This Winter issue of The Learning Curve is a robust one. We bring you another general-themed edition of very thoughtful ideas about teaching in law schools today. I am particularly happy that this issue is published shortly after the most-recent AALS Annual Meeting in San Francisco, where the theme was Why Law Matters.

Although the declining enrollment at law schools in recent years have indicated to some that legal instruction altogether has become irrelevant, I have always believed this correlation was more of a misreading of the economics of attending law school than a characterization that the whole of American legal education has been suddenly cast at the wayside. Law and politics continue to evolve. The world still needs legal thinkers. These reasons show us why law matters.

Thus, legal education matters. In the following pages, we bring to you twelve articles about what law school academic and bar support do that makes all of us matter—pieces that each embody a thoughtful place within our instruction to our students.

We have articles that approach the programmatic aspects of law school academic support from Deborah Rummelhart (Law School Toolbox) and from Kim Kass and Bethany Lesniewski (Valparaiso), and articles on bar support teaching from Allie Robbins (CUNY) and from Alicia Jackson (Florida A&M). L.O. Natt Gantt (Regent), Herbert Ramy (Suffolk), and Philip Kaplan (Suffolk) each have articles that share their classroom methodologies. Sara Berman (Nova Southeastern) brings us her take on instilling student professionalism and empowerment during orientation. Then there are pieces that draw upon moral perspectives in both law teaching and in academic support from Marsha Griggs (Thurgood Marshall), Charles Splawn (Elon), and Robert Gregg (Appalachian). Finally, Kevin Sherill (La Verne) brings us a short helpful reminder on self-care in learning.

The law matters. Our students matter. And we matter as well. Enjoy this Winter issue and stay warm!

Jeremiah A. Ho
On behalf of the Editors
CRISIS, WHAT CRISIS? – The Curious Case of Pedagogical Indifference

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I received a call recently from a doctrinal professor who was quite distressed with the 1L exams he was grading. The point of his call was to give me, an academic support instructor, the warning that this 1L class was going to do horribly on the bar exam. That call, and the many faculty and blog discussions I’ve encountered over the past few years, reveal troubling incongruities. Here is a small sampling of those incongruities:

Our bar exam free-fall over the past two years must be reversed! How can our school survive such dire statistics? Something must be done!

We, unlike some other law schools that shall remain nameless, will not be a “bar school.” We will not “teach to the bar.”

Due to the severe shrinkage of law school applicants, our incoming classes are less and less academically prepared. The proof is in the dreadful writing samples shared at our faculty development lunch workshops—and, ultimately, in the increase of equally dreadful final exam results. Many of our new students seem to lack basic logic, critical analysis, and communication skills. Also, they are easily distracted, disabled by insignificant differences, and dismal at piecing together a coherent whole from disparate parts. We suspect this is the doing of Universities.

Our students need to buckle down and work harder! They’ve been too coddled!

Okay, but should we teachers do anything? Like, examine the extent to which we confuse already confused students by using the same terms to mean different things from professor to professor (e.g., what is an “essay” answer)? Or consider whether the case method is a cruel joke for students minimally, if at all, exposed to any type of inductive reasoning? Or share with each other the specific terminology, analytical frameworks, and exam methodology we’re using, in order to address any unnecessary and befuddling inconsistencies? Should we accept any responsibility or take any specific action? No, of course not.

Notice a pattern here? We teachers seem to see a problem, less academically prepared students, but we don’t accept it as something that should affect our comfort zone or change our pedagogies. We sometimes even acknowledge that it is a scary problem. And inexplicably, that makes us retreat even further into Fort Status Quo. It is possible that such inaction is simply laziness or dereliction of duty—a half-hearted commitment to real teaching. Let’s assume, though, that is not the case for the vast majority of law professors. Then what might explain this widespread, white-knuckled attachment to pedagogies and curricula that do not appear to be well-suited for today’s less academically prepared students?

I am somewhat new to the law school landscape—but not new to teaching, having been fire-tested for a dozen years as a com-
community college teacher. My law school inexperience notwithstanding, I can recognize an institution in distress, and I love a good puzzle. So here goes. It seems that some (many?) of us view law school as we would an antique car: very fine to look at, conjuring up fond memories of ideal times, and even wonderful for a Sunday drive into the country. Like a shimmering image just at the edge of my vision, I can see it! Fine young people stream through the doors as 1Ls: self-reliant, classically educated, and eager to accept with docility the wisdom that lies within. Law professors hold forth on complexities, engaging and challenging their students. The students, sufficiently sparked, labor happily in constructing their own intellect, while the professors return to their scholarly pursuits. Ah, the good old days.

Of course, the problem is that antique cars and self-learning students belong to a former time. Pretending these glory days have not faded ignores the reality of the present. For whatever reason, a typical incoming class at a law school such as mine includes more and more students who are eager enough, most likely smart enough, but whose academic deficiencies cannot in good conscience be ignored.

Significantly, we lured them here with the expectation of learning the law, and we certainly took their money. But the crux of it is that our expectations for our incoming students are way up here, while their abilities are way down there. However you want to define the gap—cognitive, cultural, etc.—the gap is real. Either we will remember and renew a true teacher’s concern for our charges and find effective ways to help students close the gap, or we will sacrifice many of today’s law students to a wistful nostalgia.

To teach these particular students the basics we thought they already knew (e.g., logic, grammar, critical analysis, American government) is nothing like the law school we all remember. And the thought of adopting pedagogies other than the one we encountered as law students can appear daunting; indeed, innovations such as shelving the case method, at least for the first semester, appear to some as panic-inducing sacrilege. The horror! But failing to adopt a pedagogy appropriate to actual, rather than imagined, student ability has real consequences, as many of today’s law students (and bar exam takers) are demonstrating.

For a significant number of law schools, we are three years (at least) into an undeniable period of declining admissions credentials, declining observed student abilities, and declining bar passage. If this is a passing phase, it is passing slowly enough that damage is being done. So the blame game must be played. It’s the students. It’s the bar examiners. Or it’s us. Perhaps it’s all of the above. But can we (ethically, that is) admit students who we know are not going to “get it” under the old schema and do nothing to address that problem? I doubt whether there is a single faculty member at most law schools who does not see the problem. I doubt whether there is a single faculty out there lacking the means to address the problem. Thus, it is simply a question of whether we have the will to reconsider the effectiveness of our educational models and methods.

Reasonableness under the circumstances, isn’t that what we teach? Yet, as educators, are we practicing it? I cannot think of a more fitting wrap-up than Dr. Martin Luther King, Jr.’s poignant observation: “The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy.”¹

¹ Martin Luther King, Jr., STRENGTH TO LOVE (1963).
Why the first week of law school? First, law students who face a significant challenge will be more likely to conquer that challenge if they have as much time as possible to do the necessary work to defeat the challenge. If a law school can identify those law students facing or likely to face academic challenges during the first week of classes, it can prevent those students from falling hopelessly behind in the brisk pace of law school classes. Second, students who are aware that they are in trouble may be embarrassed and refrain from asking for help. Finally, in substantive classes, students may not know they are in trouble until they receive their grades on a midterm or final, at which time a half a semester or a whole semester is gone.

What does “early diagnosis” mean? One size does not fit all. Early diagnosis means pinpointing the exact type of academic support that a particular student needs. Students need academic support for a variety of reasons. Some students cannot write a grammatical sentence on any subject. Other students may be non-native speakers of English and need specialized support in learning legal vocabulary or proper English sentence structure. There are students who are unfamiliar with the basic principles of expository writing and would not recognize a topic sentence if it fell on them. Students facing this type of challenge also would never dream of using separate paragraphs for separate topics (a problem I have heard both bar exam graders and judges complain about). Finally, there are students who have mastered English grammar and expository writing but are especially challenged by learning legal analysis.

Some may believe that just doing regular legal writing assignments would identify students who face academic challenges. My experience creating and teaching in a legal writing program shows that this is not necessarily the case. During my first year of teaching legal writing, one of my students came to my office hours and burst into tears. “What happened?” I asked. “I flunked my property midterm!” my student wailed. This student was in shock. I was in shock, because this student worked diligently, came to my office hours with questions, and had done a good job on the objective memorandum writing exercises that had been assigned in the legal writing course so far. These assignments included identifying and stating a legal issue, giving a short answer, applying the law to the facts in the discussion section, and reaching a conclusion—the basics of any IRAC type of analysis. How could this student have flunked a legal essay exam?

With the student’s and the property professor’s permission, I took a look at this student’s midterm essay exam answer. The exam answer read like a mini-treatise of every property rule you could imagine. This student had property rules in the exam answer that I had never heard of. This student had property rules in the exam answer that the property professor...
had never heard of! Unfortunately, the exam answer did not include even a single fact from the exam question.

I spent the rest of the semester teaching this student how to take legal essay exams. (There was no ASP available at the law school at that time.) “Look, it’s just like what we are doing when we write a legal memorandum, only shorter,” I began. After a number of practice exams and reassurances, this student received an “A” on the final property exam. That’s great, but it would have saved the student, the academic dean, the real property professor, and me a lot of angst if we had been able to identify and conquer this student’s academic challenge early enough to prevent the student from receiving a failing grade.

How can an ASP identify and diagnose academic challenges in the first week of law school? By building a simple short diagnostic test into the curriculum that already exists in the first week of law school.

During the first week of law school, most law students are taught how to brief a case. After they have finished briefing a case, a law student’s next assignment should be to write a short (maximum one page) summary of that case to their grandparents (or a family member who has never studied law). Students should also be told that this is a test, but a pass-fail test and that they can only fail by not taking the test or cheating.

The ASP professors (with help from the legal writing professors if more staff is needed) can then quickly review these case descriptions to diagnose the writing problems of their students. Does a student ignore the basic principles of grammar or expository writing? Is a student a native or non-native speaker of English? Is a student having trouble learning legal analysis? Granted, it is early in the semester to be able to conclude that a student might face difficulty learning how to do legal analysis. However, the ASP or legal writing professors could flag those students who did significantly worse than their peers on summarizing legally significant aspects of the case as students who might need extra support with legal analysis. With the results of the case summary in hand, the ASP can guide each student to the proper type of academic support. Ideally, the law school, through different sections of the legal writing program or different sections of the ASP could provide the variety of academic support needed to address different types of problems. For native English speakers with grammatical and expository writing issues, one section could emphasize how to write short complete grammatical sentences with subject verb agreement. Another section could cover the same topics for non-native speakers of English, perhaps taught by a professor some experience teaching ESL (English as a Second Language). Students unfamiliar with the basics of good expository writing could attend a section which focuses on topic sentences, the proper use of paragraphs and the use of transition words to organize an essay. Finally, those students who have or may have difficulties learning basic legal analysis could be assigned to a section covering basic IRAC and the traditional curriculum of a law school ASP.

To avoid stigmatizing particular students, every student at the law school could be assigned to some specialized section. If every student is assigned to a specialized section, what should a law school do with the students who do not face any of the challenges described above? These students could be assigned to a special section to go over basic financial concepts that they may not be aware of but as attorneys they will need to know. These financial concepts could include the difference between a stock and a bond, and the capitalization of interest rates onto the principal of a loan. Alternatively, these students could be assigned to a special section that would prepare them to be tutors for other students who are facing academic challenges.

In sum, if the recent proposed changes to the ABA’s Admissions to the Bar Standard 361 are approved next February, then law schools will face a new challenge to their accreditation. Law schools can conquer this challenge by implementing a method for early identification and diagnosis of academically challenged students and by providing a variety of resources to enable law students to conquer their academic challenges.
Professionalism and Power: Encouraging Students from Orientation Forward, To Find Their Sources of Strength

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I am new to my law school and was impressed beyond words by this past summer’s Orientation for our incoming 1Ls—a full week on campus with content to help the new students excel in law school, team-building for students to get to know and appreciate each other’s talents and diversity, meaningful meet and greet sessions with professors, administrators and alumni, as well as volunteer and community action opportunities. The Orientation also emphasized and included programming on professionalism.

In one small-group professionalism session, a professor, local judge, and/or alumnus facilitated as students grappled with hypothetical yet realistic scenarios that test personal and professional ethics. Scenarios ranged from exploring how students would react to seeing a classmate cheat. (What did school rules require? What did ethics demand? Did students fear reprisal if they were to report a fellow student? Why? What could be done to prevent such problems before they arose?) Facilitators fast forwarded, asking how the situation might differ if reporting a colleague’s unethical behavior in law practice? We then asked if obligations would change if the incident took place during undergraduate or another non-law setting? (Students pondered whether there should be higher standards for lawyers.)

With each hypo, we as facilitators inched students toward seeing themselves as more than simply studying a new field. They began picturing themselves as lawyers: in court representing clients, in law offices counseling clients, talking with court clerks, and dealing with each other as co-counsel and with others as opposing counsel. They began to see how their actions, or inaction, would affect the professional reputations they would be building during law school and maintaining throughout their careers. (I often tell my students that classmates will remember how they behaved in law school and use that information decades into the future to decide whether or not to refer clients or provide recommendations. Many of my classmates still remember who did what in our 1L section!)

During the Orientation session described above, as I and my fellow facilitators engaged with the group, I could feel the students transforming from “just” law students to future lawyers. Part of that transformation came from seeing that law study is based far more on reality than theory. “If you like reality TV, you’ll love law school,” I told them, “It’s reality reading! The seemingly unimaginable facts in
the cases you will read actually happened.”

As we all know, when students graduate they will hold the awesome responsibility of helping real people, or not. Their actions (or failures to act) may determine whether a client keeps or loses her home or custody of her children. Their work as lawyers will affect whether people are made whole (or as whole as possible) for egregious wrongs. They will ensure with planning and preventive lawyering that companies are in compliance with rules and regulations, and see that individuals and families have sound estate plans. In short, what our students do in law school and when they graduate matters. It matters deeply. We know this, and, as educators, part of our job is to help them see this, take responsibility for their decisions and actions, and own their power.

Orientation is a perfect time to let our students know the following: “Not only does what you do matter, but who you are matters. In just three or four years, time that will fly by, you will graduate, pass the bar, and be responsible for peoples’ lives and livelihoods. You will have great power.”

I tell students this during Orientation, at a time I know they feel anything but powerful. Declaring this truth usually shocks and provokes reaction, exactly what I am after, because, after the nervous laughter settles, it makes them think! And, the more students understand their “power,” in and after law school, the greater their ability will be to improve their own potential to succeed and to make a positive difference in the world. (Students who feel powerless often internalize mistakes, feel less than, and do not seek or listen to help from ASP or doctrinal professors. Students who believe they are already strong and just need advice on how to overcome a particular challenge or correct a certain mistake are much more likely to seek and heed advice from those of us who can help.)

How does the topic of power arise in discussing professionalism with law students? There are unlimited segues. My discussion of power emerged, in this most recent Orientation, during a seemingly “light” hypothetical about appropriate dress. As the topic was introduced, some students thought it trivial. But as personal accounts from alumni poured out about how clients and/or opposing counsel treated them differently depending on what they were wearing, students took the topic more seriously.

One student admitted that during a pre-law summer experience assisting a judge in criminal courts, the student, dressed casually, learned upon arrival that anyone in the courtroom was immediately sized up as either a defendant or a lawyer. “The suits were the lawyers.” End of story. Another student raised a thoughtful point about how dress norms were changing along with social norms, adding that clothing and hairstyles might be affected by racial differences and evolving gender identifications. We also talked about how geography and weather impact dress. Yes, we are the most interconnected world ever, but we still see differences in what might be considered appropriate in South Florida or Southern California as compared with Boston or New York.

When one student seemed put off by the discussion, I proposed that they all seize opportunities, during law school, to “test” for
Professionalism and Power (Cont’d)

themselves whether people treat them differently depending on what they wore, and then draw their own conclusions about whether dress impacts professionalism. I used the example I often do, encouraging students to get a car fixed or serviced wearing old ripped jeans, then go back again to the same or a similar auto shop or car dealership wearing a suit. I then suggested that students use different law school occasions, such as events they will attend and/or presentations they will make in class and organizations, to see whether they felt differently about their own power wearing different clothing, and whether they sensed any differences in their impact on the respective audiences.

I left the students this past Orientation with the challenge to use at least some of their time in law school to decide for themselves where and how they derive their own power and suggested some

of the following self-reflection questions to ponder during their first months in law school:

-Do you feel differently about yourself and/or do others treat you differently when you come to class fully prepared?

-Is there a difference in how you understand the material (and how “smart” and/or powerful you feel) if you complete some of your assigned reading aloud, so that you have heard the words (including legal jargon terms) come from your own voice?

-Do you feel stronger when you raise your hand and engage in class, or when you wait to be called on?

-Does your sense of self differ depending on where you sit in the classroom (front rows or back rows), or whom you sit next to?

-Is your power and/or your reputation with classmates, professors, and others enhanced when you show up on time to class, meetings, and events; return emails or phone calls promptly; and keep peoples’ confidences?

-Do you feel more able to combat law school challenges when you get more sleep and exercise? How does your nutrition affect your power to cope?

-And, finally, trivial as it may have first seemed, do you feel more powerful depending on what you are wearing?

There are unlimited questions students can ask themselves before and during law school to help them embrace who they are, to understand the power they wield through their actions and/or inaction, and to determine who they will become as professionals. Many of these same questions we can ask ourselves: how and where do we derive our power as educators.
Thinking Like a (Bar Exam) Grader

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Each semester, my co-teacher and I start our pre-bar prep course with an overview of the bar exam and an essay writing workshop. One of the facts we emphasize is that every bar exam grader in New York State grades 1500-1800 of the same essay, and spends 2-3 minutes on each one.¹ We repeat this fact throughout the semester to reinforce why sticking strictly to the IRAC and mini IRAC format is so important. Despite this, of course, the homework essays and exams we received often did not closely follow this format and students found it difficult to follow the IRAC structure.

A few years ago, we introduced a grading exercise mid-semester to help students think like a bar exam grader. Usually, we use an essay that the students have done as a homework assignment and are thus familiar with. We provide them with a copy of the essay question, two sample student answers from prior years, and two grading checklists. Before they open the packet, we explain the exercise. We then give them a few minutes to read the essay question, while we put two minutes on a countdown timer on the smart board.² Next, we ask students to pull apart the packet so that sample essay A is next to checklist A. We give them a few instructions about grading an essay (which they are already familiar with after having received essay feedback and checklists from us at this point in the semester). Then we say go, start the timer, and have them grade the first essay. After two minutes, we ask them to switch to sample essay B and we give them two minutes to grade the second essay.³ One sample is organized into mini IRACs, while the other sample has a long rule statement and long application section. Both answers are fairly good answers. They both include most elements of the rule and apply them. Both answers leave some things out and have some mistakes. Our goal is for students to see that even if an essay contains good content, points can be lost if it is difficult for a speedy grader to find it.⁴

The group discussion following the exercise is always illuminating. Students are often surprised at how difficult it is to grade an essay, and it is apparent by their gasps and sighs after they grade one essay. We have received responses such as “grading the first essay gave me a headache,” and “I really had to search for
Thinking Like a (Bar Exam) Grader (Cont’d)

The students had been learning about IRAC for an entire year, but it was not until they actually had to quickly grade an essay that they began to really understand why they needed to stick strictly to the structure. Seeing how much easier it is to grade a well-organized essay really brought home an understanding of why structure matters.

things in this essay and it made it harder to grade.” Of course the best comment, which we hear often, is “I see why organizing an essay into mini IRACs makes it clearer, and I know I need to work on that.” We regularly read in our course evaluations that the grading exercise was the most effective thing we did the entire semester. It shifts student thinking from what they know, to how to most effectively demonstrate what they know.

This past summer, I did this exercise during an academic support workshop for a course I was not teaching—a 1L required course for our evening students. I used an essay they had not seen before and made up my own sample answers. Even though the students had not done the essay before, there were “a-ha” moments throughout the classroom. The students had been learning about IRAC for an entire year, but it was not until they actually had to quickly grade an essay that they began to really understand why they needed to stick strictly to the structure. Seeing how much easier it is to grade a well-organized essay really brought home an understanding of why structure matters. It helped to dispel ideas that their professors were just being too picky and that they should get full credit on exams if it seems like they know what they are talking about. It also helped break through some of the students’ concerns that exam writing should be beautiful writing. In both the first and third years, we hear students say that they don’t use mini-IRACs because it feels too choppy, or they don’t include the language of the rule in their application because it feels too repetitive. Being the ultimate audience – the grader – helps them to see what they need to do and why.

We moved up the exercise in our pre-bar course this semester, exposing students to grading earlier in the semester. At the time of this writing it’s too early to tell if moving the exercise to earlier in the semester means we will see better essays earlier, but I remain hopeful.

Last semester we also included points on the final exam specifically related to structure. We told students in advance that two points on each essay would be given for how closely they followed IRAC. The exam answers were definitely the most well-structured exam essays we have seen so far. Explicitly putting students in their readers’ shoes illustrates the importance of structure, far better than our lectures, sample answers, and checklists have done in the past.

1 We hear this statistic each year from a member of the New York Board of Law Examiners who comes to speak to our class each spring.

2 We use: http://www.online-stopwatch.com.

3 We do assure them that their professors spend more than 2-3 minutes on each essay, but that even generous professors, who will look for answers, will be happier if they don’t have to search too hard.

4 We have also done a similar exercise with our bar mentors during their training.
A Delicious Little Exercise to Teach CREAC

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In over 20 years of teaching legal analysis, research and writing, I have found that confusion and frustration with the legal writing construct of CREAC has been a constant. This is often the case, also, for students in my Advanced Legal Writing courses. Discussing a CREAC analysis relative to an everyday conversation, rather than to legal analysis, often helps students to understand that CREAC should not be viewed as an abstract formula, but as a reflection of the way we speak. In normal conversation, we state our belief (“Conclusion”), explain the reason (“Rule”), provide examples (“Explain”), apply the examples to the current problem (“Analyze”), and conclude.

This article demonstrates that discussion using an analysis about food. Everyone eats. Everyone can relate. This exercise helps to demystify CREAC.

As background, for a couple of years I have been doing an exercise with my Legal Analysis and Methods students based on the 1893 U.S. Supreme Court case of Nix v. Heddon. In Nix, the issue was whether tomatoes imported from San Marzano, Italy, should be taxed as vegetables under the Tariff Act, or not taxed due to classification as fruit. This exercise teaches the use of facts, development of themes, and use of precedent.

In Nix, the plaintiff/importer, relied on the theme of botany—that tomatoes have the characteristics of fruit: they grow above ground, from flowers, and have seeds on the inside. The defendant/taxing authority obviously pressed the theme of usage. The Court ruled that tomatoes were predominantly used like vegetables, and would be taxed as such.

In the CREAC exercise I discuss the issue of “Facts, Holding, Reasoning” (“FHR”) for the “E” of CREAC for Nix. The rule from Nix was that fruit would be taxed based on its “predominant usage.” The critical facts were: although tomatoes have the botanical characteristics of fruit, they are primarily used for soups, salads, and main courses, in applications such as sauces. The Court held that they would be taxed as vegetables. The Court reasoned that “in the common language of the people, … (tomatoes) are, like (vegetables) served at dinner in, with, or after the soup, fish, or meats which constitute the principal part of the repast, and not, like fruits generally, as dessert.” Nix, 149 U.S. at 307.

I then explain a hypothetical case, about the taxation of tangerines, Citrus v. Kibosh, 1234 F6th 78 (15th Cir. 1982). The critical facts were that tangerines not only have the botanical characteristics of fruit, but they tend to be used in fruit salads and as snacks. In this hypothetical case, the court held that tangerines, pursuant to the rule in Nix, should be taxed as fruit. The court reasoned that unlike tomatoes, tangerines tend to be used like other fruits, “generally, as desserts.” The court noted that tangerines are sometimes used in salad, but that is an infrequent usage.
Our assignment is to write a CREAC explaining how squash should be taxed. Expert testimony from dieticians, chefs, supermarket executives, and lobbyists from the fruit industry will testify as follows: squash—be it zucchini, spaghetti, or pumpkin—have the botanical characteristics of fruit (they grow above ground, from flowers, and have seeds inside). However, while they may sometimes be used for dessert (e.g., pumpkin pie, pumpkin cheesecake), and don’t tend to be widely used in salads, the predominant uses are in soup and in the main course.

The CREAC would be written as follows:

“C” Squash should be taxed as a vegetable, as they tend to be used mostly in soups and as side dishes for the main course.


“E” A fruit should be taxed as a vegetable when it is mostly utilized in the dinner course. For example, in *Nix*, the court found that although tomatoes have the botanical characteristics of fruit, they are primarily used for soups, salads, and main courses, in applications such as sauces. 149 U.S. at 307. The Court held that they would be taxed as vegetables. The Court reasoned that “in the common language of the people, … (tomatoes) are, like (vegetables) served at dinner in, with, or after the soup, fish, or meats which constitute the principal part of the repast, and not, like fruits generally, as dessert.” *Id.* Conversely, in *Citrus*, the court found that tangerines not only have the botanical classification of fruit, but also the usage. 1234 F6th, at 80. The court held that tangerines, pursuant to the rule in *Nix*, should be taxed as fruit. The court reasoned that unlike tomatoes, tangerines tend to be used like other fruits, “generally, as desserts.” *Id.* at 81.

“A” Like tomatoes, squash should be considered a vegetable for purposes of taxation. Like tomatoes in *Nix*, the predominant use of squash is in soups and main courses. The court should follow the reasoning of *Nix*, and hold that while squash, like tomatoes, have the botanical characteristics of fruit, the predominant use of squash is not in the dessert course. Squash, unlike the tangerine in *Citrus*, does not appear in fruit salads.

“C” Therefore, squash should be taxed pursuant to its predominant usage, as a dinner vegetable.

While this example seems simplistic, any student can understand the “predominant use” rule and why applying it would allow tomatoes to be taxed as vegetables and tangerines as fruit. They can see that CREAC follows the cadence of their own speech; that to convince someone of how squash should be taxed, they would explain the taxation of tomatoes and tangerines, and make the appropriate comparisons and contrasts.
The Study Circle

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Like many ASP professionals, late fall is my busiest time of year. After receiving their first few grades, students suddenly come to the realization that they must alter their approach if they are to succeed in law school. Obviously, each student is a unique individual with specific concerns and needs. That being said, in the past I often found myself giving students very similar advice about preparing for class, reviewing material, and self-assessment. Over the years, these separate pieces of advice have evolved into a single multi-step process that I have named, “The Study Circle.”

There is nothing revolutionary or unique about The Study Circle, and I suspect that all ASP professionals give comparable advice to their students regarding the various concepts that form the basis of my process. Still, addressing these concepts as a single process seems to resonate more strongly with my students than when I discuss the individual steps as separate concepts.

Initially, it does not take very long to explain The Study Circle, but it does take time to implement and master the steps. In fact, I typically spend a great deal of time delving more deeply into various aspects of the process with my students. For example, I can explain synthesis or outlining early in the fall semester, but students develop a more robust understanding of how to implement these ideas through trial and error. Then, when students struggle, they can come back to The Study Circle and to my office to get back on track.

In the end, The Study Circle is merely an acknowledgement that the steps in the learning process are related. Having these steps to work from, however, helps place students on a path toward self-reliance and better learning. So, without further ado, here are the steps in The Study Circle.

Step 1 – Prepare for class. Most obviously, you must complete the assigned reading but class preparation can also include researching concepts and terms that are confusing. When preparing for class, be sure to engage with the material and read actively. Write down questions about the cases as they arise, and then try to answer them. Question why the cases came out as they did. Alter the facts to see if you can still apply the court’s reasoning and come up with an answer. While mastery will not come during this stage in the process, you must understand the material sufficiently so that you can take part in the classroom dialogue.

Step 2 – Be an active participant in class. Engagement with your class and the professor is key. Notice what your classmates are asking, and see if you can understand the point behind their questions. Pretend that each of your professor’s question is directed to you, and see how well your answer comports with the response the professor was looking for. Also, be sure to look for patterns in the hypotheticals. Classroom hypos,
illustrate the analytical process and can hint at areas of the law that are often tested.

Step 3 – Regularly review material covered in class. I refer to this as the “micro” level review. Go over your notes and confirm that you actually understand every concept addressed by your professor. It is quite common for a student to understand a hypo answer as a professor goes over it in class, only to struggle with the hypo when reviewing it a few days later. This is the time to research what you do not know. Also, this is when you should be synthesizing principles from the material already covered. Professors often review multiple cases that relate to a single point of law. Identify the relationship between these cases and try to identify the common threads that hang them together.

Step 4 – Outline. Typically on the weekends, you should look at your most recent class notes and see how they fit within the material already covered. This is the “macro” level review of your notes. Your review at this stage is more than just placing new material at the end of the old. Instead, look for emerging patterns in the material, and indicate these connections in an outline or flowchart. Identifying connections helps you to see the law as a series of inter-related concepts, allowing you to resolve problems in a logical order. Eventually, you will memorize these connections and use them to impose order on the chaotic fact patterns you will receive during your exams. Steps 3 and 4 – the micro and macro level review – may be the most important aspects of the learning process in law school. Unfortunately, these steps are often skipped by students.

Step 5 – Quiz yourself. Every student is familiar with the concepts being addressed in class, but law school requires mastery of the material. To determine whether you have achieved mastery, quiz yourself. If your professor quizzes you, either graded or ungraded, great! This provides you with key information regarding your progress. If not, then quiz yourself. Use the Examples and Explanations series, purchase commercially available quiz questions, or log onto the CALI website (The Center for Computer Assisted Legal Instruction) to find quiz questions for various topics.

Step 6 – Identify and address problems areas. After you quiz yourself, look up the answers and identify the problem areas. Review your outline or flowchart and determine whether it lacked essential material or whether it had the answer and you simply forgot the information. In either case, clear up your confusion through additional research when needed. Most students review the answers they got wrong, but you should spend almost as much time reviewing your correct responses. Especially with short-answer or multiple choice questions, there is no guarantee that you used the correct law, facts, and process to arrive at the right answer. Sometimes, a correct response is the product of a lucky guess, and good luck is not easily replicated on a final examination.

Step 7 – After addressing problems and questions, prepare for your next class. Once you have completed the first 6 steps, you are ready to prepare for your next class. Following this process means that you will place yourself in the best position, each week, to understand the new material being covered in class and you will have completed The Study Circle. If you don’t engage in this process, or something like it, you will start each new week with a knowledge deficit. A knowledge deficit regarding last week’s material can make it impossible to grasp fully this week’s concepts.

Finally, do not panic if you discover holes in your understanding as you engage in the above process. In fact, the point of the process is to discover your strengths and weaknesses. Remember, every problem you address today is one less problem that can materialize during an exam.
On First Things and Loving the Law

Robert Gregg
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Appalachian School of Law

During my years as an academic support and bar preparation professional, I have been asked by students and fellow ASPers (and even some interested doctrinal and legal writing faculty) what I think are the most important qualities or credentials that a prospective law student should possess. It’s a difficult question, as even the “normal” range of potential indicators of law school success is considerable, from LSAT scores to undergraduate GPA to college major to work and other life experiences. My own philosophy of academic success (and law teaching, generally) contains both practical and theoretical elements, tempered with a judicious amount of realism.

I enter a classroom with the expectation that all my students are capable of performing well in class, but also that most will have to work hard to do so—and that at least a few will not. This expectation comes from nearly twelve years of extremely rewarding teaching experience and countless private conversations with students. Some of those students turned corners and became great students and attorneys; others realized law school was not for them (perhaps just not at that time). I have never been distressed about the latter group, as I believe everyone has a calling in his or her life, and that calling sometimes takes hard life experience to discover.

The more theoretical or genuinely philosophical side of my teaching philosophy—and the quality I think would-be lawyers need more than any other—is this: Students must love the law, or learn to love it if they do not upon entering law school. This sort of “love” must be in harmony with reason, but it must be real. By that I do not mean students should attempt to produce in themselves an inordinate fondness for particular kinds of civil or criminal wrongs, or even specific areas of law. But they should develop a genuine passion for and intellectual enjoyment of that body of knowledge, wisdom, and history which both reflects and helps to shape our society’s values. After all, what is a more proper object of a law student’s attention and esteem?

Experience also teaches me that students who learn the most and learn best are those who are actively engaged in the pursuit of knowledge and excellence first, and a law degree second. It should be part of the academic support professional’s vision for his or her role to inspire and instill love for the law and excellence in learning in every student. Worse, he may one day find himself among those lawyers who are frustrated with their profession and careers, and themselves.

It is also my firm conviction that, while students need to be prepared for the rigors of both law school and practice, this does not happen exclusively—sometimes not even mainly—from classroom experience. It is the job of the instructor, and especially the academic support instructor, to not only teach the law and legal skills, but to teach students how to learn. One of the most significant ways students can be taught this is by working through problems with others—in study groups both inside and outside of class. Students need this interaction with peers and professors because deep learning and internalizing course material simply won’t happen from reading what other people think about a case or legal principle. (As C.S. Lewis once wrote, even “a scholar’s parrot may talk Greek.” Or in our case, Latin.)

The modern law student can still be a thoughtful, passionate, and well-rounded learner, and the modern academic support teacher has more resources than ever to aid her in becoming so, as do other teaching staff. While there are certainly challenges (and perhaps more distractions than ever before), it is an exciting time for legal educators who are equally passionate about seeing students find and fulfill their potential.

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In light of the national decline in bar pass rates, coping with and addressing a law school’s bar passage rate is viewed by some as an insurmountable undertaking. However, I see it as an invaluable opportunity to redefine who are as law professors. Most importantly this challenge provides an opportunity for us as educators to train future attorneys to become self-aware, confident, and component to handle the challenges presented by the legal profession.

The American Bar Association (“ABA”) has made it quite clear to accredited law schools and those seeking accreditation that bar passage is now a paramount factor in retaining and obtaining accreditation. To that end, year after year, proposals are being reviewed by the ABA with the overall goal of defining what is an acceptable bar passage rate for ABA approved law schools. As a result, some law schools find themselves scrambling to implement programming and courses aimed at facilitating success on the bar exam. While some will argue the bar exam itself should be the major focus of a law school’s curriculum, others will argue in the alternative that the bar exam does not accurately assess the worthiness of a law school graduate to practice law. Irrespective of the side of the argument you take, it is undeniable that helping students to acknowledge and conquer their fears associated with the bar exam is a necessary step to assist them in passing the bar exam.

Often bar examinees’ fears are rooted in familial or community pressure to pass, as well as standardized testing anxieties, past failures, self-doubt, or fear of the unknown. For many bar takers, irrespective of their rank at graduation, the bar exam is cloaked in mystery, which in turn perpetuates the “Big Bad Wolf” phobia associated with the exam. While some students are able to turn the fear and anxiety into motivation to pass the bar exam, far too many become paralyzed by it. Ultimately it is that very fear and anxiety that results in students’ failing the bar exam, before they even begin. In addition to the emotional toll on graduates, failure on the bar exam can wreak havoc on a law school’s chances of being in compliance with ABA Standards, and affect both the reputation and rank of the school. Under the current interpretation of ABA Accreditation Standard 316, a law school can meet the bar pass requirement by: showing that 75% of its graduates who took the...
bar exam in at least three of the previous five years passed, or showing that its graduates’ first-time bar pass rate was no more than 15 points below the average bar pass rate for ABA-approved schools in states where its graduates took the bar.

This conversation is even more relevant in light of the fact that the ABA council of the Section of Legal Education and Admissions to the Bar recently approved revisions to Standard 316. Under the proposed revision, the time period for compliance would decrease from five years to two years, which directly impacts the number of attempts graduates will have to pass the bar exam. In addition, the proposed revisions would eliminate the first-time bar passage rate test – also referred to as the “gap standard” – which allows for comparative measures within each jurisdiction. Ultimately, the proposed revisions would move the standard from a multidimensional measure, to a sole test for compliance under ABA Standard 316.

Before we can begin to explore recommendations for addressing and combating students’ fears of the bar exam, we must first explore the root cause of the problem: the fear students possess about the exam. I had the pleasure of teaching and developing course content for a credit-bearing bar, law, and skills course for third-year students. This course was specifically designed to enhance students’ critical thinking and legal reasoning skills and teach bar exam strategies, while surveying heavily tested content areas within the seven subjects tested on the Multistate Bar Exam (“MBE”).

It was apparent during the very first class there was widespread fear in the room among students who ironically were within months of graduating and preparing for the bar exam. I began the class that day by describing in detail the Multistate Bar Exam (“MBE”). Next, I showed the documentary, “A Lawyer Walks into the Bar.” The purpose of showing the documentary was to put a real face on the bar exam and to put into perspective the commitment that was necessary to be successful on the exam. By the end of the documentary, what I initially presumed was fear on the faces of my students soon shifted to panic for a large portion of the class. I knew that before I could move forward with the planned curriculum for the course, it was imperative that I get to the root of the fear and panic. Failure to do so would result in many of my students failing before they began. I needed to know the things my students feared the most about the bar exam. To get to the root of their fears, I developed a series of reflective writing assignments that were specifically designed to serve as a tool for students to honestly express their fears and reservations about the bar exam. Through these reflective writing assignments, it was also my goal to create a judgment-free zone so students felt safe to be honest and open about their fears.

The first reflective writing assignment in the three-part series was titled, “The Three Things I Fear the Most about the Bar Exam.” The candidness and honesty of my students was remarkable. It was as if they were waiting for someone to ask that very question. In each of the submissions there was a proverbial sigh, as if they were finally free to talk about this pressing concern. It is important to note that students enrolled in this course represented the top, middle and bottom of their law school class, yet the fears they expressed were collective and uniform. The fears included: (1) not being able to manage the stress, anxiety and actual workload during the 10-12 week bar study period; (2) the repercussions and stig-
ma associated with not passing the bar exam on the first attempt; (3) the concern that they were not equipped or adequately prepared to take the most important exam of their educational career; and (4) the final and most consistent fear was letting down their families, friends, and community. I provided direct feedback to each of my students. In my comments, I challenged them to work hard in the course and to use the course to conquer their fears of the bar exam. At the end of the course (four months later), my students completed their final reflective writing assignment, titled, “I Will PASS the Bar Exam on the First-Attempt because . . .” This assignment gave students a chance to reflect back to the first writing assignment (about fear) and then bring the experience full circle. The final writing assignment also gave students the opportunity to address all they learned that semester, including their personal growth, their increased comfort with the bar exam (both content and structure), and most importantly, their increased confidence that they could pass the bar exam on the first attempt.

While I set out to empower my students by helping them conquer their fears related to the bar exam, my experience teaching the course highlighted far more. As a result of that experience and working directly with bar takers for over 10 years, I developed a list of recommendations. Collectively the P.A.S.S. recommendations are designed to aid law schools as they work to equip students with tools to be both successful in law school and to ultimately conquer their fears of the bar exam.

“The Big Bad Wolf (Cont’d)

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my students by helping them conquer their fears related to the bar exam, my experience teaching the course highlighted far more. As a result of that experience and working directly with bar takers for over 10 years, I developed a list of recommendations. Collectively the P.A.S.S. recommendations are designed to aid law schools as they work to equip students with tools to be both successful in law school and to ultimately conquer their fears of the bar exam.

“P.A.S.S. - Preparation, Assessment, Self-Directed Reflection, and Support”

Preparation

“You know, I look back on my law school career and have so many regrets. Why didn’t I study harder? Why did I never find a study group to join? Why didn’t I tell my kids no more often? Which leads me to my first fear. Did I learn enough to even prepare myself for bar prep? Perhaps not. Perhaps this review will not be a review at all. Perhaps this review will be three years of what I was supposed to learn crammed into 3 short months. Which then leads me to my next fear. OMG! What if the few things I did learn escape me when it comes time to perform? Do they have Viagra for mental performance? Note to self: call doctor.” - Anonymous Student

Recommendations:

• Talk to students about the bar exam early and often, not just in the final year of law school. Discuss the bar exam with students in terms of it being a comprehensive exam at the end that requires adequate preparation and commitment throughout law school, starting in the first year.

• Require or encourage students to take bar related courses, especially students that are experiencing academic difficulty after the first year of law school.

• Provide assistance to students that exhibit academic deficiencies early in law school. Consider a specialized track for students that don’t perform well after the first year of law school to help these students tackle their deficiencies while increasing their chances of success (i.e. Students with a 2.4 or below must take “x” number of bar-related courses and meet with their faculty advisor “a” number of times).

Assessment

“Multiple Choice is my arch nemesis. In my life story, the day of the bar exam will later become known as “Massacre in Downtown Tampa.” My brain will be on vacation the day of the exam.” - Anonymous Student

Recommendations:

• Provide formative and summative assessments with feedback in doctrinal courses, early and often. Meaningful feedback coupled with encouraging stu-
students to remediate their weaknesses, is a necessary component of the learning cycle.

- Strongly recommend or require mandatory first-year final exam review with the goal of encouraging students to self-assess their performance. At this stage students will have the opportunity to seek assistance with their deficiencies in advance of graduation.
- Administer a mock bar exam (or comprehensive exam) during the second year of law school to provide students with the opportunity to assess their knowledge of the black letter law, well in advance of graduation.
- Provide more opportunities throughout the curriculum for students to engage in advanced legal analysis and experiential learning. These types of exercises and learning tasks will serve to promote more active engagement among students.

Self-Directed Reflective Writing

“I will also have to tell my parents that I failed the exam and my Father is already critical of my every move and nothing I do is ever good enough for him. I am basically a terrible child if something he wishes does not go as planned. In fact, he thinks my mind is already ‘perverted’ because I am going to be a divorce lawyer, lawyers are evil, and I couldn't pass chemistry and become a respectable doctor like him.” - Anonymous Student

Recommendations:
- Incorporate reflective writing throughout the curriculum, starting in the first year of law school. Directed reflective writing provides students with a tool to evaluate their learning and heighten their self-awareness.
- Provide opportunities for students to receive feedback and targeted strategies to address concerns identified in their reflective writing.

Support

“I am now faced with the impending doom of the Bar Exam, something my husband won't quite let me out of no matter how much I beg to go to medical school. Avoidance is obviously no longer an option. And, here I sit, me and my fears (that no one at home understands) waiting to go to slaughter.” – Anonymous Student

Recommendations:
- Create a “judgment-free zone” where students can be honest about their fears and reservations about law school and the bar exam.
- Provide support to bar takers during the bar study period through mentoring provided by faculty, alums, and local attorneys. Emotional support is key for students preparing for the exam.
- Assist students with developing a life plan rather than a law school-style study schedule. This will help students to understand early in the process that bar exam preparation is distinctively different from how they prepared for their course work while in law school.
- Dispel myths about the bar exam early; don’t simply ignore the myths. This step will help students to address their fears and reservations, while furthering the goal of getting students to gain a healthy understanding and respect for what is required to sufficiently prepare for the bar exam.

It is essential that we assess the needs of students and be willing to make the necessary adjustments to our courses and overall curriculums to help students optimize their chances of success in law school and on the bar exam. While the credentials of students vary from law school to law school, there are still major commonalities in the students we serve. Understanding that bar examinees’ fears are rooted in familial or community pressure to pass, standardized testing anxieties, past failures, self-doubt, or fear of the unknown is the first step in turning this challenge into an opportunity. Failing to acknowledge these fears and the needs of our students, could result in damaging consequences not only for law schools, but also for the legal profession.
Meeting Our Obligation to At-Risk Students

Marsha Griggs
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I am proud to be an academic support professional. I work daily with at-risk students. While I am copiously aware of their statistical chances of bar failure, I focus on their potential to succeed. I try to teach law students how to write and think like the attorneys they aspire to become. My thoughts of and service to these students is not colored by their admissions index or Law School Admission Test (LSAT) score.

I am familiar with the literature that correlate admissions test scores to graduate school performance. I accept that standardized admissions tests are valid predictors of many aspects of student success across academic and applied fields. What I am not willing to accept is the notion that risk factors cannot be addressed by competent programmatic and academic intervention.

Law school graduates who don't pass the bar may have poor study habits or lack of comprehension to blame. Law students who can't pass the bar may have their law schools to blame.

There is no shortage of media reporting the alarming drop in bar passage rates and decrying the role of the American Bar Association (ABA), the National Conference of Bar Examiners (NCBE), state bar examiners, and law schools in that drop. Published are letters from law school deans who blame the NCBE, author of the multistate exams, and statements from the NCBE identifying diminished student competency as the source of declining bar outcomes. Conventional academic wisdom would suggest that further inquiry into the root cause of declining bar performance will yield the identity of the culprit that has robbed the legal academy of boasting rights to top bar performance. But conventional wisdom seems to have gotten it wrong this time.

The blame game does not improve student outcomes. Instead, students are lost in the crossfire between the ABA, the law schools and the bar examiners. In the case of plummeting bar scores, the at-risk students are likened to the defenseless children of unamicable divorce who have fallen victim to the counterproductive bickering of “parents” in charge of school accreditation, funding and academic standards. With boasted missions to promote diversity in the legal profession, law schools have lost sight of the single-minded goal of each and every student who matriculates into their halls: to leave as an attorney. Of course countless law school graduates immediately or eventually decide to pursue other fields or to forego the practice of law. Regardless of whether a law graduate

When law school administrators set admissions standards, they are implicitly contracting to teach, nurture, and develop the admitted students in a manner strategically and purposely calculated to lead to bar readiness.

THE LEARNING CURVE
ever actually practices law, the purpose of pursuing a legal education is generally the quest to be able to become an attorney. While I am not aware of any such survey ever conducted, I think it unlikely that a random sampling of anyone entering law school in this era would knowingly continue without at least the potential of being able to practice law.

I have seen students with LSAT scores below 145 perform in the 80th percentile on state bar exams. I venture to say that I would be joined by a host of academic support colleagues who has seen students with LSAT scores above 150 with high law school grade point averages fail a state bar exam. An LSAT score in any reasonable range followed by proper legal education and developed analytical skills can yield bar pass results. When law school administrators set admissions standards, they are implicitly contracting to teach, nurture, and develop the admitted students in a manner strategically and purposely calculated to lead to bar readiness.

It follows then that the calling of a law school is to produce students capable of passing a bar exam, not just recruit them. Someone, sooner or later, must consider the bleak reality that telling future law graduates how statistically unlikely it is that they will pass a bar exam is antithetical to the truer reality that today’s law students need academic support more than ever before. Law schools have an obligation to provide quality legal education and effective academic interventions to ensure that law graduates may benefit from that education. Law schools meet their obligations to at-risk students, who are most in need of academic intervention, when they commit substantial resources to staffing and funding academic support and bar readiness programs targeted to improve academic and bar pass outcomes.6

The Benefits of In-Class Group Work in Doctrinal Classes: Confession of a Hesitant Flipper

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Despite all the literature praising the benefit of the flipped classroom, I confess I have been reluctant to embrace fully the flipped experience. I have always viewed the face-to-face class experience as so special that I am hesitant to shift too much content delivery to other formats, like online videos. One aspect of the typical flipped experience that I have fully embraced, however, is the promotion of in-class student group work.

I started using in-class student group work when I revamped our Summer Academic Success Program (“Summer ASP”) at Regent in 2002. Specifically, we began that program to provide selected admitted students with an intensive experience to develop their critical reading, analytical, study, and test-taking skills in a setting that facilitates their transition into law school. The program runs for four hours each day Monday through Friday for two weeks prior to orientation week. Given that the students were in class four hours each day, I knew a critical way to maintain the energy level in the room would be to have them periodically break down into “study groups” in class to work through exercises, such as outlining the doctrinal material we were discussing. Plus, breaking down into these groups would help model for the students how they can form study groups as they move into their first semester. In fact, over the years, many students have formed study groups out of the relationships they developed in the Summer ASP.

From the benefits of in-class group work I saw in the Summer ASP, I began utilizing in-class group work in my Professional Responsibility course, which I had begun teaching in 2001. My use of the technique was gradual, however, for many years; students would break into small groups at only a few points in the semester, such as when I had them discuss various arguments for how lawyers can represent clients they know are guilty and when I had them discuss one or two professional responsibility bar exam essay questions.

The breakthroughs for when I began using more in-class group work came in 2013 and 2014. First, in the fall of 2013, I was teaching Civil Procedure for the first time, and it was my first teaching experience to a large first-year section. I wanted to integrate ASP-type techniques into my teaching and therefore had the students regularly divide into groups in which they worked through various hypotheticals either from the casebook or from ones I provided. Second, in 2014 I taught Professional Responsibility in the summer for the first time, and the course met in three-hour blocks. Like my experience with the Summer ASP back in 2002, I knew that having students divide into groups for discussion would help energize the room and break up the potential monotony of a three-hour Socratic-type dialogue.

Although I was hoping students would enjoy the group discussions, I was surprised at how positive student feedback was. I remember one student, who was an older student for law school standards (in his mid-30s!) was not as receptive to the in-class group work, saying he did not get much out of it. Other students, however, were much more positive. I was concerned that students might slack off and chit-chat as opposed to discuss the substance of the problems before them, but I was pleased as I walked around the room how engaged the students were. Particular students did not tend to dominate the discussions, and students seemed eager to work together. These breakthrough
experiences have led me to embrace fully such in-class group work, and now it is a regular staple among the various instructional techniques I use in my doctrinal classes. In fact, students seem more and more receptive to the approach, and I encourage my Regent colleagues to employ this approach as well.

In all my doctrinal classes, I have settled on these methods in using in-class group work.

1. First, each group gets a well-defined task that focuses on problem-solving. I do not ask the students to reflect generally on their reactions to a case, for instance, and rather give them one or more discrete hypothetical problems to work through and arrive at a solution. As my most common example, after we discuss cases or rules on a particular topic, I will give them a hypothetical factual scenario (like a mini essay question) to have them as a group apply and discuss the concepts we just addressed.

2. Second, students do not get too much time to conduct their small group work before I reconvene the large group discussion. I have found that sometimes five minutes is enough and often after ten the small group discussion begins to veer off track.

3. Third, students are allowed to pick their groups informally based on who is seated around them. Although some educators recommend groups be more formally assigned, I have had success with this informal formation, and therefore, believe a more formal process might inhibit the relationship-building, which, as noted below, has been a positive benefit of the experience.

4. Fourth, the groups are small; I tell the students to form groups of two to four, and strongly encourage them to land on groups of three.

5. Fifth, we call them “law firm groups” to encourage students already to see the benefits of collaboration in effective problem-solving in law practice.

6. Sixth, if I am giving the students more than a few minutes to discuss the problem, I walk around the room to observe the discussions and provide me with important feedback on how well students are learning.

Since employing these methods, I now see additional benefits to using break-out groups which I did not envision when I begin this practice—albeit slowly—14 years ago. First, such group work recognizes and makes the most of the attributes of the millennial generation. The student who was less receptive to the group work in my 2014 class was not a millennial; but research on millennials, who make up the bulk of our students, shows they thrive on relationships and collaboration in ways previous generations have not.1 Fostering such in-class discussion not only brings energy to the room; it also energizes the learning process. The typical Socratic dialogue, which I still do employ, focuses on an exchange between one student and one professor. Although ASP principles encourage each student to treat each question from the professor “as if it is asked of you,”2 we know that some students disengage when they are not in the hot seat. Breaking into small discussion groups in class forces students to get involved—and if they do not, their disengagement is obvious to their peers (and the professor who walks around the room). I therefore have been pleased to see that students who rarely, if ever, volunteer in class, do participate in the small groups in working through the material with their classmates. Moreover, the group work encourages students simply to get to know their classmates and ultimately to develop relationships that can enhance their law school experiences overall.
The Benefits of In-Class Group Work in Doctrinal Classes  (Cont’d)

Second, such group work does not come at the expense of doctrinal course coverage. One ASP professional told me years ago that “coverage is overrated” (an expression I will never forget) and that as instructors, we should recognize that skills development is critical even in doctrinal classes. Although I agree with this principle, I admit I can obsess about content coverage given that all the doctrinal classes I have taught, which this academic year are Professional Responsibility and Contracts, are tested on national multistate exams. I therefore was concerned that taking class time for group work would slow down content coverage. What I am learning more and more, however, is that such group work does not detract from coverage and can even enhance it at times. Specifically, sometimes when I engage in Socratic dialogue with a student about how he would resolve a hypothetical problem the process goes rather slowly as I help the student discover the core rules and analytical points through that dialogue. Now, when I have students tackle that same problem as a group, I may give them five to ten minutes to discuss it; but when I call on a group representative to discuss it in class, that exchange goes more smoothly such that in the end more students are engaged in the process, the large group discussion teases out the important points, and no additional time is taken.

Third, such group work creates easy opportunities for formative assessments that benefit the students—and the instructor. In our educational environment that is recognizing the increased need for formative assessments in the classroom, I have found that group work helps students assess their understanding of the material. Because small group work generally forces students to engage and talk about the material, it causes them to assess whether they understand the rules at issue and can apply them to the problem at hand. In addition, as I walk around the room during the discussion, I can assess how students are doing, what concepts they are struggling with, and what concepts appear to be understood more easily. In fact, after walking around, I sometimes make comments to the large group based on what I overheard in order to correct a substantive misunderstanding about the material. This process thus enables me to provide immediate feedback to the large group.

Even though I consider myself a hesitant flipper, I am sold on the benefits of in-class student group work in doctrinal classes. In our role as ASP professionals, I encourage us to encourage our colleagues at our respective schools to embrace this approach as a relatively easy way to address the instructional needs of millennials, energize our classrooms, and provide our students and us with feedback to enhance their—and our—learning experience.


2. Dennis J. Tonsing, 1000 Days to the Bar, but the Practice of Law Begins Now 40-1 (2d ed. 2010).
How Diet & Nutrition Can Make You Smarter

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Those of us working in law schools know that wellness is extremely important to student success. Law school is a stressful time. External forces and internal pressures can take a heavy toll on students, thus affecting their performance. While some of these forces and pressures cannot be mitigated, one set of forces that can be controlled but is often ignored is self-care. Self-care encompasses many things, including sleep and exercise, but one of the most overlooked facets of self-care is nutrition. Effective nutrition can have a significant impact on cognitive performance.

We all know the feeling. Sometimes, your mind feels agile and aware, ready to handle complex issues and problems. Other times, we feel sluggish, unfocused, our thinking is not quite clear. As it turns out, what you have eaten probably has a lot to do with how you are feeling and how your brain is working.

What I will attempt to address here is what kinds of foods or nutrients might help your brain work at a higher level, and what kinds of things you might want to avoid. This is not intended to be an all-encompassing study, rather a quick and dirty guide to get you started.

What You Should Be Eating

Omega-3 Fatty Acids
In addition to the general health benefits associated with "healthy" omega-3 fats, the brain uses these fatty acids as a fuel source. Omega-3 fatty acids have been associated with better cognitive performance, while a lack of these fatty acids can lead to anxiety and depression.

Where to get them: Salmon and sardines are the best sources of omega-3's. For vegans, things get pretty difficult as animal sources are the best. However, some omega-3's are present in walnuts, flax seeds, hemp seeds, and chia seeds.

B Vitamins
There are a number of B vitamins, but the most important appear to be vitamins B6, B12, and folate, with vitamins B1 and B2 also worth mentioning. Studies have shown that higher blood levels of these vitamins were associated with higher cognitive function.

Where to get them: When it comes to B12, vegans are again a bit out of luck - B12 is mainly found in animal products, like meat (especially liver), seafood, eggs, milk and cheese. B6 and folate, however, are mainly found in non-animal sources, especially leafy greens, citrus, peas, potatoes, bananas, chickpeas and oatmeal.

Tyrosine
Tyrosine is a very interesting amino acid, especially for those of us involved in higher education, because it has been shown to reduce the effects of stress on cognitive performance. So for someone who might be studying for the bar exam, entrance exam, or just working in a stressful environment, tyrosine could be a great ally.

Where to get it: Tyrosine is best obtained through a supplement, purchased as your local health food store.

Curcumin
Curcumin is perhaps one of the most powerful and interesting natural compounds on earth. Curcumin is a component of turmeric, which is the spice used in curry. Curcumin has a host of health benefits, really well summarized here. Curcumin, among other things, has been shown to be a powerful anti-inflammatory, antioxidant, and has been shown to reduce the risk of heart disease and cancer. Not bad! Best of all, for our purposes here, it has been shown to lead to improved brain function.

Where to get it: You could eat a ton of curry with turmeric in it, but it would be very hard to get the quantities of curcumin needed. Your best bet is to get it through a supplement, like this one.
How Diet & Nutrition Can Make You Smarter (Cont’d)

Caffeine
It should not come as a surprise to many of us that caffeine can be a performance enhancer for your brain. It enhances our ability to focus in the short term and affects a broad range of cognitive parameters. However, there is also evidence that caffeine can help commit information to memory. As with most things in life, however, moderation is the key. A single 12 ounce cup of coffee appears to be about the right amount of caffeine to help memory.

Where to get it: Purely for the caffeine content, any source is fine. However, there are some additional benefits to getting your caffeine from either tea or coffee - namely the flavonoid content and lack of sugar.

Other Considerations
Eating a good breakfast has a positive effect on brain function, but a large lunch tends to make you tired.

Getting some vitamin D helps, and the best way to do that is to get outside and get some sun exposure. A brisk midday walk or run can help you get the sun exposure, while also taking advantage of the cognitive benefits of exercise.

Avoid sugar. It is bad in essentially every sense for your body, but it can particularly affect your memory.

Trans fats have a negative impact on cognitive performance. Combine this fact with the previous bullet point, and a morning donut might be the worst thing for your brain.

There you have it!
Moving On Up: ASP’s Journey into 2L and 3L Curriculum Integration

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Since our last article, Building a Foundation, published in the Winter 2016 edition of The Learning Curve, our law school has made the strategic decision to move ASP integration beyond the 1L curriculum.

Our law school, like so many others, has experienced a decrease in bar pass rates. Accordingly, our school examined factors affecting bar passage, based on past performance of our students. We found first-year GPA, law school GPA at graduation, and enrollment in an ASP taught bar exam skills course are consistently positive and significant predictors of first-time bar exam passage for our students. Also, not surprisingly, our research revealed that students failing the bar exam on the first attempt were most likely to fall in the bottom-half of the class.

This research and a close review of our ASP programming confirmed that we needed to provide more structured ASP resources to our third and fourth quartile students from second semester through the third year of law school. (We had been helping that group of students, but not in a structured way.) We felt our bar pass rates could not improve if we lacked a comprehensive ASP program for students beyond the first year of law school. Additionally, the research supported the notion that ASP intervention in bar preparation is helping our students become first-time bar passers. As a result, we identified ways to expand the reaches of ASP in the curriculum. The following is a brief overview of our new courses and how we integrated them into the curriculum:

First Year | Legal Methods:
During the second semester of law school, students in the bottom quartile of the 1L class are now required to take a one-credit ASP course. This class is similar to many ASP courses across the country. Our goals are to improve student learning and work on academic skills in discrete lessons throughout the semester. This required course replaces a series of workshops and individual meetings for probation students. This course is taught by ASP faculty; however, the course incorporates practice problems from second semester doctrinal courses.

Second Year | Advanced Legal Analysis:
In the second year, we adopted a course entitled Advanced Legal Analysis to help improve the legal analysis skills of our at-risk students. This course is required for the bottom half of the 2L class based on grades from their 1L year. It is two credits and is designed to serve as a bridge from their first year Foundations of Legal Analysis course (see previous article) to preparing for the bar exam. Currently, both ASP professors and doctrinal faculty are teaching the course. The course uses the MPT to teach, review, and improve legal analysis skills. The students receive feedback each week on different skills-focused assignments. There are opportunities to develop students’ ability to read and analyze a problem, analyze and synthesize sources of law, apply the rules to the relevant facts, and communicate effectively in writing. Teaching these skills in a new context, i.e. the bar exam, that is tangible to them makes the course more engaging and worthwhile to the students. The frequent feedback is also valuable to the students and provides the professors (both ASP and doctrinal) with frequent opportunities to engage with the students who are struggling in law school.

Because both ASP professors and doctrinal professors are teaching this class, collaboration was necessary to achieve a consistent message for each section of the course. We handled that by using an ASP-led training session over the summer to share the syllabus, the lesson plans, and teaching tools for the course. In addition, all of the
professors teaching the course attempt to meet on a weekly basis to discuss the next week’s assignment. Further collaboration will be necessary in the coming year to develop new problem sets and to work on improvements to the course.

Third Year | Bar Exam Substance and Strategies:
Finally, Bar Exam Substance and Strategies is a mandatory six-credit course for all 3L law students. However, students in the top 25% of the class can petition for an exemption. The class meets during both the fall and spring semester with students earning three credit hours per semester.

The purpose of the course is to introduce students to bar exam subjects frequently tested on the exam, provide a review of the substantive law tested on the bar exam, and provide students an opportunity to practice the skills necessary for both the multi-state bar exam (MBE) and written portion of the exam.

Students are required to purchase multi-state outlines published by a bar vendor and a course packet that includes practice MBE questions, essay questions and multi-state performance test (MPT) questions.

The course is broken into substantive law units. Each substantive law unit, includes a three-day lecture by a doctrinal faculty member on topics that are frequently tested within a subject on the bar exam. Students are asked to create a short outline on frequently tested topics using the bar vendor’s outline and clarifying information delivered during the live professor lecture. The purpose of the outline is to assist students with the substantive law needed to work practice problems.

The unit then moves to essay examples. During the essay example segment, ASP assists students in working through previously tested bar exam essays with a focus on skills development. We teach and practice techniques for reading, analyzing and writing a bar exam essay response. This portion of the unit is collaborative with the class working together to identify applicable rules of law, applying relevant facts to the applicable law and discussing differing organizational schemes. We review well-written, average, and below-average essay responses identifying strengths and weaknesses of each essay. The essay component culminates with an in-class essay exam under timed conditions. For each in-class essay exam, students are provided with detailed feedback regarding both the substantive law and the skill of essay writing. Students are tasked with completing a reflective exercise identifying areas of strength and areas for improvement moving forward.

If the subject is also tested on the MBE, we wrap up the unit by spending three class periods teaching and implementing test-taking strategies for the MBE. Essentially, during this time we walk students through the process of deconstructing MBE questions with a focus on frequently tested topics. We teach students how to self-diagnose MBE test-taking errors to assist with improving MBE scores. We worked close with our Associate Dean of Academic Affairs and Faculty to select the substan-
tive subjects to include in the course. During the fall semester, the course was comprised of Torts, Agency, Contracts and Family Law. Moving into the spring semester, the course will include a unit on the MPT, Corporations, Trusts and Estates, and Civil Procedure. Additionally, throughout the course, ASP Faculty incorporates topics such as identifying risk factors that may impact bar passage, learning styles assessment, bar exam study schedules, and the importance of attitude and motivation.

Bar Exam Substance and Strategies allows our students consistent exposure and interaction to bar-tested materials throughout their third year of law school. Also, Bar Exam Substance and Strategies provides an opportunity for a number of doctrinal faculty and ASP faculty to team-teach for an entire academic year while preparing our students for the bar exam.

Creating buy-in for ASP integration:

When we discuss our integration journey with our ASP colleagues at other law schools, we often are asked: How did you create buy-in amongst the faculty? The short answer to that question is that ASP has spent time educating and communicating with faculty. We began opening the lines of communication over five years ago. Each opportunity we had to interact with the faculty, we took advantage of it—to ask to join committees, to ask for time at faculty meetings to describe our program, to visit faculty in their offices to seek opinions, and to offer to work with faculty on skills-based workshops for their students. However, the drop in our bar pass rates gave us the space to further educate the faculty on our research of the factors affecting our bar passage. When we shared the data with the faculty, we also offered solutions to the problem (i.e. proposing new courses for our students in the bottom half of the class and asking for a significant change to the bar skills class in the third year).

Those offerings seemed to open the door to more in-depth discussions with our faculty about next steps. It was further than we had ever gotten with the notion of ASP integration into the curriculum. Our Associate Dean of Academic Affairs and our Curriculum committee were the first to agree to the proposals, although the means of how to implement the changes were a more challenging issue. The faculty met to discuss the ideas presented by ASP and were in favor of the changes, but there were concerns about who would teach the courses and how much time the courses required of the professors teaching the courses.

Ultimately, after much discussion and the realization that our students stand a better chance of passing the bar exam with more opportunities for ASP intervention, our proposals were approved by the faculty. The challenges of course coverage and teaching loads continue to be an issue with the faculty, but we will continue to work with our Associate Dean and faculty to improve those integration issues.

Key Takeaways:
The collaboration among the faculty and ASP to implement the changes and to teach together is strengthening our curriculum in ways we haven’t seen before. The integration creates a sense that ASP is part of the curriculum instead of “that thing” a student has to participate in or complete to move forward. Additionally, it has created an atmosphere where ASP faculty and doctrinal faculty are working together on a consistent basis. Team-teaching has provided valuable learning opportunities for both the ASP faculty and doctrinal faculty. From an ASP perspective, we learn more about the substantive law and the interplays of doctrinal teaching versus bar preparation teaching. From a doctrinal perspective, faculty learn more information about the bar exam and the bar preparation process. It has allowed ASP to demonstrate how valuable skills integration is in doctrinal courses and the benefits our students reap by introducing bar-tested questions early in the curriculum. It has also demonstrated the value of feedback, especially in utilizing frequent feedback and varying the types of feedback students receive in each lesson. Most importantly, it has allowed ASP and doctrinal faculty to join forces to improve the academic performance of our students.
Call for Submissions

THE LEARNING CURVE is published twice yearly, once in the summer and once in the winter. We currently are considering articles for the Summer 2017 issue, and we want to hear from you! We encourage both new and seasoned ASP professionals to submit their work.

We are particularly interested in submissions surrounding the issue’s themes of incorporating experiential learning and meeting the needs of law students in the “new normal.” Are you doing something innovative in your classroom that helps motivate a new generation of law students? Do you have a fresh take on technology or what it means to be “ASPish” in these changing times? Do you have proven exercises and assessment tools from which your colleagues might benefit?

Please ensure that your articles are applicable to our wide readership. Principles that apply broadly — i.e., to all teaching or support program environments — are especially welcome. While we always want to be supportive of your work, we discourage articles that focus solely on advertising for an individual school’s program.

Please send inquiries and/or your article submission to LearningCurveASP@gmail.com by no later than March 15, 2017. (Please do not send inquiries to the Gmail account, as it is not regularly monitored.) Attach your submission to your message as a Word file. Please do not send a hard-copy manuscript or paste a manuscript into the body of an email message.

Articles should be 500 to 2,000 words in length, with light references, if appropriate. Please include any references in a references list at the end of your manuscript, not in footnotes. (See articles in this issue for examples.)

We look forward to reading your work and learning from you!

- The Editors

THE LEARNING CURVE is a publication of the AALS Section on Academic Support.

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We’re on the Web!

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www.lawschoolasp.org

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