# Understanding Law School

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There are many good books that tell you exactly how you should brief cases, take notes in class, make an outline of your courses, or write answers on law school examinations. What they don't tell you is why you should do these things. Programming is fme for computers, but we humans get tired, bored, and suffer pain when we have to perform tasks we do not understand. This essay tries to ease the pain by giving you an understanding oflaw school and letting you program yourself.

Law students are surprised when they discover, sometimes too late, that the study skills that got them into law school are not enough to keep them there. It should be obvious that law school is different. The casebooks don't seem to explain, and the professors don't seem to lecture. Why law school is different is frequently explained but seldom understood. The explanation goes like this: law professors are not trying to teach you a bunch of rules you will forget when the exam is over; they are trying to teach you professional skills that will last a lifetime.

The distinction between learning rules and acquiring skills is clearer in this sentence than it will ever be in the classroom. Perhaps this is because one of the skills you have to learn is how to fmd the rules and another is how to apply the rule after you have found it. Since you have to learn some rules in order to practice these skills, it is easy to think that it is the rules and not the skills that you ought to be studying. But professors don't make understanding the distinction any easier when they describe the skills they are trying to teach you by some vague description such as "learning to think like a lawyer." Let me try to be a bit clearer.

### **Thinking Like** a **Lawyer**

**During my last year in law school,** I **once tried to study while** I **was baby-sitting our two children. Distracted from my work by the sounds of forbidden activities,** I **dashed to the bedroom, threw open the door, and bellowed: "How many times have we told you kids not to jump on the bed?" My three-year-old daughter replied (innocently?): "But, Daddy -we weren't jumping on the bed.** We **were jumping off the bed!** " **This was** a **precocious example of "Thinking like** a **lawyer.** "

If we were to analyze this as legal rhetoric, we would say that I made "an argument from authority"; that is, I cited a rule ("No jumping on the bed") from an authoritative source (me). My daughter, unable to challenge the authority of the rule (for example, by arguing that it was unconstitutional), responded with a "conceptual argument'; that is, she defined a key concept ("jumpin g on the bed") in a way that made the rule inapplicable to her conduct ("Jumping off the bed"). If you focus on the type of argument made, rather than the specifics of the argument, this interchange between my daughter and me is the same sort of argument

**that lawyers make every day.**

Lawyers make many other kinds of arguments. Historical arguments: "This is a good rule because it has survived for hundreds of years" or "this is a bad rule because society has changed too much since it was first adopted." Process arguments: "This is a bad rule because it will be hard to enforce" or "this is a good rule because it was drafted by legislative experts who know more about the subject than anyone else." Instrumental (or "policy") arguments: "This is a good rule because it will produce some result that is good for society (such as encouraging investment or deterring negligent behavior)." Legal rhetoric --thinking like a lawyer --requires that you understand the various types of legal arguments so that you can tailor them to fit any specific case.

Legal arguments resemble plays in football or openings in chess because if you understand their basic structure, you will be able to see some common ways to defend against them. For example, an instrumental argument involves both a prediction about the effect of a rule and an evaluation of that rule as either good or bad; e.g., "The 'no-jumping-on-the-bed rule' is good because it allows Daddy to study." Therefore, you can respond to an instrumental argument in three ways: by disputing the prediction ("jumping on the bed is not noisy"); by contesting the value placed on the result ("who says studying is good?"); or by pointing to some bad consequence of the rule that outweighs the good effect it is supposed to produce ("if we can't jump on the bed, we'll grow up to be juvenile delinquents").

Understanding the structure of a particular argument does not tell you whether it is good or bad. Learning to make a good legal argument is a skill that takes lots of practice. As I will explain, much of your time in law school will be spent practicing this skill -and others as well. Let us see how understanding that legal education is primarily skills training can affect how you study in law school.

## PREP ARING FOR CLASS

You will probably arrive for your first year in law school eager to get a start on your studies. But you may fmd that the law school is not as ready for you as you are for the law school; class assignments are not posted, books are not yet in the bookstore, and the professor is not due back in town until the first day of classes. Don't panic or waste your time and energy frivolously. Instead think about what you need.to do to be a successful law student.

Studies of successful students show that one trait they all share is the capacity for self- reflection and analysis; that is, they constantly ask not just "what should I do to prepare for class?" but also "why am I doing it this way?" Emphasize the personal pronoun in that last question. The most important person in detern1ining your success or failure in law school is you; you cannot be a successful law student if you do not constantly look at your study habits from that perspective.

In thinking about your success in law school, the first question you must ask is "how should I defme, 'success'?" Some students unthinkingly adopt the popular definition: "'success in law school means fmishing in the top 10% of the class." But by that defmition, 90% of the class is doomed to fail. At the other extreme, after a few weeks of law school, many students begin defming "success" as "not flunking out." But defining "success" so that it is easy to achieve is not very rational either.

To get your own definition of "success," define it in terms of things that you can control rather than those that are in the laps of the gods; for example, define "success" in terms of the effort you put in rather than the effect it has on your professor's evaluation of your exam Or try to make success an immediate and concrete possibility rather than a remote and grandiose goal; for example, "success" means "studying 10 hours on Saturday" rather than

"being editor-in-chief of the law review in my third year." Always keep in mind your own strengths and weaknesses. If calling yourself a "success" is not sufficient to motivate you to brief all the cases before you go home today, then promise yourself a triple-dip ice cream cone if you get the job done.

Time and the Law Student

Despite your uniqueness, there is one way that you are like all other law students: none of you has more than 168 hours per week to study. Despite the stories you may have heard about "straight A" students who never crack a book after sundown, all the evidence shows that the more time you spend studying, the better your grades are likely to be. So, some students spend lOO hours per week studying, which still leaves them nearly 10 hours a day to eat, sleep, exercise, and perform other bodily functions. But if you have to work 40 hours per week to support your family (as I did), you can't be that profligate with your study time. You have to budget it carefully.

The best way to budget your time is the way lawyers do it: by keeping time sheets. Time sheets break down the day into increments of 10 to 15 minutes. Carry them with you and get in the habit of recording exactly how you spend your time as you are doing it; e.g., " 10:57 am. -11 :50 a.m. -attended contracts class" or "briefed pages 30-41 in property" or "stood in line at the registrar's office and thought of several crimes." Go through your daily time sheets at the end of each week and "bill" each professor for the time you spent studying for each class and "bill " yourself for the rest.

Keeping time sheets is not only a good way to acquire a professional skill; it will also help you to avoid some common mistakes. One of these is spending more time on classes that you understand and enjoy than you do on those you hate because they are difficult. Another error is to suppose that you spent an hour studying between torts and contracts by ignoring the 10 minutes you spent going to and from those classes, the 10 minutes you spent in conversation by your locker, and the 10 minutes you spent in the john. Time sheets can help you distinguish between "quality hours" and the kind where you spend 60 minutes staring at the page, understanding nothing, and slapping your face to keep awake. "Billing" your hours will help you to schedule them more productively and show you where you can squeeze in the time you need for a major research paper or a visit from your lover.

**Know** Your **Enemy**

**If you focus on skills rather than rules, you can see why people have been** as **important** as **principles** in **shaping our law. This is why we have battles over Supreme Court appointments. It is also why lawyers** try **to learn** as **much** as **they can about the judge who will hear their case. Whether** an **argument is "good" or "bad"' either** in **the courtroom or the classroom, depends upon the person to whom it is addressed.** F **or example,** an **instrumental argument showing that capital punishment is "efficient" is not going to be very effective with** a judge **or law professor who thinks "fairness" is** a **more appropriate criterion. This is why you need to know** as **much as you can about the person who will be evaluating your arguments** in **class and on the final examination.**

Some professors are political mavericks who make their views well-known in the classroom (and give students their first taste ofmaking arguments that are acceptable to someone whose values they do not share ). But other professors hide behind a Socratic mask so that determining their values requires a good bit of detective work. A good place to start is the professor's biographical entry in the Directory of Law Teachers, published annually by the Association of American Law Schools and available in most law libraries. You can also read or skim any books or articles the professor has written. In some schools, you can inspect evaluations of the professor by fonner students. Finally, looking over some of her old

examinations can provide some useful clues about the professor's values.

## Preparing Class Assignments

When assignments are posted, your first task in preparing for class is to simply read the assigned cases or statutes. This will be difficult at first because legal writers use unfamiliar words or familiar words in unfamiliar ways. You will have to stop frequently to look up definitions in a legal dictionary .This is not alway easy because the definitions themselves may use other words that you will also have to look up or the defInitions may simply be unclear. But don't give up. If you stick with it, you will gradually begin to master the language of the law. But if you just plow ahead reading words you don't understand, the pain may persist for the rest of the year.

After you have read the case once, you are ready to analyze it. Lawyers analyze the case in three steps. First they examine the facts of the case to determine what legal issues were presented to the court; this requires separating the facts that are legally relevant from those that are not. Second, lawyers try to deduce what rule ( or rules) the court applied in deciding the dispute; this is called "the holding" of the case, and determining it is not as easy as you might suppose. Finally, lawyers will examine the legal arguments the court used to justify applying this rule rather than some other rule; those arguments are called "the reasoning" of the opinion. This part of the opinion provides important clues as to what arguments the court might find persuasive when asked to apply the holding of this case to a case with slightly different facts.

## **Briefing** Cases

Lawyers record their analysis of an opinion in a "case brier' (not to be confused with a "legal brief," which is a written summary of a lawyer's argument to a court). Casenotes offers a free publication you can print called"How [0 Brief a ('ase." However, some of these books obscure the fact that briefmg cases is a lawyerly skill and convey the impression that it is some special drill for law students. It is true that your brief will be more elaborate than a lawyer's because you have to consider the case from all points of view where the lawyer is only concerned with how the case can hurt or help her client. But the purpose of the brief is the same in both cases; namely, to provide a written summary of your analysis of the case so that you do not have to re-read the case when preparing for classroom or courtroom arguments.

Learning to brief cases takes time, but with a little practice you will be able to read and brief a case in little more time than it takes you to analyze the case without briefing it. Real briefmg does take more time than "book briefing" because preparing your own brief requires you to analyze the case, while merely underlining sentences in the opinion does not. If a month into law school, you find that it takes all your class preparation time just to read and brief the cases, you have a problem that will not be solved by abandoning briefmg. It may be that your briefs are not "brier because you have not mastered the abbreviations and other shortcuts that reduce the required verbiage. But you may also have some problems in your analytic technique. Ask for help from your professor or writing instructor.

## After Briefmg, Then What?

Sooner or later you will find that reading or briefing the cases takes only a small portion of the time you have allotted for studying. You can use part of this new- found time for reviewing and planning for the fmal exam, but I doubt that you can or should devote all of your extra time to exam preparation during the early part of the semester. I used much of this time to read and brief ahead in all my classes because I had been warned that some teachers will pile on work at the end of the semester when you need the time for exam preparation.

For reasons you can probably deduce, most of my classmates thought this an insane way to spend valuable time.

On the other hand, not everything my classmates did seemed completely rational to me. Most law schools have an ample supply ofwell-meaning quacks or fast-buck artists who have just the thing to reduce your anxieties and make education effortless. Their nostrums range from flashcards to computer programs, from songs you can sing in the shower to weekend seminars in flea-bag hotels. I have not tried any of these, but I can tell you that each of them has proved helpful, or so they tell me, to at least some students. Be that as it may, I only have space here to cover some of the more conventional secondary sources.

Law Review Articles

I spent a lot of time in law school reading the law review articles that were cited or excerpted in my case books -too much time. Most law review articles are written to impress other law professors or to change the law, not to explain it to neophytes. You can learn from some of them about the "cutting-edge issues" that make good examination questions or about the outer limits of permissible legal arguments, but lucid explanations of the law are infrequent. I kept slogging away on many articles because I was too stubborn to admit that I was getting nothing out of them. Don't you make that mistake.

By all means, read anything your professor has written -even if it is so incomprehensible that you wouldn't dare try to parrot it back on the final examination. Read the "classic" articles, those that have changed the way lawyers and judges think about the subject; you can identify these from the way your professor talks about them in class or from the way they are cited in your casebook. Student writing is useful, especially casenotes that analyze the principal cases in your casebook; student writers may not be as knowledgeable as professors, but what they do know is closer to what you need to know than are most faculty articles. Finally, don't overlook articles in bar journals; they are often written by practicing lawyers so they are shorter, more practical, and can provide a refreshing change from the academic alfalfa you are fed by the faculty .

Hornbooks and Other Student Texts

My favorite form of secondary reading was student texts, often called "hornbooks" after the title of a series of such texts from the West Publishing Co. I used them in law school and continue to do so -even as a substitute for a casebook in one of the classes I teach. Some professors will advise you not to use hornbooks-and with good reason. A hornbook is essentially a written lecture; which is to say that it is good for conveying information about the rules but will not teach you much about the skills you use to apply them. But if you understand that limitation you can safely use them to quickly satisfy your need to know the rules and thus free up more of your time for practicing your lawyerly skills.

Student texts, unlike law review articles, are written for students and by professors who are in the mainstream of legal thinking. They can be a useful antidote to the weirdos whose ideas get more attention in law school classes then they ever will in the courts. Most hornbooks also do a good job of showing you the way the rules are related to each other. This is a big help when you are trying to organize the rules for your outline. Finally, a hornbook is a good source for a "second opinion" when your professor's explanation leaves the subject unclear.

CLASSROOM TRAINING

Class Attendance

Some people believe they can do well in law school without attending classes; we call such people "ex-students." If you have understood what I have been telling you about legal education you will see why. The classroom is to the law student what the practice field is to the athlete -a place to practice your skills with and against your peers under the guidance of a coach who can correct bad habits and suggest how to improve your technique. Moreover, the classroom gives you a chance to see what your professor thinks are "good" and "bad" legal arguments, so you know what kind to use on the fmal examination.

The accreditation standards of the American Bar Association require class attendance, and conscientious professors will take roil even if the law school does not require this because missing classes is the first sign that a student is having educational or emotional problems that require help. If you think you are getting nothing out of classes except the next day's assignment, talk it over with a friendly faculty member. She can help you understand what your professor is trying to do and, perhaps, point out how you can better prepare to meet those goals. Sitting in on the class of some other professor who is teaching the same subject is rarely a good way to prepare for your professor's final examination. Use it only in the rare case of the truly incompetent teacher. ("Yes, Virginia, there are. ..)

Just Before Class

Make sure you bring all of the assigned texts, your case briefs, and everything you need to take notes with you to class. If you have a choice, select a seat someplace in the middle of the room where you can see everything written on the chalkboard and hear what is said even by your soft-spoken classmates. (Contrary to what cynics may tell you, the last row in the classroom is not the best place to avoid the professor's eye.) Use the minutes before class begins to review your notes from the previous day and your briefs of that day's cases. Two minutes of such review each day in a class that meets 60 times will save you two hours of study -almost enough time to take in a movie as a reward!

Notetaking

Most law students have plenty of notetaking experience so they are not likely to think of taking notes as a professional skill. But if you get to court and watch a real trial, you will see that good lawyers do not spend their time staring at the witness or opposing counsel like lawyers on TV shows do. Instead, they and the judge are busily taking notes of the testimony. This may seem strange when you see the court reporter making a verbatim stenographic record of everything that is said. But if you could see their notes you would understand the difference. The reporter records everything that is said -the relevant, the irrelevant, and the insignificant. The lawyer takes down only what is useful for cross- examination or final argument; the judge notes only what she needs to rule on motions and objections.

**Notetaking is** a **tool for** critical listening, **not** an **inefficient substitute for tape-recording. The skill you should master** in **class is selectivity** in **notetaking. Make it** a **habit to** think **"why** am I **taking this down?" rather than just scribbling away whenever the professor's mouth moves. Ifhe is just repeating something that is already** in **yesterday's notes (that's why you reviewed them before class), the only reason for writing it down again is to help fix it** in **your memory** . **This is not the best use of the limited strength** in **your writing hand.**

Noting Class Discussion

Students who think that law is just rules will copy down every pseudo-lecture delivered by the professor but record very little of the most important part of the traditional class --the discussion or " Socratic dialogue. " Even students who do take notes of the discussion will

only record what they suppose to be the "right" answers and disregard everything else. Students who understand that the classroom is the place where they practice rgumentative skills also know that they have to record specimens ofboth "good" and "bad" arguments if they are to learn the difference between them.

Taking good notes of class discussion is not as difficult as you might suppose. In learning to brief cases, you will develop a set of abbreviations for the major rules and concepts in each subject. If you devise a set of symbols for the various types of legal argument to help in recording the "reasoning" portion of your case briefs, you can use these symbols and abbreviations to capture both the form and content of an argument or response. or example, if the student makes the instrumental argument that the Mapp rule (requiring the suppression of illegally obtained evidence) is "good" because it will encourage the police to follow the law, you might record the argument this way: "Mapp cops cops law-abiding" (the arrow indicating the causative element of the argument). If the professor questions the causative part of the argument, you just add underneath: "P:?? "

Noting the structure as well as the content of the argument will help you see that what other students think is the professor's disapproval of a student's argument is simply an attempt to demonstrate the standard responses to that type of argument. For example, when the student makes the instrumental argument for the Mapp rule just mentioned, the professor might respond, "How do you know the rule deters police misconduct?" (attacking the causative claim) or, "Who says illegal searches are 'bad'?" (attacking the evaluation of the result) or, " A lot of guilty people will escape punishment if we suppress illegally obtained
evidence" (pointing to some supposedly "bad" effect of the rule). Students who ignore this entire interchange on the ground that what the student said was "wrong" will never learn that they could have attacked the professor's last argument the same way she attacked the student's; e.g., "How do you know we need illegally obtained evidence to convict the guilty?"

Demystifying the Socratic Dialogue

Socratic teachers usually begin the class discussion by asking a student to "state the case"; that is, to describe the salient facts and the court's decision of the disputed issue(s). My purpose in "stating the case" is to make sure students have the correct understanding of the legal dispute and its resolution. The professor may quiz the student to elicit any relevant facts omitted or to question the relevance of some of the facts stated or simply to test whether and when the rule it states will be available in future cases with different facts. The best way to record this part of the dialogue is by additions to, or deletions from, your brief of the case.

The professor will next ask about "the holding" of the case. Whatever the student says will be criticized or questioned by other students egged on by the professor. This can be confusing if you do not realize that there is no single, unequivocal holding for most cases. The case can, and in subsequent litigation frequently will be, cited for any number of possible "holdings." The purpose of this part of the discussion is to enable you to see how malleable the idea of a "holding" is and to open your eyes to all the possible "holdings," not to arrive at some determination of what is The One True Holding.

At some point, students will be invited to describe and criticize the court's "reasoning." This part of the discussion allows you to practice your skills in making and analyzing arguments. It will become more sophisticated as student understanding of argumentative techniques deepens. If one student seems to approve of the court's use of some concept, such as "consideration," "malice," or "minimum contacts," other students will respond with conceptual arguments suggesting other definitions that will change the result. If a student attacks the court's instrumental argument, the professor may respond with another argument

**the court did not make to see if the student can shoot the new argument down** as **well.**

Good Socratic teachers make extensive use of hypothetical cases (or "hypos," for short). Hypos are designed so that students can see how the case under discussion (usually called "the principal case") might be used as a precedent in some subsequent case. For example, if the principal case holds that the landlord is not liable for injuries suffered by a fireman who comes into the building to fight a fire, the professor may pose a hypo where the fIreman is there to sell tickets to the fIreman's ball or where a policeman enters the house to catch a burglar. The student will be expected to see whether the principle case can be "distinguished" by revising the holding so that it does not apply to the hypo (the rule only applies to firemen who are on duty) or "extended" by expanding the holding to cover the hypo (the rule applies to "public safety officers, not just to" fIremen"). It is a good idea to take note of the professor's hypos; they have a nasty habit ofpopping up again on fmal examinations.

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# Understanding Law School - Page Two

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To Participate or Not To Participate?

This question would seem to have an obvious answer if you view the classroom as a place to practice your new-found skills -or if you have seen movies about the "good days" before the "no-hassle pass" when students had their names stricken from the class for failure to answer. However, even when I was in school the stress of participating in a legal argument - even with someone of limited skill and venom of the typical law professor -seemed so forbidding to many students that they preferred to falsely claim they were "unprepared" and endure the abuse that followed rather than attempt to match wits with the professor. And today in many schools, there is a student "ethic" ofnon-participation that is enforced by "hissing" when some "handwaver" volunteers answer.

My advice is to ignore the hisses. How will you know if you are making any progress in learning legal rhetoric if you don't try your arguments in class to see how far they will fly? (Ironically, the same idiots who hiss at "handwavers" and bad-mouth rigorous Socratic teachers will often be heard to belly-ache about the lack of "feedback in legal education.") As you learn to distinguish between a response from your professor that says "that was a pretty weak argument" and one that says "not bad -now let's see if you can hit this curve ball," you will fmd that arguing with the teacher becomes less stressful -even fun! Besides, and I am ashamed to say that this is what motivated me to become a "handwaver," if you volunteer often when you are well-prepared and reasonably certain of your answer, this makes it less likely that the professor will. call on you when you are unprepared or have not the slightest clue as to what he is after.

Why Don't We Do It In The Road?

Many professors hang around the hallway after class to answer questions or continue discussions that were cut off by the bell. If you are too scared to jump right into class discussions, you might get your feet wet by posing your questions or making your arguments in these post-class "seminars." Since many professors drop the Socratic mask when they step out from behind the podium, yours may seem less frightening out in the hall. But stick around even if you aren't terrified of the teacher. I find that some ofmy best explanations of complicated subjects come after the class is over, and I do not have to worry about covering the next case, students are more candid about what they don't understand, and I can tailor my explanation to the particular student's needs.

If the professor does not hang around after class, he or she may hold formal "office hours" to meet with students. If you fear that asking your question during office hours will lead to a "one-on-one" Socratic dialogue, you can invite a friend or your study group to come along and share the abuse. However, you will probably fmd the professor much less forbidding in her office than she appears in class. Besides, an office visit is a good way to learn a bit more about the person who will be grading your examination paper, you don't want to write a bluebook filled with cross-outs and interlineation if your professor is one of those anal compulsives with a neat desk. (Guess what mine looks like.) The pictures and diplomas on the wall and the books in the bookcase can provide useful clues into the Professor's values and socio-political philosophy.

## **Debriefing the** Class



As soon as possible after each class, go over your notes, fill in any gaps and make necessary corrections while the discussion is still fresh in your memory .As you go over the notes, ask yourself "why did the professor ask this question?" and "are there any kinds of arguments that were not made?" If you focus on the type of argument being made, rather than just the specific content of the argument (that is, seeing that the argument "if we apply the fireman's rule to policemen, how can we not apply it to garbage collectors and meter readers?" is simply another variant of the infamous "slippery slope" argument), you will see the kinds of arguments your professor favors as well as the values she holds. You will see how similar arguments are being made in classes with quite different specific content This makes your skills training more efficient. If you argue in torts that a common law liability rule is a good one because it has been refined by centuries ofuse (the historical "good because old" argument) and your teacher responds with "but we need a rule that is more attuned to socioeconomic conditions of the twenty-flfst century" (the historical "good because new" argument), this should teach you how you can respond in property when your professor tries to defend some medieval doctrine by arguing that it must be a good rule because it has survived for so many years.

Each week, or at the end of every casebook chapter, you should go through your notes and briefs and attempt to integrate and synthesize the cases into a coherent set of rules. This requires that you determine whether one case overrides another case or creates an exception to the rule in the other case or is a "minority rule" only in effect in a few states. If this is unclear from your notes, ask your teacher or check the hornbook. This integration of the cases is the fIrst step in preparing the outline of the subject. You will need to be able to apply all these rules on the fmal examination.

## **PREP ARING FOR LA** W **SCHOOL EXAMS**

A sage once observed that legal education resembles the method used to induce schizophrenia in laboratory mice; namely, you train them to run the maze in one way, then abruptly change the goal. All semester, law students are told that rules are not important and are rewarded for making oral arguments; then on final examinations, they are expected to memorize a bunch of rules and make good written arguments. Why we test you on what is testable on a written examination rather than on your mastery of all the skills you are taught in class is too complicated to be discussed here. But this practice creates a tension between learning what you need to be a good lawyer and learning skills that are only useful on examinations.

I have no desire to foster the all-too-prevalent notion that law school is an intellectual track meet, and I certainly do not want to make you think that your potentiality as a lawyer is captured by your grade-point average. But the fact is that if you want to be a lawyer, you have to pass law school exams (and in most states a bar exam as well). The trick is to learn the skills you need to pass these examinations without taking too much time away from learning the skills you will need after the bar exam is over. My suggestions aim to show how you might do that -not to make it appear that there is nothing in law school besides examinations. If you are lucky , you may have teachers who try to make the discontinuity between lawyerly skills and examination skills less sharp than is usually the case.

### Looking at **Old** Examinations

From what I have said about the importance of knowing your audience in designing your arguments, you may already have deduced one of the most important maxims for exam preparation: never take a law school examination without looking at samples of the

professor's past examinations. One of the first things you want to do when you begin law school is to find out where the law library keeps old examinations. Some students delay looking at old examinations until late in the semester on the theory that until you know most of the rules, you will not be able to understand the examination. Poppycock. The real reason they postpone this vital task is that they are afraid of what they will find. This is irrational. The best way to reduce fear of exams is to know exactly what to expect when you walk into the examination room.

In going over our corporations teacher's old exams, my study group discovered that the old gentleman had been using the same dozen questions for more than 40 years, but this recycling had gone unnoticed because most students only looked at exams for one or two years. You can imagine how confident we felt walking into that examination, knowing that we had already worked out answers to all the questions we were going to be asked. In fact, I felt so good that I got my lowest grade in law school. This may prove that there is a fine line between complacency and confidence --or that grading is inherently arbitrary (the rest of my study group did fme) --but it does not disprove the wisdom of looking at old exams.

What to Look For

Look fIrst at the instructions. They will tell you if the exam was "open-book"or "closed- book" or what materials students were allowed to use if the exam was "semi-open-book." Make note of these materials and make sure you bring them to the exam; feeling like a fool because you forgot to bring your statutory supplement to the exam is not the best state of mind with which to begin the exam. Watch out for idiosyncratic instructions: e.g., "don't write in red ink" or "don't use small bluebooks." You may say it is safe to ignore these petty preferences, but I have a colleague who enforces his request that students "write on only one side of the page" by refusing to read what appears on the other side when grading exams.

Check whether the past exams were in the traditional essay form or whether they also used multiple-choice, true-false, short-answer, or other so-called "objective questions." The form of examinations can influence your method of preparation for them. An essay examination tests such skills as making legal arguments and the ability to write English prose under severe time constraints. An objective exam is more likely to test yom ability to recall or recognize rules and your skill in applying them to varying facts. Moreover, if the exam is "open-book," you are more likely to be tested on esoteric rules than you would be on a "closed-book" exam; it would be an outrage to expect you to memorize some obscme provision of the Internal Revenue Code, but it is not outrageous to expect you to find and apply it if it appears in a book beside you.

Be wary of examinations if the past instructions suggest your teacher likes to give "take- home" exams. A take-home exam is "good" if you prefer to have your anxieties stretched out over 24 hours rather than compressed into three. It also frees you from the distractions ofbeing cooped up with 100 sweating paranoiacs. But a take-home exam requires a bit of advance preparation if you are to get all of its presumed benefits. For example, the law school administration is not going to summon you from the examination room to answer a telephonic inquiry from a parent or lover into your pretended celibacy; in a take-home exam, you have to make your own arrangements for screening out such distractions. Moreover, you may feel pressured to buy books that all of your classmates will have beside them when preparing their answer on a take-home examination when you might well forego this expense on an in-class exam where you wouldn't have much time to consult the book even if you had it.

Study Groups

**study group. However, since many students have** a **mistaken idea** of the **purpose of** a **study group, they have** a **hard time finding** a **good one. The purpose of** a **study group is two-fold. First it gives you** a **chance to practice the skills you are learning in class with** a **group of your peers. Second, it gives you** a **chance to develop** an **important lawyerly skill not taught** in **class -how to work in** a **group. Many students** in **law** school like **to think of themselves** as **intellectual "Lone Rangers," but it is unlikely that many** of them **are going to practice law that way. Besides, if you are in one of those law schools with** a **highly competitive student culture, you can fmd your study group to be** a **comforting enclave of cooperation.**

A study group is not a "briefing pool" or an "outline combine," though some good ones may share such tasks, nor is it a "legal bull session" or "support group for the alienated," though some poor ones do little more than that. The ideal study group is more like a debate team where you practice making arguments and criticize arguments made by others. When you are just getting started, the subject of these debates can be whose briefhas the best statement of the facts or holding; later you can choose up sides and argue some classroom hypothetical case or some issue raised by the notes in your casebook. When you get closer to exam time, you can practice making up hypotheticals for the rest of the group to argue. This gives you a chance to look at the rules from the perspective of a teacher trying to devise an exam or a lawyer trying to work her way around them; that is, you search for gaps and ambiguities in the rules and try to imagine factual situations that exploit these weaknesses.

My law school study group met only one evening a week (we were married with children so this became our spouses'"night out"). In advance of the meeting we would assign topics, rotating weekly, so that one week I might take criminal law and torts, the next week civil procedure, and so on. I would dig out several old exam questions on my assigned topic and try to work out answers to them by using class notes, hornbooks, outlines, etc. At our weekly sessions, we would take turns presenting the questions we had prepared to the other members of the group and criticizing or supplementing their attempts to give oral answers to the questions. I don't claim this is the "ideal method", but it will illustrate how one good study group functioned.

## **Forming** a **Study Group**

A good size for a study group is three to five students. With only two people, there is no one to criticize ( or referee) debates; with more than five students, you decrease the participation of each and increase the likelihood of including someone whose personality or purpose does not mesh with others in the group. Keeping the group going requires effort under the best of circumstances; you don't want to end up spending more time debating what you ought to be doing instead of doing it.

Some students think the primary criterion for membership should be intellectual that is, that an ideal study group is "me and two other people with high L.S.A. T. scores or who seem to know more than I do about what is going on in class." Avoid students who express such sentiments. It is hard to build a cohesive group with people whose primary motivation is what they can get out of the rest of the group rather than what they can contribute to the group. Compatibility of purpose should be the primary criterion for a study group. If you want a skills-practice group of the type I have described, you will not be happy in a study group with people who really want a "briefmg pool" or an "outline exchange." Similarly~ if you are a working parent who has to carefully budget your time, you don't belong in a study group with "100-hours-a-week" overachievers who will kill themselves (or you) in order "to make law review."

## Outlining

Why does everyone who offers advice on law study tell you that you "gotta outline?" The best answer is that an outline helps to overcome one of the major disadvantages of the case method of law study; namely, the way that it tends to fragment the law. Studying the law by close examination of individual cases can be like learning about forest ecology by
examining the individual trees; the things you learn this way are true and useful, but terribly incomplete. In some caselaw courses, the only synthesis you get is the analysis of a group of cases to develop "the rule" and its myriad exceptions and qualifications. But this leaves you with some serious questions about the relationship of this rule to other rules -to say nothing of the relationship between this subject and other branches of the law. This is an important problem in the practice of law because clients do not come through the office

door with the announcement: "I have this novation problem." Indeed, the client usually does not know whether the problem is one of torts, contract, or property.

I can make the same point in more concrete terms with a more immediate pay-off. All semester long, you will be honing your rhetorical skills on hypos that the professor presents in class. You may get pretty good at this and feel confident going into the fmal examination. Yet when you read the fIrst question, you can be dumbfounded if you are not prepared for it. Why is that? One reason is that each time you looked at a question in class, you knew from the day's chapter headings that the applicable rules were those dealing with "novation" or "burglary" or "indispensable parties." Now on the examination you are faced, often for the fIrst time, with a set of facts that are not only more complex than the classroom hypos but that lack the clues you have been getting in class about the relevant rules. Like the lawyer, you have to decide whether the appropriate rules to invoke are those dealing with
"novation" or those that govern offer and acceptance, though unlike the lawyer you can be pretty sure that the appropriate rules will be found in contract law rather than property or torts. Not only are you faced with an unfamiliar task, but you are asked to perform it on a
set of facts more complex than anything you will have faced in class -more characters than a Russian novel and moving faster than a Max Sennet comedy. Facts that are relevant to contract formation may be intermixed with those that concern issues of breach or performance. Worse yet, some facts may be relevant to more than one issue and some may be totally irrelevant. It is little wonder that many students who were doing well in class can flounder on a law school examination.

This is where outlining comes into play. You make one monster outline of the entire course -what one ofmy classmates used to refer to as "the Poppa Bear." The purpose of this outline is to figure out how the rules fit together, which rules are separate requirements, which am subsidiary rules or exceptions to major rules, which are competing rules that are inconsistent and in effect in different states (the so-called "majority rule-minority rule" classification). Making this big outline can serve other functions as well- review, testing to see which rules you don't understand yet, and helping to implant the rule in your memory - but its major function is to organize the course so that it can be compressed into an exam outline.

The purpose of the exam outline -the "Momma Bear" in my friend's terminology -is two- fold. The second, and less important, function is to condense the course to a length that you can realistically expect to memorize for a closed-book exam. The first, and most important, purpose is to give you a program for processing exam questions through your own "thinking-like-a-lawyer" hand-operated computer. It should be obvious that you cannot discuss all the facts in an examination question at the same time and that the legal rules cannot be applied simultaneously. You have to deal with some issues first and others second and third. Does it make any difference which issue you discuss fIrst and which you discuss second? Or is the law like long addition where you get the same answer regardless of the order in which the numbers are taken? If you cannot answer these questions, then I have just successfully illustrated the problem that an outline is designed to deal with.

The last step in outlining is the preparation of a one-page document that is less an outline than a check-list or index of the exam outline; this is the "Baby Bear." When I say "one- page," I mean that literally. The Baby Bear is a mental check-list that you will use as you go through a complicated exam question, searching for issues that the professor has buried and planning how you will organize your answer. I will explain the use of the mental check-list in the portion of this essay suggesting how to go about writing an answer to a law school examination. For now, you will simply have to take it from me that the Baby Bear has to be so short that you can visualize it in one comer of your mind's eye as you read the question -- something like that little picture that appears in the comer of the screen on television sets that allow you to monitor one channel as you are watching another .

Commercial Outlines

As the author of a commercial outline, anything I say on this subject is suspect -and rightly so. But if that were grounds for silence, no one could say anything on the subject. My views on the subject were biased before I wrote an outline, albeit in a somewhat different fashion. As courts do with biased witnesses, don't treat me as a total incompetent but hear what I have to say and discount it for bias in making up your own mind.

From what I have said above about the function of outlining, you will have deduced that while a commercial outline can be an adequate substitute for some of the purposes of outlining, for others it is no substitute at all. A commercial outline can demonstrate how someone else organizes the rules, but it does not give you much practice in that skill. Moreover, by letting someone else do the outlining for you- whether it is me or a member of your study group -you lose the review, memorization, and learning that are the by-products of the outlining process as well as the psychological sense of progress that comes from producing your own. These are the reasons I did my own outlines and urge you to do the same.

But having said that, I must acknowledge that not every student has the time to do outlining. Despite the importance of outlining, only the most devout worshiper of the Great God
G.P .A. would claim that it should rank above spending time with your children or engaging in political activity or reading poetry .Moreover, commercial outlines do offer something that your own cannot -namely, a second opinion on organization or another explanation of difficult rules and concepts. Indeed, some students buy an outline not as a substitute for
their own outline, but as a substitute for a hardbound student text and a model for their own outline.

**The issue with commercial outlines,** as **with any study aid, is not one of use, but abuse. If buying** an **outline increases your passivity** , **makes you** a **spectator rather than** a **participant** in **the educational process, and prevents you from developing your own critical skills, then buying it is** a **bad idea regardless of how good the outline may be in other respects. On the other hand, if you use the outline** as a **tool to encourage your own critical aid to free up more time for the practice of your rhetorical skills, it is probably worth the price** in **dollars and foregone opportunities.**

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# Understanding Law School - Page Three

By Professor Kenneth W. Graham, Jr.
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Mid-semester Melt and The Marathon Metaphor

If you plotted study effort over time, for most law students the graph would look like a cross-section of the San Joaquin Valley; two towering peaks at either end with a flat, foggy miasma between them. We all fmd it easy to study at the beginning of the term, when our enthusiasm is high, or at the end, when fear of failure towers over us. The trick is to maintain study in the middle weeks when the subject matter is no longer fresh, the faculty's foibles become annoying rather than amusing, and when job interviews, research memos, or co-curricular activities (such as law review, moot court or other student organizations) provide a handy excuse for decreased study time. If weekly review of your time sheets shows a decline in your efforts, it is time to think about a strategy for the long haul.

One model for such a strategy is a marathoner's training schedule in preparation for a 26- mile run. Viewed over the entire period, a typical plan would show a slow but steady increase in mileage each week with a tapering off just before the race. A look at the daily or weekly schedule would show a more varied pattern. One day might have a long, slow run that is interspersed with short, sudden bursts of speed. Some days the runs are up a hill to strengthen leg muscles, while on others the runs are supplemented by lifting weights to build up unused muscles. There are even days of total rest. Your mind is also a muscle, perhaps not the same as the gluteus maximum, but with a similar need to recover, recharge, and rebuild after stress and with the same need for variety .If you spend all your time exercising your lagical and analytic capacities, your imaginative and empathetic faculties may atrophy like non-stressed pectorals.

Don't make your "training plan" a prison; as the runners say, learn to "go with the flow." If you are "on a roll" when briefing cases for property, you don't have to come to a screeching halt just because the plan calls for you to switch to some other task. On the other hand, if you are having trouble just staying awake when you are scheduled to read the hornbook, don't push the "no-pain, no-gain philosophy to the point where you stick pins through your nostrils to keep from drowsing off. Switch to lighter reading, like a legal novel or a lawyer's biography; that will clear your mind of academic torpor. If you keep track of your time, you will find that your efforts will balance out over the long run.

Did I just tell you to read a novel? Yes, I did -and do some legal history or jurisprudence or legal jokebooks while you are at it. I am a believer in the "serendipity theory" of education, which holds that learning is a process of making connections between what is already known and what you would like to know so that the more you know, the easier it is to make these connections. But you don't have to understand or believe in this theory to take my advice. Just understand that learning to "think like a lawyer" requires you to know our legal culture. That culture is deeply embedded in materials that seem rather far removed from the cases, statutes, and treatises that are your daily diet. You have to immerse yourself in other manifestations of the legal imagination if you expect to understand the thinking of lawyers and judges. This is why I never felt guilty about stopping by the rack in the library , when I had a few moments before class, and skimming the front page of a legal newspaper or giving a fast read to an article in the local bar journal. Let your reading roam beyond the syllabus and you will fmd many rewards.

# WRITING LAW SCHOOL EXAMS

**The** Profs Eye View

**When** I **entered law school,** I **had prior experience** as a **teacher.** I **found my experience in giving and grading examinations helped me when** I **returned to taking them.** I **urge you to** try **to** think **about law school examinations from the professor's point of view. If you do, you will realize that your professor could devise** an **exam that everyone could pass (well, almost everyone) or** an **exam that everyone would fail** ( **contrary to what students may** think, **this last is not the strategy professors follow). From the professor's point** of view, **the reason for giving you** an **exam is so that she can give you** a **grade. All schools require grades and most of them expect or require that grades be distributed** in a **manner resembling the infamous "bell-shaped curve." Thus, the professor's strategy** in **constructing** an **exam is to ask some questions everybody can answer, some questions almost nobody can answer, and** a **range of questions between these two extremes.**

Students need their own strategy for taking examinations. If your only plan is to walk into the exam room, read the question, and "wing it" in writing your answer, you are much more likely to panic when you see all those facts and issues crawling off the page toward you ( or worse yet, when you see no issues at all). A sound strategy will help you to avoid common errors. For example, good students sometimes think that if a legal question is easy to answer, then it must not be an issue when they see it on the exam; so they lose points for not discussing an issue that the teacher thought everyone in the class would be able to answer. It may help you to devise your strategy ifl describe the method I used to write law school exan1inations.

The "Three Times Through" Method

My method was to read an essay exam question three times before I began to write my answer. The first time through, I read quickly to get a general understanding of the facts and to make sure that I understood the task that I was expected to perform. The task instruction or "call" is usually at the end of essay questions, despite the fact that these instructions should make a difference in how you read the question. You will look at the facts one way if you are instructed to "discuss all possible claims and defenses" and another way if you are told to "write a legal argument in opposition to defendants motion to dismiss."

The second time through, I read the question much more carefully and with this thought in mind; "Why did the professor put this fact in?" I knew from my experience as a teacher and in devising hypos for my study group that you raise legal issues by fIrst making up facts needed to raise these issues, then gluing them together into a plausible story with other non- essential facts. Hence, the second time through the question I was just reversing the process. I would ask "what legal issue(s) would this fact be relevant to?" and jot down the abbreviation for the issue in the margin of the exam next to that fact.

If you practice this technique on old exams, you will see some patterns that make it easier to spot issues. For example, the more specifically a fact is stated in the question, the more likely it is to be relevant to some issue; if the professor wants to raise an issue about the amount of damage recoverable for negligent destruction of a vehicle, he is going to describe it as a" 1990 Mercedes" rather than as "plaintiffs automobile" because the latter gives you no idea what the car is worth. Similarly, if the professor goes to the trouble of making up specific dates for some events in the question, it's a pretty good bet he wants to raise an issue like the statue of limitations that turns on the dates of those events.

The third time through the exam was another quick trip. This time I flipped on the one-page

mental checklist I had memorized just before the exam and kept it in my mind's eye as I looked over the facts and my notes in the margin regarding their potential significance. I used the checklist for two purposes. First, to organize my answer (I would suggest that you ouline your answer on the fIrst page of the bluebook if your professor is one of those who will give you credit for seeing issues you don't have time to discuss). Second, I used the checklist to make sure that I had not missed some issue that did not leap out at you from the facts but was easy to see if you were looking for it with the assistance of the checklist.

A strategy such as the "three times through " method takes time -but it is time well spent. If you make sme that you have found all of the issues and the facts necessary to resolve them before you start to write, you won't have to feel (and look) like a fool when you cross out pages you have already written because you remember a rule or stumble over a fact that demolishes yom initial analysis of the question. Moreover, if you see all the issues and organize yom answer, you can allot your time so you don't waste so much on the earlier issues that you can only skim the surface of the later ones. Finally, if you practice this system on old exams of a professor who uses the "Easter egg hunt" method of constructing exams, you may discover the tricks she uses to conceal issues so that only a few students can find them.

To Type or Not to Type?

There is only one good reason for typewriting your answers to an essay examination; namely, you can write a better answer with the machine than you could with a pen. Since most law Students have poor handwriting, the professor is unlikely to be particularly biased against you when she has to pause now and then to decipher a word. I know of no evidence, including my own grading, that typewritten answers are scored higher than handwritten answers with the same content. Because typists are a small minority , law schools do not administer examinations with them in mind. For example, corrections to the questions that are chalked on the board where students are writing the exam are not always communicated to the typists. When you add in all the things that can go wrong with the machine, it is clear that while typing the exam may make it easier for the professor to read, it is not necessarily the best way for you to write your answers.

**Common Errors -Some Rules** of Thumb **(Down)**

(1) R T .D.P .-Read The Damn Problem! Make sure you have the parties straight and the facts correct. Nothing exasperates a grader more than factual "mistakes"; somehow students always seem to "err" in the direction that makes the issue easier to answer (and the answer harder to grade ).

(2) Follow the "call" of the question, not the "call of the wild." If you are instructed to "write a legal memo supporting the plaintiffs claim", don't write your answer as if you had been told to "discuss." Put your answer in the form ofa memo and only make arguments that favor the plaintiff.

(3) Resist the temptation to show offhow much law you know; discuss only those rules that are essential to resolving the issues posed. If the professor wants you to write a law review article, she will say so.

(4) Don't write "formulaic" answers. "I.R.A.C." may be a way to remember the elements of a good answer, but it is not a recipe for wilting one. It is tedious for the grader to read and inefficient for you to write an answer that repeats over and over, "The issue is. ..The rule is ...The application of the rule is ...The conclusion is. ..."

**(5) Don't "resolve issues** in **your head."** If you think **"this can't be** a **battery because the**

defendant never touched the victim," write that down in your bluebook. If you don't, you may miss cheap points that every idiot in the class is going to get; if you do, the act of writing it may remind you of some rule or reason that turns this "cheapie" into a more difficult issue.

(6) Don't ignore the gorilla. If there is a major issue that you have no idea how to resolve, don't just pretend that it is not there. If you do, you look like a fool and miss points the grader ay give you for seeing an issue that he really didn't think that anyone could answer.

(7) Keep your eye on the doughnut, not the hole. If you have a gap in your recollection or knowledge, don't let that distract or discourage you. Start with what you do know and try to work your way toward the answer from there. If you can't think of a relevant statute or case, make an argument from policy. For all you know, there may be no policy!

**(8) Use legal tenninology.** I **know you are not going to pass the exam when** I **read** in **your answer that "this case should be thrown out of court," instead of "The motion to quash service of summons should be granted.** " **If you can't even** talk **like** a **lawyer, it is almost certain you can't** think **like one.**

**(9) Don't whine or throw bouquets.** If the **exam is unclear or has** an **apparent error, don't annoy the grader by gloating or complaining about how his mistake has destroyed your concentration. Explain how you have resolved the ambiguity or corrected the error, then answer accordingly. And** if **you really** think **it was** a " **great class" don't write this at the end of your bluebook; send your professor flowers after the exam. Putting compliments** in **your bluebook makes you look like** an **insincere sycophant.**

(10) Finish it off. Before turning in your bluebook, make sure it complies with all formal requirements (exam number attached, honor pledge signed, etc.) and all your answers are labeled so the professor can find the answer she wants to grade without guessing which bluebook has the answers to which questions.

II **After The** Ball Is **Over ...**

Get away from the exam room immediately. If you stand around in the hall exchanging anxieties with your classmates, you will disturb other students still writing their exams. Even worse, you will hear about a whole bunch of issues that you never saw (and which may not have been there). You don't want to ruin your concentration for the next exam (or the first day of your vacation) by worrying about your performance on this exam. Besides, your subjective feelings are rarely a good indication of how you did. You may think you "creamed" the exam because you were not prepared enough to see all the issues you would now be moaning about missing if you were.

The time to "debrief' the exam is after it has been graded, but very few students do this, perhaps understandably so. It is embarrassing to admit to a professor you admired that you are the author of a bluebook he didn't admire. It may be painful to read what you wrote and to listen to a litany of your errors of analysis. However, if you wait until you have calmed down and go in with the attitude that you intend to learn from your mistakes, the confrontation may be less painful and more helpful than you might suppose.

If your grade on this exam was markedly worse than your others, tell the professor and ask (respectfully) if she will check or allow you to check the calculation of your grade. Over the past 25 years, such requests have turned up two cases in which stupid mistakes in addition by me have lowered the student's grade significantly. Two mistakes in over 4,000 bluebooks might seem like long odds, but keep in mind that there were probably less than 100 students who actually had the math checked.

Make careful notes as the professor explains the strengths and weaknesses of your answer; you probably won't be able to absorb the criticism adequately just by hearing it once. Ask the professor if you can make a photocopy of your answers so you can go over them more carefully later. (Most schools have rules that forbid the professor from giving you the original bluebook.) Don't be discouraged if you run across a professor who seems reluctant to take the time to debrief you. Insist. You paid your tuition like everybody else and are as much entitled to make demands on his time as his buddies on the law review.

When you have assembled comments on your exam performance from all your professors, you can go over them and the copies of your exam answers to see if any common threads emerge. Don't be surprised if the critiques of your work vary in both their direction and their quality .Professors vary widely in their notions of what makes a good answer and in the depth of their insight as to what is really going on when they give and grade examinations. This is why you have to put together the comments from all your teachers so that you can weed out the idiosyncratic and the id iotic before you make changes in your study habits and your exam strategies. The specific suggestions I have made here are less important than the premise on which they are based; that is, that you should see the examination as a part of the educational pr ocess, not as its end. If you have tried in your daily work to engage in self- conscious criticism of your learning practices, you will find it easier to respond intelligently to your exam grades, good or bad. It is foolish to look at a set of bad grades and decide to give up studying for partying; but it is also foolish to keep beating your brains out semester after semester using the same unsuccessful methods to try to improve your grades. The fact that your teachers have not taught you how to learn the law is a poor excuse for not learning to do it yourself.

This brings me to one final point. Maintain your dignity .If you thought the professor was a jerk for 15 weeks, don't suddenly discover his hidden virtues after your grade puts you in the top of the class. If you have studied hard and learned much during a semester, don't think you are a jerk if the grades don't seem to reflect your accomplishments.

Success or Failure?

**One of the least pleasant side effects of legal education is the way** in **which students I!internalizel! their grades. It is most apparent** in **the case** of the **student who responds to** a **set of bad grades by thinking: 1!1** am a **IC' student** -a **worthless person who will be lucky to get** a **job** as a **claims adjuster and who is doomed to** a **lifetime envying those with better grades.1! But it is equally invidious** in **the case of the** I! A I! **student who decides that his grades prove his self-worth and spends the rest ofhis life seeking** a **substitute for the G.P.A.** in **more money, faster cars, or better children than everybody else.**

The fact that some employers seem to give grades a disproportionate significance should not fool you into supposing that all lawyers are unaware of the arbitrary nature of law school grading. Anyone who has ever graded law school exams can tell you that while there is a palpable difference between the best and worst papers in the class, other comparisons can be more problematic. A grade of 80 could go to either a student whose parents were both lawyers, who has learned nothing in law school, and who has gotten by on what was learned from listening to Mommy and Daddy talk at the dinner table or to someone who is the first person in the family to attend college and who has had to learn not only how to think like a lawyer, but how to understand people from a totally alien culture. In other words, the same grade can represent either an achievement or an accident.

Some law schools have done studies of their graduates that have produced one striking, and frequently suppressed, result. There seems to be an inverse relationship between grades and "success," regardless ofwhether success is defmed in terms of financial rewards,

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**professional stature, or personal satisfaction. Law professors, who are usually** II A II **students, have offered** a **number of explanations for these fmdings. Law professors are unrewarded** in **tenI1S of pay and status. Other top students go to big finns where they exchange security for the opportunity to make the kind of money that personal injury lawyers make. Students with low grades are "too dumb to know they are unhappy.** II

But in their candid moments, even law professors will concede that law school grades measure (and often very poorly) only a few of the talents needed to be a "success" at the bar, irrespective of how that term is defined. Like many ofmy colleagues, I have no difficulty writing truthful letters of recommendation for students whose grades on examinations do not reveal the talents they have displayed in class. I could spend the next 20 pages just listing people I know who have had wholly admirable careers as lawyers despite "mediocre" grades. But I won't -because to do that would be to foster the very attitude that needs to be discouraged.

**Sooner or later, we must all recognize our own strengths and weaknesses, whether these limitations are broader or narrower** than **those of others who we know. When we do that, we are ready to redefine "success"** in **our own terms rather than accept the defInitions that seem to be thrust upon us. This requires** us **to give up the comparative ease of asking,"** Am I **better or worse than X," for more difficult questions such as,"** A.m I **better or worse than** I **was yesterday?"** " Am I **really performing up to my capabilities or** am I **imagining limits** as an **excuse for my failure?," and "What difference will it all make when I'm dead?"**

**It is with these more difficult questions that education, even legal education, ought to be concerned. But because those questions are so personal, we have to learn to handle them with little help.** I **hope that the suggestions** in **this essay will seem to you not** a **"blueprint for success,** II **but rather** as **encouragement to begin learning about yourself** as **you** try **to learn about adverse possession and the Commerce Clause.**

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