allow their creative side to surface when reading these questions, and they stray from the fact pattern.
- Don't let yourself go off on tangents based on possible theories you see raised in the facts. Sometimes when you read a fact pattern, you'll see the potential for a number of possible causes of action. Let the stem, or interrogatory for the question, guide your analysis.
- Sometimes you don't “add” facts but see implications which have no basis in the facts. This leads you astray in your analysis as well. Let the facts dictate your direction.

- (8) Am I disregarding an important exception and jumping immediately to the general rule?
- (9) Am I not seeing the significance of the facts and that's why I can't identify the legal problem?
- (10) Does this question require application of statutory law and not the common law? Did I disregard this before?
- (11) Am I applying the minority view instead of the majority rule?
- (12) Am I misapplying the rule to the facts?
- (13) Am I “reacting” to answer choices instead of “acting” in response with an analysis of the issue presented?

- (14) Did I get emotionally involved with the problem and substitute my instincts for what I know is legally correct?
- (15) Did I become “practical” and replace the black letter law for what I thought would occur in actual practice?

3. Figure out what your answer means.

If you answered “yes” to questions 1 through 7, then you most likely have a reading problem.

You therefore choose the incorrect answer choices because you've misread a fact either in the fact pattern or the answer choice. This is usually the result of sloppy reading because you're intent on reading quickly rather than carefully. A hasty reader is likely to overlook the specific use of vocabulary and the significance of modifiers in the answer choices. These types of errors and omissions go directly to your reading of the problem, not necessarily to your knowledge of the substantive law or to your analysis of the legal question. In fact, your difficulties with reading may prevent you from getting to the actual problem in controversy.

If you've been able to identify your problem as one of reading, now you have a direction in which to work. You can and must learn to read questions “actively.” Because of time constraints on an exam, you may have time for only one reading of the fact pattern. However, you can't sacrifice a careful reading for a quick one. You must read carefully to spot signal words and legally significant facts. *Slow down and watch what happens.* Train yourself to look for the following as you read, and if you may write in your test booklet, do not hesitate to circle the relevant language:

- Relationships between parties that signal the area of law and legal duties: landlord/tenant, employer/employee, principal/agent, buyer/seller;
- Amounts of money, dates, quantities, and ages;
- Words such as “oral” and “written,” and “reasonable” and “unreasonable,” among others; and
- Words that indicate the actor's state of mind, such as “intended,” “decided,” “mistakenly thought,” and “deliberately,” among others.

If you answered “yes” to questions 8 through 15, then you may have a problem with either application or the rule.

It's often difficult to distinguish between the two problems because they are closely related in the dynamic of answering multiple-choice questions. Problems with analysis are process-oriented while problems with the rule are substance-based. But they can and do overlap as evidenced in these questions.

Analysis Problems

Conquering a problem with analysis not only involves close,

accurate reading of the text, but it also requires exactness in following the structure of legal analysis in the context of multiple-choice questions. This requires that as you re-read the question, you focus on answering the following:

- *Did you properly analyze the question?*
 1. Did you begin by reading the stem?
 2. Did you identify the issue in the fact pattern?
 3. Did you move from finding the issue to forming your answer?
 4. Did you fill the gap from “your answer” to find one of the answer choices?
- *Did you properly analyze the answer choices?*
 1. Did you identify the issue in each answer choice?
 2. Did you use the process of elimination by determining when an answer choice can't be correct?
 - (a) Was the answer choice completely correct?
 - (b) Did the answer choice misstate or misapply a rule of law?
 - (c) Did the answer choice mischaracterize the facts?

The basic cure for reading and application-based problems is practice—lots and lots of it. *There's no real secret: the more questions you work your way through, the more careful and conscious a reader you become.* In some ways, answering a multiple-choice question is more a science than an art, but rigor in application of the method will yield favorable results.

Rule Problems

Let's face it; if you don't know the black letter law, you can't distinguish between the answer choices. The key in analyzing the question after you've identified the issue is to articulate the rule of law that addresses that issue. If you don't know the rule, you can't get to this step. The only thing that works is complete and thorough understanding of the rule.

If you answered “yes” to questions 8 through 12, consider this: If you cannot summon to mind the relevant rule as soon as you've articulated the issue, you must return to your notes and review the substantive law in detail. Your problem is with knowledge of the rules, and you must be comfortable with answering the following questions as soon as you read a fact pattern:

- What is the legal problem presented by the facts?
- What area of law is implicated?
- What is the specific rule of law that governs under these facts?

On the other hand, if you answered “yes” to questions 13 through 15, then something slightly different may be happening which requires a different approach. Let's look at each one

individually.

If you react instead of act:

When you find yourself “reacting” to answer choices instead of “acting” in response to them with a careful analysis of the issue presented, then some changes in procedure are required. This type of problem is basically one of control: Because you've lost control of your thought process in analyzing the problem, you've placed yourself at the mercy of the answer choices. They then pick you, instead of the other way around. How do you act and not react to the answer choices? *The answer is simple: formulate your own answer to the interrogatory before you even look at the answer choices.* Practice questions this way until it becomes habit and you'll see what a difference it makes.

If you ignore the rule:

If you find yourself substituting your instincts for what you know is legally correct, you're headed for trouble. You must apply the rule of law to the facts without equivocation. You can't afford to get emotionally involved with the parties and let your sympathies interfere with what you know is legally correct. It's not your place to find a criminal defendant not guilty when in fact her actions satisfy every element of the crime. Conversely, if an act doesn't violate the provisions of a given statute, then whatever you happen to think about the nature of the act (or actor) doesn't matter. It's not a crime if the jurisdiction doesn't make it one. Your job is to follow the law and apply it to the facts mechanically.

If you substitute “practice” for “theory”:

If you find that you become practical on exams and replace the black letter law for what you think would occur in the real world, then you're going to end up with some incorrect answers. Your exam is not the time or place to become “practical” and consider what you think would happen in actual practice. Many students have defended incorrect answer choices to me by explaining “I know it couldn't happen like that in practice. That's why I didn't choose that answer.” My response is that this isn't “real” life. It's a law school exam! This is not to say, however, that exam questions have nothing to do with the practice of law or the “real rules.” It's just that in law school, we are studying and working with the theoretical rule of law and what should be, not necessarily what is. When answering a question from your professor, apply the rule of law as you've learned it and you'll be fine.

I developed these approaches for bar exam re-takers to help them increase their MBE scores, but I soon found that the skills were equally useful for law students. As word got around, more and more students came to my office for help with answering multiple-choice questions. As a result, we included it as part of the training for teaching assistants in our First-Year Teaching Assistant Program. TAs then work with their groups of 1L

students on leading them through practice questions.

We hope that showing students how to engage in self-examination early in the law school learning process will yield positive results, but it's been too soon to tell.

An ASP Response to Classroom Conduct and the Learning Environment

Mario Mainero
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Whittier Law School

One of the lessons we stress in our Academic Success Program at Whittier is taken directly from Dennis Tonsing's *1000 Days to the Bar—But the Practice of Law Begins Now*. Law school is the "training ground" for practicing law, not a place merely to memorize laws. Therefore, what goes on in the classroom is a training ground for, among other things, what goes on in the courtroom, in the interview room, in the lawyer's office, or across a negotiating table. The skills a student learns, and the behavior a student undertakes, must be the same skills and the same behavior expected in professional settings. Too often, because law students forget this and think they are just in "school," they act like they are in school: passing notes, answering cell phones, playing games, coming to class unprepared, "passing," or answering inarticulately or with little attempt to speak confidently and defend their position against critique. The unnecessary distractions, classroom misconduct, and lack of preparedness had become something of a "culture" at our law school against which I had fought since I began here in August 2001.

We recently expanded the Academic Success Program at Whittier Law School in two ways. First, from a program with one Director, we added four new positions—a new Assistant Director (Prof. Rebecca Flanagan) and three full-time faculty (Professors Paula Manning, Rebecca Marciniak, and Eric Leach). Second, the program has been designated (as has the Legal Writing Program) an "Institute"—the Institute for Student and Graduate Academic Support—and both our Legal Writing Director, Professor Andrea Funk, and I have been appointed Associate Deans.

We as an Academic Support faculty decided early this semester to confront the distractions from a good learning environment which I have mentioned above. Our first-year Academic Success Program—a series of five group lectures by either Prof. Flanagan or myself on discrete skills such as note-taking, outlining, and exam writing, as well as seven small group sessions that are taught by the full-time ASP faculty and work further on those skills and provide individual feedback—is mandatory. Thus, we as an Academic Support faculty adopted "Rules of Professional Classroom Conduct."

The preamble to the rules provides:

In an effort to develop an attitude and atmosphere of professionalism that is consistent with the highest standards of the legal profession, and in recognition that the classroom is the training ground for the courtroom, the Whittier Law School Academic Success Program faculty have adopted the following policies:

The policies are then divided into two types: those involving curricular preparation and classroom attendance, and those involving classroom conduct. The policies involving curricular preparation and classroom attendance read:

1. Attendance at every class session is mandatory.
2. In order to satisfy the attendance requirement, students must arrive before the scheduled class time in order to be prepared to begin class on time.
3. Students must be prepared to participate in each session, which requires completion of any required reading or other assignment prior to the commencement of each class session.
4. Unless otherwise excused beforehand by the professor, students must remain in class until the professor has concluded the session and dismissed the class.
5. Any student who fails to comply with any of these policies during any session will be deemed absent for that session.
6. Any student who is absent, for any reason, more than two times during a semester will be dismissed from the Academic Success Program. Dismissal from the program will result in a determination that the student has not satisfied the ASP requirement for graduation.

The policy involving classroom conduct reads:

1. When called upon to make a presentation students shall stand erect and shall speak in a clear voice.
2. Students shall not pass notes in class.
3. Students shall not play computer or video games during class.
4. All cell phones and pagers must be turned off.
5. Students shall treat each other, the TA and their professor courteously.

The most obvious criticism of these policies is that they seem Draconian, harsh, and perhaps counter to the natural inclination of academic support professionals to be nurturing and caring. But as we note in the conclusion of the rules, "these policies are intended to prepare students to enter a profession that does not tolerate lack of preparation, sloppiness, tardiness or failure to appear on a scheduled day and time."

We believe that only in an environment where we expect professionalism will we get professionalism. We also believe that only in an environment where we expect that everyone is focused on, and dedicated to, only learning, and not distractions, will we

get only learning, and not distractions. We recognize that the policies we have adopted will not work for every program, or even perhaps for most programs, and may indeed not even be necessary for most programs. These policies may, however, be appropriate or modified for those programs that encounter similar pervasive issues of distractions from a good learning environment.

In the ASP classes, students have welcomed the changes. Our ASP faculty report that students are better prepared, more professional, and more enthusiastic about learning. The substantive faculty adopted a similar set of rules after reading ours, and the reaction, particularly among upper-level students, has been predictably more mixed. Many students welcomed the changes as leading to an atmosphere of more serious learning, but some students still take the view that they are entitled to do whatever they want, and be as unprepared as they want, because they paid their money and cannot be told how to conduct themselves. Only in time will this attitude become less prevalent, and a new culture borne of students whose only experience is with these new rules will take root.

A Fun-Filled Way to Illustrate the Pros and Cons of Study Groups

Celeste F. Bremer
Academic Success Program Coordinator
Drake University Law School

In order to demonstrate some of the pros and cons of study groups, I have used the following exercise that is fast and fun. The exercise also involves a food reward, so it appeals to everyone.

Materials needed:

- 4 dozen sugar cookies
- 4 cans frosting (2 chocolate and 2 white)
- 7 plastic knives
- 7 aprons
- antibacterial handwipes
- napkins
- flexicuffs (used as temporary handcuffs or to bundle wires in your IT dept.; can substitute any ribbon, string, or even masking tape)

Ask for volunteers to be in your “study group” and to demonstrate working alone.

- Connect 4 students together as Group 1.
- Connect 2 students together as Group 2.
- *Connect the students by tying their wrists together with flexicuffs or ribbon. Therefore, in the line of 4 students, the end people have one hand free and the rest are “chain gang,” each looped to the next person (right wrist of one to left wrist of another). The two students are attached at one wrist.*

- Have 1 student work by him or herself.

Instructions:

Frost as many cookies as you can, in the shortest amount of time.

The first year we did this, the large group spent the entire time getting organized, talking about a plan, and trying to get some system going. The most cookies were frosted by the student working alone. This year, the large group had two women who took over and issued commands, and they got 23 cookies done, generally steamrolling the other groups in grabbing the supplies. The group of two had barely any discussion, and the student working alone didn’t listen to the directions and assumed he was frosting just enough for himself. He pattered along and only got eight finished.

Afterwards, we talked about how the group dynamics worked—or didn’t, and about how a couple of the students in the large group felt they hadn’t had a chance to talk about what the plan should be. The two students who just worked without talking provided the opportunity to discuss what it might be like to be assigned to a writing project with someone very much like yourself, or whether you should seek out a partner with contrasting styles. The students who were the observers noted that the sole practitioner might have had fewer cookies frosted but did a nicer job, which led to a discussion about quality versus quantity of material covered.

This exercise was a light-hearted way to examine the pros and cons of study groups, the importance of understanding the directions, and how your learning style impacts your participation in group activities. It also encouraged students to think about how they will look for a brief partner for moot court exercises. And we all got to eat the cookies! [Note: There are students with food allergies, so don’t bring peanut butter cookies. I’m also learning to do some gluten-free baking so that we’ve got all the bases covered.]

Editor’s note: Judge Bremer’s bio on Drake’s website notes that she is an “award-winning baker at the Iowa State Fair.” This exercise thus may not be suited for those of us in the ASP community who are “baking challenged”!

Editor’s Postscript: Developing Scripts for Law Students

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A few years ago, I heard an ASP professional reason that law students can write 70% of their essay answers before they walk through the door to take their final exams. Although I can’t remember the name of the speaker, his statement certainly caught

my attention. I believed then, as I do now, that the percentage was an overstatement; but I definitely agree with his underlying point. Given the traditional essay answer format of IRAC (issue, rule, analysis/application, conclusion), law students can and should think a lot about how they are going to phrase their issue and rule sentences long before they sit for their finals.

This year during our Summer Academic Success Program I observed more than in previous years the difficulty students faced in translating rule buzzwords or catch phrases into complete sentences. Specifically, after our mock classes on particular legal issues, I would ask the students to identify the key rules the professor discussed in the preceding class. Students were quick to throw out buzzwords or catch phrases, like "substantive due process," "strict scrutiny," or "neutral law of general applicability." When I pressed them, however, many struggled with turning those phrases into coherent sentences that could serve as actual rule sentences for an essay answer on an exam. I therefore began to require that they identify the key rules by reciting them to me in complete sentences. Students were taken aback by the task and sometimes stumbled over the words in trying to turn the phrases into nice rule sounding sentences.

As I reflected on this experience, I was struck by how often we think in our culture in terms of sound bites, quick phrases, or catchy slogans. In our postmodern world with its constant barrage of images and messages, we all struggle at times to organize and format the information bombarding us into coherent, logical units of thought. It's no wonder that we, in turn, might struggle with converting those units of thought into the building blocks for a most basic form of communication: the sentence.

I am certainly no expert on attention deficit disorder and its related conditions, and I applaud the work of many of our ASP colleagues who are heavily researching this area. Even with my simple understanding of the conditions, however, I see their creeping influence on our students. I was confronted with that influence head-on when an impassioned student visited my office early this year. He reflected on how he struggled with attention deficit disorder and asserted that he viewed it as an "epidemic" among his twentysomething peers. Because he felt so strongly that our professors be educated on this condition, he presented me with a copy of *Driven to Distraction: Recognizing and Coping with Attention Deficit Disorder from Childhood through Adulthood* by Edward Hallowell and John Ratey.

I wonder whether postmodern culture and attention deficit issues may be colliding in causing many of our students to excel in one area of their study strategy but suffer in another. Specifically, I teach, as many of

you do, that successful law students must spend time breaking down legal rules and theories into manageable nuggets of information so that they can process those nuggets and learn the rules and theories for the exam. Many students seem to get this principle; I even notice more and more students taking their class notes in outline form to help them process the legal information bit-by-bit.

Where many students may suffer, however, is in taking those content nuggets and turning them back into the traditional prose that forms the backbone of essay writing. I therefore have encouraged this year students to develop "scripts" in preparation for their exams. Like I did during our summer program, I instructed all the students in my exam taking workshop to force themselves to think about rules and principles not just in terms of elements or factors but also in terms of sentences that they can see themselves writing on their exams.

In my one-on-one meetings, I also pressed students on this point. While reviewing their course outlines with them, I challenged them to recite to me a rule sentence for certain of their outline headings. Many were surprised at how difficult that was for them even with their outlines in front of them. I therefore encouraged students, as a final active learning studying technique before their exams, to take the key sections of their outlines and turn their information in bullet or outline form back into complete sentences or short paragraphs. I told them that they were, in a sense, to shift in reverse by reconstructing the key sections of their outlines to make them look more like the traditional paragraph structure that gave rise to their outlines in the first place.

In the end, I believe these ideas resonated with students. In fact, a student just the other day came by my office to tell me how developing those "scripts" really helped him on the exam he had just taken. I plan to continue to reflect on these issues and look forward to learning more about how we in the ASP community can tackle the learning needs of students in our postmodern, media-saturated culture.

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